

OUTDOOR DINING AND TRADING PROCEDURE

1. INTRODUCTION

The aim of this procedure is to support the Management of Public Spaces Policy and to provide a framework for making decisions regarding outdoor dining and trading which encourages uses that add vitality and interest to the streetscapes within the Local Government Area in a safe and beneficial manner.

The objectives of this Procedure are:

- The objective of this procedure is to outline the steps to be undertaken by applicants and Council officers in processing applications for outdoor dining and trading within Council's Local Government Area.
- To encourage uses that add vitality and interest to the streetscape of towns and suburbs within Council's Local Government Area.
- To provide attractive surroundings for outdoor dining and refreshment.
- To support local economic development and commercial vitality.
- To ensure surrounding properties are not adversely impacted upon by outdoor dining and trading activities either visually, or by the conduct and nature of those activities.
- To ensure adequate and safe space is available for use of footpaths and or road reserves for general pedestrian circulation and to ensure pedestrian and traffic safety are not compromised by outdoor dining and trading activities.
- To allow the placement of furniture, planter boxes and displays that do not excessively separate or close off areas from the general streetscape or interfere with safe public and pedestrian access, or other business uses.
- To ensure that footpaths and or road reserves are maintained in a manner conducive to the maintenance of public health standards, public access and the attractiveness of the areas as a civic space.
- To ensure that only high quality, attractive furniture and structures of a standard deemed suitable by Council are used in the outdoor dining and trading areas.
- To apply common or consistent requirements and procedures to all applications for the use of a footpath and or road reserve for purposes of outdoor dining ancillary to an existing or a new food business and for outdoor trading ancillary to an existing retail business.
- To specifically detail Council's requirements with regards to applications for the use of footpaths and or road reserves for purposes of outdoor dining ancillary to an existing or a new food business and for outdoor trading ancillary to an existing retail business.

2. PROCEDURE STATEMENT AND SCOPE

This procedure applies to:

- a) Council staff making decisions on outdoor dining and outdoor trading.
- b) All applications for Approval under *section 125 of the Roads Act 1993 and section 68 of the Local Government Act 1993*, to occupy a footpath and or road reserve for purposes of outdoor dining ancillary to an existing or a new food business and for outdoor trading ancillary to an existing retail business.
- c) All applications for approval under *section 149 of the Roads Act 1993* to occupy air space above or below any public road for outdoor dining or trading.
- d) The Outdoor Dining and Trading Procedure will be reviewed as required and in line with relevant legislation and industry standards.

3. RESPONSIBILITIES AND AUTHORITIES

The Property and Leasing Coordinator is responsible and accountable to:

- *Implementing and communicating this procedure*
- *Ensuring this procedure is reviewed and updated to meet external compliance*
- *The Group Manager Environment & Regulatory Services is responsible for monitoring compliance of this procedure.*

4. APPLICATION PROCESS

4.1. Flowchart

The Flowchart of the Process for Outdoor Dining and Trading Applications (**Annexure A**) shows the relevant steps involving both the applicant and Council in the processing of Application.

An applicant must apply for the issue of an Approval, by completing the Council Application Form and submitting it to Council along with the required documentation as per table below.

Failure to provide all the relevant information/documentation will delay the processing of the application. Council's Property Section can provide assistance with the completion of applications.

4.2. Required Documentation

Step	Required documentation on Application
1.	Completed Outdoor Dining and Trading Approval Application form.
2.	Payment of the application fee as stipulated in Council's Fees and Charges.
3.	Evidence of Public Liability insurance in the sum of not less than \$20,000,000.00, noting Council's rights and interests and specifically indemnifying Council in respect of the Approved Area.
4.	A plan detailing the proposed area to be occupied (see paragraph 3.1).
5.	Colour pictures of all outdoor dining or trading furniture and equipment to be placed on the proposed Approved Area: including tables, chairs, umbrellas, planters, speakers and barriers to be used to define the proposed Approved Area.
	Post Approval
1.	Payment of bond
2.	Payment of rent in advance

5. GENERAL REQUIREMENTS

5.1. Site Plan

Applications must be accompanied by a plan indicating:

- A clear definition of the area to be used related to the property boundaries and showing all measurements. NOTE: Appropriate public pedestrian access along the footpath must be retained at all times (see paragraph 5.2 below).
- The manner by which the area is to be physically delineated by for example planter boxes, so as to ensure the activity can be contained within the Approved Area and to enable the proper management of the Approved Area.
- The design, colour and nature of any structure and any furniture to be installed.
- The location and capacity of toilet facilities, if required in respect of the activity.
- The location of any storage facilities that may be required for use in connection with the area.
- A typical Approval Area will not extend further than the width of the street frontage of the applicant's premises.

- Council will consider approving an area in front of the adjoining premises with the written consent of both the owner and occupier of the adjoining premises.

5.2. Pedestrian Access

The most important conditions to be considered in determining an Application are issues pertaining to pedestrians (including wheel chair and visually impaired pedestrians) vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and amenity in residential areas.

To ensure adequate pedestrian movement along the footpath, clear pedestrian zones must be maintained at all times. The following distances to allow for pedestrian zones must be maintained:

- The area must be setback a minimum of 0.6 metres from the kerb.
- Based on AS1428.2, Council has adopted a minimum footpath clearance width of between 1.8 metres for high volume pedestrian areas and 1.5 metres for low volume pedestrian areas. The clearance area is to be maintained between the immediate front of the building (shoreline) and the proposed outdoor dining or trading area. As a guide, areas zoned B3 in Port Macquarie and B2 in Wauchope and Laurieton will be considered high volume pedestrian areas.
- The minimum depth for an outdoor dining or trading area is 1.0 metre.

5.3. Disability Access

The size of the outdoor dining or trading area or the placement of any object on the footpath depends on the width of the footpath. The Applicant should make themselves aware of their obligations under the [Commonwealth Disability Discrimination Act 1992](#) and comply with the provisions thereof.

To observe the laws and legislation enshrined in the *Commonwealth Disability Discrimination Act 1992*, Council will require the applicant to provide access in accordance with AS1428 of the Australian Standards for people with disabilities to 20% of furniture in use for outdoor seating.

5.4. Furniture

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space and so as not to tempt patrons to move furniture beyond the boundaries of the approved area. All furniture must be stackable, foldable, portable or easily dismantled and must be removed and stored away every day at the close of business.

Any activity, installation, furnishing or enclosure on footpaths must:

- Be attractive and complementary of the streetscape;
- Use quality furniture and equipment;
- Use landscape elements, such as planter boxes designed in accord with any established landscape character and must be regularly maintained to Council's satisfaction;
- Use lighting where required, which does not adversely affect surrounding properties; and
- Be kept in good order, repair and condition at all times.

Furniture to be used shall be of a quality suitable for outdoor use and shall not present a safety hazard to users or passers-by. There should be no potential hazards with sharp edges and moving parts. The design must not contain parts that are likely to cause damage to the footpath.

Umbrellas and heating devices are not permitted unless approved in writing by Council and included in the Approval. Umbrellas must have a secure locking mechanism and be securely fixed to withstand wind and they must be removed or closed in high wind conditions. The underside of umbrellas must be a minimum of 2.2 metres above the ground level with no protruding objects and may not protrude over the roadway. Umbrellas that are not permanent structures must be removed at the end of every trading day.

Furniture should be secured if there is a risk of it moving in windy conditions or in other circumstances.

Gas heaters, if installed, shall comply with the specifications outlined by the manufacturer. Any gas heaters fixed to awnings or buildings must be installed by a registered plumber. A Development Application may be required prior to any works taking place.

Heating devices should turn off automatically if overturned to prevent injury to patrons and property. Heating devices must be removed from the footpath and appropriately stored when not in use.

Ancillary objects, subject to Council approval, such as planters, shelters, barriers, dividers, umbrellas, signs etc. are to be used within the confines of the approved outdoor dining or trading area.

Drop down blinds are not permitted to be installed on any outdoor dining fixtures. This is to ensure pedestrian views along the footpaths and the visibility of shopfronts remain unobstructed.

5.5. Location

The use of a footpath for outdoor dining or trading will typically be limited to the area situated directly in front of the property, which provides the base for the outdoor dining or trading area.

Council will consider approving an additional Outdoor Dining or Trading Area adjoining to the Applicant's premises with the written consent of both the owner and occupier of the adjoining premises.

The ground surface must be suitably constructed and sufficiently level to support a proper layout and safe use of the required furniture and associated circulation areas. To achieve this only minor structures or changes in the footpath will be permitted such as fixing of umbrellas and planter boxes as markers for dining or trading areas.

The location of trees, artwork, street furniture and other public infrastructure, as well as the width of the footpath, may preclude the establishment of an outdoor dining or trading area.

The potential impact on adjoining property owners and occupiers, traffic and pedestrians and the amenity of the area will be considered.

The potential benefit and enhancement of the area will be considered.

Council may require the approved area to be identified by markers supplied and installed by Council at the applicant's expense.

5.6. Development Consent as Food Premises

A food business must have current development application consent from Council for the use as a food premises. The food premises must also be registered with Council and must operate in accordance with the current requirements of the *Food Act 2003*, Regulations and Food Safety Standards.

5.7. Toilet Facilities

Toilet facilities are to be made available to patrons of an outdoor dining area and the inclusion of outdoor dining will increase the number of seats of a food and drink premises. Council's Duty Building Surveyor can provide information on the relevant requirements in accordance with the Building Code of Australia.

6. APPROVAL CONDITIONS

6.1. Approval

If an Outdoor Dining or Trading application is approved, an Outdoor Dining or Trading Approval will be issued by Council to the Applicant stipulating the Conditions of the Approval. The Approval is conditional upon the Applicant signing and returning the Approval document to confirm the Applicant has read and understood the Conditions of the Approval and the Applicant agrees to comply with the Conditions of the Approval.

The Conditions of the Approval will provide for the right of access to the approved outdoor or trading dining area by service authorities to maintain their services and mains.

An Approval shall not be construed as conferring any ownership to the footpath and may not be sublet or assigned.

Council may delete, amend or add further conditions to any Approval to suit changing circumstances at its discretion.

6.2. Commencement of an Outdoor Dining or Trading Approval

When the Approval Holder has signed and returned the Approval document and met any other preconditions, including payment of the required bond and provided evidence of Public Liability insurance etc, the Approval Holder may proceed to operate the outdoor dining or trading area in accordance with the Terms and Conditions of the Approval.

6.3. Term of Approval

Council may grant a *Section 125 Roads Act* Approval for a term of seven (7) years or for a term determined by the Chief Executive Officer.

6.4. Variation/Amendment of an Outdoor Dining Approval

An Approval Holder must submit in writing to Council the request for any amendment to an existing Approval including details of any proposed changes to the existing Approval. The changes shall not come into effect until the Approval Holder has received written consent from Council. In some instances this will require the preparation of a new Approval document and the payment of the relevant fees.

All costs incurred, if any, will be the responsibility of the Approval Holder.

6.5. Rent and Outgoings

An Approval will be granted on a commercial basis, with the commencing rent payable as indicated in Council's Fees and Charges for Outdoor Dining and Trading. The rental for the remaining term of the Approval shall be equivalent to the current market rental indicated by Council's Fees and charges.

The rental charged will not be rebated if the Approved Area is not used due to inclement weather.

All outgoings relating to the approved outdoor dining area are to be paid by the Approval Holder.

6.6. Business Interruption

Council accepts no responsibility or liability for any interruption to business caused by the need for Council or any other Authority to carry out any type of maintenance works on the Approved Area or any other interruption to business how so ever caused.

Council may agree to a rental rebate, where Council is directly responsible for the business interruption. Each case will be considered on an individual case basis upon written application to Council.

A rebate will only be considered where the interruption is equal to or more than seven (7) consecutive days.

6.7. Advertisement and Signage

Any sign displayed or exhibited on the footpath in relation to the outdoor dining or trading activity are to be approved by Council prior to its display and is to be displayed within the approved Outdoor Dining or Trading area.

6.8. Associated Works

In some cases the Applicant may wish to undertake streetscape works to accommodate an outdoor dining or trading area such as footpath widening, paving, street tree planting, pedestrian lighting, etc.

Any such works may require a specific approval by Council and no construction or structure is to be carried out or installed on the outdoor dining or trading area, without the prior written approval of Council.

For enquiries for any works in addition to the placement of furniture on the footpath please contact Council's Property Section on ph 6581 8111 for advice as to whether a separate application is required.

6.9. Amplified Music and Noise

The Approved Area will be governed by the *Protection of the Environment Operations Act 1997* and the Approval Holder will be required to monitor this aspect of the use of the Approved Area.

Approval Holders must be able to demonstrate that any noise generated by the Approved Area will not be intrusive and/or affect the use of neighbouring premises.

Any noise created by an activity in the Approved Area must be managed and controlled to ensure that there is no adverse impact on the occupiers of surrounding properties or on the amenity of the area generally.

The Approved Area must not be used for the purposes of entertainment.

Council may issue a Notice on the Approval Holder under the provisions of the *Protection of the Environment Operations Act 1997* to reduce or cease noisy activities.

6.10. *Serving of Alcohol*

If the Approval Holder wishes to serve alcohol in the outdoor dining or trading area, the Approval Holder must obtain a Liquor Licence or seek an extension of an existing Licence for the indoor premises from Liquor & Gaming NSW, so the approved outdoor dining or trading area is included in that Licence.

6.11. *Health Requirements*

A cafe or restaurant must be registered with Council as a Food Premises. See Council's website for a Registration of Food Premises Application Form.

The preparation and serving of food in the Outdoor Dining Area must comply with the *Food Act 1993* at all times.

Food additives (for example sugar, salt, pepper) must be protected from sources of contamination including airborne contaminants and insects.

No food shall be prepared in the approved outdoor dining area.

Food scraps and waste materials shall be returned to the café/restaurant immediately or as soon as possible after the completion of each meal for disposal.

Council street bins are not to be used for commercial waste disposal. If a litterbin is sited adjacent to an approved outdoor dining area, Council shall have the option to remove the litterbin.

Utensils shall be returned to the food business for cleaning as soon as possible after the completion of each meal.

The Approval Holder is responsible for the management of all spills that may occur and shall immediately remove all spills in the said area.

Smoking is prohibited in all Outdoor Dining and Trading Approved areas that are located on public land/footpaths.

6.12. *Repairs to Footpath*

The Approval Holder shall bear the cost of all footpath repairs carried out by Council, which have been caused by footpath dining or trading activities in the Approved Area.

6.13. *Animals*

Pursuant to *Section 14A of the Companion Animals Act 1998* animals are permitted within the outdoor dining area, however the Approval Holder has the right to refuse animals within the Approved Area.

6.14. *Cancellation of an Outdoor Dining Approval*

Council reserves the right to cancel the Approval at any time if the Approval Holder fails to comply with any condition of the Approval or this Procedure, in particular the failure to pay the assessed rental, or where Council's General Manager considers that an unacceptable public risk exists.

Notice of cancellation will be given in writing to the Approval Holder and will take effect immediately.

The Approval Holder will not be entitled to any damages or compensation in respect of loss of business, or occupation fees paid in respect of the unexpired portion of the Approval.

A Council Ranger/Compliance Officer will inspect the Approved Area from time to time to ensure the Conditions of the Approval and/or this Procedure are complied with. Any complaints received regarding the use of the Approved Area will be investigated where ever necessary and appropriate action taken.

The circumstances that generally apply to the cancellation of an Approval are set out in the conditions of the Approval document.

6.15. Lapsing of an Approval/Selling the Food Business

In the event of the business ceasing to operate prior to expiry of the Approval, or if the Approval is not renewed, the Approval will lapse and the Approval Holder is responsible for the removal of all improvements and re-instatement of the footway to its original condition, as directed by Council. All furniture is to be removed immediately.

The Approved Area is not a saleable item when businesses are sold or transferred. The Approval is personal to the Approval Holder and may not be assigned to the new business owner.

When an Approval Holder sells the business, which forms the base of the Approved Area, the Approval will cease. If the purchaser of the business wishes to operate outdoor dining or trading they must apply for a new Approval by following the process outlined above.

6.16. Failing to Remove and Re-instate

In the event of the Approval Holder failing to remove furniture or other property from the Approved Area following the lapsing or cancellation of an Approval, Council may remove and dispose of such property at its discretion if not claimed within seven (7) days of notification to the Approval Holder.

In the event of the Approval Holder failing to remove improvements and or to re-instate the footway to its original condition within fourteen (14) days from the date of expiration or cancellation of the g Approval, Council will carry out the works at the Approval Holder's expense.

7. REFERENCES

7.1. Legislative Provisions

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 permits the use of a footpath within the meaning of the *Roads Act 1993* for an outdoor dining or trading area associated with a lawfully approved food and drink premises as "exempt development", provided that the outdoor dining area:

- Is not associated with a pub or a small bar, and
- Is carried out in accordance with an approval granted under *section 125 of the Roads Act 1993 and s68 of the Local Government Act 1993*, including in accordance with any hours of operation to which the approval is subject.

8. DEFINITIONS

Applicant - means any of the following: a person(s) making application for approval under *section 125 or section 149 of the Roads Act 1993* and under *section 68 of the Local Government Act 1993* or being the owner/business operator/manager of the commercial premises adjacent to the footpath and can include a corporation, a firm trading under a business or trade name and a partnership or an individual.

Approval Holder - means an applicant to whom a Roads Act Approval under *section 125 of the Roads Act 1993* and *section 68 of the Local Government Act 1993* has been granted.

Council - means the Port Macquarie-Hastings Council.

Council officer - A member of Council staff.

Food business - means a restaurant, café, or takeaway food shop and the like.

Footpath and Footway - means that part of a Road Reserve immediately adjacent to the freehold land upon which a restaurant or café is situated as is set aside or formed as a path or way for pedestrian traffic, whether or not it may also be used for bicycle traffic.

Road Reserve/Public Road - means the entire right-of-way devoted to public travel, including footpaths, shoulders, verges and carriageways – the whole width between adjacent property boundaries.

Outdoor Dining Approval – means an approval to occupy a footway under *section 125 of the Roads Act 1993* and *section 68 of the Local Government Act 1993* for Outdoor Dining.

9. PROCESS OWNER

Property and Leasing Coordinator.

10. AMENDMENTS

Minor amendments to staff titles.

11. ANNEXURES

- Application Process Flowchart

Outdoor Dining and Trading Procedure Flowchart

