

OUTDOOR DINING PROCEDURE

1. INTRODUCTION

The objective of this procedure is to outline the steps to be undertaken by applicants and Council officers in processing applications for outdoor dining within Council's Local Government Area.

2. PROCEDURE STATEMENT AND SCOPE

This procedure will be applied to:

- All applications for approval under *section 125 of the Roads Act 1993* (approval to use footpath for outdoor dining) and *section 68 of the Local Government Act 1993*.
- All applications for approval under *section 149 of the Roads Act 1993* to occupy air space above or below any public road.

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 Regulatory Services is responsible for monitoring compliance of this procedure.*

4. APPLICATION PROCESS

4.1. Flowchart

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

The Applicant must apply for the issue of an Outdoor Dining 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 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 drawn to scale (1:100) detailing the proposal (see paragraph 3.1).

Step	Required documentation on Application
5.	Colour photographs or brochures of all outdoor dining furniture and equipment to be placed on the Outdoor Dining Area: including tables, chairs, umbrellas, planters, speakers and barriers to be used to define the area of the proposed outdoor dining 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 drawn to scale (1:100) indicating:

- A clear definition of the area to be used related to the property boundaries and appropriately dimensioned. 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, for example planter boxes, balusters and chain or the like, 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 to be constructed and or any furnishing 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 outdoor dining 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 for an outdoor dining area 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 outdoor dining 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 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 area is 1.0 metre.

5.3. Disability Access

The size of the outdoor dining 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.

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 Outdoor Dining 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.

Furniture must be stackable or foldable or portable or easily dismantled so that it can be removed and stored away at night and at other times when the Approval Holder authorised to use or occupy the footpath for outdoor dining purposes is closed for business.

No part of the footpath may be used to store any removable item/s.

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, etc. are to be used within the confines of the approved outdoor dining area.

5.5. Limitations on the Use of a Footpath for Outdoor Dining

Development Consent as Food Premises

The 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.

Location

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

Council will consider approving an additional Outdoor Dining 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 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 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. Toilet Facilities

Toilet facilities are to be made available to patrons in accordance with the requirements of the Building Code of Australia. Toilet facilities are required to be available in the building occupied by the food and drink premises where alcohol is served or if the total seating provided, (indoors and footways) exceeds the prescribed number.

The inclusion of outdoor dining will increase the number of seats to a food and drink premises and such an increase may require the provision of toilet facilities. Council's Duty Building Surveyor, ph 02 6581 8111 can provide information on these issues.

6. APPROVAL CONDITIONS

6.1. Approval

If the Outdoor Dining application is approved, an Outdoor Dining Approval will be issued by Council to the Applicant stipulating the Conditions of the Approval. A sample of the Outdoor Dining Approval Conditions is provided in "**Annexure B**". 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 Outdoor Dining Approval and the Applicant agrees to comply with the Conditions of the Approval.

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

An Outdoor Dining 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 Outdoor Dining Approval to suit changing circumstances at its discretion.

6.2. Commencement of an Outdoor Dining Approval

When the Approval Holder has signed and returned the Outdoor Dining Approval document and met any other preconditions (such as paid the required bond, provided evidence of Public Liability insurance etc), the Approval Holder may proceed to operate the outdoor dining area in accordance with the Terms and Conditions of the Outdoor Dining Approval.

A Permit will be attached to the Terms and Conditions of the Outdoor Dining Approval, which must be displayed on or near the area to which it applies. The Permit summarises the approved use and the hours of operation.

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 General Manager this includes a maximum holding over period of twelve (12) months.

6.4. Variation/Amendment of an Outdoor Dining Approval

An Approval Holder must submit an application in writing to Council for any amendment to an existing Outdoor Dining Approval. Any change the Approval requires will require a new Approval application to be submitted and payment of the relevant fees.

The Approval Holder must provide in writing, together with an application, details of any proposed changes to the Outdoor Dining 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 Outdoor Dining Approval document.

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

6.5. Rent and Outgoings

An Outdoor Dining Approval will be granted on a commercial basis, with the commencing rent payable as indicated in Council's Fees and Charges for Outdoor Dining. 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 outdoor dining 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

If the Applicant intends to place an "A" Frame Sign on the Outdoor Dining Area a separate application must be submitted. Refer to Council's A Frame Sign Application Form.

Any sign displayed or exhibited on the footpath in relation to the outdoor dining activity are to be approved by Council prior to its display and is to be displayed in accordance with Council's A Frame Sign Policy.

6.8. Associated Works

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

Any such works may require a specific approval by Council and if the outdoor dining area is located within the Port Macquarie Central Business District any associated works will also need to be approved by the Town Centre Master Plan Committee.

No construction or structure is to be carried out or erected on the outdoor dining 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 Duty Planner, ph 6581 8111 for advice as to whether a separate application is required.

6.9. Amplified Music and Noise

The outdoor dining 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 outdoor dining area.

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

Any noise created by the approved outdoor dining area activity 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 outdoor dining 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 area, the Approval Holder must obtain a Licence from the Office of Liquor Gaming and Racing or seek an extension of an existing Licence for the indoor premises so the approved outdoor dining area is included in that Licence.

6.11. *Health Requirements*

The 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 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 activities.

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 reserves the right to refuse animals within the Approved Area.

6.14. *Cancellation of an Outdoor Dining Approval*

Council reserves the right to cancel the Outdoor Dining Approval at any time if the Approval Holder fails to comply with any condition of the Outdoor Dining Approval document or these guidelines (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 Outdoor Dining Approval.

A Council Ranger/Compliance Officer will inspect the approved outdoor dining area from time to time to ensure the Conditions of the Outdoor Dining Approval and/or this Procedure is complied with. Any complaints received regarding the use of the approved outdoor dining area will be investigated where ever necessary and appropriate action taken.

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

6.15. Lapsing of an Outdoor Dining Approval/Selling the Food Business

In the event of the food business ceasing to operate prior to expiry of the Approval or at the end of the term or for the term as determined by the General Manager, or if the Outdoor Dining Approval is not renewed (prior to the expiry of the twelve (12) month holding over period), the Outdoor Dining Approval will lapse and the Approval Holder is responsible for the removal of improvements and re-instatement of the footway to its original condition, as directed by Council. All furniture is to be removed immediately.

The approved outdoor dining area is not a saleable item when businesses are sold or transferred. The Outdoor Dining Approval is personal to the Approval Holder and may not be assigned.

When an Approval Holder sells the food business, which forms the base of the outdoor dining area, the Outdoor Dining Approval will cease. If the purchaser wishes to operate Outdoor Dining they will have to apply for a new Outdoor Dining 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 outdoor dining area following the lapsing or cancellation of the Outdoor Dining 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 Outdoor Dining 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 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, coffee lounge or takeaway food store 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 authorised by the Executive Group on 12 July 2018.

11. ANNEXURES

- Application Process Flowchart

Outdoor Dining Approvals Flowchart

