

ITINERANT TRADING POLICY

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Responsible Officer:	Manager Safe and Healthy Environments
Owner:	Safe and Healthy Environments
Responsible Director:	Health and Wellbeing
Relevant Legislation/Authority:	<i>Local Government Act 2020 Crown Land (Reserves) Act 1978 Road Safety Act 1986, Road Management Act 2004 (Vic),</i>
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1. PURPOSE

- 1.1 The purpose of this policy is to provide a functional framework for managing itinerant trading in the public realm and facilitate consistent decision making.
- 1.2 This policy seeks to:
 - (a) Provide a fair and balanced approach to the use of public space;
 - (b) Ensure safe, orderly and appropriate activation of public space;
 - (c) Provide clarity and certainty for the community;
 - (d) Formalise roles and responsibilities; and
 - (e) Manage the public risk.

2. BACKGROUND

- 2.1 Council's vision is for Greater Bendigo to be '*the world's most liveable community*' and this policy has been developed to ensure that itinerant trading can contribute to that vision.
- 2.2 In accordance with the Community Local Law, itinerant trading in Greater Bendigo requires a permit from the City. This policy will help guide and assist the management

of itinerant trading in the municipality by providing a transparent, consistent and fair approach, for the benefit of all.

3. SCOPE

- 3.1 This policy applies to all itinerant trading on land owned or managed by the City where that trading is at:
- (a) Any time or day, regardless of the frequency or duration; and
 - (b) A single location only; or
 - (c) Multiple locations at different times, or simultaneously.
- 3.2 This policy does not apply to itinerant trading, where that itinerant trading is:
- (a) Conducted on land not owned or managed by the City;
 - (b) Associated with a fixed premise business and captured by an '*outdoor dining and street trading*' permit;
 - (c) Conducted on land owned or managed by the City, but controlled by others under a lease, licence or agreement, and that itinerant trading is sanctioned by the lessee, sub-lease, licensee or other;
 - (d) A home delivery service from a fixed premise business; or
 - (e) Captured as part of a permitted event, where that itinerant trading is:
 - (i) Sanctioned by the event organiser; and
 - (ii) Covered by the event organisers public liability and professional indemnity insurance.

4. DEFINITIONS

In this policy:

Authorised Officer means any person appointed by the Council for the purposes of the administration and enforcement of any Act, regulations or local laws which relate to the functions and powers of the Council.

City means the Greater Bendigo City Council.

Community Local Law means the Greater Bendigo City Council Community Local Law.

CPTED means crime prevention through environmental design.

Exemption clause means a clause exempting certain pre-existing classes of itinerant traders from the tender process at highly desirable and sustainable sites

Highly desirable and sustainable means a site that has accommodated one or more itinerant trader at least monthly for longer than a twelve-month period.

Itinerant trader means any person or persons who for the purposes of selling or offering for sale any goods and/or services from a vehicle, caravan, table, stall or other similar structure.

Itinerant trading means the sale or offering for sale of any goods and/or services from a vehicle, caravan, trailer, table, stall or similar structure.

Outdoor dining means an area that is used by patrons to sit down and consume beverages/meals from an adjoining fixed premise.

Street trading means the use of a road or part thereof including a footpath for the sale or display of goods or signs or for an outdoor dining area.

Suitably authorised person means a person in a position with delegated authority to represent an organisation or agency.

5. PRINCIPLES

The City's general position regarding itinerant trading will:

- (a) Employ a placemaking mindset;
- (b) Support activation of public spaces;
- (c) Acknowledge the contribution it makes to creating safer neighbourhoods through its CPTED benefits;
- (d) Ensure community safety is not compromised;
- (e) Minimise the red tape embedded in the process;
- (f) Encourage diversity;
- (g) Facilitate equitable access;
- (h) Balance potential competitive and complementary impacts on other traders;
- (i) Have regard to the social and economic impacts; and
- (j) Facilitate integration of the City's plans and strategies.

6. POLICY

6.1 Policy statement

The use of public land for commercial purposes is a privilege not a right. The City seeks to strike a balance between supporting itinerant trading for the benefits of public space activation and preserving those spaces for use by all. While the City's Community Local Law defines the activities that require a permit, this policy seeks to provide assurance to the community that the City will manage itinerant trading on public land transparently, fairly and for the benefit of all.

6.2 Land owned or managed by the City of Greater Bendigo

6.2.1 Applications for itinerant trade must clearly identify the land on which the trading is proposed.

6.2.2 The City must be satisfied that it is either the land owner, or land manager prior to considering any application for itinerant trading.

6.2.3 Where the City is the land manager, applications for itinerant trading cannot be considered unless the land owner has provided consent for the proposed use in writing, or the land management arrangements authorise the City to do so.

6.2.4 Land owner consent must be issued by a suitably authorised person.

6.2.5 Permits for itinerant trade will not be issued where the land owner has not, or does not, consent to the proposed use.

6.2.6 The City reserves the right to determine whether to grant a permit or not for itinerant trading on land managed by the City, where the land owner has consented to the proposed use.

6.2.7 The City reserves the right to refuse a permit for itinerant trading on land owned or managed by the City, where there is evidence that the proposed use would have a detrimental impact on the amenity of the site or general area.

6.3 Appropriate locations

6.3.1 The City reserves the right to decide the suitability of any location for itinerant trading. When determining if a location is suitable, the City may consider matters such as (but not limited to):

- (a) The proximity to land zoned General Residential (GRZ) under the Greater Bendigo City Council Planning Scheme;
- (b) The proximity to, and nature of, existing traders and businesses;
- (c) The utility services available at the location;
- (d) The *Road Safety Act 1986* and the *Road Management Act 2004 (Vic)*; and
- (e) The proximity of other infrastructure including (but not limited to) waste bins, public toilets, parking, fire plugs and bus stops.

6.3.2 The City will not permit itinerant trading:

- (a) In a public park or reserve, unless the itinerant trading is associated with a temporary event and/or the site is a 'highly desirable and sustainable site' as referred to in section 6.3.3, 6.3.4, 6.3.5 and 6.3.6 of this policy; or
- (b) On a footpath, unless that itinerant trading is captured in an '*outdoor dining and street trading*' or '*activity in a public place*' permit; or
- (c) On a road or road reserve, unless that itinerant trading is included in an '*activity in a public place*' and/or the site is supported by the City for itinerant trading; or
- (d) In an 'on-street' formed car parking bay, unless included in an '*outdoor dining and street trading*' or '*activity in a public place*' permit.
- (e) Where utilities such as power and water are necessary but unavailable, and their installation is not practical, viable or desirable for any reason.

- 6.3.3 At sites identified by the City as 'highly desirable and sustainable' for itinerant trading, for example Lake Weeroona, the City will transition that annual approval process to a tender based process within two years of adopting this policy.
- 6.3.4 Existing approved itinerant traders at highly desirable and sustainable sites will be exempt from the tender process in accordance with clause 6.7.3.
- 6.3.5 Where existing itinerant trading has been approved by others at Gateway Park, the City will take over the approval role in line with current land management agreements, and implement a tender based process within two years of adopting this policy.
- 6.3.6 The City will undertake an annual review of the suitability of 'highly desirable and sustainable' sites and ensure that any new and emerging sites are included in the tendering process referred to in section 6.7.2 and 6.7.5 of this policy.

6.4 Exclusive use rights

- 6.4.1 Any permit issued for itinerant trading at a site does not give the permit holder exclusive use rights to the site. Where that site is nominated in an '*activity in a public place*' application, the City can issue a permit for the activity, to run concurrently with any existing itinerant trading permit.
- 6.4.2 In limited circumstances such as an event, itinerant trading permit holders will be given no less than 2 weeks' notice where possible, that they will not be able to trade during that event, where that trading is not sanctioned by an event organiser.

6.5 Access to utilities

- 6.5.1 Where connection to the City's utilities is required to support any application for itinerant trading, all costs associated with the connection and use must be met by the applicant.
- 6.5.2 Where connection to the City's utilities is required but not available, all costs associated with the provision of those utility services must be met by the applicant and can only be undertaken at such time that a permit has been granted.
- 6.5.3 Where works are required to provide utilities, the land owner must provide written consent for the works to be undertaken, from a suitably authorised person.
- 6.5.4 All works will be undertaken to the standards set by the land owner.
- 6.5.5 All infrastructure installed to support itinerant trading, including utilities, remain the property of the land owner.
- 6.5.6 Where infrastructure has been installed by an itinerant trader, and it is no longer required by the trader or the City, the trader will be required to remove the infrastructure from the site and make good, at their cost.

6.6 Public liability and professional indemnity insurance

Approvals will only be issued where applicants provide proof of public liability insurance and professional indemnity insurance for an amount not less than ten million dollars (\$10,000,000) current at time of the itinerant trading.

6.7 Applications for itinerant trading

6.7.1 All applications for itinerant trading must include:

- (a) A completed application form;
- (b) A certificate of currency for public liability insurance and professional indemnity insurance for a minimum of \$10,000,000;
- (c) Copy of current Food Act 1984 registration (for food businesses);
- (d) Application fee;
- (e) Nominated site(s) details including address;
- (f) Proposed day(s) and time(s) of operation;
- (g) Proposed period(s) of operation;
- (h) Diagram(s), photo(s) or illustration(s) representing the proposed design and proximity to existing infrastructure or site features;
- (i) Nature of business and products to be traded;
- (j) Details of waste management (including litter and waste water), utility needs and vehicle registration (if applicable); and
- (k) Details of any proposed signage.

6.7.2 Where there is interest from multiple traders for a site, that site will be considered a 'highly desirable and sustainable' site and included in the City's tendering process at the next renewal period.

6.7.3 Existing traders at highly desirable and sustainable sites will be subject to an exemption clause, that:

- 6.7.3.1 exempts them from the tender process;
- 6.7.3.2 maintains their current annual approval process via a licence agreement;
- 6.7.3.3 prohibits the transfer of this exemption to others;
- 6.7.3.4 requires them to adhere to all other sections of this policy.

6.7.4 The application of an exemption clause to existing traders will be subject to a sunset clause at a time to be determined at the first review of the Policy.

6.7.5 Where the City seeks tenders for 'highly desirable and sustainable sites', due consideration will be given to applications that align with the City's strategic objectives.

6.8 Assessment of applications for itinerant trading

When assessing applications for itinerant trading, Authorised Officers will:

- (a) Review all information provided by the applicant to ensure that it is a complete application;
- (b) Issue a further information request to the applicant should there be insufficient information provided, or items requiring further clarification;
- (c) Assess the application against the Community Local Law and the '*outdoor dining and street trading code of practice*';
- (d) Assess the application against the relevant sections of the *Road Safety Act 1986* and the *Road Management Act 2004 (Vic)*;
- (e) Refer the application to external authorities as required for comment, e.g. Regional Roads Victoria and Victoria Police;
- (f) Refer the application to internal departments as required for comment;
- (g) Consider any other matter relevant to the application;
- (h) Determine whether to grant or refuse an itinerant trading permit;
- (i) Determine all conditions relevant to approving the application and detail those conditions on any subsequent permit; and
- (j) Notify the applicant of the decision to grant or refuse a permit in writing.

6.9 Revocation of permits

6.9.1 The City reserves the right to revoke an itinerant trading permit in the following circumstances:

- (a) A permit holder did not comply with permit conditions.
- (b) A permit holder did not follow a direction by an Authorised Officer.
- (c) The City decides that the site is no longer suitable for itinerant trading.

6.9.2 At sites where the City decides that a site is no longer suitable for itinerant trading, any impacted permit holder(s) will be given no less than one month's notice in writing of the City's intention to revoke a permit.

6.9.3 Where the City determines that an itinerant trade permit should be revoked; the permit holder will be notified in writing as per section 6.9.2 of this policy and be given two weeks to submit reasons for consideration as to why the permit should not be revoked.

6.9.4 Any submission (written or verbal) relating to section 6.9.3 of this policy will be reviewed in accordance with the *Greater Bendigo City Council Local Law No. 10 – Administration*.

6.9.5 A permit holder is not entitled to any form of compensation should an itinerant trading permit be revoked.

6.10 Appeal of decision to refuse

An applicant may appeal a decision to refuse to issue a permit in accordance with the *Greater Bendigo City Council Local Law No. 10 – Administration*.

6.11 Permit fees and renewals

- 6.11.1 Itinerant trading permit fees will be determined annually in line with Council's annual budget process.
- 6.11.2 The City's fee structure will provide a financial incentive for applicants that implement the Victorian Government's Healthy Choices Guidelines.
- 6.11.3 Itinerant trading permits will be issued for a maximum of twelve months and will expire on 30 June annually.
- 6.11.4 Itinerant trading permits for 'highly desirable and sustainable' sites will be for the terms of the agreement determined during the tender process.
- 6.11.5 Pro-rata fees based on quarters will apply for new applications.
- 6.11.6 Where an application is refused, the application fee is non-refundable.
- 6.11.7 Renewal notices will be issued by the City prior to 30 June annually and it is the responsibility of the applicant to renew permits for itinerant trading. Failure to do so by the 1 July annually may result in permit cancellation.
- 6.11.8 Other than for agreements at the 'highly desirable and sustainable sites', renewal notices for a site will be issued to the existing permit holder.
- 6.11.9 The City reserves the right to determine not to renew an itinerant trading permit or amend permit conditions.

6.12 Compliance and enforcement

All compliance and enforcement activities undertaken by the City will be in accordance with the City's Compliance Policy.

7. ROLES AND RESPONSIBILITIES

7.1 Council

It is the role of Council to adopt the itinerant trading policy.

7.2 City of Greater Bendigo employees

7.2.1 The Safe and Healthy Environments unit is responsible for:

- (a) Administrative review of this policy and all associated reporting to Council;
- (b) Assessing applications for itinerant trading and making decisions; and
- (c) Applying the itinerant trade policy; and
- (d) Ensuring permit holders comply with all conditions of approval.

7.2.2 The Governance unit is responsible for:

- (a) Providing administrative support and oversight of tender processes.

7.2.3 The Property Services unit is responsible for:

- (a) Providing administrative support and oversight of leases, licences and agreements;
- (b) Reviewing and approving applications for infrastructure installation.

7.2.4 The Regional Sustainable Development unit is responsible for:

- (a) Identifying 'highly desirable and sustainable sites' in consultation with Parks and Open Space.

7.3 Permit holders

7.3.1 Permit holders must ensure that the approved itinerant trading is always conducted in accordance with:

- (a) the City's Community Local Law;
- (b) all conditions specified in the approval;
- (c) all requirements in the '*Outdoor Dining and Street Trading Code of Practice*', a reference document incorporated into the City's Community Local Law; and
- (d) any direction given by an Authorised Officer of the City.

7.3.2 Permit holders must ensure that a copy of the permit or agreement is always available at the location the itinerant trading is occurring.

8. RELATED DOCUMENTS

Readers are encouraged to access relevant documents and/or resources which are available as per the below.

These include:

- Greater Bendigo Community Plan 2017–21
- Greater Bendigo Health and Wellbeing Plan 2019-23
- Greater Bendigo Community Local Law
- Greater Bendigo Local Law 10 - Administration
- Greater Bendigo City Council Outdoor Dining and Street Trading Code of Practice
- Greater Bendigo Compliance Policy
- Department of Health and Human Service, Healthy Choices: food and drink classification guide
- Greater Bendigo Waste Wise Events Single-use Plastics Policy

Further information or advice on this policy should be directed to Safe and Healthy Environments

9. HUMAN RIGHTS COMPATIBILITY

The implications of this policy have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

10. ADMINISTRATIVE UPDATES

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this, such a change may be made administratively. Examples include a change to the name of a City unit, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be made through consultation with the staff Consultative Committee and with the approval of the Executive Management Team or where required, resolution of Council.

11. DOCUMENT HISTORY

Date Approved	Responsible Officer	Unit	Change Type	Version	Next Review Date
16/09/20	CG	Safe and Healthy Environments	Develop	1	Month, year