

POLICY TITLE **USE OF PUBLIC FOOTPATHS FOR COMMERCIAL PURPOSES, STREET STALLS, GOODS & SIGNS ON FOOTPATHS**

VERSION III: Adopted 16 August 2016

Last reviewed: 16 August 2016

OBJECTIVES

To encourage the use of public footpaths for displays and restaurants in accordance with documented guidelines.

To provide for a range of uses which supply services in a safe pedestrian environment.

POLICY STATEMENT

DECISION OBJECTIVES

1. That Council permit the use of public footpaths for outdoor activities in association with adjoining businesses as follows :-
 - *To create an informal and relaxed atmosphere in the main street of Dungog Shire towns.*
 - *To increase tourism potential.*
 - *To provide guidelines for implementing and maintaining footway areas to avoid nuisance or inconvenience to the public.*

GENERAL REQUIREMENTS

2. An application for approval to use a footway for outdoor purposes is to be made under Section 125 of the Roads Act, 1993. Applications are to be made in writing on the footway activity application form. Only complete applications will be processed.
3. Approval will only be issued if the footway can be clearly and easily negotiated by pedestrians when tables, chairs, displays etc. are in place.
4. Use of part of a footway for display purposes etc. can only be considered where that use is in association with an established retail business. The applicant must be the owner/proprietor of that business.

5. Use of part of a footway for dining purposes etc. can only be considered where that use is in association with an established food business. The applicant must be the owner/proprietor of that business. A 'Food Business' means a restaurant, café, coffee lounge, or take away food store.
6. All food shall be stored and prepared within the approved food preparation area of the premises.
7. Where a footway dining area is approved in association with licensed premises, liquor may not be supplied or consumed in the open air without prior approval from the Licensing Court.
8. The holder of the approval 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.
9. Public risk insurance to a minimum value of ten million dollars (\$10,000,000) need to be taken out by the applicant/holder of the approval to cover the footpath area.
10. Existing policies shall include the following co-insurance clause:

*"It is hereby agreed that the indemnity given by this policy is extended to Dungog Shire Council, in respect to the operation of an approved outdoor footway area **activity**".*
11. The applicant/holder 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.
12. Goods are not allowed to be sold from the footway area.
13. The applicant shall ensure that the use of the footway area does not result in offensive noise.

PUBLIC SAFETY

14. Clear footpath widths must be maintained to ensure the free, unobstructed flow of pedestrians with specific allowance for the disabled. The minimum widths are as follows:-
 - a. 2 metres in Dungog;
 - b. 1.2 metres in other centres.Greater widths may be requested in areas of high pedestrian and/or high vehicle traffic on a case by case basis.
15. Any displays or furniture shall be at least 1 metre from the kerb line except fuel pumps to allow for car doors to open. Outdoor furniture is to be confined to the approved area and must not encroach upon the adjoining footway fronting other properties.

16. No outdoor furniture, barrier or structures are to be permanently fastened to the footway unless development consent is obtained from Council. Specific requirements as regards to fixed structures will form part of that consent process.
17. Any display items or furniture not permanently fastened to the footway are to be removed from the approved area upon completion of each days trading.
18. Safe access should be able to be gained by disabled persons in line with the NSW Disability Inclusion Act 2014.
19. The use of the footway is not to inhibit access to public utilities such as fire hydrants, access holes, inspection chambers, telephone and electricity underground cables, water service pipes and the like. Statutory authorities have right of access to approved areas to effect repairs or to maintain their equipment.
20. The granting of an approval does not grant right with respect to alterations to the approved areas or to the erection of structures or signs.
21. New applicants 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 prior to being granted an approval to use the footpath.
22. Repairs to concrete footpaths that are deemed by Council to be unsafe and requiring to be fenced off, are to be carried out within fourteen (14) working days of the defect being identified by Council.

DISPLAYS

23. Displays should not comprise items which constitute a hazard to public safety. Display racks should be no higher than 2.0m in height, stable and fixed in position from moving if on wheels or coasters. Sandwich boards will be permitted up to a maximum size 1200 x 900 double sided and hinged.

CLEANLINESS

24. Footway areas must be in a clean and tidy condition at all times. Liquid wastes are not to be discharged onto the footway or street. Any waste dropping onto the footway is to be cleaned up immediately. The approval holder shall clean the footway at his/her expense utilising appropriate methods when deemed necessary by Dungog Shire Council.
25. Furniture, shelters and displays are to remain clean and in good repair at all times.
26. Dogs may only enter dining areas in accordance with Clause 14A of the Companion Animals Act.

27. A footway dining area must be paved for its full width. The applicant/holder of an approval shall bear the cost of all pavement repairs carried out by Dungog Shire Council which have been caused by footway activities.
28. Council's Officers will consider the cleanliness and continued suitability of the footpath area at the time of an inspection or in association with food shop inspections.

OUTDOOR FURNITURE

29. Outdoor furniture is to be supplied and maintained by the applicant/approval holder at his/her own expense. Where outdoor furniture is proposed to be located in a heritage conservation area or within the vicinity of an item of heritage significance, special consideration should be given to the style, colour and appearance of the furniture so as not to detract from the character of the place.
30. To provide protection from the ultraviolet radiation of the sun, applicants 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.
31. It is suggested that consideration be given to the following protective shade qualities of the furniture:

Orientation – areas which receive high levels of ultraviolet radiation should provide customers with protective summer and winter shade. Priority for shade cover should be for the hours of between 11.00am and 3.00pm.

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 a more concentrated use of shade devices in order to achieve protective shade.

PROVISION OF TOILET FACILITIES

32. Toilet facilities are to be available for patrons when the combined seating capacity of both internal and footway dining areas total twenty five (25) or greater places.
33. Access to toilets shall be provided through non food 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.

APPLICATION REQUIREMENTS

34. Applications for approval to use a footway need to be made on the approved form and accompanied by the appropriate fee.

35. Applications for alterations to detail of an existing approval will be dealt with as for a new approval upon payment of the appropriate fee as determined by Council and included in the fees and charges section of the Management Plan. The application fee is non-refundable.
36. An application for approval needs to be supported by a dimension drawing (A4 size) indicating frontage of the site and size of the area of footway proposed to be used.
37. Renewal applications for approval to use a footway need to be made on the approved form and accompanied by the appropriate fee.
38. Renewal applications are to be made no later than 1 month prior to the expiration of the approval.

ASSESSMENT OF APPLICATIONS

39. Applications would be unlikely to be approved where:
 - o *The proposal is located in a residential neighbourhood which would have an adverse affect on residential amenity. Applications submitted for such an area will be subject to Council's notification policy.*
 - o *The use would create an obstruction or hazard to either vehicular or pedestrian traffic on the carriageway or road.*
 - o *The site is located in an area of very high pedestrian traffic.*

APPROVAL DETAILS

40. Unless revoked earlier an approval shall remain in force for two (2) years.
41. An approval may be revoked at any time when in the opinion of Dungog Shire Council, the conditions applying to the approval have not been satisfactorily met.
42. Approvals are transferable, when the new proprietor produces documentation that public liability insurance has been satisfied.
43. Council may delete, amend or add further conditions to any approval to suit changing circumstances. Council may delete amend or add conditions to this Policy after consultation with approved holders by fourteen (14) days written notification of the proposed changes.
44. If the conduct of the footway activity area causes undue inconvenience or disruption to pedestrian, vehicular traffic or the occupants of adjoining business premises, the Council, after considering any representations made by customers, general public and written response by the approval holder can terminate the approval with one month's notice in writing.
45. In the event of the approval holder fails to remove furniture or other property following the expiration or termination of the approval, the Council may

remove and dispose of such property at its discretion if not claimed within seven (7) days of notification for removal having been given to the approval holder. Costs associated with such removal will be recovered from the applicant by Council.

ASSIGNMENT

46. Any approval issued does not entitle the holder to sub-let the area to another person.

WAIVER OF FEE

47. By special approval, Council will waive the fee if the footpath use is by a registered charity or a non-profit community organisation/group.

48. STREET STALLS

- i That authority be delegated to the Executive Manager - Infrastructure & Assets to grant permission (or his representative) for the holding of street stalls. Applications are to be submitted at least 7 days before the date requested to commence.
- ii That a maximum of one street stall and one other form of collection e.g. raffle are to be approved for the same day in the same general area.
- iii That "roving" raffles be approved provided the sellers move at a steady pace and do not interrupt pedestrians and traffic.
- iv That raffles be restricted to local (Shire) organisations or other organisations represented by a local committee.
- v That in respect of street stall sites in villages, these sites are to be negotiated with the proprietor of the adjacent business before application is made.
- vi Council reserves the right to approve multiple Street Stalls in any location for community events. Approvals for multiple sites will require a minimum of 6 weeks notice.

49. GOODS & SIGNS ON FOOTPATHS (that are not covered under item 1-45 of this policy)


- a (i) The retailer must indemnify and will keep indemnified council whilst goods are placed on the footpath for any injury to persons or property, caused by goods being placed outside shop premises.
- (ii) The retailer must notify their respective Insurance Company that goods are being displayed outside the shop premises and arrange with that Company for

a Public Liability Risk Insurance Policy in the sum of not less than \$10 million, in the name(s) of the applicant and Dungog Shire Council.

- (iii) The retailer will produce evidence to Council that the Insurance in respect of the risk, as mentioned in (a) and (b) above has been obtained and will forward to Council a copy of the same on the renewal of the policy.
- b. Goods shall not be displayed at a lower level than 750mm above ground level.
 - c. Goods shall not protrude more than 900mm from the shop frontage.
 - d. Goods shall only be displayed in front of the Retailer's own shop premises.
 - e. The minimum width of unobstructed footpath shall be two (2) metres.
 - f. No sound shall be associated with the display of goods.
 - g. No goods or signs shall be displayed without the payment of the adopted fee.
 - h. Non-compliance with the conditions for occupation will have the licence immediately cancelled.
 - i. The fee charged is non-refundable.
 - j. Council will not permit advertising signs to be placed on footpaths.

| Date Policy Adopted | Minute No | Authority |
|----------------------------|------------------|--------------------|
| 12 October 1999 | 29655 | Council resolution |
| 19 August 2003 | 31593 | Council resolution |
| 16 August 2016 | 37200 | Council resolution |

OUTDOOR DINING & FOOTPATH TRADING LICENCE APPLICATION FORM

| | | | | | | | | | | | | | |
|---|--|-----------------------------------|-----------------|----------------|-----------------|---------------------------------|--|--|--|-----------------|--|--|--|
|  | <h2 style="margin: 0;">Application for Outdoor Dining & Footpath Trading Licence</h2> | | | | | | | | | | | | |
| Introduction | <p>This form is required to protect the personal information of individuals and to ascertain the reason for the request. A licence will be issued by Council and renewed annually subject to compliance with Sec 68 LGA 1993, Sections 125, 126, 127, 140, 141 & 142 of the Roads Act 1993; Council Policy C3.27 Use of Public Footpaths for Commercial Purposes, Street Stalls, Goods & Signs on Footpath (as modified by Council from time to time) and payment of relevant annual fees. An approval lapses 2 years after the date from which it operates or earlier for non-compliance with Policy conditions and/or non-payment of fees. .</p> | | | | | | | | | | | | |
| Fees | <p>*** Fees to be determined annually in line with Council Policy and Fees & Charges ***</p> | | | | | | | | | | | | |
| Description of Outdoor Dining and Footpath Trading | <p>.....</p> <p>.....</p> <p>.....</p> | | | | | | | | | | | | |
| Applicants Details | <p>Applicants Name:</p> <p>Company Name: ABN:</p> <p>Applicant Address:</p> <p>Phone: Mobile:</p> <p>Property Address:</p> <p>Lot / DP:</p> | | | | | | | | | | | | |
| Collection | <p><input type="checkbox"/> Call for Collection <input type="checkbox"/> Please Post</p> | | | | | | | | | | | | |
| Signature | <p>I have read Council Policy C3.27 Use of Public Footpaths for Commercial Purposes, Street Stalls, Goods & Signs on Footpath and agree to comply with the conditions of this policy and the conditions associated with DA..... and Licence Approval Conditions. The attached details are true and correct.</p> <p>Signature: Date:</p> | | | | | | | | | | | | |
| OFFICE USE Cashier Code | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Licence Fee (to be determined) \$</td> <td style="width: 20%;">Date</td> <td style="width: 20%;">Receipt Number</td> <td style="width: 20%;">Council Officer</td> </tr> <tr> <td>Legal Fee (to be determined) \$</td> <td></td> <td></td> <td></td> </tr> <tr> <td>TOTAL \$</td> <td></td> <td></td> <td></td> </tr> </table> | Licence Fee (to be determined) \$ | Date | Receipt Number | Council Officer | Legal Fee (to be determined) \$ | | | | TOTAL \$ | | | |
| Licence Fee (to be determined) \$ | Date | Receipt Number | Council Officer | | | | | | | | | | |
| Legal Fee (to be determined) \$ | | | | | | | | | | | | | |
| TOTAL \$ | | | | | | | | | | | | | |
| | <p>PLEASE ATTACH A COPY OF \$10 MILLION PUBLIC LIABILITY INSURANCE (minimum)</p> | | | | | | | | | | | | |
| PERMIT APPROVAL | <p>Information provided has been checked and is recommended for permit approval</p> <p>Assets & Facilities Manager: Date:</p> <p>Executive Manager - Infrastructure & Assets: Date:</p> <p style="text-align: center;">DATE OF APPROVAL:-</p> | | | | | | | | | | | | |

Last Amended 05/08/2016

Privacy Notification: The personal information you have supplied on this form assists Council Officers in determining your application. The supply of information is voluntary. If you do not provide all details requested, Council may be unable to process your application. The details you provide are stored at Council Offices and are not made publicly available. For more information about your privacy please contact Dungog Shire Council on 49957777

| | | | |
|------------------------------------|--------------------|--------------------|--|
| 198 Dowling Street Dungog NSW 2420 | ABN 62 610 350 056 | Tel (02) 4995 7777 | shirecouncil@dungog.nsw.gov.au |
| PO Box 95 Dungog NSW 2420 | | Fax (02) 4995 7750 | www.dungog.nsw.gov.au |

SKETCH OF LEASED AREA (AS SHOWN ON DEVELOPMENT CONSENT WHERE APPLICABLE)

(Sketch of leased area, drawn to scale, with measurements showing the dining area, number of tablets & chairs, distances to the kerb & buildings, etc)

| DESCRIPTION OF THE LAND TO WHICH THIS APPLICATION RELATES | | | |
|--|--|---------------------------|------------------------------------|
| House No | Street | Suburb | Post Code |
| Lot and DP | | | |
| | | | |
| Title | Surname (or Company & A.B.N. / A.C.N.) | Given Names | |
| Title | Surname | Given Names | |
| Title | Surname | Given Names | |
| Address for Primary Contact | | Phone No (Business Hours) | |
| As the owner/s of the land to which this Application relates, I/We consent to the making of this Application. Signature/s | | | Company/Owners Corporation Seal |
| A separate letter providing the written consent of all owners to lodge this Application is attached. | | | |

IS THE FOLLOWING INFORMATION WITH YOUR APPLICATION?

| <i>Description</i> | <i>Tick yes</i> | <i>Tick no</i> |
|---|---------------------|--------------------|
| A copy of your current \$10m Public Liability Insurance. | | |
| The written consent of the property owner. | | |
| Paid the relevant fees for the use of the footpath. (<i>Not applicable at this time</i>) | | |
| Submitted the relevant information for Council to assess this application in accordance with Council Policy C3.27 Use of Public Footpaths for Commercial Purposes, Street Stalls, Goods & Signs on Footpaths | | |
| Please ensure that your proposed Footpath Dining or Footpath Trading use is in accordance with a Development Consent for your property. | | |

Standard Conditions for Outdoor Dining on Public Footpath Licence

1. This approval is for the use of the public footpath adjacent to for the purpose of **Outdoor Dining** and is for a term of two (2) years only following which time all structures are to be removed and the footpath made good to the satisfaction of Council. Should the applicant wish to extend the period the consent operates, formal application must be lodged with Council to modify the conditions prior to the expiry of the consent.
2. This approval is subject to the Business/Property owner entering into a licence agreement attached to this approval, which when executed by the Business/Property owner and Council, will constitute a licence to occupy and use the approved footpath area for the purpose of outdoor dining. An "Outdoor Dining on Public Footpath" licence permits a Property/Business owner to provide a suitable number of approved tables and chairs in the agreed area.
3. Public Liability Insurance Cover, for a minimum amount of \$10 Million, is to be maintained for the duration of the Licence Agreement.
4. A Display Notice indicating the agreed use, hours of operation and licensed area must be displayed in the front window of the business to which the Display Notice refers. Failure to exhibit the "Display Notice" may result in cancellation of the Licence. The Display Notice shall be issued by Council at time of issue of Licence.
5. The requirements, terms and conditions contained in the Licence are conditions of this approval.
6. Only approved tables, chairs, and associated structures are to be used, and these must not be placed outside the approved area under any circumstances. No third party logos, advertising, or display is permitted as part of the licensed use of public footpath. This includes signs, barriers, awnings and umbrellas.
7. Outdoor furniture shall not pose any potential safety hazard, especially with sharp edges or moving parts, to pedestrians, patrons, or employees. The furniture shall be fixed and constructed with smooth and impervious surfaces maintained as such. Unfixed seating is not permitted.
8. All outdoor furniture and structures must be maintained at all times in a structurally sound, clean and aesthetically pleasing condition.
9. To minimise the likelihood of collision between café staff and passing pedestrians, it shall be the responsibility of business operators to inform and train their staff to give priority to passing pedestrians, when traversing between the licensed footpath area and the shop.
10. An appropriate level of table service shall be provided to ensure the footpath dining area is kept clean and free of dirty plates, cups, cutlery and food scraps at all times to ensure the area is maintained in a clean, tidy and hygienic state.
11. The licenced dining area and the footpath area between it and the shop premises shall be kept clean at all times and any spilt food, liquid or other material likely to cause injury shall be removed immediately by the Business operator. The licensee is responsible for appropriate disposal of litter and wastes, and is not permitted to use public rubbish bins. Sweeping of the leased section of footpath area is the responsibility of the licensee.
12. Selling and consumption of alcoholic or intoxicating liquor is only permitted in the public footpath area if the licensee has obtained an appropriate liquor licence and/or approval from Council.
13. No business or financial transactions shall be carried out on the public footpath, outside the Outdoor Dining licensed area. Such activities shall be carried out wholly within the confines of the premise.
14. No part of the public footpath shall be used for storage of any items, including the licensed area.
15. The licensee must be aware of the provisions of the Disability Discrimination Act 1992 and provide and maintain access in accordance with AS 1428 "Design for Access and Mobility" to accommodate people with disabilities.
16. Food shall not be offered for sale or displayed within the footpath thoroughfare area between the licensed outdoor dining area and business premises.
17. All covered outside areas that permit smoking must comply with the Smoke-Free Environment Act 2000 and the Smoke-Free Environment Amendment (Enclosed Places) Regulation 2006.
18. Any specific non-standard conditions (listed below):
 - a. The footpath dining must be located such that a minimum unobstructed contiguous pedestrian corridor of 2.0 metres width and 2.6m height is maintained on the footpath;
 - b. The operator must steam clean the pavement of the footpath dining area when required to do so by the Authorised Council Officer.
19. **Non-compliance with any of the above conditions may result in cancellation of the Outdoor Dining Licence.**



DISPLAY NOTICE

Outdoor Dining & Footpath Trading Licence No
(Approved under Sections 125, 126 & 127 of the Roads Act 1993 & Section 68 of the Local Government Act 1993).

Issued to:

Date of Approval:

Lapse Date:

Address:

Licence Period:
(subject to payment of annual fee).

Description:

-
- Only fixed tables and chairs are permitted. No chair is to be placed between any table and the building facade so that a clear pathway of 2.0m between the building facade and the dining area is maintained at all times.
- Development Consent No:-
- Subject to Licence Conditions

General Manager - Dungog Shire Council