

Note: these guidelines were updated in June 2017 to include current legislative and Departmental references. They otherwise reflect the information presented in the 1996 version.

STREET VENDING

Foreword

Street vending activity involves the selling of articles either directly or from a stall or standing vehicle or at a footpath restaurant or take-away service facility on public roads and public places. Street vending has general community support and may improve the amenity of streets and public places and provide added convenience and economic benefit for the community.

There are several State Government organisations with responsibility for aspects of street vending. Roads and Maritime Services (RMS) is responsible for the safe and efficient use of the State's roads. NSW Police has responsibility for law enforcement.

The Office of Local Government (OLG) has responsibility for local government legislation and promoting efficiency in local government administration.

Local Councils have specific operational responsibility for the regulation of street vending activity in NSW. The *Local Government Act 1993* requires anyone engaged in street vending activity to obtain prior approval from the local Council and to comply with Council conditions. The *Roads Act 1993* requires prior consent for street vending structures and allows Councils to charge rents in built-up areas.

This manual was first prepared in 1996 jointly by the former Roads and Traffic Authority and the then Department of Local Government in association with the then Police Service and the then Local Government and Shires Associations of NSW. The manual provides guidance on relevant policy and clarifies responsibilities of Councils, RMS, NSW Police and street vending operators.

Councils are required to consider and apply this manual when determining applications for street vending approval under the *Local Government Act 1993*, or consent for street vending structures on public roads under the *Roads Act 1993*.

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1. Introduction

This manual provides Councils and street vending operators with guidance to more effectively and consistently control and operate street vending activities within a public road or a public place. In particular, this manual outlines the responsibilities and criteria for approvals so that problems associated with street vending are minimised.

This manual is mandatory where street vending is carried out from street vending structures in built-up areas and Council wishes to charge rent for such activities. See Section 6, Criteria for approvals, of this manual for more information.

2. Definitions

Arterial roads – these roads predominantly carry through traffic from one region to another and form principal avenues of communication for metropolitan traffic movements. Arterial roads are usually part of the declared classified road system.

Carriageway – that portion of the road reserve devoted particularly to moving vehicles. See Figure 1.

Classified road – means any of the following: a main road, a highway, a freeway, a controlled access road, a secondary road, a tourist road, a tollway, a State work. See *Roads Act 1993*, Part 5 for further details.

Kerb – a raised border of rigid material formed at the edge of a carriageway. See Figure 1.

Mobile vending vehicle – see definition of street vending vehicle.

Prescribed flashing warning light - means the light required to be fitted to street vending vehicles by Clause 126 of Schedule 2 to the *Road Transport (Vehicle Registration) Regulation 2007*.

Public place – means a public road, bridge, jetty, wharf, road ferry, public bathing reserve, public baths, public land and other land which is a public place under the *Local Government Act 1993*.

Public road – means a road which the public are entitled to use.

Public street – means any street, road, lane, thoroughfare, footpath, or place open to or used by the public, and includes any place at the time open to or used by the public on the payment of money or otherwise.

Road reserve – the entire right-of-way devoted to public travel, including footpaths, shoulders, verges and carriageways – the whole width between adjacent property boundaries. See Figure 1.

Road users – includes pedestrians, motorists, cyclists and motor cyclists.

Shoulder – the portion of the carriageway beyond the traffic lanes and contiguous and generally flush with the surface of the pavement.

Standing vehicle – includes any vehicle, whether registered or not, which is stopped on a public road or a public place for the purposes of selling any article.

Street vending vehicle – means –

- a) For the purpose of an approval under Section 68 of the *Local Government Act 1999*, to use a standing vehicle or any article for the purpose of selling an article in a public place, this term includes all types of vehicles (registered or unregistered) which are used for the sale of articles in a public road or public place.
- b) For the purpose of Clause 126, Schedule 2 of the *Road Transport (Vehicle Registration) Regulation 2007* and Rule 221-2 of the *Road Rules 2014*, a street vending vehicle means a motor vehicle or trailer used for the hawking of ice cream (including any form of frozen confection containing ice cream, flavoured ice, fruit-ice, water-ice or a substitute for ice cream) or chocolates, sweets or other confectionery (defined in *Road Transport (Vehicle Registration) Regulation 2007*).

Street vending – involves the selling of articles either directly or from a stall or standing vehicle in a public street or a public place.

Examples of street vending activities include:

- sale of fruits and vegetables from barrows on a footpath
- sale of newspapers from a stand on a footpath
- sale of food, drinks, fruits or vegetables from a stall, a standing vehicle or structure (e.g. kiosks) in a pedestrian mall, near a tourist area, sporting venue or the like not being on private land
- sale of food or articles from a box, stall or table located on a footpath, including stalls operated by charitable organisations
- sale of any goods from a stall, stand, or standing vehicle located in a kerbside lane or on the side of a carriageway
- setting up of footway restaurants or take-away facilities for sale or serving of drinks in a pedestrian area
- sale of flowers from a box on the side of a carriageway
- sale of food, confectionary or other articles from a standing street or mobile vending vehicle on the side of a carriageway.

Street vending structure – a structure or article in respect of which consent may be granted under Section 138 of the *Roads Act 1993* or in respect of which approval may be granted under Section 68 of the *Local Government Act 1993*.

Vehicle – any type of vehicle e.g. a motor vehicle, trailer, tram, bicycle etc. whether registered or not.

3. Traffic and safety problems

The practice of street vending can have an adverse effect on traffic safety and operation. Street vending activities should not be approved on public streets where there is a conflict with road users which cannot be resolved. However there are locations where street vending can be accommodated without compromising the safety and convenience of road users. Such locations may include public roads:

- in urban areas with wide footpaths
- where the speed limit is less than 80 km/h and the carriageway has wide shoulders.

The selling of goods to passing motorists from the kerbside lane or verge is potentially dangerous as vehicles may have to suddenly stop creating unsafe situations with moving traffic. Similarly, the setting up of footway restaurants and take-away facilities in public places and on footpaths may jeopardise the free movement of pedestrians especially, children, the elderly and people with disabilities (including wheelchair users). Dangerous situations may also arise when pedestrians are forced onto the carriageway by the encroachment of street vending stalls or footway restaurants.

These problems may arise because of the:

- (a) lack of defined entry and exit to street vending locations
- (b) inadequacy or lack of parking in areas
- (c) hazardous location of advertising signs, and
- (d) inadequate room for the mobility of pedestrians, especially people with disabilities, and for the passage of prams and wheelchairs.

Street vending activities often produce more hazardous traffic conditions than comparable off-street developments as no defined entry and exit or parking locations exist, leading to random, uncontrolled and unexpected traffic manoeuvres. This is particularly the case when street vendors are selling articles to passing motorists on:

- roads where the speed limit is 80 km/h or higher
- busy arterial roads.

A number of activities such as selling newspapers, charity collections and cleaning windscreens from the carriageway of a public street (especially at intersections controlled by traffic signals) may cause obstruction, hindrance and/or prevent the free passage of road users. In some circumstances these activities are potentially unsafe and may lead to injuries and deaths.

4. Legislation

It is an offence under the *Local Government Act 1993* to carry out any street vending activity without the prior approval of the Council of the area in which the activity is conducted. The offence is punishable by an on-the-spot penalty.

Section 68 (Item 7, Part F) of the *Local Government Act 1993* requires any person, using a standing vehicle or any article for the purpose of selling any article in a public place, to obtain the prior approval of the Council. The Act sets the procedure for making an application for approval and the determination of applications by the Council. The Council may refuse approval or grant approval subject to conditions. The Council may also require the payment of an application fee and may fix the period for which the approval will operate. The applicant is entitled to be advised of any regulatory requirements in advance and to know the reasons for the Council's decision. The applicant may appeal to the Land and Environment Court if dissatisfied with the Council's decision.

Street vending vehicles are to meet the requirements of Clause 126 of Schedule 2 of the *Road Transport (Vehicle Registration) Regulation 2007* (i.e. must be fitted with a prescribed flashing warning light).

Section 125 of the *Roads Act 1993* empowers the Council to approve footway restaurants, and requires RMS concurrence if these facilities are on classified roads.

The *Roads Act 1993* includes a number of provisions (mainly Sections 139A to E) in respect of consents for the use of a structure.

Section 139F of the *Roads Act 1993* outlines matters to be taken into account when considering whether to grant, extend or transfer a street vending consent including that the relevant roads authority must comply with guidelines on street vending issued by RMS and the Office of Local Government (Section 6 of this manual).

While a consent is in force, the taking of action in accordance with the consent is taken not to constitute a public nuisance and does not give rise to an offence against the *Roads Act 1993* or any other Act.

Road Rule 236 prohibits pedestrians causing a traffic hazard or obstruction, including from displaying advertisements, selling or offering articles for sale or washing or cleaning, or offering to wash or clean, the windscreen of a vehicle.

5. Responsibilities

5.1 Councils

Councils have general responsibilities for the stewardship and management of public roads and public places.

Councils have specific powers and responsibilities under the *Local Government Act 1993* to control street vending activity and the *Roads Act 1993*, gives Councils power to control footway restaurants and structures on public roads.

Under the *Local Government Act 1993*, Councils may use local approval policies to establish formal criteria for street vending approvals.

In determining applications for street vending approval, Councils should consider:

- (a) the requirements of any relevant Acts and Regulations
- (b) this manual
- (c) any traffic safety and management issues and relevant advice provided by the Local Traffic Committee(s)
- (d) the circumstances and nature of the proposed street vending activity and its likely impact, and
- (e) any relevant health and hygiene requirements, including food handling standards and appropriate provision for the collection and disposal of litter.

RMS, in principle, does not favour street vending activities on classified roads for traffic and safety reasons. Council should nonetheless consult with RMS and consider Section 6 of this manual dealing with criteria for approvals.

Under the *Roads Act 1993*, Councils have responsibility to:

- (a) determine an application to use an area of footpath adjacent to a restaurant for purposes of footway restaurants (Section 125)
- (b) obtain the concurrence of RMS prior to granting consent to erect any structure on a classified road (Section 138), and
- (c) comply with this manual regarding consents where street vending is carried out from a structure on or over a public road, which is not in a built-up area.

5.2 Roads and Maritime Services

RMS has functions under the *Transport Administration Act 1988*, relating to traffic management and safety. These functions include promoting traffic safety measures or activities for the prevention of, and minimising of, the effect of accidents on roads or road related areas. RMS' responsibility is to give advice on matters relating to traffic safety and management either directly or through the Local Traffic Committee. This may include advice on the effect street vending activities will have on traffic safety.

RMS' views should always be considered by Council when determining applications for street vending approvals on classified roads.

5.3 NSW Police

NSW Police may undertake enforcement of the road transport legislation.

In relation to street vending activities, the role of NSW Police includes control of activities involving charity collections, windscreen cleaning and sale of newspapers from carriageways of public streets and to provide advice on matters relating to safety and enforcement through the Local Traffic Committee.

5.4 Street vending operators

Councils are the sole approval authority for street vending within the road reserve and public places. Accordingly, the operator of a street vending proposal under the *Local Government Act 1993 and Roads Act 1993* must first apply to local Council as the roads authority for approval in writing.

The application should provide details of:

- (a) the proposed location(s) of the activity
- (b) the proposed period of operation, including times and days of the week
- (c) the type of business including full details of the goods for sale
- (d) the nature of any signs, including warning and advertising signs, and
- (e) any further information required by the Council.

When operators carry out street vending they must comply with the conditions detailed in the written approval issued by the Council, and the approval may be revoked.

A person who fails to obtain an approval or who carries out an activity not in accordance with an approval is guilty of an offence under Section 626 and 627 of the *Local Government Act 1993*.

6. Criteria for approvals

Where selling of any article or service is carried out from street vending structures in built-up areas and Council wishes to charge rent for the activity, the requirements set out in this section of the manual are mandatory.

6.1 General

The health and hygiene controls placed on street vending activities are matters for Council to determine.

Traffic warning/information signs where required should conform with this manual. See Figure 1.

Street vending activities generally cater for pedestrians and for passing traffic.

6.2 Pedestrians

Street vending activities catering for pedestrians must:

- (a) not unduly obstruct the free passage of pedestrians, especially children, people with prams, the elderly and people with disabilities, including wheelchair users
- (b) be located on footpaths wide enough to accommodate the street vending activity as well as to allow the free movement of pedestrians during peak periods
- (c) be carried out from a safe structure if a structure is used
- (d) not be located where they would breach regulatory or signposted parking/standing restrictions (e.g. barrows in kerbside lanes when parking restrictions apply)
- (e) not be located in front of driveways or entrances to properties unless the permission of the property owner has been obtained.

6.3 Passing traffic

Street vending activities, see Figure 1, catering for passing traffic (generally rural and non-CBD situations in urban areas) must:

- (a) not be located where speed limit is 80 km/h or higher, unless safety and efficiency is not compromised
- (b) not be located on a hill or a bend where sight distance is limited (refer to Austroads Guide to Road Design)
- (c) not be located in front of driveways or entrances to properties unless the permission of the property owner has been obtained
- (d) not be located where motorists are forced to park in the kerbside lane, where parking/standing restrictions apply
- (e) have sufficient parking near the site
- (f) provide sufficient traffic warning signs in advance of the facility (signs should be placed only during periods of selling activity)
- (g) not be located in a two-lane, two-way (one lane in each direction) street, unless safe approach to the facility and safe departure from the facility is available
- (h) only be allowed from vehicles standing in the kerbside lane if an additional lane is available for moving traffic in that direction of travel, and there are no kerbside standing/parking restrictions, and
- (i) not be allowed to operate during hours of darkness, especially from a street vending vehicle or mobile vending vehicle unless adequate street lighting or other forms of lighting is available to warn pedestrians and other road users.

7. Approvals

The determination of an application for approval to carry out street vending activity in a public place or on a public road, either under the *Local Government Act 1993* or the *Roads Act 1993* respectively, is the responsibility of the local Council. For classified roads, consent must not be given except with the concurrence of RMS.

The Council is required under Section 77 of the *Local Government Act 1993* to bring relevant regulations or relevant local policy to the attention of an intending applicant.

The Council is required under Section 113 of the *Local Government Act 1993* to maintain a register of approvals showing:

- (a) the serial number of the approval
- (b) the date of application
- (c) the amount of the application fee and the date it was paid
- (d) the duration of the approval
- (e) the name and address of the person to whom the approval is granted
- (f) the location(s) at which the approved activity may be conducted
- (g) a description of the approved activity (including hours and days of operation), and
- (h) details of any conditions of approval and whether the approval has been revoked or modified.

In determining an application for approval the Council must have regard to Section 89 of the *Local Government Act 1993* and must not approve an application if the activity would not comply with relevant regulations.

Approvals for street vending activities may be given on a general–area or site–specific basis.

The approval in writing should normally include the following:

- (a) the permitted location for the street vending facility
- (b) the approved times and days of operation
- (c) the types of goods permitted to be sold
- (d) details of signposting requirements, if any
- (e) other conditions as may be deemed appropriate or necessary by Council.

It is recommended that the Council should apply standard conditions of approval requiring that a street vending operator must:

- (a) display evidence of a current street vending approval whenever street vending activities are being conducted
- (b) provide proof of identity whenever requested by an authorised Council employee or by the Police, and
- (c) comply with relevant food and traffic regulations.

An approval may be revoked if the operator does not comply with the written conditions.

Note: The exposure of articles (whether for sale or not) in or on or overhanging any part of a public road, requires Council approval under Item 2 Part E of Section 68 of the *Local Government Act 1993*. An application for approval under this Part may be made concurrently with a street vending application under Item 7, Part F of Section 68.

Where articles on display are not used for selling purposes, a separate application under Item 2 Part E of Section 68 may be

appropriate.

The requirement for approval to expose articles on the street enables Councils to regulate the display of goods and produce on the footpath and other road areas.

Failure to obtain approval is an offence punishable by a penalty notice (\$300) or a fine of up to \$2,000. The guidance provided in this manual in relation to street vending is generally relevant to applications for displays.

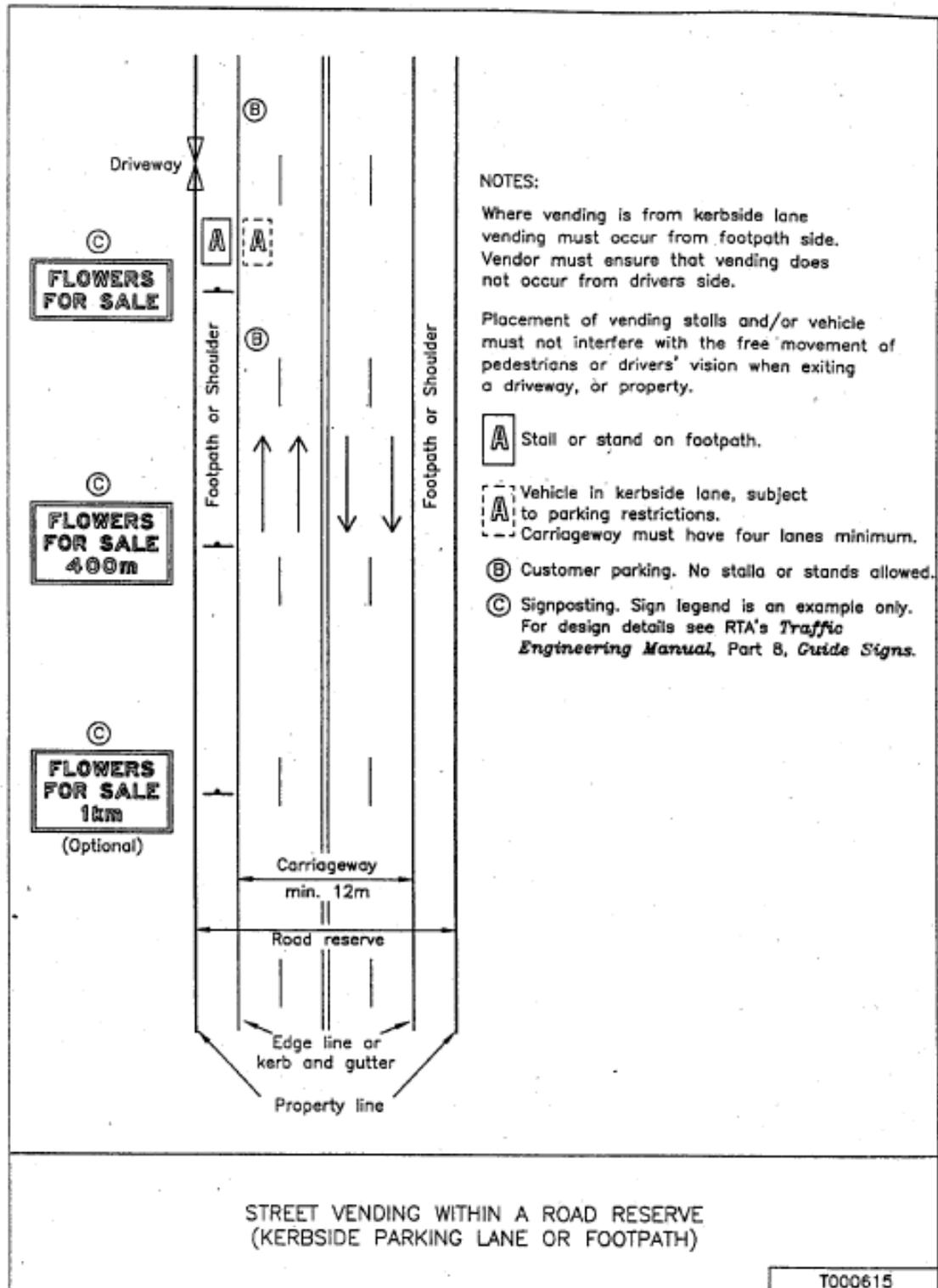


Figure 1