

Approval to Use Part of Footpath for Footpath Dining

made under section 125 of the *Roads Act 1993* and/or section 68 of the *Local Government Act 1993*

A1. Registered Food Premise Details

Name of Food Premises

Food Premises Number

A2. Applicant

Surname/s

Given Name/s

OR

Company/Organisation

ABN

Postal Address

Contact No.

Email

A3. Land Description

Lot No Section DP/NPP/SP

Shop No Unit/Street No Street

Suburb/Town

A4. Application Details

Proposed number of chairs and tables to be placed on public land:

Chairs

Tables

Associated structures to be placed on public land:

Screens Umbrellas Barriers

Planter Box A-Frame Stands

Other

Total footpath width

Footpath width left for pedestrians

Total proposed public land area to be used (m²)

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A5. Location Plan

Please provide a plan to scale of 1:100 or 1:200 on A4 or A3 paper with measurements detailing:

- The building line of your shop and adjacent shops
- The boundaries of the proposed approval area
- The distance of the road kerb of the street to the shop
- The nominated area proposed for outdoor dining
- Existing street furniture, trees, light poles, signs or any other structures located within the proposed approval area

Please note Council's minimum requirements for obstacles located on footpaths as identified in Tweed Shire Council's Footpath Trading Policy.

Where possible the preferred location for seating in an outdoor dining area is away from the building edge. This preferred configuration is shown in Figure 1. Alternative configurations can be considered based on their merit and the principles contained in Council's Footpath Trading Policy. The merit assessment will also depend on the space available and other relevant site constraints.

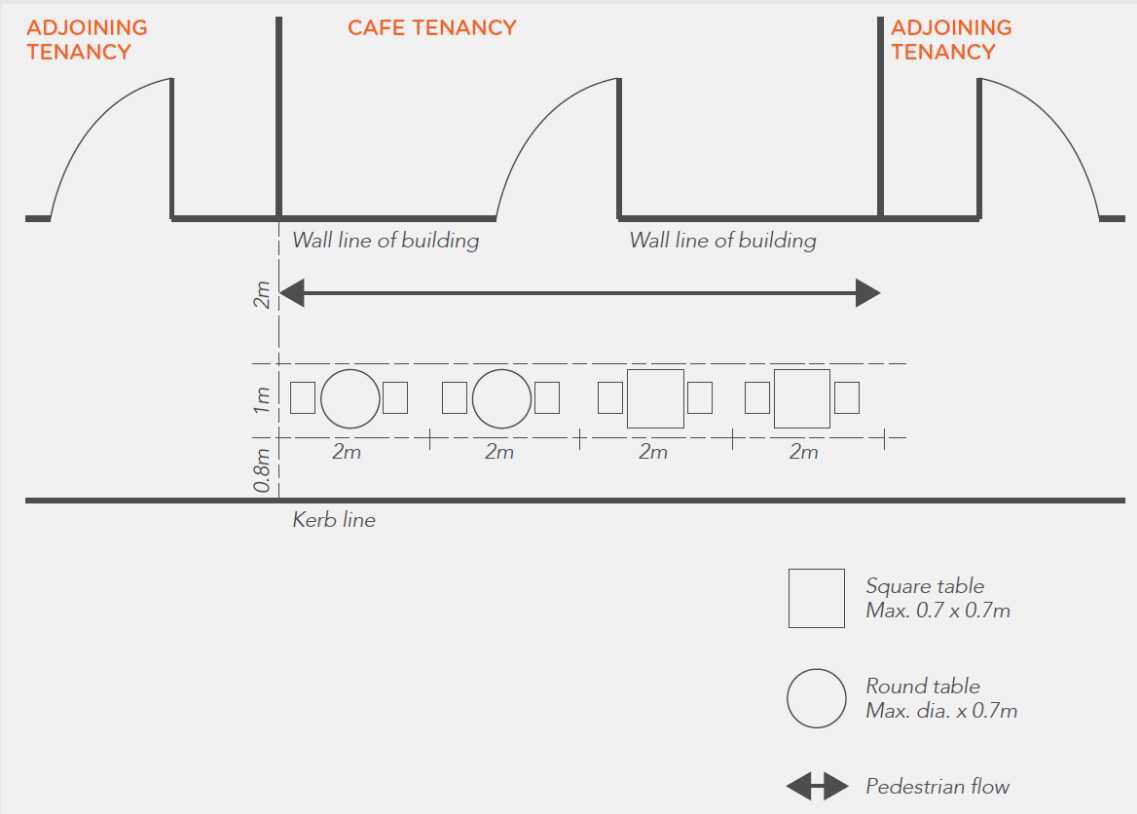


Figure 1.: Preferred configuration for outdoor dining areas

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A6. Important Information and Terms and Conditions

IMPORTANT INFORMATION AND CONDITIONS

Use this form for food business owners to apply to Council for an approval to use part of the footpath for footpath dining. The terms and conditions set out below form the agreement between yourself (as applicant) and Council (as landowner) for footpath dining and will be binding when both parties have signed the form. An approval letter will be issued with a copy of this form completed and a final Council approved location plan.

RENEWAL, TERMINATION OR SUSPENSION OF THE APPROVAL

If your application is approved, the following conditions will apply (but Council reserves the right to apply additional conditions specific to location):

- The term of an approval is to be such period not exceeding five (5) years as is specified in the approval as per section 125 of the *Roads Act 1993* however can be terminated by the applicant on 14 days written notice.
- A reapplication of this approval will be required by the applicant upon expiry of the approval term. Council will contact the applicant to determine their status. Applicant to pay prescribed fees and charges. The approval will expire at midnight (12.00am) on the expiry date.
- Should the applicant sell or permanently close the business it is their responsibility to notify Council with a minimum of 14 days written notice. This agreement is non transferrable and will terminate when you sell or transfer the business to another person or entity. The new owner must submit a new application with payment. No right that existed to recover costs or obtain indemnity shall merge but will cease on termination of the approval and Council shall be entitled to recover any losses or costs that arose prior to any termination.
- If Council undertakes work on the road it may, for whatever period necessary on giving reasonable notice and at its absolute discretion, suspend this approval and the approval shall not be entitled to any compensation.
- Council reserves the right to terminate this agreement within 14 days by written correspondence should the applicant fail to pay the prescribed fees and charges or fails to comply with the Terms and Conditions set out under section 125 of the *Roads Act 1993*. Non-compliance means:
 - Payments remain unpaid for 14 days
 - Terms and condition of this application form are breached
 - The use of unapproved footpath for the purpose of footpath dining
 - Non approved construction of structures or improvements or modifications
- If Council decides to undertake works to the road/footpath that would make it not viable or practical for the licence to continue. Such determination of viability or practicability shall be at the sole determination of Council.
- Regular inspections will be made of the footpath area to ensure compliance with this or any other approval, including that the area is maintained and kept clean and tidy. Non-compliance with terms and conditions of this application may result in Council terminating the Agreement. Council, on giving the business owner/applicant 14 days written notice, may terminate, vary or change conditions relating to this approval.
- If Council terminates this approval or changes the conditions no compensation will be payable by Council to the applicant.
- Approval documents will be used to control unauthorised occupation of footpaths, investigate complaints and for routine management of footpaths and must be shown to Council staff on request.

IN DETERMINING APPLICATIONS, COUNCIL CONSIDERS

In all areas the footpath must have at least 2 metres left clear for pedestrians. Structures such as trees, bins, traffic signage, public seating and street posts will reduce the area available for footpath dining. See Tweed Shire Councils' *Footpath Trading Policy* for all specific details.

STANDARD APPROVAL REQUIREMENTS AND CONDITIONS

- The approved area must be kept clean and tidy at all times.
- A liquor approval and Council approval is needed to sell or serve liquor.
- Amplified music and entertainment is not allowed without further approval.
- External outdoor lighting if required must be approved by Council.

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- Food and drink must be prepared inside the premises.
- Throw-away plates, knives, forks and spoons should not be used in footpath dining areas.
- Applicant to use the allocated footpath dining area for the purpose of serving food and drinks to the public.
- Applicant to note footpath dining areas will not allow smoking near the vicinity.
- No physical works are to be undertaken to any part of the footpath or structures on the footpath without the written consent of Council.
- Apart from the complying outdoor seating furniture required by the applicant (including tables, chairs, umbrellas and barriers) nothing else is to be placed on the footpath without the written consent of Council.
- The applicant shall comply with section 125 of the *Roads Act 1993* and Council's *Footpath Trading Policy*.
- The applicant must comply with all laws of the Commonwealth, State and Local Government or any other applicable laws. Including but not limited to:
 - *Food Act 2003* and *Food Regulation 2010*
 - *Smoke-free Environment Act 2000* and *Smoke-free Environment Regulation 2016*
 - *Liquor Act 2007* and *Liquor Regulation 2018*
 - *Companion Animals Act 1998* and *Companion Animals Regulation 2018*
 - *Local Government Act 1993*
- The applicant must comply with any conditions of development consent.

FEES AND CHARGES

- **Council requires payment in full before we can commence processing your application. A tax invoice will be emailed/posted following lodgement.**
- Council may review the approval fees from time to time in accordance with Council's Annual Schedule of Fees & Charges. The applicant will be required to pay additional fees as prescribed by the Schedule of Fees & Charges.
- The GST component was removed by NSW Government for Outdoor Dining in 2014.
- If the annual fee or payments under this agreement become liable to payment of goods and services tax then Council shall be entitled to recover in addition to the annual fee or any other payment the goods and services tax payable, and issue to the grantee a complying tax invoice.

INSURANCE

It is the applicant's responsibility to carry a valid Certificate of Currency for a Public Liability Insurance policy (for not less than 10 million dollars (\$10,000,000) including a notation showing Council as an interested party) over the public footpaths at all times.

Proof of this Public Liability Insurance policy will need to be submitted to Council by the applicant when submitting this application. This policy is to be kept current at all times by the applicant and produced to Council within 2 business days of request by Council.

The applicant acknowledges and accepts that he/she will indemnify Council against any claims, suits, charges, or whatsoever, for damages or injury in any way arising out of or in connection with the use of the land by the applicant.

A7. Insurance Details

Name of Insurer	<input type="text"/>		
Policy Number	<input type="text"/>	Amount	<input type="text" value="\$"/>
Expiry Date	<input type="text"/>	<input type="checkbox"/>	Council shown as an interested party

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A8. Checklist

Please tick the boxes below to confirm that you had included all items required for this application:

- Have all sections of the Application been completed?
- Have you included a copy of your Certificate of Currency for Public Liability Insurance Policy (including a minimum cover of \$10 million and a notation of Council's interest in the policy)?
- Does the application include a location plan of the subject area including dimensions? (see figure 1 for a suitable example).
- I have read the terms and conditions of the agreement and I confirm that I will abide to them.

A8. Privacy and Personal Information Protection Notice

I declare that all the information in this application is true and correct.

I acknowledge that I have read Council's *Use of Footpath* Policy and will abide by the requirements.

Some information requested by Council for this form constitutes personal information under the *Privacy and Personal Information Protection Act 1998* (NSW).

Purpose of Collection: This information is collected for the purpose of updating Council's database/registers.

Intended Recipients: Council staff, Government agencies

Supply: Legally required, Council may not be able to accept your application if information is not provided.

Right of Access / Correction: Contact Council (02) 6670 2400 or email tsc@tweed.nsw.gov.au

Storage details: Tweed Shire Council, 10-14 Tumbulgum Road, Murwillumbah NSW 2484

Applicants Name
(please print)

Position Title
(If Guarantor for Company)

Applicants Signature

Date

(OFFICE USE)

Total Public Land approved by Council

Improved Area (m²)

Unimproved Area (m²)

Approval Number

Commencement Date

Expiry Date

DA Consent Number

Food Premise App No

ECM No for RTA Concurrence
(for classified roads only)

**Roads Act & Local
Government Act approval**
Building & Environmental
Health Manager signature

Date

Notes