

# Policy

## Footpath Trading

Version 1.2

Adopted by Council at its meeting on 13 November 2007

Minute No: O290 and 179

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Section:	Building and Health
File Reference:	Council Policies/Protocols/Procedures
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# Footpath Trading

## Policy Objective

- To ensure safe, unrestricted and convenient pedestrian movement.
- To provide for the safety and amenity of footpath trading patrons.
- To maintain or improve existing streetscape elements and maintain or promote local amenity.

## Definitions

For the purpose of this policy and any approval issued under it, the following definitions shall apply:

**Applicant:** any person, organisation, property owner, or tenant who applies for approval under this policy.

**Blister:** an extension of the footpath onto the formed road for the purpose of creating greater footpath area. Uses include footpath dining, increased clear vision at pedestrian crossings and pedestrian rest areas.

**Busking:** performance of an activity for the purpose of entertainment, usually in anticipation of voluntary reward. Includes the provision of entertainment in conjunction with any other trading.

**Goods:** any article, good, item or materials usually associated with the trade or operation of a business conducted by the applicant, whether displayed on a stand or otherwise.

**Footpath:** that part of the road set aside or formed as a path or way for pedestrian traffic between the property alignment and the closest kerb line/road verge and excludes street medians, roundabouts, garden and tree reserves.

**Pedestrian Safety Barrier:** a barrier that prevents patrons within a footpath trading area from easily accessing the roadway, either by intention or accident.

**Street Selling:** the sale of goods on foot by traders from a mobile display.

**Trading:** any activity undertaken for the purpose of business, sale of goods or services, fund raising, canvassing, promotion, hawking or entertainment.

**Trader:** business operator or staff, tenant, charity worker, ticker seller, busker, individual or organisation trading.

**Vehicle protection barrier:** a substantial barrier designed and certified by a structural engineer to withstand a vehicle hitting it at a speed up to 10 kph at an angle of 15degrees.



## Policy Background

Tweed Shire Council has developed this footpath trading policy to maintain a balance between pedestrian movement, convenience and safety, and footpath trading activities.

This policy acknowledges that the ability to trade on the footpath can bring financial benefit and increased community enjoyment, particularly in the case of footpath dining. However footpaths exist for safe and easy pedestrian travel.

The use of footpaths by businesses, individuals and organisations for trade, fund raising or promotion can only be permitted when it can be guaranteed that all are able to use the footpath safely and unhindered. The provision of safe and unhindered movement must acknowledge the needs of all people, particularly those with physical disability or infirmity, such as the visually impaired, wheelchair users and the elderly.

Trading, safety and comfort can usually coexist. This policy presents simple urban design requirements to facilitate the establishment of outdoor cafes and restaurants, and other forms of footpath trading in typical urban situations.

This policy is applicable to the entire Tweed Shire.

## Policy

### General Requirements

The primary requirements for the use of a footpath for trading are the satisfaction of the Objectives of this policy.

All other policy requirements must be complied with in consideration of the Objectives. Where other policy requirements can be satisfied but the Objectives cannot be assured, approval will not be given by Council.

A trader seeking or holding approval for footpath trading accepts that they have responsibility for ensuring that their trading activities satisfy the Objectives of this policy.

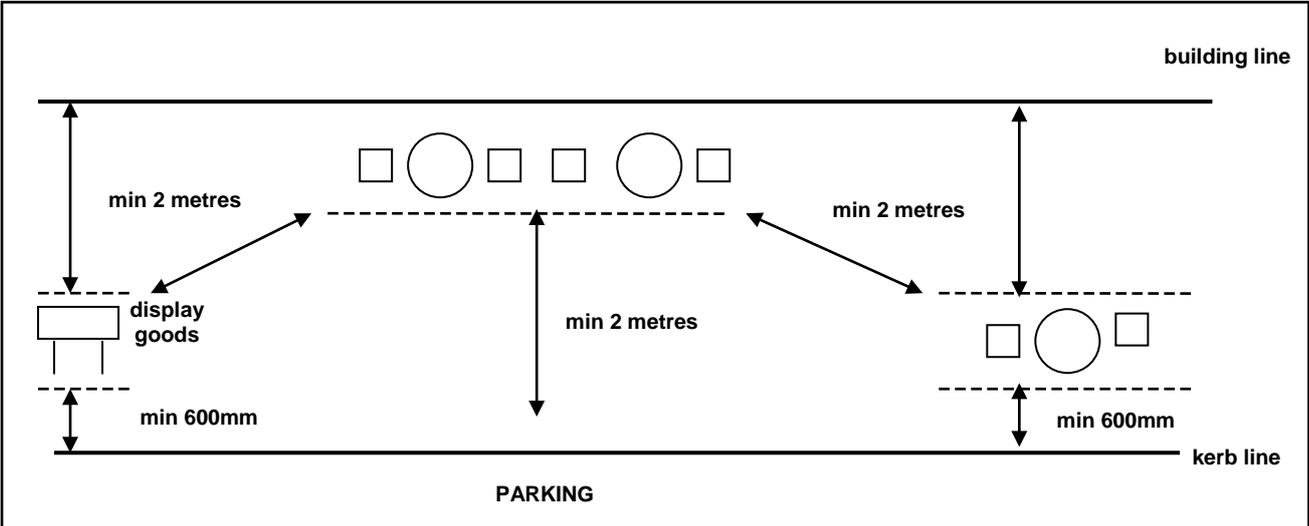
The only forms of footpath trading permitted are:

- footpath dining;
- display of goods;
- busking;
- ticket selling tables and street stalls for charity;
- street selling exclusively for Poppy Day Appeal, Legacy Appeal and Anzac Day Appeal, and
- community events that may from time to time be permitted by Council.

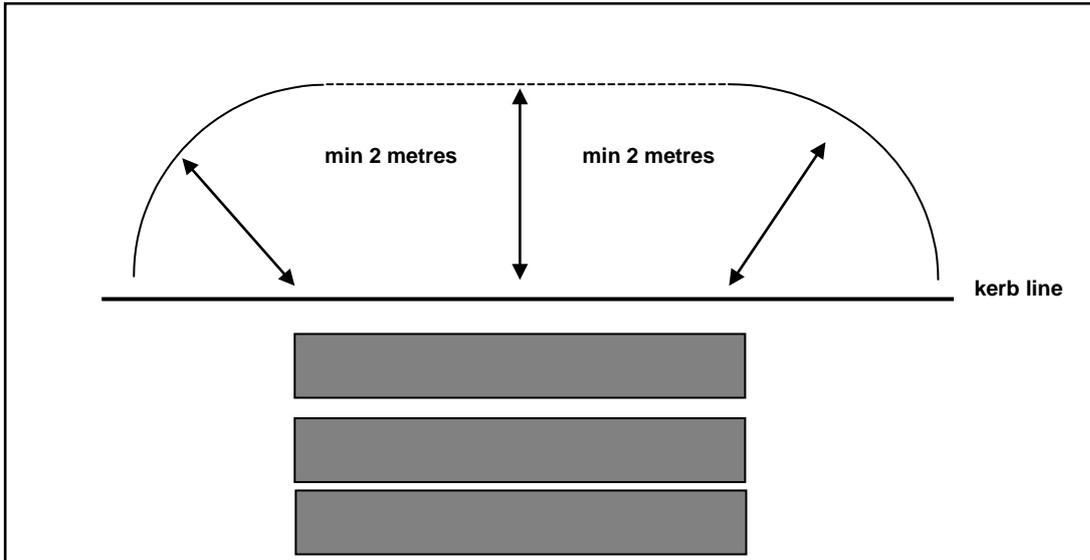
### All footpath trading requires prior approval of Council.

The following design and trading requirements provide direction on meeting the objectives of this policy.

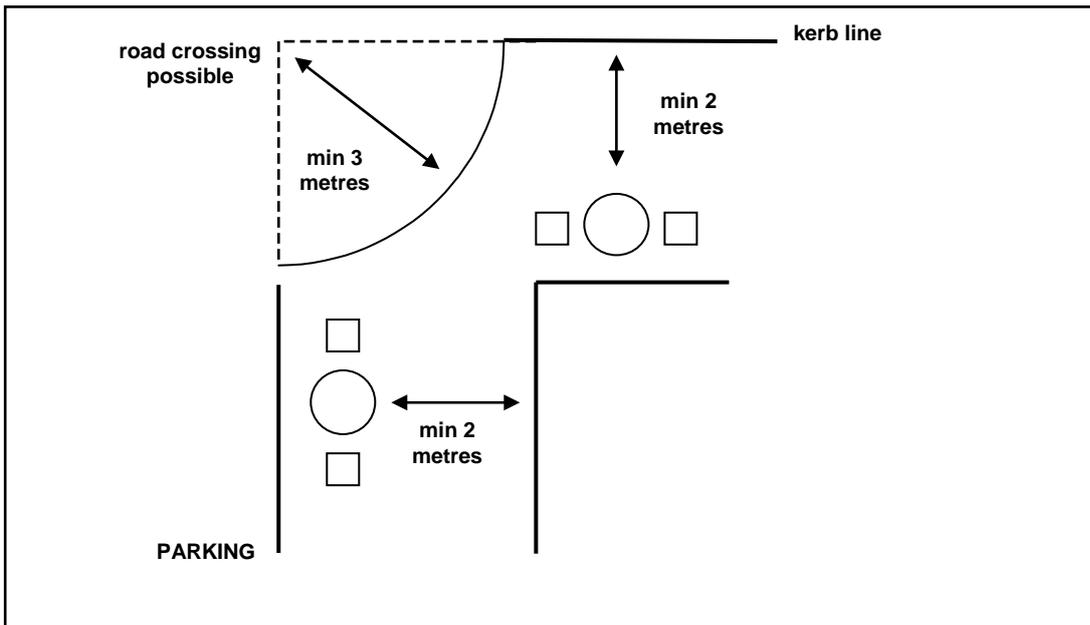
- A. A 2 metre wide thoroughfare must be maintained at all times on a footpath to the satisfaction of Council. The thoroughfare must be between all goods, including goods placed on footpaths by adjacent businesses.
- B. The responsibility for creating a 2 metre wide thoroughfare is shared equally between adjacent traders (refer also to requirement I this section).
- C. Where possible the thoroughfare shall be established along the building line.
- D. Where possible the goods shall only be placed on either the kerbside of a footpath or the building side of a footpath, not both.
- E. Where there is kerbside parking, no item is to be placed closer than 600 mm to the kerb edge so as to allow safe pedestrian access and vehicle parking. Chairs should not be placed with their back to the kerb unless the approval holder provides a suitable pedestrian safety barrier. Such barrier is to be to the satisfaction of Council.



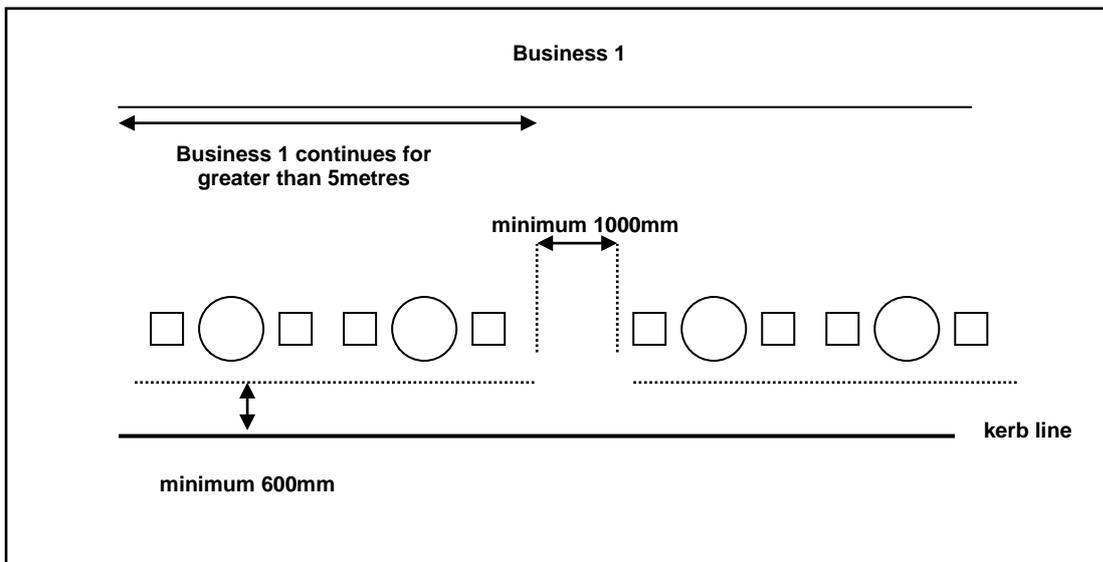
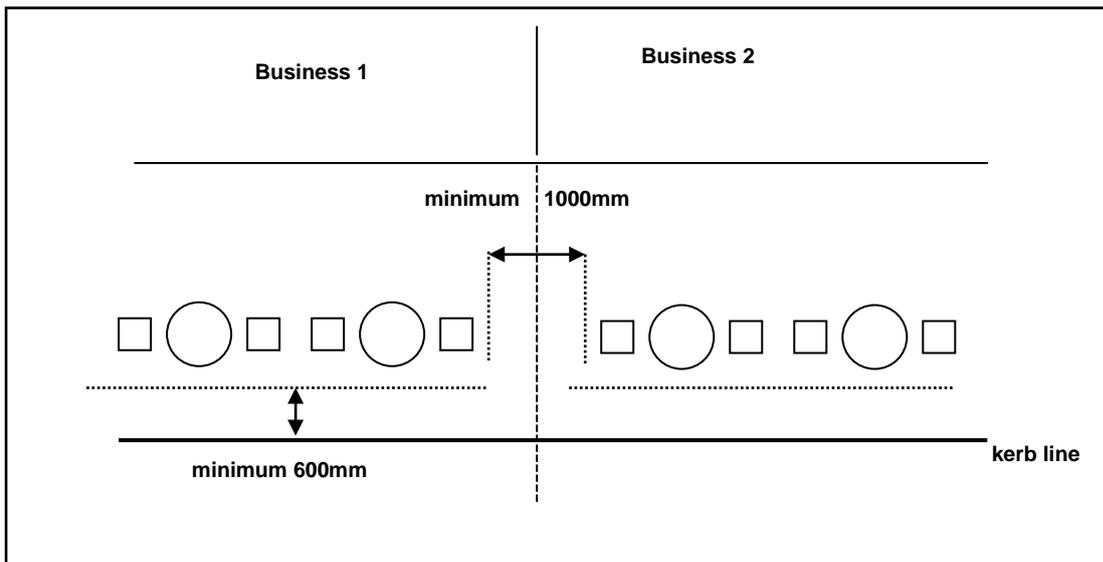
- F. Council street furniture, street trees and street bins, telephone booths, telephone/power poles and other Council or public infrastructure are to be considered when establishing a thoroughfare.
- G. A 2 metre clear radius must be maintained around the joining of a kerb and a pedestrian crossing or pedestrian access ramps.



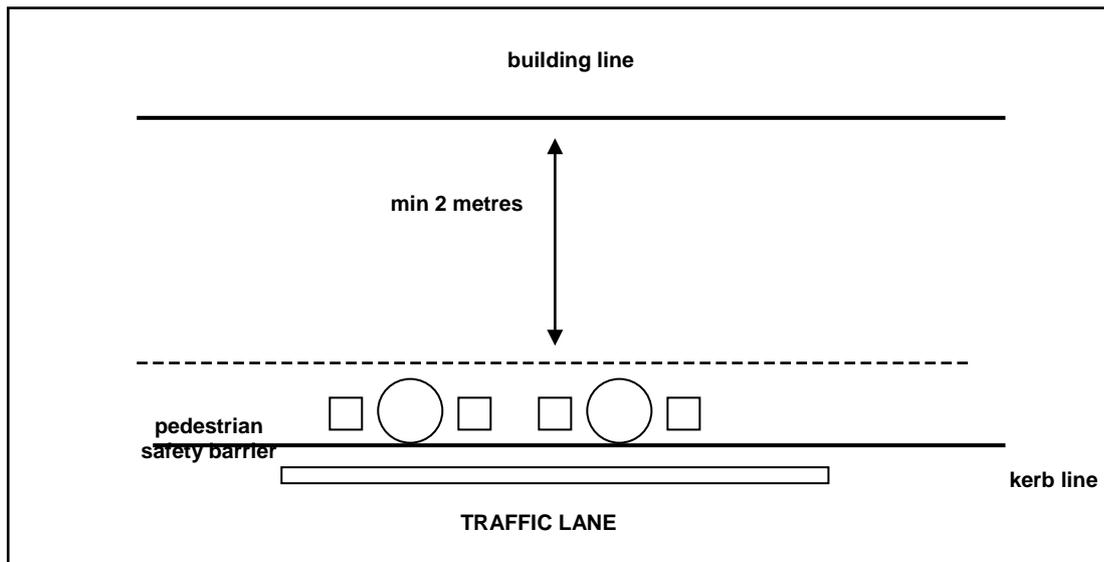
H. No object is to be placed within 3 metres of an intersection where pedestrians are able to cross.



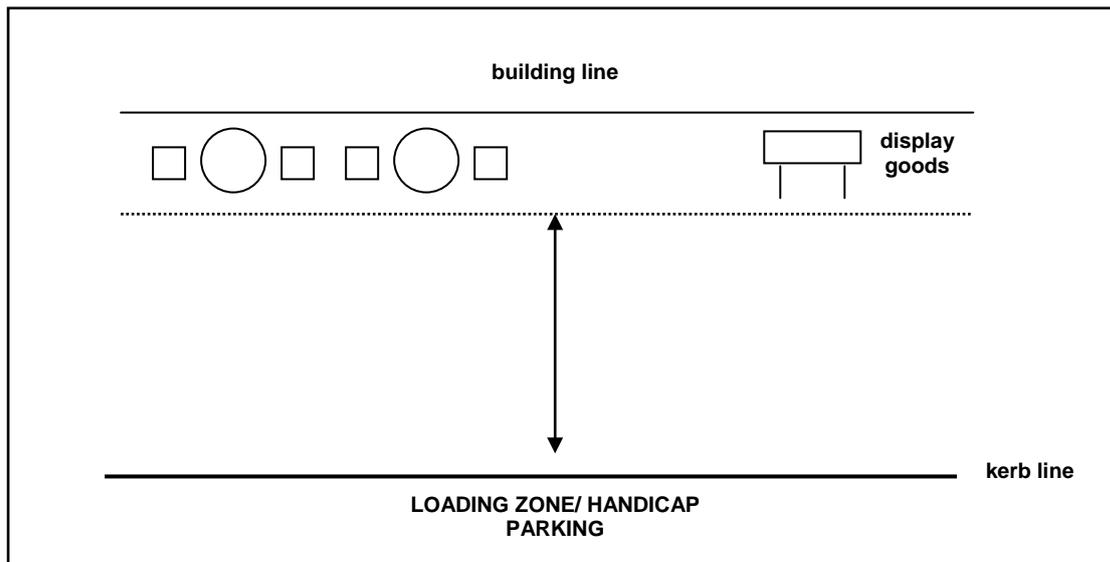
I. To avoid an unbroken line of obstacles on the footpath, and so as to allow a person to safely step onto the footpath from the road, a space of 1000mm must be left every 5 metres or where a shop frontage line ends. This is particularly important where there are two premises side by side that have tables and chairs and enclosures or goods on display. Road blisters are excluded as they extend onto the roadway and stopping a vehicle for passenger disembarking is illegal.



- J. Public utilities and infrastructure, such as water hydrants and stop valves, must be able to be easily accessed at all times. The placement of heavy or fixed items, such as planter boxes, over utilities or infrastructure is not permitted. The occupier of the footpath must grant vehicular access through the footpath trading area when requested by authorities for use, maintenance, repair and replacement of any public utilities or infrastructure.
- K. Where an outdoor eating area abuts a traffic travel lane, then the approval holder must provide a suitable pedestrian safety barrier. The barrier is to meet the requirements contained in the definitions.



- L. A minimum clearance of 600mm must be maintained on either side of an entrance to a building or shop.
- M. An approval holder must collect any litter or refuse or any material resulting from their trading and dispose appropriately. No hosing, sweeping or disposing to the gutter is permitted.
- N. To facilitate footpath cleaning nothing is to be fixed to the footpath and all goods must be removed from and stored off the footpath at close of trade and stored on private property unless approval is granted by Council.
- O. There is to be no amplified music played on the footpath unless approval is granted by Council.
- P. A business can only trade within the footpath area directly in front of its premises and up 600mm from the kerb line (Council may permit trading in front of neighbouring premises in certain circumstances, refer to the 'Neighbouring Footpath' section of this policy).
- Q. Traders are not permitted to approach or canvass pedestrians. Food business may promote dining from their storefront after 6 p.m. to patrons displaying interest.
- R. Where a loading zone or handicap parking exists adjacent to a footpath, a 2 metre minimum clear footpath area must extend from the kerb.



- S. Where a driveway crosses a footpath, a 2 metre clear footpath area shall be maintained on either side of the crossing.

### General Requirements - Insurance Provision

This section applies to all forms of footpath trading including ticket selling and stalls for charity fundraising, and busking. It does not preclude traders obtaining other insurances relevant to their operation.

- A. All footpath trading must be covered by public liability insurance of at least \$10 million - this insurance must extended to indemnify Tweed Shire Council against any liability arising from trading activities on the footpath.
- B. A copy of the insurance policy shall be submitted with an application for approval, and include a currency certificate indicating that the insurance premium has been paid and is in an appropriate form.
- C. The holder of a footpath trading approval must maintain the insurance policy whilst trading on a footpath and ensure that Council is provided with updated currency certificates as the policy is renewed.

### Specific Requirements – Blisters

Blisters are Council constructed extensions of the footpath onto the formed road for the purpose of creating greater footpath area for trading, rest areas or pedestrian crossings. Blisters may be initiated by Council as part of a street upgrade program or be initiated and paid for by a business. Blisters constructed for businesses enable a footpath thoroughfare to be more easily maintained as trade is conducted in an area set aside from the main footpath.

The creation of a new blister requires separate approval under Section 138 of the Roads Act. A Section 138 application form and plans are to be lodged and approval issued before any work takes place. As blisters generally result in the loss of public on-street parking, the applicant will be required to compensate Council for the loss of parking. Enquires should be directed to the Tweed Shire Council Engineering Services Division.

As blisters extend onto the road they abut traffic lanes and an approval applicant or holder must provide a pedestrian safety barrier. The barrier is to meet the requirements contained in the definitions.

### **Specific Requirements – Permanent Structures**

Where a trader wishes to construct a permanent structure in association with a footpath trading area, a Development Application must be submitted to Council and approved prior to commencement. Wind breaks, awnings and other enclosures are considered to be permanent structures.

When determining the Development Application, the Objective of this policy must be a primary consideration.

If planning approval is granted, the following standard consent conditions should apply:

1. A footpath trading approval must be obtained prior to the commencement of construction of the structure.
2. The business operator must hold a current footpath trading approval whilst footpath trading is occurring.
3. Upon the termination of a footpath trading approval, the structure and footpath trading area must be left clean and in good and substantial repair, order and condition in all respects, and if so required by the Council be removed and the footpath area restored to its original condition.
4. Upon vacation of the business associated with this consent, the structure and footpath trading area must be left clean and in good and substantial repair, order and condition in all respects, and if so required by the Council be removed and the footpath area restored to its original condition. Anything not removed shall become the property of the Council, who may keep or remove it, and charge the business operator the cost of making good and disposal.

Conditions 2. to 4. shall also be standard conditions on a footpath trading approval where a permanent structure exists.

### **Specific Requirements - Footpath Dining**

Footpath dining businesses must comply with the General Requirements set out in this Policy. The following specific conditions also apply:

- A. The measurement of the 2 metre thoroughfare shall allow for the dining area to be in use e.g. chairs out from the tables.
- B. Use of the footpath should provide attractive surroundings in which people may enjoy food and refreshments.

- C. Footpath dining facilities should contribute to an improvement of the streetscape.
- D. Surrounding properties and businesses should not be adversely affected by the installation.
- E. Toilet facilities are to be provided to patrons in accordance with the Building Code of Australia.
- F. The concurrence of the NSW Roads and Traffic Authority will be required before approval is given for footpath trading on classified roads. A “classified road” is defined as a main road, state highway, controlled access road, secondary road, tourist road, tollway or state road.
- G. The provisions of the Food Standards Code must be complied with. So as to prevent contamination, condiments should be single use and utensils should not be preset on tables.

**Specific Requirements - Dining Tables and Chairs and Ancillary Items:**

Dining Tables and Chairs and Ancillary Items must comply with the General Requirements set out in this Policy. The following specific conditions also apply:

- A. Where Tables and Chairs are placed near the kerb and a safety barrier is not in place, they must be arranged parallel to the kerb to prevent the risks of backward fall to the kerb.
- B. Tables and Chairs and ancillary items should be strong, durable, waterproof and weather resistant designed for commercial outdoor use. They should fold or stack for storage. The design must not contain parts that are likely to cause damage to the pavement, or sharp edges, hinges and other moving parts that may present a hazard to patrons.
- C. Tables and Chairs and ancillary items may be powder coated or polished aluminium, powder coated, brushed or stainless steel, natural or painted timber, or canvas. Surfaces such as table tops should be non-reflective.
- D. Planters should be terra cotta, concrete or reconstituted stone in natural, sandstone or terra cotta colour, or powder coated, brushed or stainless steel, or timber in natural deep green or black.
- E. It is the traders’ responsibility to ensure that if customers move the furniture it is not outside the agreed trading areas. Council may require a trader to mark the agreed trading areas in a manner prescribed by Council.
- F. Ancillary items such as umbrellas, enclosures, planters, chalkboards, heaters will be permitted in conjunction with tables and chairs and must be within the agreed area. Ancillary items are included in the per square metre charge.
- G. Umbrellas must be a minimum of 2.2 metres high, at the lowest point. They must have mechanisms to ensure that they are at all times securely fixed to withstand wind and the must be removed or closed in extremely windy conditions.

### **Specific Requirements - Display of Goods**

Display of Goods must comply with the General Requirements set out in this Policy. The following specific conditions also apply:

- A. If goods are displayed on a stand, it must be stable and solid and no higher than 1.5 metres.
- B. A good displayed without a stand are to be stable and solid and no higher than 1 metres
- C. Goods are not to be stacked more than two high with a maximum height of 1 metre.

### **Specific Requirements - Busking**

Buskers must comply with the General Requirements set out in this Policy. The following specific conditions also apply:

- A. The area in which the busking is to take place must be approved by Council.
- B. There is to be no amplified music.
- C. Busking should not create offense due to discriminatory content.
- D. Busking is only permitted between 9am and 9pm.
- E. Groups of more than 6 buskers are not permitted other than at approved community events.
- F. The use of fire, animals, materials, substances or equipment that may pose threat to public safety, is prohibited.
- G. Children under the age of 13 must be accompanied by a person over the age of 16, and require parental or guardian written permission.
- H. An authorised officer of Council may require the busker to move to another location, or suspend or revoke an approval - should complaints be received.
- I. A busker may be required to demonstrate their 'act' to Council before approval is granted.

### **Specific Requirements - Ticket Selling/Street Stalls for Charity Fundraising**

Ticket selling and street stalls for recognised charity fundraising must comply with the General Requirements set out in this Policy. The following specific conditions also apply:

- A. Ticket selling and street stalls for recognised charity fundraising are exempted from the General Requirements – Insurance Provisions portion of this Policy, however the obtainment of appropriate insurances is encouraged.

- B. Ticket selling and street stalls for recognised charity fundraising are exempted from the Application Procedure portion of this policy. Application shall instead be in the form of a letter to the General Manager specifying the details of the charity, proposed dates and proposed location.
- C. Ticket selling and street stalls for recognised charity fundraising will not be subject to an application fee, or lease fee, provided the appropriate application (as per B. above) is submitted to Council and the proposal complies with this Policy.
- D. The Poppy Day Appeal, Legacy Appeal and Anzac Day Appeal are traditionally supported by Council and are the only form of street selling permitted in Tweed Shire.
- E. Council reserves the right to restrict the number of street stall and ticket tables that may be permitted to operate on one day. Murwillumbah Street, Murwillumbah is restricted to a maximum of three ticket tables and one street stall.
- F. Preference will be given to local charities in the allocation of dates.
- G. Council reserves the right to withdraw ticket selling and street stalls permission at any time.
- H. Ticket sellers are restricted to a small table and/or two chairs not exceeding 500 millimetres in width.
- I. A stall holder or ticket seller offering food for sale must comply with Council's code for the sale of food at markets and one-day events.

### **Specific Requirements - Footpath Signs and Advertising**

Any sign, notice, device, representation or advertisement is considered signage under planning regulations. Tweed Shire Council Development Control Plan 15 states, "*Such signs are prohibited within road reserves and public area in the Tweed Shire...*".

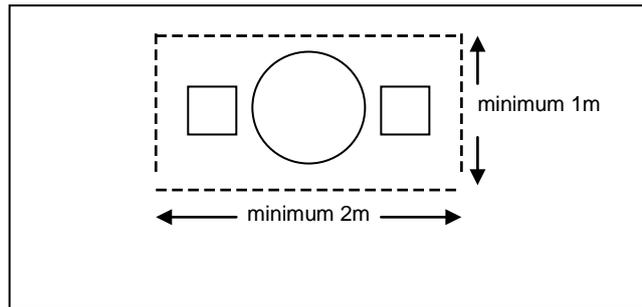
Enquires should be directed to Council's Development Assessment Unit.

### **Fees**

Fees will be set each year and advertised as part of the normal fee and charges consultation process.

Ticket selling and street stalls will not be subject to an application fee, or lease fee, provided an approval application is submitted to Council and the proposal complies with this Policy.

As fees are based on area used, it will be the trader's decision as to what combination of goods will be placed in the approved area. In the case of outdoor dining areas it is recommended that a minimum practical depth of 1 metre and width of 2 metres be used for a table and two chairs.



When an approval is applied for, a Council officer will make a site inspection, the area will be measured and the fee established.

Fees also apply for Development Applications and Section 138 applications where structures or blisters are proposed.

### **Maintaining and Preserving Amenity**

When seeking to meet this Policy's objectives of maintaining or improving existing streetscape elements and maintaining or promoting local amenity, guidance should be sought from any strategic planning documents Council has developed for Tweed Shire precincts, such as *Tweed Heads 2000+ A Strategy for the Tweed Heads Central Area* and *Development Control Plan No 18 – Tweed Heads*.

### **Neighbouring Footpath**

Where business usages do not conflict, placement of outdoor dining items or display goods in front of neighbouring premises may be permitted in special circumstances. Permission will be at Council discretion, and the views of neighbouring premises will be taken into consideration when a decision is made.

Where a neighbouring business usage changes during the period of an approval, and the new usage is in conflict, a footpath trading approval will be modified accordingly and the appropriate portion of fees refunded on a pro-rata basis.

All General and Specific Requirements for standard footpath trading will apply, including the need for further extension of public liability insurance. The approval holder will be liable for any accident or breach of this Policy that occurs on the footpath of the neighbouring premises.

### **Transition Period**

There will be a "grace period" to allow traders with existing approval or permits to make the changes required by the new Footpath Trading Policy. The transition period for traders with existing approvals or permits will extend for the life of the current approval or change of approval holder, whichever occurs sooner. The transition period for all other traders will expire 3 months from the date of adoption of the Policy.

After the transition period expires, usual enforcement procedures will be taken.

## Application Procedure

Applications for approval to use an area of the footpath for trading purposes shall be submitted on the form supplied for purpose by Council, and accompanied by accurate drawings indicating:

- the dimensions and shape of the area proposed to be occupied together with a plan layout to scale 1:100 of the adjacent business premises;
- the proposed pedestrian thoroughfare through the footpath trading area and all required separation distances;
- the proposed layout of items, chairs, tables and equipment to be located within the proposed area;
- the number of chairs and tables presently existing within the restaurant (for footpath dining);
- the number and location of toilet facilities available to patrons (for footpath dining);
- a site plan showing the width of the existing footpath, the location and size of any street trees, street furniture, street bins, telephone booths, telephone/power poles and other Council or public infrastructure, driveways, kerb and gutter, car parking and signage;
- the location, height and separation distances of any items used to define the approved footpath trading area;
- the location, height and separation distances of any pedestrian or vehicular safety barrier that may be required by this policy and certified by a qualified engineer; and
- the surface type and slope of the footpath.

Details must also be provided indicating:

- the existing and proposed hours of operation of the business;
- the colour, design, construction materials and method of installation of ancillary items, chairs, tables and equipment to be located within the proposed area;
- the colour, design, construction materials and method of installation of any items used to define the approved footpath trading area;
- the colour, design, construction materials and method of installation of pedestrian safety barriers that may be required by this policy;
- the floor area of the display, trading or dining area of the existing business; and
- where it is intended to trade outside adjacent businesses, the name, address and nature of the adjacent businesses.

Proof of the required public liability insurance shall be provided in the form of a copy of the insurance policy; and include a currency certificate indicating that the insurance premium has been paid, is current, is in an appropriate form and extends to property trading on Tweed Shire Council property.

The completed application form and application fee are to be submitted to Council. All correspondence is to be addressed to the General Manager, Tweed Shire Council, PO Box 816 Murwillumbah NSW 2484.

To be granted an approval, a trader must sign an approval agreement to comply with this Policy. Any non-compliance is an offence against the Local Government Act 1993 and will result in enforcement measures being taken.

If an application for approval is refused because the situation does not meet all the requirements set out in this Policy and the applicant does not believe that safety or amenity is negatively affected - an appeal may be lodged in writing and the issue will be brought to Council for a final decision.

Council retains the right not to grant an approval where there are safety or amenity issues that may negatively impact on the wider community even if this policy is fully complied with.

An approval will be issued by Council and must be displayed on stall or the front window of the business at all times.

### **Approval to Trade on a Footpath**

To trade on a footpath a trader must hold a Council approval. The footpath trading approval will be subject to the conditions contained in this Policy and any specific conditions deemed suitable. Any non-compliance with approval conditions is an offence against the Local Government Act 1993 and will result in enforcement measures being taken.

The term of a footpath trading approval will be a maximum of two years.

An approval lapses at the end of its term.

An application for renewal of the approval shall be made at least one month prior to the expiration of the existing approval.

## **Related Legislation**

Local Government Act 1993  
Liquor Act  
Roads Act

## **Compliance**

This policy primarily relates to the management of footpath trading. Other permissions associated with footpath trading may also be necessary, including:

- Roads and Traffic Authority approval to use a classified road footpath for restaurant purposes;
- development consent for permanent structures – contact Tweed Shire Council Development Assessment Unit;
- development consent for signage and advertising;
- development consent for the conducting of a business;
- the construction of blisters
- compliance with the Food Standards Code; and
- licensing under the Liquor Act.

Council will provide assistance in ensuring all relevant requirements under its jurisdiction are satisfied, however it remains the responsibility of the trader to ascertain what approvals, consents and licenses are required and to obtain them.

The obtaining of such approvals, consents and licenses may require the submission of applications and payment of fees additional to those described in this policy.

## **Forms**

Not applicable

## **Review Period**

This policy will be reviewed within 12 months of the election of each new Council or more frequently in the event of any legislative changes or change in circumstances.

## **Useful Links**

[Tweed Shire Council website](#)

