

Outdoor dining

Policy, procedure, protocol	Policy
Document version	V 3.0
Date adopted by Council	18 August 2015
Minute number	14.144/15
File reference number	ECM 1554393
Due for review	July 2020
Documents superseded	V1.0 – 22/6/2010 – 12.085/10 V2.0 – 19/3/2013 – 12.032/13
Related documents	
Author	Manager
Section / Department	Environment, Development & Regulated Services
Linkage to Our Community Plan	1 Our Society
Objective	1.4 We will have access and equity of services
Strategy	1.4.7 Work with the community and partners to inform, develop and maintain an inclusive and equitable community

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1. Purpose

This policy is designed to provide guidance to staff and businesses on applications for the approval of footpath dining in the Clarence Valley.

2. Definitions

Approval to use a footpath for dining purposes is governed by sections 125-127 of the Roads Act.

'Approval' means an approval that allows a person who conducts a restaurant adjacent to a footway of a public road (being a public road that is vested in fee simple in the Council) to use part of the footway for the purposes for a restaurant in accordance with the provisions of the Roads Act.

'Footpath' means a footway within a Council road reserve.

'Food premises' includes all outlets that provide meals to the public and includes restaurants, cafes, hotels, clubs and bakeries.

3. Objectives

- 3.1 To encourage an outdoor lifestyle by promoting the social and economic benefits of footpath dining.
- 3.2 To ensure the safe movement of pedestrians and to minimise inconvenience to neighbouring premises.
- 3.3 To maintain safe and equitable access for persons with disabilities.
- 3.4 To ensure that an appropriate fee is paid for the use of public land for commercial premises.
- 3.5 To acknowledge that many businesses have been in existence in some areas for many years and have established locally accepted practices.

4. Policy statement

- 4.1 Use of part of a footpath for dining purposes requires Council approval. The procedure for applying for such approval is set out in Clause 5 below. The concurrence of the Roads and Traffic Authority is required if the footpath dining area is located on a classified road (e.g. Prince St, Grafton).
- 4.2 Council shall not require a development application for footpath dining.
- 4.3 Council considers the most important criteria when assessing applications for outdoor dining to be pedestrian (including pedestrians who use mobility aids who are vision impaired) and vehicular circulation, convenience and safety of patrons and the general public, and existing streetscape elements.

Setbacks and Location

- 4.4 Use of part of a footpath for dining can only be considered on that part of the footpath that is adjacent to the food premises. Council has developed streetscape development plans that identify, amongst other matters areas where outdoor dining can occur safely with minimal obstruction to pedestrian traffic and are to be consulted in the application assessment process.

The areas suitable for outdoor dining are usually in the form of ‘blisters’ that extend into the road reserve and are the preferred method and location for siting outdoor dining facilities. Council may consider the use of such area that is close to but not directly adjacent to the food premises. Consultation with adjacent businesses would be a key consideration of the assessment of the approval. In these cases applicants are recommended to obtain written consent from the adjacent property owners to be lodged with applications.

- 4.5 During the period that a food premises holds a valid approval for outdoor dining it may locate tables and chairs in accordance with the approved plan on the footpath adjacent to its premises.
- 4.6 Council seeks to provide a clear continuous accessible path of travel along the footpath adjacent to the shopfront building line for all pedestrians. The building frontage provides a tactile edge or “shoreline” which can be used for orientation by people with a disability, particularly individuals who are blind or vision impaired. The pedestrian corridor must be continuous with the frontage of the property and/or contiguous with the adjoining properties, within a reasonably distinctive section, or portion, of the street/lane with no objections or projections from this line in order to provide the best possible guidance for all users.
- 4.7 Council considers the minimum practical depth for a footpath dining area of 1.0 metre. Tables and chairs shall be located at all times at least 2.5 metres out from the building frontage. Where this distance is not achievable due to site constraints, a 1.8 metre minimum setback from the shopfront building line will be acceptable except where the location is adjacent to a physical marked pedestrian corridor that is incorporated into an approved streetscape design plan.
- 4.8 If, due to site constraints the setbacks in Clause 4.7 cannot be met, in exceptional cases where adequate clearances permit, tables and chairs may be considered adjoining the shopfront within the central business districts excluding Prince Street Grafton, Skinner Street South Grafton, River Street Maclean, Yamba Street, Coldstream Street and Wooli Street Yamba and Charles and Young Streets Iluka provided that:
- (a) stable outdoor dining/café barriers with solid sides directing pedestrians away from the shopfront are installed around the tables and chairs as far as practicable,
 - (b) tactile ground surface indicators (directional and hazard tiles) shall be provided (as applicable in accordance with Australian Standard 1428.4) to designate the route to



be taken to avoid this hazard in the absence of existing tactile clues (such as those aforementioned in Clause 4.8a), at the applicant's cost, and

(c) Council's specific written approval is sought by the applicant in exceptional cases.

- 4.9 In addition to Clause 4.9 existing shoreline dining can continue in areas only where Council has approved plans for as yet unfunded identified improvements that will provide opportunities for future outdoor dining activity consistent with this policy. Once these works are completed and alternate areas become available outdoor dining shall be fully relocated to the new areas.
- 4.10 Council may approve outdoor dining activity, with distances less than those required in the policy, where the trading area adjoins footpaths that are physically less in width than the minimum recommended distances. In these circumstances each case shall be considered on its merits.
- 4.11 Tables and chairs shall be located at least 900mm in from the kerb line and are to be protected from vehicles by the erection of continuous temporary barriers with solid sides during times of trade. Barriers are to be no higher than 1.0 metre and be visible to a parking vehicle.
- 4.12 Chairs adjacent to either a roadway or a pedestrian passageway are not to be placed so their backs are either to the roadway or to the passageway but should be placed parallel to the shop frontage.
- 4.13 In some cases, step projections exist beyond the building line that may or may not be located on the footway. Tables and chairs should not be placed adjacent to the shoreline in these locations. Ideally, tactile ground surface indicators (hazard) tiles shall be installed to alert people who are blind or vision impaired to the pending step projection/hazard within the continuous accessible path of travel.
- 4.14 No outdoor dining will be permitted on tables or chairs that are physically attached or hinge from the adjacent building frontage.

Furniture

- 4.15 All furniture utilised is to be strong, durable, waterproof and weather resistant, designed for commercial outdoor use. The design is not to contain parts that are likely to cause damage to the pavement. Care is to be taken to ensure that they do not contain sharp edges, hinges or other parts that may pose a potential hazard to users or passers-by.

- 4.16 Umbrellas are permitted to provide shade and shelter in exposed locations provided they:
- (a) are adequately secured against the effects of the wind,
 - (b) do not project beyond the table and seated areas,
 - (c) are removed or closed during periods of high winds and
 - (d) are at least 2000 mm above the ground, preferably 2400 mm, as per Australian Standard 1428.1.
- 4.18 Any damage caused to Council's footpaths as a direct result of trading activities or the placing of tables and chairs on them, shall be the responsibility of the applicant. Any repair works necessary will be carried out by Council at the applicant's expense.

Lighting and Electricity Supply

- 4.19 The provision of any electricity supply to tables on footpaths is prohibited. Any applicant seeking to provide outdoor dining outside daylight hours (as defined by the Bureau of Meteorology) must first obtain Council's written consent and provide lighting to the Council's satisfaction, to ensure the safety and amenity of patrons and the general public.

Structures on Footways/Footpaths

- 4.20 Approval under this policy does not authorise the erection of any structure on the footpath. No structure is to be erected on the footpath without either the prior written consent of Council or, if required, development consent.
- 4.21 Council may approve picnic style tables and/or benches, located outside general stores not within a town centre, where Council is of the opinion that the facility will provide a community benefit. No licence agreement is required, nor will any fee be charged but the approval is at the absolute discretion of Council. If approved, then the tables/benches shall:
- (a) not be for the exclusive use of the applicant's customers but shall be available for use by the public,
 - (b) remain the sole property of the applicant and the applicant shall be responsible for them, and
 - (c) ensure a clear, accessible pathway is maintained on any existing footway.
 - (d) be designed to accommodate use by persons who use mobility aids or a visually impaired.

Alcohol Free Zones/Consumption of Liquor

- 4.22 Alcohol Free Zones have been approved and declared by Council, based around community and police concerns of actual or potential alcohol related violence and anti social behaviour. The consumption of alcohol outside licensed premises such as on the footpath is unlawful under the Liquor Act as the area is usually not a part of the defined licensed premises. Patrons of hotels wishing to smoke or drink alcohol in an outdoor environment are encouraged to utilise hotel beer gardens and/or outdoor gaming areas where smoking/drinking is authorised.

- 4.23 If licensed premises fall within an alcohol free zone, Council will not approve applications to consume liquor in the outdoor dining approved area. Those applicants for premises who may have constructed an existing outdoor dining deck, blister or other structure will be required to lodge an application to the Casino Liquor & Gaming Control Authority to have these areas included within their defined licensed boundaries (or demonstrate to Council that approval from Casino Liquor & Gaming Control Authority already exists) and seek consent from Council to that application.

Council will consult with the NSW Police when considering those applications. Council reserves the right to revoke any approval to consume alcohol in these areas in consultation with NSW Police and the approval will be reviewed annually.

- 4.24 Except as provided in Clause 4.22 outdoor dining shall not be permitted within an alcohol free zone on the immediate adjacent pedestrian corridor next to a licensed hotel.
- 4.25 If licensed premises are not within an alcohol free zone, Council may approve applications to consume liquor in the outdoor dining approved area. Applicants will be required to lodge an application to the Casino Liquor & Gaming Control Authority to have these proposed outdoor dining areas included within their defined licensed boundaries (or demonstrate to Council that approval from Casino Liquor & Gaming Control Authority already exists) and seek consent from Council to that application. Council will consult with the NSW Police when considering those applications.
- 4.26 Accessible toilet facilities within the food premises must be made available to patrons where alcohol is served.

Miscellaneous Items/Advertising

- 4.27 With the exception of approved tables, chairs and umbrellas, approval holders may not place any item (including planter boxes, shade structures, advertising signs, barriers, outdoor heaters or bollards) on the footpath without the prior written consent of Council.

Smoking, Noise and Waste

- 4.28 It shall be a condition of approval that the approval holder:
- keep the footpath dining area and the adjoining footpath and gutters free of all rubbish,
 - ensure no amplified music will be permitted to emanate over the approved dining area
 - not permit public entertainment within the approved dining area without a separate approval of Council and,
 - ensure that no smoking is permitted within the footpath dining area.

Storage

- 4.29 All outdoor furniture and attendant fixtures must be stored away from the approved area outside the approved hours of operation. The area is not to be used for the storage or preparation of any food or beverages unless Council has given permission.

5. Procedures

- 5.1 An application form for approval for footpath dining is to be completed and lodged with Council, together with both the application fee and the relevant square metre area use fee (both reviewed annually and included in Council's Schedule of Fees and Charges).
- 5.2 All applications for approval must contain the following details:
- (a) number of tables and chairs.
 - (b) location and use of adjoining business boundaries.
 - (c) a scaled plan showing the proposed location including dimensions of the approved outdoor dining area clearly indicating the area of outdoor dining sought, all setbacks and sizes of tables, chairs and furniture.
 - (d) hours of operation.
 - (e) if it is proposed that alcohol be served or consumed within the outdoor dining area, then a copy of the relevant liquor license is to be submitted with the application. That licence must confirm that the outdoor dining area is included as part of the licensed premises.
- 5.3 The application is to be submitted with a Certificate of Currency for public liability insurance of at least \$20 million and applicants are required to sign and return an indemnity that will be issued with the application.
- 5.4 If approved, confirmation of the approval for up to 12 months from application date will be forwarded to the applicant as soon as practical after receipt of application.
- 5.5 If Council consents to the renewal, a renewal notice will be forwarded by Council to all holders of an approval and this notice will advise the current applicable fee. Renewal will be dependant upon compliance with any conditions of approval, payment of the renewal fee and production of a Certificate of Currency for public liability insurance.
- 5.6 All holders of an approval will be required to pay an annual fee for such approvals as set out in Council's Schedule of Fees and Charges.
- 5.7 Should a business with a current approval be sold or transferred, Council will consent to the transfer and assign the approval provided that, prior to the sale or transfer, Council:
- (a) is advised of the transfer of the business and the name and contact details of the transferee,
 - (b) receives a Certificate of Currency for the public liability insurance of the transferee, and
 - (c) receives an indemnity in the approved form signed by the transferee.

In the event that any of these are not made available to Council prior to the sale or transfer, then the approval will lapse on the date of the sale or transfer and, if any tables or chairs remain on the footpath after that date, the transferee will be required to remove them and apply for approval (and pay the application fee as well as the relevant tables and chairs fee). In this event, Council will not refund any fee previously paid.

- 5.8 In the event that the holder of an approval, whose trading area contains a structure for outdoor dining purposes (refer to Clause 4.21), is in breach of the conditions of approval for the structure, then the approval shall lapse until such time as the breach is rectified. The approval holder will be required to remove all tables and chairs from the structure and not to use it during this period. In addition, the approval will not be renewed while ever the approval holder remains in breach of the conditions.