

Footway Dining Application Form

Title (Dr/Mr/Mrs/Ms): _____

Given name: _____ Surname: _____

Postal address: _____

Suburb: _____ Facsimile: _____

Phone: _____ Mobile: _____

Email: _____

Advertiser/Company: _____

Insurance Details (PLEASE PROVIDE COPY OF INSURANCE POLICY)

Public Liability Insurer: _____ Policy Number _____

Policy Validity Dates: From ____/____/____ To ____/____/____

Please provide the following with this application:

1. Two copies of a dimensional drawing (A4 size) indicating frontage of the site and size of the area proposed to be used for a temporary structure and the structure's location;
2. A colour photograph of the site frontage and area proposed to be used for dining purposes;
3. A colour photograph or brochure detailing the furniture intended to be placed on the footway;
4. A current copy of Certificate of Currency for Public Liability Policy (minimum value \$20,000,000) with the co-insurance clause.

Dimensions of Area to be used:

Length (m): ____ Width (m): ____ Total Area (m²): ____ Number of Table & Chairs Used in Area: ____

Other Temporary Structures on the Footway:

Are you intending or already using another type of temporary structure on the footway? YES/NO

If NO go to Declaration. If YES continue

What type of temporary structure is it? _____

Is the temporary structure to be used within the above specified footway dining area? YES/NO

Declaration: I declare that all the information provided is true and correct. I have read and understand the Terms and Conditions attached for the provision of Space on the Footway for Dining purposes and agree to abide by them.

Name: _____ Signature: _____ Date: _____

Witness Name: _____ Witness Signature: _____

Footway Dining Terms and Conditions

1.0 Introduction

These terms and conditions outline the requirements for the use of the footway (road reserve) for dining.

2.0 Aims & Objectives

- (a) To create a cosmopolitan alfresco dining/cafe atmosphere in appropriate areas of Port Stephens;
- (b) To increase tourism potential;
- (c) To enhance Port Stephens' image in keeping with Council's Vision: ""Engaged people, working together, delivering valued services" and Council's Mission - "Leadership and alliances are innovative and entrepreneurial, stimulating growth and profits and deliver to our community a great lifestyle in a treasured environment".
- (d) To provide guidelines for implementing and maintaining footway dining areas;
- (e) To regulate the use of footway dining areas to avoid nuisance or inconvenience to the public.

3.0 Definitions

Applicant means:

- (a) person(s) making application,;
- (b) holders of a current licence for a footway dining area on the footway being the owner or lessee of the commercial premises or a Corporation; or
- (c) a firm trading under a business or trade name and a partnership or an individual.

Carriageway – that portion of the road reserve devoted particularly to moving vehicles and parked vehicles.

Classified road – means any of the following: a main road, a State highway, a freeway, a controlled access road, a secondary road, a tourist road, a tollway, a transit way, a State work.

Food business – means a restaurant, café, coffee lounge or takes away food store.

Footway – that part of a road as is set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic).

Kerb – a raised border of rigid material formed at the edge of a carriageway.

Licensee – means any of the following person(s), holders of a current Footway Dining Licence on the footway (road reserve) being the owner/leasee of the commercial premises etc and can include a corporation, a firm trading under a business or trade name and a partnership or an individual.

Licensor – means Port Stephens Council.

Public place – means a public road, bridge, jetty, wharf, road ferry, public bathing reserve, public bath, public land and other land which is a public place under the Local Government Act 1993.

Public road – means a road which the public are entitled to use.

Public street - means any street, road, lane, thoroughfare, footway or place open to or used by the public and includes any place at the time open to or used by the public on the payment of money or otherwise.

Road reserve – the entire right-of-way devoted to public travel, including footways, shoulders, verges and carriageways – the whole width between adjacent property boundaries.

Road users – includes pedestrians, motorists, cyclists and motor cyclists.

4.0 Statutory Requirements

An application for approval to use a footway for dining purposes is made under Section 125 of the Roads Act 1993 and Section 68 of the Local Government Act 1993.

Footway Dining Terms and Conditions (cont'd)

5.0 Approvals

5.1 General

Applications are to be forwarded to the Facilities & Service Customer Liaison Officer by mail – PO Box 42 Raymond Terrace 2324, in person at 116 Adelaide Street, Raymond Terrace or by email:

council@portstephens.nsw.gov.au

Approvals will only be issued if pedestrians can easily negotiate the footway when temporary structures are in place.

Use of part of a footway for dining purposes can only be considered where that use is in association with an established food business. The Applicant must be the owner/proprietor/manager of that business.

Approval may also be subject to local or specific Development Control Plan conditions, agreements/conditions formed by the local Chamber of Commerce and Industry or any other sectors approved by Council. It should be noted that some conditions or requirements under this approval may alter during the Licence period. (See section 9.0 Outdoor Furniture).

The use of non-permanent umbrellas may be permissible when used in conjunction within the approved footway dining area. (See section 10.0 Other Items in the Approved Footway Dining Area).

The applicant is to indemnify Council in writing against any action taken against it by persons aggrieved by the use of the footpath Council will not accept liability for damage to or loss of furniture or personal property from the approved area.

Any application to use a footway on a main road or State Highway ("classified road" as specified under section 125 of the Roads Act 1993) must be accompanied by a letter from the NSW Roads & Maritime indicating its approval in principle to the proposal. Council's Facilities & Services Group can assist with this process.

Public risk insurance to a minimum value of twenty million dollars (\$20,000,000) must be maintained by the applicant/Licensee. (See section 7.0 Insurance Requirements for full details and conditions).

Approval shall not be construed as conferring any ownership to the site. The Applicant shall not be entitled to any compensation or consideration if for any reason part or all of the approved site becomes permanently or temporarily unavailable, for example during footpath reconstruction or installation of new public utilities.

The area under the approved licence is not a saleable item when businesses are sold or transferred. A new application form must be submitted by new owners and supported with the necessary insurance documentation. When new applicants are not altering the usage and area details compared with the previous Applicant, the Facilities & Services Group Manager may waive the initial application fee and only charge the renewal fee. (See section 16.0 Renewal Application Requirements & 15.0 Renewal Application Requirements).

Council's Facilities & Services Group Manager will consider the cleanliness and continued suitability of the footway for the temporary structure use at the time of routine inspections.

The Applicant shall clean the footway at his/her expense when deemed necessary by the Facilities & Services Group Manager.

Footway Dining Terms and Conditions (cont'd)

6.0 Specific Requirements & Safety

6.1 Requirements

The Licensee must not cause, permit or allow:

- (a) Any person to serve or consume alcoholic beverages within the Premises or on the footway unless the Licensee has first obtained, and provided copies of each to the Licensor, all necessary licenses and approvals, including but not limited to those required by the Liquor Act, 1982 from the Licensing Court of New South Wales.
- (b) Any other goods to be stored, displayed upon or sold from the footway except those items as specified in the approved application;
- (c) The use of the footway or the Premises by or on behalf of the Applicant to give rise to "pollution" [as defined in the Protection of the Environment Operations Act, 1997, which includes but is not limited to that not limited to that noise which (by reason of its level, nature, character, quality or the time at which it is made) is or is likely to be harmful to any person outside the Premises or unreasonably interferes with the comfort or repose of a person outside the Premises or a nuisance;
- (d) Interference with access to any public utility or public amenity (including but not limited to fire hydrants, inspection chambers, telephone and electricity underground cables, water service pipe or service ducts within the footway;
- (e) Any furniture, barrier, structure or other items to be used or placed upon the footway so as to obstruct or interfere with the flow of pedestrian (including pedestrians suffering from any disability) passage over the footway or adjacent footway areas. Unless otherwise agreed in writing this requires that an adequate clear path of at least 2 metres width (or such other width as the Council may direct in writing is to be maintained across the footway or adjacent footway areas for pedestrian use at all times;
- (f) The installation or use of any furniture, barrier or structure that is not of a design, colour and specification submitted with their application and approved on such application by the Manager of Engineering Services. Council has the option to have structures removed if they are not adhering to this condition or if Council considers that the structure detracts from the visual character of the area;
- (g) Any furniture, barrier or structure to be permanently fastened to the footway unless the Applicant has obtained prior written approval from the Council;
- (h) Any furniture, barrier or structure to be placed in any position that might impede any vehicle travelling along any adjoining road way or that might pose a risk of damage or a nuisance to any person or interfere with access of any disabled person to the premises or across any adjacent footway or roadway.
- (i) The display of any advertisement or the erection of structures without the prior written consent of the Council;
- (j) Action in any way contrary to the Council's interests.

6.2 Other Requirements

The Licensee must ensure:

- (a) That all food shall be stored and prepared within the approved food preparation area of the premises.
- (b) That all outdoor furniture to be removed from the approved area upon completion of each days' trading.
- (c) That statutory authorities have right of access to approved areas to effect repairs or to maintain their equipment.

Footway Dining Terms and Conditions (cont'd)

- (d) That the Licensee of the approval, may be required to carry out improvements to the footway at his/her expense where the surface of the footway in the proposed area is damaged, cracked or deteriorated or is otherwise unsuitable for a dining area. The Licensee shall bear the cost of all pavement repairs carried out by the Port Stephens Council which have been caused by footway dining activities.
- (e) That the footway dining area is in a clean and tidy condition at all times.
- (f) That liquid wastes are not discharged onto the footway or street.
- (g) That furniture and shelters remain clean and in good repair at all times.

(h) That the footway dining area be paved or sealed for its full width.

(i) That the licensee is aware that the Stockton Street Stage Area is primarily a community asset that is to be utilised by community members. Given this, it is a requirement that the Stockton Street Stage Area is vacated by the licensee for periods where access is required by other community groups or events who have applied to Council for its use and where Council has approved use of this area. Council will notify the licensee at least 3 working days prior to

any event start date, after which the licensee will be required to vacate the area by the direction of Council for the event period.

7.0 Insurance Requirements

The Licensee must hold public risk insurance to a minimum value of twenty million dollars (\$20,000,000).

Existing policies shall include the following co-insurance clause: -

“It is hereby agreed that the indemnity given by this policy is extended to the Port Stephens Council, in respect to the operation of an approved outdoor footway dining area”.

The Licensee of the approval shall lodge a copy of the policy with Council prior to the issue of an approval. A certificate of currency needs to be furnished at the expiration of insurance and with each renewal application.

8.0 Maintenance of the Footway Dining Furniture

Footway dining area furniture is to be supplied and maintained by the Licensee at their own expense.

9.0 Outdoor Furniture

Furniture shall be of a design, colour, material and specifications approved by the Engineering Services – Assets Manager.

Council may approve furniture but this may alter during the Licence period subject to the introduction of local or specific Development Control Plan conditions, agreements/conditions formed by the local Chamber of Commerce and Industry or any other sectors approved by Council.

10.0 Sun Protection

Licensees are encouraged to consider providing tables with securely anchored umbrellas of such size as to provide adequate sun protection to patrons during hours of sunlight.

Footway Dining Terms and Conditions (cont'd)

It is suggested that consideration be given to the following protective shade qualities of the furniture:

(i) Orientation

Areas that receive high levels of ultraviolet radiation should provide customers with protective summer and winter shade. Priority for shade cover should be for the hours between 11am and 3pm.

(ii) Reflectivity

Levels of reflectivity of ultraviolet radiation need to be considered when selecting material and colours. Sites where reflective materials occur in abundance, such as commercial or retail zones where large areas of paving or glass exist, may require more concentrated use of shade devices in order to achieve protective shade.

(iii) **Solar Paths**

Protective shade, where provided, should be designed for maximum protection through the location of shade devices according to the sun's position.

11.0 Other Structures in the Approved Footway Dining Area

Other items that may be applied for are as follows:

(a) Umbrellas that are not fixed to a structure (be it a pole, an awning or the building) or that are permanent structures. The umbrella must be removed at the end of every trading day and comply with all the safety requirements specified in section 8.0 and 9.0 Outdoor furniture, particularly securely anchored. The only form of advertising permissible on the umbrellas is limited to the trading/business name of the establishment eg. "Bob's Café".

(b) Sandwich boards/ A frames when relating to the business or its activities.

(c) Other items that may be appropriate (eg. plant pots/boxes, dividers etc – all being non-permanent and removed at the end of every trading day).

Any other item(s) used in the approved footway dining area as mentioned above, must comply with all of the safety regulations noted in these terms and conditions and the deed of licence and any requirements as specified in the relevant application form and conditions for that specific activity. The relevant documentation and supporting documents for each activity must be completed regardless of the location of the item.

If it is intended to be used in a location outside the approved space, then the Application form for Temporary Structures in the Footway must be completed and returned for review.

12.0 Advertising

The only form of advertising permissible on umbrellas, chairs etc is the trading/business name of the establishment eg "Bob's Café".

Promotional, brand names, slogans, symbols or writing will not be permitted.

13.0 Provision of Toilet Facilities

Toilet facilities are to be available for patrons according to the current Building Code of Australia. If you require any additional information contact the Engineering Services Department.

Footway Dining Terms and Conditions (cont'd)

Access to toilets shall be provided through nonfood preparation areas. However, an exemption from toilet facilities may be issued on a permanent or trial basis according to the nature of the food business, at the discretion of the Port Stephens Council.

14.0 Initial Application Requirements

Applications for approval to use a footway for dining need to be made on the attached form.

Applications for alterations to detail of an existing approval will be dealt with as for a new approval.

An application for approval needs to be supported by the following documentation:

(a) A copy of a dimensional drawing (A4 size) indicating frontage of the site and size of the area proposed to be used for dining purposes;

(b) A colour photograph of the site frontage and area proposed to be used for dining purposes;

(c) A colour photograph or brochure detailing the furniture, accessories and fittings intended to be placed on the footpath.

When calculating the area required the minimum 2 metre clearance for pedestrian traffic should not be included in the calculated area applied for, as this area must be kept clear of any obstacles at all times.

15.0 Renewal Application Requirements

Applications for renewal of footway dining are sent out as a renewal pack approximately 1 month before the end of financial year for completion and return to council no later than 1 July each year.

Applicants are required to lodge a renewal application each year regardless of when their initial application was lodged with Council during the previous year.

16.0 Compliance

In all circumstances, applicants will be required to comply with all conditions specified, including the completion of the relevant forms, submission of the supporting documentation and presentation of relevant public liability insurance as specified in this policy and the relevant procedures

17.0 Assessment of Applications

Applications would be unlikely to be approved where:

- (a) the proposal is located in a residential neighbourhood which would have an adverse effect on residential amenity;
- (b) the use would create an obstruction or hazard to either vehicular or pedestrian traffic on the carriageway or road;
- (c) the site is located in an area of very high pedestrian traffic;
- (d) it does not comply with other statutory or regulatory requirements.

Footway Dining Terms and Conditions (cont'd)

18.0 Approval Details

The usual renewal period (unless revoked earlier) shall be from 1 July to 30 June the following year.

An approval may be revoked at any time when in the opinion of the Civil Assets Manager, the conditions applying to the approval is not being satisfactorily met.

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

If the conduct of the footway dining area causes undue inconvenience or disruption to pedestrian, vehicular traffic or the occupants of adjoining business premises, the Civil Assets Manager, after considering any representations from the approval holder with seven (7) days of being notified, may terminate the approval with one month's notice in writing.

In the event of the approval holder failing to remove furniture or other property following the expiration of termination of the approval, the Council may remove and dispose of such property at its discretion of not claimed within seven (7) days of notification for removal having been given to the approval holder.

YOUR PRIVACY

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy.

Purpose: This information is collected only for Council's Footway Dining register.

Intended recipients: The information will only be used by Council staff.

Supply: This information is supplied voluntarily.

Consequence of Non Provision: Non provision of the information required will result in the application not being processed.

Storage and security: This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation.

Access: Please contact Council on (02) 4980 0255 to enquire how you can access information.

Office Use Only

Approved By: _____ Signature: _____ Date: _____