

Footpath Trading and Outdoor Dining Policy

Policy Approval and Distribution

Approved by	Council resolution
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Council Service Unit	Development, Building & Compliance
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Version Control

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0.1	27-11-2019	Adopted.	257/2018

Purpose

The purpose of this policy is to establish and outline guidelines around footpath trading and outdoor dining practices in the Cootamundra-Gundagai Regional Council area.

Objectives:

- Make our towns and villages more liveable and friendly.
- Enhance the character of the urban environment.
- Enhance opportunities for social interaction.
- Provide alternatives to indoor dining.
- Boost trade for retailers.
- Provide for the appropriate use of footpaths, plazas and public areas for outdoor dining and footpath trading activities.
- Provide outdoor dining areas and footpath trading activities that contribute positively to the streetscape character.
- Provide outdoor dining areas and footpath trading activities that are compatible with other community uses of the public space.
- Provide outdoor dining areas and footpath trading activities that are safe and accessible for all users.

Scope

This policy applies to all retail premises, and food premises within commercial areas that are lawfully operating or that have a valid development consent to operate, where it is proposed to use public footpaths and other public areas to either:

- establish an outdoor dining area which does not include the service of alcohol; or
- carry out footpath trading activities; or
- place items (but *not* advertising - see section 1.1) on a footpath or public area to promote items for business trading purposes.

Note: This policy does not apply to outdoor dining areas or footpath trading activities that are carried out on *privately* owned land.

Legislative Framework

NSW Model Outdoor Dining Policy and Section 125 of *the Roads Act 1993*.

Associated Form or Documentation

Footpath Trading and Outdoor Dining Application for Permit Form.

Review Period

This document is to be reviewed every three (3) years to ensure that it remains relevant and meets legislative requirements.

Policy Statement

1 OBTAINING A PERMIT

Council will use this Policy to assess all applications for the commercial use of public footpaths or other public areas. Before applying for a permit, the applicant should:

- obtain an application form for either a 'Footpath Trading Activity Permit' or an 'Outdoor Dining Area Permit' from Council;
- consider how the proposal complies with the objectives of this Policy;
- establish which sections of this Policy apply to the proposal;
- consider discussing the proposal with Council officers to ensure relevant key matters are identified and addressed prior to lodging the application;
- ensure that the application is consistent and complies with the requirements contained within this Policy; and
- ensure Council is provided with all the necessary information.

1.1 Advertising Structures

Outdoor dining and footpath trading is not to be used as a means for increasing advertising to a business's activity. The use of advertising material and signage outside the provisions of this policy will require separate development consent.

1.2 Variations to the Policy

Variations to the controls and requirements of this Policy may be permissible if, in the opinion of the Council, the objectives of the Policy have been met. A written statement and any other supporting information that details how this will be achieved must be included with an application that seeks a variation from this Policy.

1.3 Exemptions to this policy

One-off celebrations which are endorsed by Council, are not required to lodge an application for approval, provided businesses comply with the criteria set out in this Policy.

2 OUTDOOR DINING AREAS

2.1 Suitable Locations for Outdoor Dining Areas

The following criteria apply:

- Outdoor dining areas should be located on a suitably constructed surface that is sufficiently level to allow for the safe use of the furniture and can support a layout that adequately meets the other requirements of this Policy.
- Location should be consistent with any other outdoor dining area at adjoining premises.
- A minimum unobstructed footpath width of 2.0 metres is to be maintained.

- Outdoor dining must be located so as not to interfere with car parking and vehicular movement where it adjoins a roadway.
- Furniture must not be placed within 0.8m of any vehicle parking space.
- Furniture should be located directly in front of the premises to which it relates unless written consent from the landowner or proprietor is provided.
- Either non-disposable eating utensils are provided in the outdoor dining area of the premises, or appropriate receptacles for the collection of disposable eating utensils must be provided.
- No furniture shall be located within 3.0 metres of any road corner.
- Outdoor dining areas can include areas in front of neighbouring properties so long as written permission from owner of the adjoining property has been obtained and is included in the application.

2.2 Outdoor Furniture

Outdoor furniture to be used by an establishment must adhere to the following guidelines:

- Outdoor furniture must be commercial grade and of adequate strength and durability to withstand most external weather conditions and outdoor commercial use.
- Domestic style plastic furniture is not permitted as it is not generally considered to be of high quality or durability. All furniture must be of a high aesthetic quality that enhances the existing streetscape.
- Furniture for all establishments and surrounds are to be kept in a clean, hygienic and safe condition at all times.
- The security, cleanliness and safety of all furnishings are the responsibility of the proprietor.
- Shade umbrellas/structures are to be securely anchored.
- Penetrations into the footpath are prohibited.
- Shade umbrellas/structures must not protrude into the roadway. They must be more than 2.0 metres in height if they protrude into the pedestrian thoroughfare.
- All furnishings are to be removed from the public domain and securely stored outside trading hours.

2.3 Heating Structures

Any proposal to use heating structures within outdoor dining areas will be assessed on merit with consideration given to: footpath width; the type, number and location of heating structures proposed; and proximity to other structures. Particular attention will be given to the safety of the diners and the general public.

Note: All gas heating structures must adhere to *Australian Standard 4565 - Radiant gas Heated for outdoor and non-residential indoor use*.

2.4 Lighting

Any outdoor dining area licensed to operate outside daylight hours must be adequately lit to ensure the safety and amenity of patrons and the general public. Lighting of any outdoor dining area must be in the form of down lights or the like which need to be:

- directed away from the roadway;
- contained to the outdoor dining areas only;
- turned off outside the operating hours of the premises.

Existing under-awning lighting may suffice.

2.5 Advertising and Signage

Advertising on outdoor dining furniture or footpath trading activities that is associated with the cafe/restaurant or retail premises is permitted by Council in accordance with the following guidelines:

- The third party advertising of one advertiser only may appear on the furnishings of the area. It should not dominate the appearance of every piece of furniture.
- Details of third party advertising on outdoor dining furnishings must be submitted to Council with the application for a permit.

2.6 Planter Boxes

Planter box styles proposed for use within outdoor dining areas will be assessed by Council on merit, with consideration given to footpath width, and type and location of the planter boxes proposed.

Planter boxes:

- must be located within the permit area;
- must be located so as not to obstruct pedestrian flow;
- must be maintained and cleaned of litter;
- must not carry advertising.

Council reserves the right to order the removal of planter boxes that are not properly maintained.

2.7 Permanent Covered and Walled Structures

In some cases, the applicant may wish to undertake streetscape works to accommodate an outdoor dining area. Such works may include permanent covers, walled structures, street tree planting, landscaping, pedestrian lighting etc. Any such works requires a specific approval by the Council and lodgement of a development application.

These structures are outside the provisions of this policy and require separate development consent and rental agreements with the Council.

2.8 Amenity, Public Health and Safety

Each permit holder is responsible for the cleanliness and tidiness of the areas in front of the premises and the immediate surrounds used for outdoor dining:

- Tables must be cleaned of food scraps immediately after customers leave. All litter must be swept up in a timely way and disposed of appropriately.
- Furniture items must be maintained in a neat, tidy and clean appearance when in use.
- All furniture must be removed from the footpath/public area to enable the area to be swept and stains removed from the footpath at least daily (on each day of use).

Note: Debris must not be swept into the gutter. This action constitutes a pollution offence for which penalties may be incurred.

3 FOOTPATH TRADING ACTIVITIES

3.1 Footpath Trading Activity Locations

The footpath space directly in front of a retail premises is allocated to that shop. Footpath trading activities must be established in accordance with the following guidelines:

- Footpath trading activities must be located on a safe, stable, hard surface that is sufficiently level to provide adequate stability to display stands.
- Supervision of trading activities/goods must be possible from the shop.
- A minimum unobstructed footpath width of 2.0 metres is to be maintained.
- The location of the footpath trading activity shall be consistent with any footpath trading activity or outdoor dining area at adjoining premises.
- No footpath trading activity shall be located within 3.0 metres of any road corner.
- The footpath trading activity shall have a width not greater than 1.2m.
- The footpath trading activity is not to extend beyond the side property boundaries of the premises.
- The footpath trading activity is not to impede access to or egress from the premises.
- The footpath trading activity is not to create litter, rubbish or any other form of degradation of the footpath area.
- Footpath trading activities (including display stands) are to be stabilised/ anchored to avoid collapse.
- The lodged application must show the intended location of display stands and structures.
- All furnishings are to be removed from the public domain and be securely stored outside of trading hours.

3.2 Display Merchandise or Promotional Items on Footpaths

The following types of merchandise may not be displayed on footpaths, or public areas:

- Liquor, tobacco or other drugs
- Gases, e.g. Liquid Petroleum Gas (LPG) canisters
- Corrosives, e.g. Car batteries
- Oxidising materials, e.g. paint stripper
- Explosives, e.g. Boat flares
- Flammable liquids
- Spray paints.

Note: This list is not exhaustive. Council reserves the right to order the removal of any merchandise considered to be a risk to the health and safety of the public and/or the environment at any time.

3.3 Display of Goods on Footpath

When displaying goods on a footpath:

- Fresh food must be kept at least 750mm above the footpath.
- All goods must be displayed on stands, racks or in containers above the level of the footpath, unless goods to be displayed are designed in a manner intended to allow for placement on the ground.
- No advertising using amplification or persons calling to the public may be undertaken.

3.4 Display Stands

When using display stands on footpath areas to present goods, the following conditions apply:

- All goods are to be presented on display stands approved by Council.
- Display stands are to be aesthetically pleasing, durable, well-finished, secure and solid-to-ground at the base.
- Materials and finish of display stands must be weather-resistant. Edges and corners must be finished so as not to cause any injury to a passer-by.
- All display stands are to be custom-made and/or designed for the goods being displayed.

3.5 Free Standing Signage, Flags and Similar Items to Promote Business Activities

When using free standing signage, flags and similar items to promote business activities on footpath areas, the following conditions apply:

- Items are to be aesthetically pleasing, durable, well-finished, secure and solid-to-ground at the base.
- Each item may occupy up to 0.8m² of surface area on the footpath.
- The maximum number of items per premises is directly related to shop frontage facing the street. Up to two items are permitted for every 10m of shopfront.
- The maximum number of items per premises is six (regardless of shopfront length).
- A minimum unobstructed footpath width of 2m is to be maintained.
- No item shall be located within 3 metres of any road corner.
- A maximum of one A-frame sandwich board is permitted per premises. The maximum size shall not exceed 1m² on each side (including framework). A-frames must be securely weighted to avoid movement in high winds.
- All signs, flags etc are to be removed from the public area and securely stored outside of trading hours.

4 GENERAL CONSIDERATIONS

4.1 Hours of Operation/Noise Impacts

The hours of operation will generally be the same as the hours approved under the development consent for the premises unless a lesser period is determined due to environmental considerations. An application for an outdoor dining area or footpath trading activity will not be approved under this Policy if the proposal is of such a scale that the noise generated will have a significantly adverse effect upon nearby residential properties.

4.2 Insurance

Proprietors of the premises must maintain no less than \$20 million public liability insurance cover for utilisation of the footpath area and are required to provide a certificate of currency noting the interest of the Council over the concerned area.

4.3 Conduct of Patrons

The appropriate conduct of patrons is the responsibility of the permit holder.

4.4 Work on Council Footpaths/Public Areas

Permit holders cannot claim for any loss of income or refund of permit fees as a result of works carried out by Council or other service providers on Council owned footpaths, plazas and public areas.

4.5 Outdoor Dining and Footpath Trading Activity Permit Application Requirements

Applicants are required to complete and submit to Council an application form to conduct activities covered by this Policy. If approved, a 12 month permit will be issued for the activity. Application forms are available from Council's Customer Service staff or downloadable from the Council's website.

4.6 Information that must be supplied when making a Development Application for a Permit to Operate

Applications must be made on the standard Application Form and include a sketch indicating:

- the street;
- the subject property;
- neighbours' properties;
- distance from the boundary line to the kerb & gutter;
- distance from the boundary line to any awning posts;
- areas (with dimensions) of the footpath to be occupied by the outdoor activity;
- location of any street furniture to be included in the area, e.g.: planter boxes, chairs and tables;
- location and description of any signage, flags or similar;
- details of the design and colour of the outdoor furniture proposed, including photographs if possible.

4.7 Renewal of permit

The permit must be renewed every year on 1st July. It is the permit holder's responsibility to ensure the renewal of the permit before the renewal date. If the renewal is not made by this date, the activity is to cease until a new permit is approved. Permits are non-transferable.

4.8 Rental Fees

Application and rental fees to conduct business or place items on Council-owned or managed land will be charged in accordance with Council's adopted Fees and Charges Schedule, where applicable.

4.9 Modification or Early Termination of a Permit

Council may terminate or cancel a permit to use a footpath, plaza or public area or have the agreed conditions of the permit modified at any time in order to maintain optimal pedestrian movement patterns or preserve the amenity of the area.

Council may also suspend or terminate a permit at any time if all or part of the permit area is required for road construction works.

Reasonable notice shall be given in the event this clause is to be applied.

Note: The Council can only advise permit holders of any work being undertaken which is under its control.

Other service providers have authority to undertake work on footpaths and the like without seeking approval from permit holders or the Council.

Permits are non-transferable.

4.10 Breaches of Permit conditions Council may terminate a permit for breaches of the agreed conditions of the permit or the requirements of this Policy.

Repeated breaches will result in termination of the permit agreement. Breaches of the permit include but are not limited to:

- non-payment of rental fee;
- encroachment beyond the permitted outdoor dining area and footpath activity area;
- non-compliance with the approved permit and the controls set out in this Policy;
- not keeping the area of outdoor activity clean and tidy.
- not displaying current permit (or copy) in a prominent place (preferable front window or door of the primary premises)

4.11 Display of permit and sketch

Council requires all permit holders to display their current permit (or copy) with the approved sketch showing the information in section 4.6 above in a prominent place (preferable front window or door of the primary premises)

