

# *Council Policy*

## Roadside Trading



# COUNCIL POLICY



## ROADSIDE TRADING (USE OF PUBLIC ROAD VERGES FOR BUSINESS PURPOSES)

<b>Policy Number:</b>	COM-20
<b>Responsible Department(s):</b>	Strategy & Development, Property Services and Regulatory Services
<b>Relevant Delegations:</b>	None
<b>Other Relevant Policies:</b>	Mobile Food Vendor Location Rules
<b>Relevant Procedure(s):</b>	None
<b>Relevant Legislation:</b>	<i>Local Government Act 1999</i> <i>Local Government (Mobile Food Vendors) Amendment Act 2017</i>
<b>Policies and Procedures Superseded by this policy on its Adoption:</b>	Street Traders Policy Roadside Trading 23/07/2007, Item 7.1, 31 Roadside Trading 13/10/2008, Item 8.1, 109 Roadside Trading 13/09/2011, Item 10.2, Minute 275 Roadside Trading 10/03/2015, Item 12.2, 7
<b>Adoption Authority:</b>	Council
<b>Date of Adoption:</b>	24 April 2018
<b>Effective From:</b>	14 May 2018
<b>Minute Reference for Adoption:</b>	Item 12.5, 91/18
<b>Next Review:</b>	No later than March 2021 or as required by legislation or changed circumstances

## ROADSIDE TRADING (USE OF PUBLIC ROAD VERGES FOR BUSINESS PURPOSES) POLICY

### 1. POLICY SCOPE

Adelaide Hills Council recognises and supports the practice of selling some products from public roads within the Council area, and acknowledges the need for appropriate permit procedures and guidelines for these activities to ensure public safety and fair sharing of Council's road and other reserve spaces.

This policy establishes how applications are to be assessed and permits issued. This permit system is intended to guide how public road verges are to be used for business purposes in ways that ensure an appropriate balance between the interests of the Council, street traders, residents of the Adelaide Hills Council, and visitors to the Adelaide Hills region.

This policy does not apply to:

- permanent or all year round fruit sales outlets within private property – e.g., apples and cherries from orchards;
- permanent outlets – e.g. at Balhannah (which operate separately under development legislation);
- stalls of any type intended to be located at one site for more than 6 months;
- outdoor dining; or,
- some casual and very short-term uses of a road reserve by persons selling raffle tickets, holiday or festival appropriate flowers, home-made products, or persons seeking donations.

The policy applies to the following, and similar, business activities located on Council's road reserves, or on other Council land:

- temporary stalls;
- street vending stalls;
- Mobile Food Vendors
- fundraising stalls; or,
- seasonal stalls.

### 2. LEGISLATIVE CONTEXT

Under the *Local Government Act 1999*, a person must not use a public road for business purposes without a permit (*Section 222(1)*). Business purposes include the use of land even if it is not intended to make a profit (*Section 5*).

A permit may grant rights of exclusive occupation in relation to part of a public road (*Section 222(2)*) may be granted for a particular occasion or for a specific period (*Section 222(3)*) but cannot exceed more than five years (*Section 222(4)*). Public consultation is required if Council proposes to grant a permit that would result in any part of a road being fenced, enclosed or partitioned so as to impede traffic to a material degree (*Section 223(1)*). Council can include

conditions on a permit which it considers appropriate, requiring, for example, compliance with safety requirements, specific insurance or indemnities or payment of rent (*Section 224*).

Any person vending on a public road without a permit is in breach of the *Local Government Act 1999* and an expiation fee of \$210 will apply. In addition, Council may impose a penalty of \$2,500 if a permit is not obtained (*Section 222(1)*).

A permit may be revoked by Council by written notice to the permit holder (*Section 225*).

### 3. DEFINITIONS

**“Business purposes”** includes any **“business activity”**.

**“Business Activity”** means any activity that is engaged in for the primary purpose of making a profit. In general, business activities can include things like sales, operations, marketing, production, administration and developing economic opportunities. This policy relates primarily to business activities involving selling to the general public and passing trade. While other business activities can be undertaken on road side locations, they are unlikely to be a practical or profitable use of that land. For the purposes of this policy, land may be used for a business purpose even if the use is not intended to make a profit.

**“Fundraising stall”** means a stall operating to raise money for a charity or not-for-profit organisation where 100% of the net proceeds of sales are directed to that charity or organisation.

**“Imported goods and produce”** means goods and farm produce not grown, dug, picked, collected, sourced or produced by the stall holder on land adjacent to the stall, and goods and farm produce, including manufactured goods, which are on-sold for a third party even if locally grown or produced.

**“Manufactured goods”** means goods produced on a large scale by manual labour and/or machinery. Manufactured goods do not include, farm produce dug, picked, collected, or sourced by the stall holder, or goods hand-made or produced by the stall holder.

**“Mobile Trading”** means the sale of items from a vehicle, where a particular item is sold to buyers from the vehicle itself.

**“Permanent stall”** means a stall which is intended to be in place indefinitely, being more than six months continuously or consecutively, or in varying periods which together total more than six months over a 12 month permit period.

**“Permit”** means a permit to use a public road for business purposes as prescribed in Section 222 of the *Local Government Act 1999*.

**“Seasonal”** means farm produce which is available during its natural season or which is available periodically, and includes the sale of manure in accordance with best practice animal keeping.

**“Small stall”** means a stall no more than four (4) square metres in area.

**“Street Vending”** means the sale of items where the vendor is present at all times and assists buyers with their purchase.

**“Temporary stall”** means a stall which is in place for a limited time only, being not more than six months continuously or consecutively, or in varying periods which together total six months or less over a 12 month permit period.

#### **4. POLICY OBJECTIVES**

- 4.1** To provide for public health, safety and amenity;
- 4.2** To establish procedures for registration and identification of traders who trade on Council’s road verges; and,
- 4.3** To indicate those types of activities which Council do not support.

#### **5. POLICY STATEMENTS/PRINCIPLES**

- 5.1** The use of public footpaths in townships and urban areas and road verges in rural areas by business and other persons selling goods should be granted only where:
  - a) there is no adverse impact on pedestrian safety or other road users; and,
  - b) amenity of the locality can be preserved.
- 5.2** Council acknowledges the tradition of temporary roadside stalls in rural areas, in particular stalls of a small scale (occupying no more than 4m<sup>2</sup>) which do not require the construction of any structure(s) and which only involve the sale of farm produce or goods (e.g. flowers, fire wood, manure).
- 5.3** Any roadside stall selling manure will be categorised as ‘temporary’ provided that any signs and empty pallets, or the like, are removed when there is no manure for sale.
- 5.4** Council supports small scale (occupying no more than 4m<sup>2</sup>) and temporary street trading in townships and urban areas which:
  - a) does not require the construction of any permanent or fixed structure(s) within townships and urban areas; and,
  - b) comprises charity or community service fundraising activities, or sales or promotions by businesses immediately adjacent to that section of street to be used for business purposes.
- 5.5** No manufactured goods shall be sold at road verge stalls in rural areas.
- 5.6** Permit holders in townships and urban areas must remove all vehicles and equipment from the public footpath or road verge at the end of each day or at the conclusion of business unless the permit indicates otherwise.
- 5.7** Vehicles used to sell goods, and any stall must display a valid Permit.

- 5.8** Only those parts of a road reserve which are considered safe for pedestrian and vehicular traffic may be utilised. Assessment of acceptable sight distance for rural roadside verge stalls will be based on the following general approach for minimum safe stopping distance (SSD) either side of the location of the stall:
- a) 60kph road = 73 metres SSD;
  - b) 80 kph = 114 metres SSD; and,
  - c) 100 kph = 165 metres SSD.
- 5.9** A permit holder must agree to indemnify Council from all actions and damages whatsoever which may be brought against them for any wilful or negligent act.
- 5.10** If the applicant is not the owner of the land adjacent to the proposed location of the stall, then the applicant shall obtain the written agreement of the immediately adjoining owner(s) of land.
- 5.11** Public liability insurance for permit holders to the value of at least \$20 million provided by Adelaide Hills Council.
- 5.12** Signage is to be restricted to two (2) single-sided or double-sided sign per stall, with an advertisement area of not more than 0.36 m<sup>2</sup> (e.g. 1200mm x 300mm or 600mm x 600mm) and situated immediately adjacent the stall.
- 5.13** The general approach to fees is:
- a) permit fees are set in Council's Fees and Charges Register, located on the Adelaide Hills Council website at [www.ahc.sa.gov.au](http://www.ahc.sa.gov.au)
  - b) a permit fee will apply:
    - to the use of the road reserve within townships and urban areas to display and sell goods or for promotional and similar purposes;
    - in all areas where goods sold are imported or manufactured
    - in all areas where goods are sold from large and/or permanent stalls; subject to the exclusions noted below
  - c) No permit fee will apply for:
    - a small temporary or permanent stall displaying and selling horse manure adjacent to a residential or rural property;
    - a small temporary display selling seasonal good and produce (ie. flowers, fruit and vegetables) adjacent to a residential or rural property;
    - one day only of the sale of manufacture or imported good or for promotional purposes (up to a maximum of 5 days per annum);
    - fundraising stalls for charitable purposes
- 5.14** Permission, either by permit or allowance under this policy, to operate in a particular location does not extend to times when a major event occurs which includes that same location – e.g. 'Tour Down Under' or the 'Lights of Lobethal'. Approval to operate during such events in the same location is to be obtained via the event organiser and Council.

**5.15** Permits are only allowed for use of roadside verges. Permits will not be issued for:

- road carriageways or road surface areas, including areas set aside for the movement or parking of vehicles;
- any area where the parking or movement of vehicles is prohibited or restricted; or
- any other location, including verges, that Council determines are unsafe.

## **6. PERMIT PROCESS AND CONDITIONS**

### **6.1 Types of Street Trading Permits under this policy include:**

Permit type/category	Common examples
<b>Mobile food vendor</b>	<ul style="list-style-type: none"> <li>• Soft serve ice cream van</li> <li>• Boxed ice cream sales from van</li> <li>• Coffee van</li> <li>• Take away food</li> <li>• Sale of farm produce from a vehicle</li> </ul>
<b>Display and/or sale of goods on footpath</b>	<ul style="list-style-type: none"> <li>• Sale items displayed on trestle table with sale taking place in adjacent shop</li> <li>• Goods placed directly on footpath with sale taking place in adjacent shop</li> <li>• Fruit and vegetables in cart or on table on footpath with sales in adjacent shop</li> <li>• Goods displayed on trestle table or placed directly on footpath with sale taking place outside shop</li> </ul>
<b>Roadside trading</b>	<ul style="list-style-type: none"> <li>• Seasonal stall – eg fruit, flowers</li> <li>• Sale of rural produce from adjacent property – eg fruit, manure, hay, flowers</li> <li>• Permanent or semi-permanent stall – eg fruit, flowers</li> </ul>
<b>Fundraising</b>	<ul style="list-style-type: none"> <li>• Fund raising stall</li> </ul>

### **6.2 Period of Validity**

Permits will be issued for a maximum 12 month period ending on 30 June each year with the actual duration to be determined by Council.

### **6.3 Fees**

Fees are set and reviewed each year by Council and are listed in Council's Fees and Charges Register located on the Adelaide Hills Council website at [www.ahc.sa.gov.au](http://www.ahc.sa.gov.au)

### **6.4 Application process**

1. Application form to be completed and lodged with Council together with required information (NB: a single application may be lodged for special events)
2. Application received, registered and acknowledged
3. Council officer, or officers inspect the site to assess suitability of the site

4. Assessment of application taking into account the following issues:
  - a) appropriate location of the vehicle, table, stall or other temporary structure, having regard to the safety of other road users and pedestrians;
  - b) assessment of acceptable sight distance for rural roadside verge stalls in accordance with clause 5.8;
  - c) control of obstructions;
  - d) location of nearby infrastructure, properties and driveway crossovers;
  - e) control of visual amenity, cleanliness and litter;
  - f) scale and nature of proposal;
  - g) the protection of Council against any public liability claims arising out of any failure by the permit holder;
  - h) and any other relevant factors.
5. Referral to other sections within Council, when relevant;
6. Determine any conditions which should apply; and
7. Application granted or refused
8. If the application is granted, and the determined fee paid, then the permit will be issued.

If it is determined the activity will require other approvals, such as approval under the *Public and Environmental Health Act 1987* or development approval under the *Development Act 1993*, the applicant will be advised that the application cannot proceed until the required approvals have been obtained.

## **6.5 Conditions of Permit**

The following conditions, where applicable, will apply to all Roadside Trading Permits:

1. the permit holder will comply with all relevant laws of the Commonwealth and State and any relevant Council by-law;
2. the permit holder agrees to comply with permit conditions and Council's Roadside Trading (Use of Public Road Verges for Business Purposes) Policy;
3. vendors must comply with all provisions of the Australian Road Rules;
4. permit holders in townships and urban areas must remove all vehicles and equipment from the public footpath or road verge at the end of each day or at the conclusion of business unless this permit indicates otherwise;
5. music or other audible means, e.g. bell, used for attracting custom is to be kept to a minimum and are not to create a nuisance. Music or bells utilised on vehicles are not to be used when the vehicle is stationary;
6. this permit must be supplied on request by an authorised officer of Adelaide Hills Council;
7. permits must be on display at all times;
8. the permit holder is required to notify Council in writing within 7 days of any changes of address of the business;
9. the permit is non-transferable;
10. a permit holder must indemnify Council from all actions and damages whatsoever which may be brought against them for any wilful or negligent act;
11. all permit applications that relate to the sale or distribution of any food materials, must have lodged a Mobile Food Vendor Application Form and had food preparation equipment that is intended to be used, inspected by and approved by an Adelaide Hills Council's Environmental Health Officer;
12. signage is to be restricted to one single-sided or double-sided sign per stall, with an advertisement area of not more than 0.36 square metres (e.g. 1200mm x

- 300mm or 600mm x 600mm) and situated immediately adjacent the stall with no approach signs allowed;
13. this permit is not valid if a major event occurs which includes the same location as approved under this permit. Approval to operate during such events in the same location must be obtained via the event organiser;
  14. permits are issued subject to the principles, terms and conditions of Councils Roadside Trading (Use of Public Road Verges for Business Purposes) Policy; and,
  15. any breaches of permit condition(s) or of Councils Roadside Trading (Use of Public Road Verges for Business Purposes) Policy may result in the cancellation of the permit.

#### **6.6 Specific Conditions for Street Vending or Mobile Food Vendors (selling food or drinks)**

The following additional conditions, will apply to the occasional street vending of food, drinks or agricultural produce:

1. all permit applications that relate to the sale or distribution of any food materials, must have lodged a food notification form, and had any food preparation equipment that is intended to be used inspected by and approved by an Adelaide Hills Council Environmental Health Officer.
2. unpackaged ice cream may only be sold if:
  - the permit holders name and address is conspicuously marked on the vehicle;
  - in a mobile van, the vehicle is safe and displays appropriate safety signage; and,
  - in a mobile van, the vehicle is not used for any other purpose.

#### **6.7 Specific Conditions for Street Vending or Mobile Vans (not selling food or drinks)**

The following additional conditions, will apply to occasional/ periodical non-food related Street Vending at approved areas within the Council area:

1. The permit holder must not sell any animals or birds.

### **7. DELEGATION**

Permits may be issued by the Delegated Council Officer in accordance with this Policy.

The Chief Executive Officer has the delegation to:

- Approve, amend and review any procedures that shall be consistent with this Policy; and
- Make any formatting, nomenclature or other minor changes to the Policy during the period of its currency.

### **8. AVAILABILITY OF THE POLICY**

This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website [www.ahc.sa.gov.au](http://www.ahc.sa.gov.au). Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.