	<h2 style="margin: 0;">Procedure</h2> <h1 style="margin: 0;">Footway Dining</h1>	
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Procedure

Purpose & Scope

Footway cafés make a significant contribution to the quality of public places and urban life. They contribute to active vibrant streets with opportunities for economic activity, social interaction and leisure.

This document supports Council's Footway Dining Policy and provides information for the public and for applicants seeking to use the footway for dining. The procedure has been developed internally as well as procedures that are required under legislation and provide guidance for Council in determining applications.

Council is responsible for assessment and approval of footway dining activities on any public land (including Public Roads) in the Lake Macquarie City Council Local Government Area that is owned or under the care, control and management of Council. This particularly applies to footpath areas adjacent to public roads situated within the town and neighbourhood centres in the City.

Process

1. Objectives

The objectives of this procedure are:

- To encourage footway dining in areas that are suitable for that purpose;
- To add to the vitality of the streetscape character of centres within the City;
- To provide opportunities for increased economic activity in the City;
- To provide clear guidelines for applicants, staff, Council and the community with respect to Council's expectations in relation to footway dining;
- To ensure that pedestrian and traffic safety and accessibility is not compromised by footway dining activities;
- To ensure that adequate, sheltered and safe space is maintained for pedestrian access and circulation;
- To ensure equitable access for all including people with disabilities;
- To ensure that footway dining areas are maintained in a clean, healthy, tidy manner and remain attractive elements of Lake Macquarie City.

2. Legislative Context

Footway dining proposals require approval from Council. The most common location for footway dining is on part of the public footpath outside restaurants, cafes and other food premises, but may also be located on other public land in Council's ownership such as road reserves (land adjacent to carparks etc.), provided that the land is adjacent to a restaurant, café or other food premises.

There are a number of safety, accessibility, and amenity considerations with respect to footway dining proposals. These aim to ensure the comfort of footway diners as well as the comfort of the general public accessing areas in and around footway dining areas.

Council has various responsibilities to meet under the following legislation:

- Local Government Act 1993

- Roads Act 1993
- Disability discrimination Act 1992
- Companion Animals Act 1998
- The Companion Animals Amendment (Footway Dining Areas) Act 2010
- Liquor Act 2007
- Food Act 2003
- Work Health and Safety Act and Regulations 2011

Part 3 of this procedure outlines the requirements for applications to Council for approvals under the above seven Acts.

The Roads Act 1993 and the Local Government Act 1993 generally require that a person shall not carry out any activity on a public road or place without the approval of Council. The Roads Act 1993 enables Council, as a road authority, to grant approval for limited use of Council's footpaths, roadways etc. which form part of a public road.

Sections 125, 126 and 127 and in some cases Sections 137-139 of the Roads Act 1993 allow Council to grant approval for use of a footpath in association with an adjacent restaurant (being premises in which food is regularly supplied on sale to the public for consumption on the premises), as long as this use is not taken to constitute a public nuisance and does not give rise to an offence against the Roads Act or any other legislation.

The Roads and Maritime Services (RMS) must also give approval for footway dining activities on classified roads.

3. How to use this Procedure

This Procedure is divided into four sections:

3.1 Location and Site Criteria

This section assists applicants with the appropriate choice for the location of footway dining areas.

3.2 Furniture Guidelines

This section provides information and guidelines regarding proposed tables, chairs and other elements of furniture and structure, both removable and fixed, associated with footway dining.

3.3 Management Issues

This section outlines the ongoing management requirements necessary to ensure footway dining meets relevant approvals and controls.

3.4 Application Requirements

This section explains what applicants need to do to apply for approval for footway dining.

3.1 Location and Site Criteria

This section provides details on location and site criteria for footway dining.

The most important local conditions to be considered in locating footway dining areas are:

- Proximity to associated approved food and drink premises;
- Available area for footway dining – footpath width and width of public space;
- Existing context including topography and footpath gradient, existing street furniture, the access points to nearby businesses;
- Siting and design of any existing footway dining in the locality;
- Proximity to residential areas; and
- Type of parking and the proximity to kerb.

3.1.1 Site Conditions and Associated Works

The ground surface must be suitably constructed and sufficiently level to support a proper layout and safe use of furniture.

Minor structures and changes to the footpath may be approved to achieve a suitable gradient. The applicant may also wish to undertake other streetscape works to accommodate the footway dining area. Such works may include footpath widening, paving, street tree planting, lighting, safety fencing, etc. Any such changes or works to the footpath require approval by Council and will be at the expense of the applicant/s.

3.1.2 Minimum Areas and Clearances

3.1.2.1 Minimum Areas

The minimum area for any footway dining is 4m²; this minimum area is based on a layout of one table with four chairs (or two small tables with two chairs each). The number of tables and chairs permitted in the proposed area will be assessed on an individual basis.

Applications for smaller footway dining areas will be considered on a case by case basis.

3.1.2.2 Minimum Clearances (Setbacks)

For circulation, safety, accessibility and convenience, clearances are required around footway dining areas.

Locations on footways in business centres

A footway dining area may be located:

- Adjacent to the kerb/roadway
- Adjacent to shop front
- Plaza locations
- Corner locations
- Other locations satisfying criteria outlined in this procedure

The location will be determined considering local conditions, including the retention of a continuous accessible pedestrian corridor; the volume of pedestrian traffic; the location of existing footway dining areas, existing shop fronts and awnings; the location of streetscape elements including poles, signs, rubbish bins; and the location of any bus stops and taxi stands, etc. (refer also 3.1.3 Unsuitable Locations).

A clear unobstructed pedestrian corridor of 2 metres minimum must be maintained adjacent to the seating area or shop frontage (whichever is relevant) for clear passage of pedestrian traffic to allow for continuous accessible paths of travel at all times.

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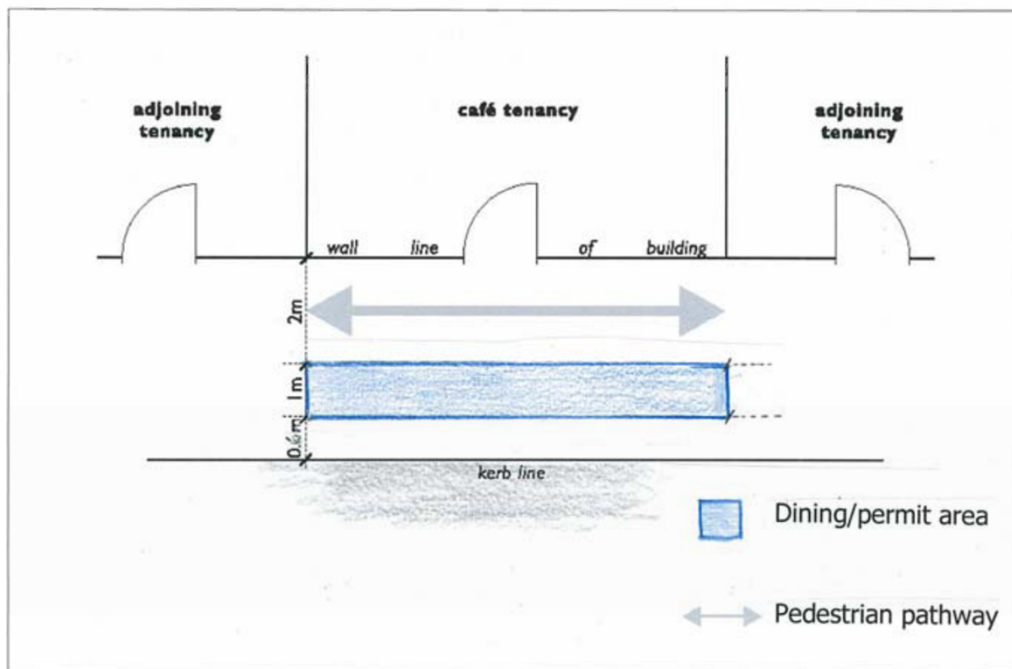
Footpath widths and configurations can vary. The diagram in Figure 1 illustrates pedestrian clearances required for alignments of footway dining area in typical urban shopping strips on footpaths of minimum 3.6 metres in width.

Adjacent to kerb/roadway

Where footway dining is proposed adjacent to kerbside parking, a minimum 600mm wide clear area must be provided adjacent to the kerb to allow motor vehicle doors to open unimpeded and to permit passage of pedestrians to and from vehicles (refer Figure 1). This distance may be increased depending on the road use and type of parking. For safety reasons, allowances for clear pedestrian passage may be increased depending on the volume of pedestrian activity, traffic speed and volume, and where required by the Roads & Maritime Services (RMS), particularly on classified roads. Barriers/wheels stops may also be required to be installed at the expense of the applicant/approval holder and to the satisfaction of Council.

Figure 1: The diagram below shows the location of the 2m wide pedestrian corridor where footway dining is proposed along the kerb line. Note the 600mm wide clearance from the kerb where there is a parking lane in the adjacent road.

Note: Equitable access is to be considered and clearances must have regard to current Access Standards including AS1428.



Where there is no kerbside parking, a suitable barrier/clear zone must be placed in accordance with the approved licence and to the satisfaction of Council for safety considerations including preventing diners from walking directly onto the roadway and chairs being pushed onto the roadway. Installation will be at the expense of the applicant/approval holder.

Plaza locations

Where proposed in plaza locations, the footway dining area may be considered in locations not directly in front of the associated business. In these circumstances, it may be considered in close proximity to the respective café, restaurant, or hotel depending on:

- The design of the plaza area;
- The location of street furniture and services;
- Topography of the site and surrounds;

- Location of pedestrian corridors, service vehicle access, existing or planned for goods for display, street stalls; and
- Other matters with respect to the design of pedestrian and shared plaza areas, including the needs of adjacent businesses.

Corner locations

At street corners, a setback of at least 2 metres measured from the building corner applies exclusive of any obstruction or street fixture e.g. bench, tree, rubbish bin, pole etc. This is required to maintain safe sight distances for vehicles and pedestrians, as well as clear paths of travel and equitable access (refer Figure 2).

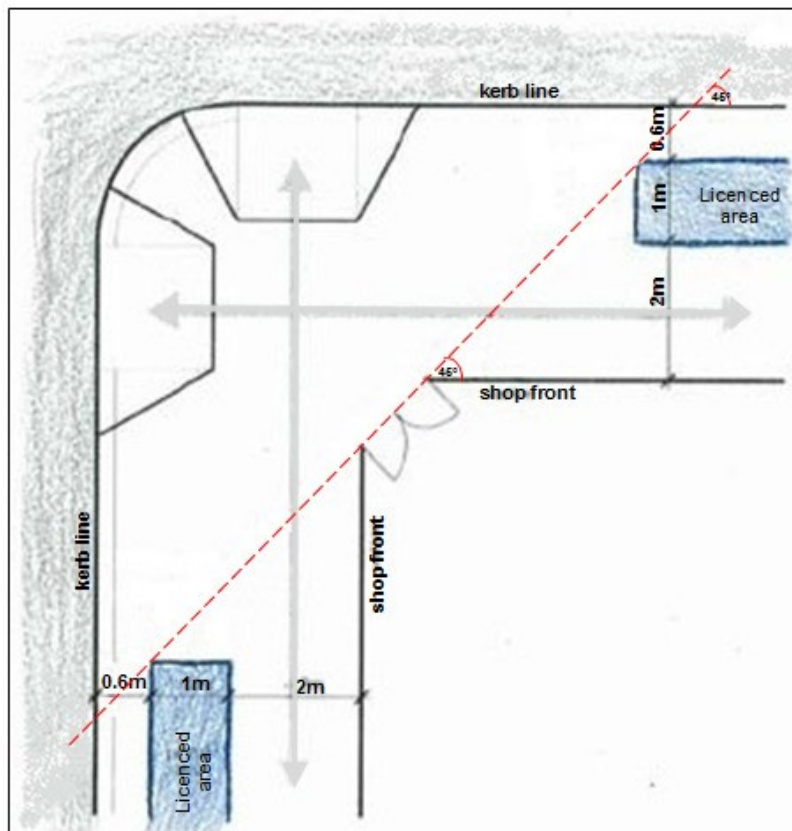


Figure 2: Footway dining areas are permitted on corner locations at street intersections subject to the required clearances being met. The diagram identifies the clearances required for safety and access considerations.

Other locations

In otherwise favourable locations, minor modifications of the nominated clearances may be approved if the objectives of this policy are met.

3.1.3 Unsuitable Locations

Footway dining areas will not be considered at bus stops, taxi ranks, near pedestrian crossings, or other areas where there is concentrated pedestrian traffic or vehicular traffic safety concerns. In some locations, it may also be necessary to limit footway dining activity to particular times of the day depending on local circumstances.

Not all footpaths are suitable for use as footway dining areas, or may not have sufficient width to meet pedestrian access/vehicular access, sightlines etc.

Where a suitable pedestrian access corridor is unable to be provided, footway dining will not be permitted.

3.1.4 Limitations on the Use of Footpath Areas

The use of a footpath will generally be limited to the area situated directly in front of the food premises/restaurant, which provides the base for the footway dining activity.

The Liquor Act 2007 may also apply when determining the location of footway dining areas.

Extension Areas

In some circumstances, for example where a footway dining area is proposed outside a row of shops, consideration may be given to extending the footway dining into the area in front of the adjoining shop (refer to Figure 3). This consideration will require the written consent of the owner and the occupier of the adjoining premises to be submitted with the application.

Any changes to the ownership or occupancy of the adjoining premises will require the approval holder to seek a new consent from the owner and occupier. If this approval is not obtained, the area approved for use of the activity will be reduced to the footpath area immediately in front of the principle dining premises.

Footway dining approvals will also cease upon change of use or change of ownership of the principle dining premises or if the restaurant ceases to trade.

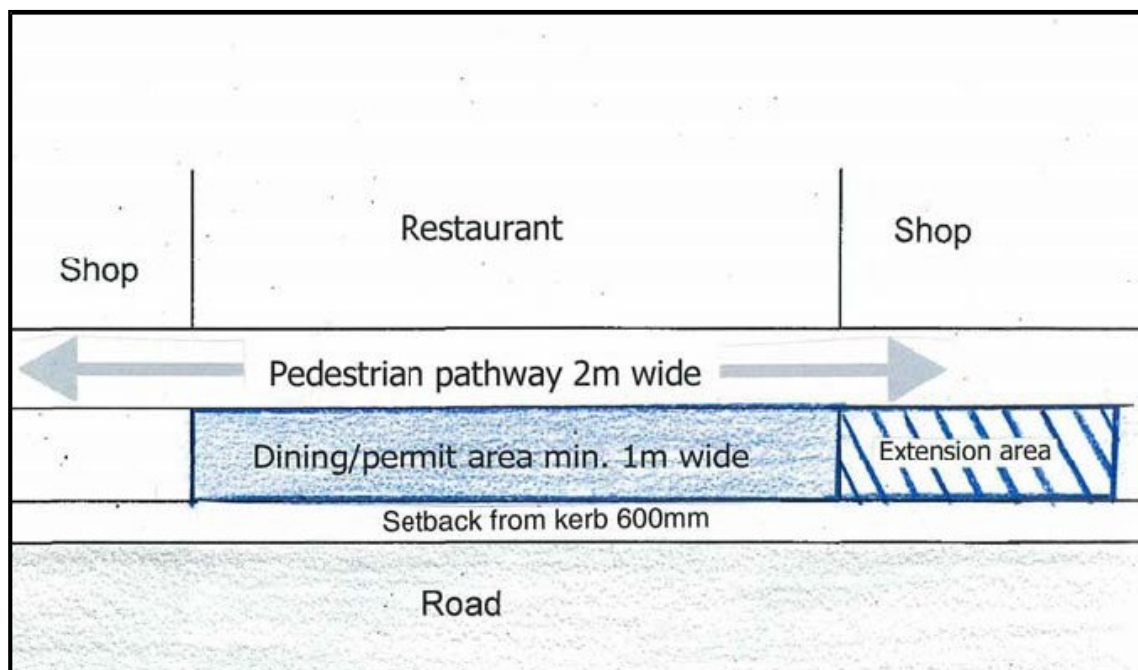


Figure 3: The diagram illustrates an example of an opportunity for extension of a footway dining area.

3.2 Furniture Guidelines

Footway furniture for the purpose of this policy includes shade structures, tables, chairs, heaters, and perimeter barricades.

This section provides guidance on the design requirements for both removable and fixed furniture associated with footway dining.

3.2.1 Furniture Layout

The layout and orientation of furniture should be chosen according to the size and shape of the available space. The available depth of a footway dining area depends on the width of the footpath; however, the minimum practical width for footway dining is 1m (refer to Figure 4).

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The location of all furniture, barriers and the like, removable and fixed, must not extend beyond the boundaries of the approved footway dining area.

The approval holder is responsible to ensure patrons maintain furniture within the boundaries of the approved seating area at all times.

In kerbside locations where footway dining is located adjacent to parking, for safety reasons, the layout must be organised so that chairs must not be placed with their backs to the kerb.

Whenever possible, a footway dining area should visually relate to and be physically aligned with streetscape features.

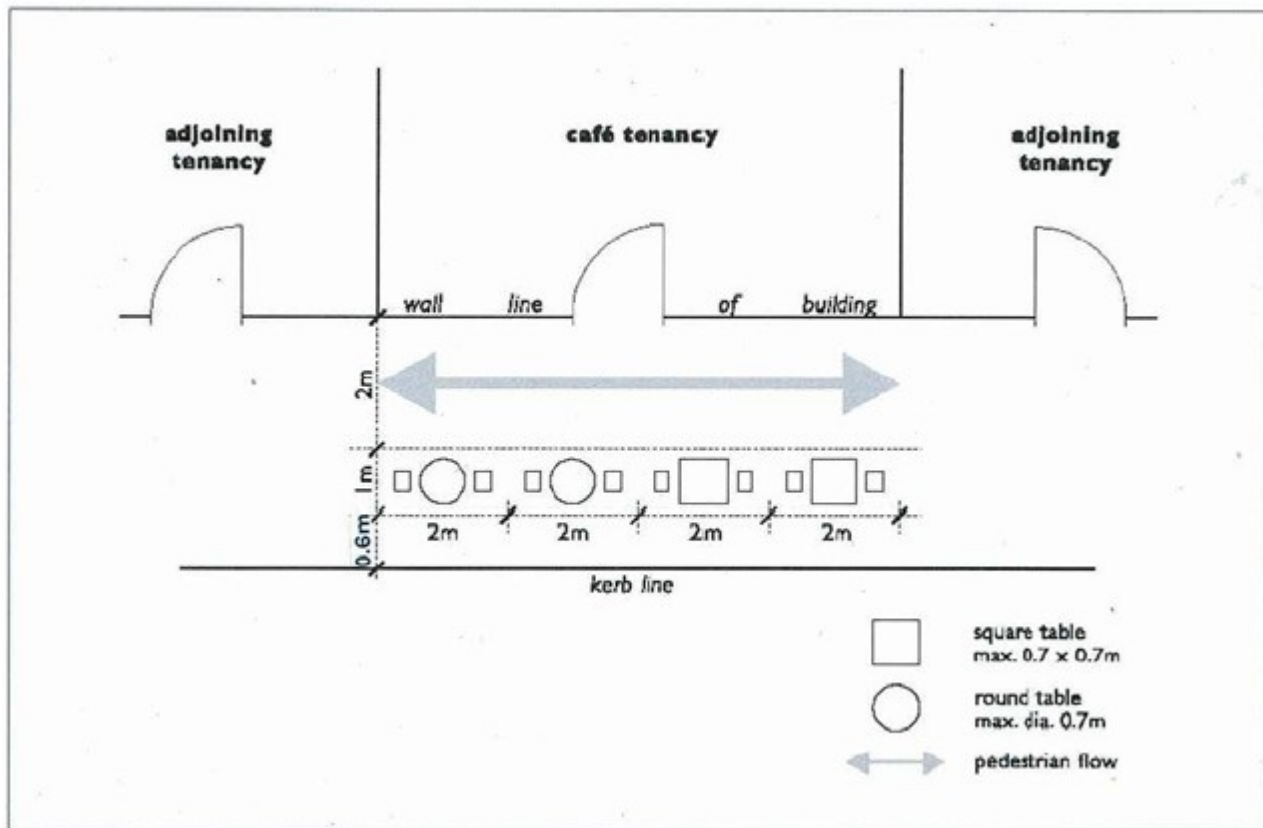


Figure 4: Example of a seating layout for a standard 3.6 m wide footpath. Chairs are sited so as not to intrude on the 2m wide pedestrian corridor.

3.2.2 Delineation of Boundaries

Council requires all footway dining areas to be delineated.

Markers

Where appropriate, Council will install markers on the footpath, at the cost of the applicant. In paved areas, metal discs will be installed flush with the surface. Maintenance of the markers will be the responsibility of Council.

Where the area is not a paved area, existing landscape elements such as light poles, garden beds etc. may be used at Council's discretion.

Barriers

The use of framed fabric barriers may be appropriate, provided they do not become a physical or visual obstruction within the public domain and do not have a detrimental impact on pedestrians.

Barriers may be considered between adjoining footway dining activities to separate the dining areas. Barriers should be provided where the footway dining area is located 600mm from the kerb line to

prevent chairs and tables creeping closer to the kerb. The barriers prevent car drivers/passengers walking through the maze of tables and chairs to access the footpath. For safety purposes, barriers/bollards may be required to be designed to be energy absorbing (refer also Section 3.1.2.2 Minimum Clearances (Setbacks)).

Barriers must be of a colour and type that complements other furniture, such as umbrellas (refer to Figure 5).

Removable barriers, placed on public land, must be free standing and of a weight that is safe, durable and supports the design. The establishment of holes, location fasteners and penetration into a pavement surface is not permitted without Council approval.

All fixed barriers/bollards require the approval of Council.



Figure 5: Examples of removable barriers.

Other

Other barriers that may be appropriate between the footway dining area and kerb area are planter boxes and landscape features. The design of such elements should be discussed with Council.

All fixed elements require the approval of Council.

3.2.3 Furniture style

Footway furniture should make a positive contribution to the street environment. A furniture style that is practical, robust and attractive and complements the surrounding streetscape is encouraged. All furniture items, including umbrellas and barriers are to be approved by Council, details of which must form part of any application.

Furniture should comply with the following criteria:

- Furniture should be strong, sturdy, durable, waterproof and weather resistant, designed for commercial footway use; of smart design approved by council prior to use;
- The design must not contain parts that are likely to cause damage to the pavement;
- The furniture must be suitable for the maintenance of public safety, comfort and hygiene;
- Particular care should be taken with any sharp edges, and hinges or other moving parts

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to ensure that they do not present a potential hazard to users;

- Furniture, in particular tables, must be able to be cleaned and not be of a design that allows particles of food to collect;
- All removable furniture must fold or stack for storage, and be readily removed and stored within the associated indoor premises;
- Furniture colour schemes must form part of any application. The design and colour should give consideration to the furniture in existing approved footway dining areas in the street, and access for the vision impaired (refer AS1428);
- Surfaces such as table tops must be non-reflective;
- Any proposed items of furniture that are to carry advertising materials (logos, brand names etc.) must be detailed as part of the application.

Refer to Figure 6.

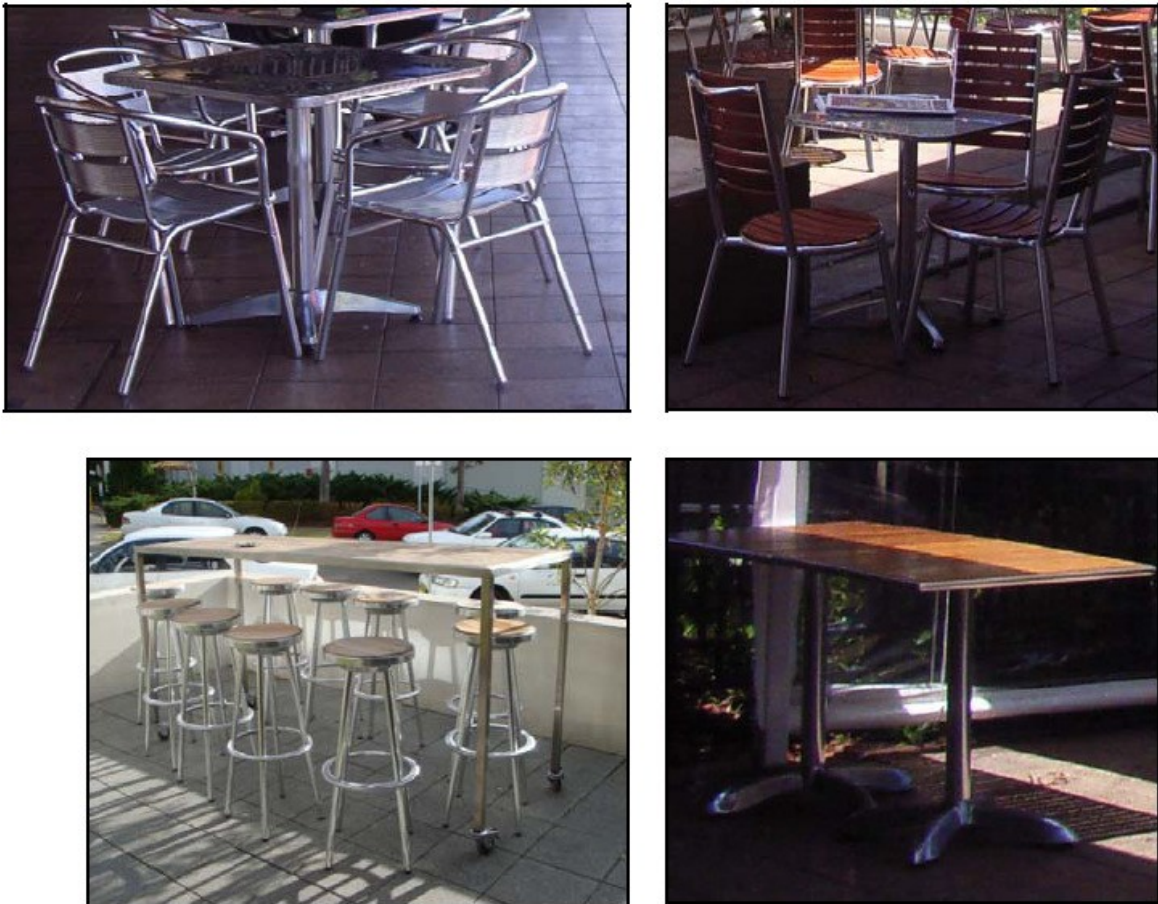


Figure 6: Examples of REMOVABLE Furniture Styles

Note: These styles are illustrative only. Requirements may vary depending on proposed location of footway dining area. Favourable consideration may also be given to well designed, creative and individual alternatives.



Figure 7: Examples of FIXED Furniture Styles

Note: These styles are illustrative only. Requirements may vary depending on proposed location of the footway dining area. Favourable consideration may also be given to well designed, creative and individual alternatives.

3.2.4 Enclosure

Footway dining areas should enrich the pedestrian experience and public life. It is therefore important that they present an open inviting image and are easily accessible.

Full height solid screens are **not** preferred. Direct physical contact with the footway environment is an integral part of the experience of footway dining.

Roll-up blinds and the like

Where applicants propose the use of any form of enclosure for footway dining areas, such as roll-up blinds and the like, the enclosures are:

- to be used around no more than two sides of the footway dining area. In the case of a row of footway dining areas, should only be used on the perimeter of the entire row of footway dining areas so as not to work against the amenity of footway dining;
- must be retractable and not to be permanently rolled down (in the case of blinds) i.e. can be rolled up and down for use only in inclement conditions;
- not to cause any obstruction to the minimum path clearance required for public access (including access for the disabled);
- not to encroach the roadway or the approved seating area or be able to be blown into kerb edge/roadway area or pedestrian area;
- not to be located near any heating devices so as not to cause a potential fire hazard;
- to be securely fitted and installed to ensure that they withstand the effects of wind. Fixtures that penetrate or damage the pavement on Council's footpaths will not be permitted; and further that they be removed or closed in extremely windy conditions and must be removed when the footway seating area is not in use;
- not undermine the strength of the structure on which they are to be fitted;
- not to be used for the display of advertising;
- not to be positioned where vehicle sight distance is restricted for example at an intersection.

3.2.5 Umbrellas

Umbrellas are appropriate for providing shade and shelter; however, considerations with respect to safety are critical.

Umbrellas must:

- be installed to ensure that they are at all times securely fixed to withstand the effects of wind;
- be removed or closed in extremely windy conditions and must be removed when the footway seating area is not in use;
- not encroach on, or interfere with pedestrian movement, and must be at least 2.2 metres above the ground level at the lowest point;
- be manufactured from fire retardant material if adjacent to a heating device;
- be maintained in sound and aesthetically acceptable condition to the Council's satisfaction;
- not have general advertising, but may include business premises identification and advertising associated with the associated food premises (e.g. coffee brand).

For other shade structures, contact Council for advice on whether such structures will require the consent of Council.

3.2.6 Heating Devices

Where the use of a heating device is proposed, details of the type, location and design must be included in the application. The design of the device and the safety of persons and property will be the main consideration. Heating devices should turn off automatically if overturned to prevent injury to patrons and property.

3.2.7 Storage facilities

Adequate storage facilities will be required to be provided in the associated premises or in the building containing the associated premises for tables, chairs, umbrellas, heating devices, etc. when not in use (i.e. outside the hours of operation of the footway dining area).

3.2.8 Toilet facilities

Toilet facilities are to be made available to patrons in accordance with the requirements of the Building Code of Australia.

Toilet facilities are required to be available in the building occupied by the food and drink premises where alcohol is served or if the total seating provided, (indoors and footways) exceeds the prescribed number.

Inclusion of footway seating will increase the number of seats to a food and drink premises, and such an increase may require the provision of toilet facilities. Contact Council's Duty Planner on telephone 02 4921 0333 for information on these issues.

3.2.9 Advertising and signage

The name of the footway dining premises, its business name or logo may be placed on footway umbrellas, and other items of furniture, only if it:

- identifies the footway dining premises;
- is in the nature of a corporate logo or identification;
- is of a minor and integral element of the furniture design and does not have an excessive impact on the area of the café or the streetscape.

Details of all signage and advertising must be submitted for approval as part of the application.

3.2.10 Lighting

Any footway dining approved to operate outside daylight hours must have adequate lighting, to Council's satisfaction, to ensure the safety and amenity of patrons and the public.

3.3 Management Issues

This section provides an understanding of the ongoing management and operational matters required of footway dining areas.

3.3.1 Conditions of approval

The approval holder will be responsible for making sure the footway dining area is operated in accordance with the conditions attached to the approval, and where it applies, any conditions attached to the development consent.

Non-compliance will be enforced by way of a written warning for a first offence and a fine in all other circumstances. Continual non-compliance may result in the approval being revoked or enforcement action taken.

3.3.2 Fees

All fees associated with footway dining approvals are included in the current Lake Macquarie City Council Fees and Charges document.

3.3.3 Approval Document

A copy of the Footway Dining Approval that includes a plan of the approved area must be kept on the premises and is to be produced on request by any authorised person. Approvals will be issued as part of Council's approval process.

3.3.4 Maintenance and Cleaning

All furniture must be maintained at all times in a physically sound and aesthetically acceptable condition to the Council's satisfaction. The approval holder is responsible for cleaning the approved footway dining area. It must present a clean, well-maintained image as specified in the conditions of the approval.

3.3.5 Waste Disposal

Street rubbish bins are not to be used for the disposal of waste associated with the operation of the restaurant, café or other food premises and the approval holder must have a suitable arrangement for commercial waste collection service.

3.3.6 Furniture Storage

Footway furniture must be removed and stored away from all public areas outside the hours of business operation or when not in use due to bad weather etc.

3.3.7 Table Service

The Liquor Act 2007 may include requirements with respect to table service in the footway dining area where alcohol is served. The use of disposable tableware in footway dining areas is not permitted.

3.3.8 Alcohol

A Liquor Licence from Liquor and Gaming NSW needs to be obtained prior to the consumption of alcohol within the footway dining area. This includes Bring Your Own (BYO) Alcohol. Alcohol may then be supplied or consumed within the footway dining area, subject to requirements from Liquor and Gaming NSW and other conditions imposed by Council. The Liquor Licence must include the outdoor dining area.

The applicant must provide evidence of the Liquor Licence to Council at the time of the Footway Dining Application.

3.3.9 No Smoking Policy

Refer to the Smoke Free Environment Act and Regulations 2000 for further information.

3.3.10 Heating Devices

Heating devices must be removed from public land and appropriately stored when not in use.

3.3.11 Animals

The Companion Animals Act 1998 Sec 14A enables café and restaurant owners to make a decision whether or not to allow dogs in footway dining areas, under certain circumstances, which are indicated in "the Act." This requirement relates to the responsibilities attached to food handling and it is the responsibility of the approval holder to comply with the requirements of relevant legislation.

Assistance animals are permitted in footway dining areas under the Disability Discrimination Act 1992.

3.3.12 Lighting

Lighting provided for footway dining is to be maintained to ensure the safety and amenity of patrons and the public.

3.3.13 Insurance

All approval holders will be required to carry and maintain public risk liability insurance to the minimum value of \$20million with Lake Macquarie City Council listed as an interested party for footway dining purposes.

3.3.14 Change of Ownership or Use

Footway dining approvals will cease upon change of ownership or change of use of the principle dining premises. A new application is required for any change of ownership.

3.4 Application Requirements

In all cases of footway dining, approval is required from Council to meet various legislated and policy requirements. The nature of the approval required might relate to one, two or three Acts (or more) and related policies. To assist applicants, Council has made the application process as streamlined as possible. This section assists in explaining the requirements for approval in the majority of cases.

3.4.1 Local Government Act 1993 and Roads Act 1993

Footway dining proposals also need approval under the Local Government Act 1993 (where located on public land) and the Roads Act 1993 (where the activity is on a public road/footway).

Application forms for an approval under the Local Government Act 1993 or Roads Act 1993 are available from Council's website at www.lakemac.nsw.gov.au or Council's Customer Service Centre, 126-138 Main Road Speers Point, telephone (02) 49 210333. Other Requirements

Any footway dining areas where it is intended to serve alcohol require a separate licence under the Liquor Act 2007. Further information can be obtained from Liquor and Gaming NSW.

If the application for footway dining is in a residential area or adjacent to a residential area and is likely to involve the consumption of alcohol, Council must consider the following matters in determining the application:

- whether the proposed use is likely to detrimentally affect the amenity of the surrounding residential area; and
- whether any objections to the proposed liquor licence are well founded.

3.4.2 Period of approval and variation of approval

Approvals issued under the Roads Act 1993 or Local Government Act 1993 will apply for a maximum of five years. An approval to use a footway or public space may be varied or revoked at any time.

It should be noted that pedestrian movement patterns are continuously monitored and may lead to variation or revocation of an approval at any time should Council consider it to be in the public interest to do so. In these circumstances, reasonable notice shall be given and a reasonable period of time, as set out in the approval, will be provided before the notice becomes effective. Notice periods will be abridged where there is any risk to public safety and amenity.

Roads Act and Local Government Act approvals will automatically cease upon any change of ownership or occupancy of the associated premises or if the restaurant ceases to trade.

Note: Applications to extend/renew the footway dining approval should be lodged at least two months before expiration of the approval if continuity of use is required. Otherwise, any use of the footway dining area must cease at the end of the five years and all tables, chairs, umbrellas, barriers and the like are to be removed permanently or until a new approval is issued.

Controlled Document Information

Authorisation Details

Folder No:	F2007/02037	Record No:	D09249935
Audience:	Council Wide - Persons making application and using Council's footpaths for dining purposes		
Department:	Property & Business Development		
Officer:	Business Support Officer - Adele Payne		
Review Timeframe: Max < 4 years	2 years	Next Scheduled Review Date:	11 March 2021
Authorisation:	Manager Property & Business Development - Mitchell Cameron - 11 March 2019		

Related Document Information, Standards & References

Related Legislation:	(Legislation Name) Local Government Act 1993 Smoke Free Environment Act & Regulations 2000 Roads Act 1993 Food Act 2003 Liquor Act 2007 Companion Animals Act 1998 Work Health & Safety Act 2011 Noise Control Act 1975 Companion Animals Act (Outdoor Dining Areas) Act 2010	(Relationship/Context)
Related Policies (Council & Internal):	(Policy Name) Lake Macquarie City Council Local Approvals Policy D08496927 Footway Dining Policy – D08853395	(Relationship/Context)
Related Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements:	(Document Name) Risk Assessment - Clerical and Administration Duties within the Property Department – D07943636 Lake Macquarie City Council Current Fees & Charges	(Relationship/Context)
Standards COP's & Other References	(Standard, COP or Other References) Access Standard AS1428 Building Codes of Australia	(Relationship/Context)

Definitions

Term / Abbreviation	Definition
BYO	Bring Your Own Alcohol
Classified Road	A Classified road includes Main Roads, State Highway, Freeway, Controlled Access Roads, Secondary Roads, Tourist Road, Tollway, Transit way and a State Work as defined under the Roads Act 1993.

Consultation (update for each version created)

Key Departments, Teams, Positions, Meetings:	Manager Property & Business Development, Property & Business Development Coordinator, Asset Management Department, Integrated Planning Department
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Version History

Version No	Date Changed	Modified By	Details and Comments
1	21/2/2014	A Payne	Procedure created
2	11/4/2014	A Paynr	Procedure amended
3	27/3/2015	A Payne	Procedure amended
4	1/7/2016	A Paynr	Procedure amended
5	14/2/2017	A Payne	Amend procedure to include fee increases
6	20/2/1019	A Payne	Procedure reviewed and updated. Appendix removed