



USE OF PUBLIC FOOTPATH – OUTDOOR DINING POLICY

Adopted by Council 18 September 2012, Resolution No. 2012/358
Reviewed 13 June 2018. Adopted by Council 11 July 2018, Resolution No.
2018/152
Reviewed 2021. Adopted by Council 16 June 2021, Resolution No. 2021/120

POLICY STATEMENT

This Policy establishes Council's statements and principles dealing with applications for use of the public footpath for outdoor dining.

This Policy aims to permit the establishment of business opportunities and to create a more vibrant and cosmopolitan atmosphere in the commercial centres of the Narromine Shire. The policy will allow the approval of business use of footpath areas (which may include tables, chairs, shade structures, planter boxes and the like to be placed on footpaths) within the Shire adjacent to businesses where there is adequate footpath width for pedestrian circulation.

POLICY OBJECTIVES

The objectives of this Policy are as follows:

Access and Equity

- To ensure safety and convenient passage of all pedestrians when using public footpaths.
- To ensure the maintenance of clear view lines for both pedestrians and motorists, particularly near pedestrian crossings, street corners and key intersections.
- To ensure adjoining premises are not adversely affected by any business use of footpath areas.

Council and Community Protection

- To protect Council and the public interest while permitting effective use of public footpaths for business purposes.
- To effectively address risk management issues for Council.
- To ensure that business use of public footpaths will not cost the public purse.
- To ensure that public amenities will not be compromised by the provision of business use of footpath areas.

Economic

- To enhance the economic viability of our local business by offering consent to use public footpaths for business purposes.
- To encourage trading by providing a more vibrant atmosphere for shoppers.
- To provide an active and integrated street front.
- To maintain visibility and exposure of shop fronts.

OUTDOOR DINING

Approval Requirements

A **Section 68 Application** needs to be lodged with Council seeking consent for any proposed footpath dining.

An approval is also required under Section 125 of the *Roads Act 1993*. The term of the approval is for 1 year.

Note: The RMS will need to be consulted in accordance with the provisions of the *Roads Act 1993*, if the footpath is on a classified road

Application Requirements

Applications are lodged using the prescribed application form and payment of the appropriate application fees. The application shall include:

- Three copies of the proposed site plan;
- Photographs and manufacturing details of all items proposed to be placed on the footpath (i.e. tables, chairs, umbrellas, barricades etc);
- Details of proposed hours of use of the footpath; and
- Copy of the Public Liability Insurance Policy.

Assessment Criteria

Applications for footpath dining will need to demonstrate that the following approval criteria can be met:

- (a) Must be related to the operation of existing food business and operates on the same basis as the existing food business.
- (b) Applicant is the owner or proprietor of the business.
- (c) Service of alcohol limited to business frontage only.
- (d) A 1.8 metre wide unobstructed passage of footway is maintained at all times. This clearance shall be measured traverse to and between the property boundary alignment and the kerb.
- (e) Tables, chairs, barriers, shade structures (including canopy) shall be positioned so as not to overhang or encroach beyond the side boundaries and shall be wholly contained within the frontage of the food business premises.
- (f) Shade structures shall provide a minimum vertical clearance of two point one (2.1) metres above footway level.
- (g) Shade structures, tables and barriers shall be securely supported and suitably anchored to withstand unexpected wind gusts and shall be monitored for sturdiness at all times.
- (h) The designated footpath dining area shall be enclosed by means of portable metal framed barricade where there are three or more table settings proposed or is proposed to be located adjacent to the kerb. The barricade shall be set back a minimum of 600mm from the kerb line to permit pedestrian access to and from parked motor vehicles. Barricades shall be purpose designed for footpath dining and where they incorporate advertisement panels, advertisements shall be restricted to the advertising of products sold on the premises.

- (i) All footpath dining furniture shall be to an approved structural and aesthetic standard and of matching thematic design.
- (j) All portable footpath dining furniture shall be removed from the foot path whilst ever the food business is closed.
- (k) The footpath dining furniture shall not restrict access to, or incorporate usage of, existing street furniture provided for public use.
- (l) Compliance with conditions and regulations relating to the preparation, storage and serving of food in a public place complies with the *Food Act 2003*.
- (m) The designated footpath dining area shall be maintained in a clean and tidy condition at all times.
- (n) A right of access exists with all utility service authorities with infrastructure in the footpath for the purpose of repairs and maintenance. There will be no compensation payable for interruption to footpath dining due to infrastructure repair and maintenance.

Fees and Securities

The fees associated with the Section 68 Application under the Local Government Act are stated in Council's Fees & Charges as current at the time of lodgement.

Conditions of Consent

Should the application be approved by Council, the conditions of consent as outlined in **Schedule A** will be applied.

PUBLIC LIABILITY

Approval for business use of the footpath will only be valid where adequate insurance cover is provided by the business. This compliance is required to ensure meeting the objective of the policy, i.e. protecting Council and the public interest while permitting effective use of the public footpath for business purposes. To ensure protection from claims that may arise as a result of business use of the footpath area the business operator must:

- Take out and maintain public liability insurance for a sum of not less than \$20,000,000 at all times during the term of the approval. This is to include a cross liability clause, in the sum of not less than \$20,000,000 or any higher amount specified by Council throughout the term of the approval on advice of Council's insurers. The insurance policy must specifically state that it is to indemnify Narromine Shire Council against any public liability claims within the area between the front property boundary of the premises and the kerb line for the full frontage of the premises or area approved.
- Provide a copy of this current policy to Council prior to occupation of the footpath and validation of the approval.
- Ensure that they maintain a current public liability insurance policy for the period of the approval issued.
- Proof of currency must be kept on the premises and produced on demand by any authorised Council Officer.
- Provide Council with a copy of the current public liability insurance policy each time the approval is renewed.

FEES AND CHARGES

As per the Council's adopted Fees & Charges

COMPLIANCE

At least once per year Council will be undertaking an inspection of the area in question to determine compliance with the conditions of consent. This will include an audit of the businesses insurance requirements.

Failure to have a valid policy will result in this Section 68 consent being invalid and may result in Council issuing an on-the-spot penalty notice for the non-compliance with conditions of consent.

Appendices:

Public Footpath Dining Conditions

Authorisation:

Status	Committee	N/A	
	Executive Leadership Team	N/A	
Owner	General Manager		
Doc. ID			
Superseded Policy	Nil		
Date of Adoption/ Amendment	Revision Number	Minute Number	Review Date
<i>18 September 2012</i>		<i>2012/358</i>	<i>2018</i>
<i>13 June 2018</i>	1	2018/152	2020
<i>16 June 2021</i>	2	2021/120	2023

SCHEDULE A – PUBLIC FOOTPATH DINING CONDITIONS

The following are standard conditions that are applied to approvals for use of the public footpath for dining:

1. This approval is for the use of the public footpath adjacent to (xxxxxxx) is for the term *[twelve (12) months]*
2. A 1.8 metre wide unobstructed passage of footway is maintained at all times. This clearance shall be measured traverse to and between the property boundary alignment and the kerb. In addition, a 600 mm clear space is to be maintained from the kerb.
3. Tables and chairs are not to be placed outside the approved area under any circumstances.
4. The outdoor furniture shall not pose any potential safety hazard, especially with sharp edges or moving parts, to passers-by, patrons, or employees. The furniture shall be firmly secured to avoid risk of moving and falling over in windy conditions or other circumstances. The furniture shall be removed in high wind conditions.
5. The outdoor furniture shall be stackable, foldable or easily dismantled so that it can be moved and stored away.
6. Appropriate footpath service shall be provided which includes as a minimum the removal of any dirty plates, cups, cutlery, footpath staining and rubbish on a regular basis during each operating day. As such the area and its surrounds shall be maintained in a clean, tidy and hygienic state.
7. No business or financial transactions shall be carried out on the footpath. Such activities shall be carried out wholly within the confines of the premises. This does not include the giving and taking of bills, and associated tips and change.
8. No part of the footpath shall be used as a permanent storage place for any item/s.
9. Where possible, the applicant must provide access in accordance with AS 1428.1 for people with disabilities to 20% of furniture used for outdoor seating.
10. No advertising signs (including menu boards) are permitted on the footpath area without Council's consent.
11. Any aluminium furniture shall have a powder coated or polished finish.
12. The hours of operation for the footpath dining must be the same as or less than the hours of operation of the associated business. The hours of operation for the business use of footpath areas may be limited if it is considered that the amenity of the surrounding area or the safety of pedestrians or footpath diners may be adversely affected.
13. Furniture must be removed from the footpath and stored within the building outside business operating hours. Furniture is not permitted to extend past the area that has been approved by Council for the purpose of the business.
14. Service of alcohol limited to business frontage only.
15. Noise and music appropriately managed.
16. Waste management requirements met.

17. Current public liability insurance is to be maintained throughout the term of approval. When a new insurance policy is issued during the term of the approval, a copy of the new policy is to be provided to Council.

Failure to have a valid policy will result in this section 68 approval being invalid and may result in Council issuing an on-the-spot penalty notice for the non-compliance with conditions of consent.