

### 1. PURPOSE OF GUIDELINES

Warrumbungle Shire Council supports business use of footpaths by allowing commercial use and outdoor dining on Council's footpaths. To be eligible, it is necessary to:

- be a business that operates adjacent to the footpath; or
- be a food business adjacent to the footpath that serves food and also has seating inside.

### 2. STEPS

#### 2.1. How to use this guide

This guide:

- is to be read along with Council's *Business Use of Footpaths Policy*;
- will provide information for the public and for applicants seeking to use the footpath for business use and outdoor dining under the *Roads Act 1993*; and
- will provide guidance for Council in determining applications for use of footpaths for business use and outdoor dining.

#### 2.2. Applying to use the footpath

Applications must be made on the Business Use of the Footpath Application Form which is attached to these guidelines, and is also available on Council's website or at Council's offices.

Applications must be accompanied by a diagram showing how the footpath is proposed to be used with particular reference to the area of the proposed use and other supporting documentation as required by the *Business Use of Footpaths Policy*.

There are two categories of permits for the use of public footpaths within Warrumbungle Shire Council, Permanent Business and Temporary Business Permits.

Permanent Business permits are for permanent use of the footpath for commercial gain and include:

- Advertising signs
- Display of goods for sale
- Outdoor Dining
- Dining/Liquor licensed area (Note - Pubs and small bars also require development consent under the *Environmental Planning and Assessment Act 1979*)

Temporary Business Permits are a one off or occasional use of footpath for both business and community groups and include:

- Community groups fundraising
- Advertising signs
- Display of good for sale

#### 2.3. Footpath area that can and cannot be used

Business, community groups and entertainers use of footpath areas is permitted, with the approval of Council, generally on footpaths immediately adjacent to a shop front and in locations that do not cause an impediment to other footpath users.

The use of footpath areas maybe either prohibited or restricted in locations where they obstruct the clear view line of pedestrians or motorists. Clear view lines allow pedestrians to view on-coming traffic and motorists to observe pedestrians' movements.

To ensure access and equity there will need to be an area retained for pedestrian circulation of at least 1.5 metres.

Ideally the area immediately adjacent to the property boundaries (generally the building line) is the preferred location for the clear passage of footpath users. Council may, on the merit of a particular situation and application, consider variation to this standard where the applicant can show that the proposal is consistent with the surrounding environment, adequate pedestrian circulation and parking safely is maintained.

Any use of footpaths will be conditional upon the safety of potential users. Where deemed necessary, a 1.2 metre setback from the kerb edge may be required to ensure the safety of pedestrians and patrons from contact with moving motor vehicles. Barriers may be installed at the applicants request subject to Council's approval.

Council will consider each application individually and provide flexibility as it is acknowledged that footpath widths across the LGA vary considerably.

### 2.4. Legislative Requirements

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 approval of Council.

Sections 125, 126 and 127 and in some cases Sections 137A-139F of the *Roads Act 1993* allow Council to approve the use of a footpath as long as using the footpath for that purpose is not taken to constitute a public nuisance and does not give rise to an offence against the *Roads Act 1993* or any other relevant legislation.

Section 68 of the *Local Government Act 1993* allows Council to approve temporary, occasional uses of footpaths.

Sections 137A-139F of the *Roads Act 1993*, address legislative requirements for street vending activities.

Footpath dining that is not exempt will require development consent under the *Environmental Planning and Assessment Act 1979*. To be exempt development, pursuant to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the use of the footpath must:

- (a) not be associated with a pub or a small bar, and
- (b) be carried out in accordance with an approval granted under Section 125 of the *Roads Act 1993* (if applicable), including in accordance with any hours of operation to which the approval is subject, and
- (c) be carried out in accordance with any approval granted under section 68 of the *Local Government Act 1993* (if applicable).

In accordance with above, if the outdoor dining area is associated with a pub or small bar, development consent is required under the *Environmental Planning and Assessment Act 1979*.

The *Liquor Act 2007* and *Liquor Regulation 2018* apply for the purpose of the service of alcohol.

### 2.5. Public liability insurance

Permission for the use of the footpath will only be valid where adequate insurance cover is provided by the applicant. To ensure Council and community protection from claims that may arise as a result of use of the footpath area the permit holder must:

- Take out a public liability insurance policy for the sum of not less than \$20,000,000 which is to be in force at all times during the term of the approval. Extend the policy to indemnify Warrumbungle Shire Council against any public liability claims arising from trading activities on the footpath; if the permit is for a commercial entity.
- Provide proof of this current policy to council with the application for approval or when requested to do so (this can be by way of a Certificate of Currency).
- Maintain this insurance policy during the term of the approval and provide updated Certificates of Currency to Council each year upon renewal.

### 2.6. The permit

Council will issue a permit to those who receive approval to use the footpath for business purposes. The issue of permits to use the footpath for business purposes will be at the sole discretion of the General Manager.

### 2.7. General conditions

All business / persons being issued with a permit shall be required to comply with the following general conditions:

Term – approvals under the *Roads Act 1993* shall be for a maximum period of 7 years.

Fees - Council reserves the right to charge a fee for the administration process of determining, approving and issuing permits. Permits are subject to an application fee and annual renewal fee as outlined in Councils Schedule of Fees and Charges.

Hours of operation - the hours of operation for any approved area must be the same as or less than the approved hours of operation of the associated business unless specified in the permit. The hours of operation for the approved area may be limited if it is considered that the amenity of the surrounding area or the safety of pedestrians or footpath diners may be adversely affected. Businesses seeking approval for the service of alcohol with meals will have hours of alcohol service defined - refer to section Dining/Liquor Licensing below.

Maintenance of approved area - the approved area and areas between the shop premises shall be kept clean at all times and any spills or other material likely to cause injury or accident shall be removed immediately by the applicant/operator.

Smoking - smoking is not permitted in any area used for dining or any other area as provided under the *Smoke-free Environment Act 2000*.

Business or financial transactions - no business or financial transactions shall be carried out on the approved area. Such activities shall be carried out wholly within the confines of the premises. This does not include the giving and taking of bills, and associated tips and charges.

Lighting - any proposed lighting must be included in the application for approval by Council and be in accordance with the relevant lighting codes and Australian Standards.

Noise - amplified music is not permitted.

Safety - the approved area shall not in any form reduce the safe egress of people from the business premises.

**Access** - the applicant should take into consideration to provide access in accordance with *AS1428* for people with disabilities. No business use of the footpath will be permitted where the use would create access problems for people with disabilities. In heritage areas with narrower footpaths, consideration will still be given to applications which take into account the needs of all persons who require clear lines of access past footpath obstacles.

**Public Assets** - the removal/relocation of any Council assets, such as rubbish bins and existing street furniture, shall be subject to Council approval and will be at the applicant's cost. The removal/relocation of any public utilities/infrastructure shall not be permitted unless justification on public benefit can be made to Council and approvals have been obtained from the relevant authorities. Works will be carried out at the applicant's cost.

**Breaches of Conditions** - if a business permitted to use the footpath in accordance with the policy, breaches any of the conditions that apply to their permit, will, in the first instance be warned. The warning of the breach will be placed in writing. Businesses that have been warned of a breach and are found to have again breached will have the permit withdrawn. Notice of withdrawal of the permit will be in writing. Any such breaches and withdrawals of permits relating to liquor licenced areas will be reported to local Licensing Sergeant.

**Permit transferability** - the permit cannot be transferred from one user to another. Should a business be sold, the new business operator must make a new application to Council for permission to use the footpath.

**Termination of a permit** - a Permit can be terminated at any time by either party with one week's notice. The Council may enter the approved area and terminate the approval, without notice if:

- The operator breaches the approval and does not remedy the breach within 14 days of receipt of written notice from the Council;
- In the Council's opinion, the road safety or pedestrian circumstances in regard to the approved area substantially change; or
- Council's approval granted under the *Local Government Act 1993* or under the *Roads Act 1993* is either revoked by Council, or lapses.

**Enforcement and Compliance** - enforcement can be taken under the *Roads Regulation 2018* in relation to the placement of obstructions on the footpath, or Section 125(1) and 121B of the *Environmental Planning and Assessment Act 1979*. Failure to comply with the conduct of business set out herein or with the enforcement order may result in receiving a fine or cancellation of the permit. These offences incur set penalties set by State legislation.

## 2.8. Specific Conditions

### Advertising Signs

The following controls apply to all signage/advertising to be displayed on the approved area:

- Large portable advertising signs or fixed structures will be referred to Councils Planning Department for determination of the need for a Development Application to be lodged with the Council.
- Signage/advertising can be permitted on A-frames, barriers and umbrellas. Umbrellas must be of non-reflective material, signage on each umbrella must be consistent with all other umbrellas on the approved area.
- No other signage will be permitted on any other structure on the footpath/nature strip.
- All signage must be placed to avoid obstruction to pedestrian movement.
- A-Frames must only be a maximum height of 0.9 metres and a maximum width of 0.6 metres.
- A-Frames must only be displayed during business hours.

- A-Frames are to be generally located directly in front of the premises to which they relate.
- Signage must be of colour (or marked) so that it is distinguishable.
- Signage must not have any sharp edges or protruding parts.
- Signage must directly relate to your business.

### Dining

- Footpath dining areas associated with pubs or small bars require development consent under the *Environmental Planning and Assessment Act 1979* in addition to a permit under Section 125 of the *Roads Act 1993*.
- Barricades are optional. If installed, barricades 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 or pedestrians
- Any proposed transparent solid barrier (such as perspex) should comply with *AS 1428.1 Design for access and mobility*, and should be clearly marked for the full width with a highly visible contrasting line to meet luminous contrast requirements.
- Outdoor dining areas must be easily accessible from the public footway and should as far as possible present an open and inviting image to entice participation. Planter boxes may be used in appropriate circumstances to physically define the side boundaries or perimeters of an outdoor dining area.
- Planter boxes may be considered in open areas, where there is sufficient room and pedestrian movement is not impeded. The planter boxes must be well-maintained by the applicant. Council reserves the right to order the removal of planter boxes that are not properly maintained including the consistent provision of approved high-quality flowers or vegetation. Permanent planter boxes will only be considered on footpath areas where the footpath has been widened for specific business use.
- Approved planters shall be terra cotta, concrete or reconstituted stone in natural, sandstone or terra cotta colour, or powder coated, brushed stainless steel or timber.
- Outdoor furniture should be strong, durable, waterproof and weather resistant designed for commercial outdoor use. Tables and chairs should fold or stack for storage.
- Outdoor furniture may be powder coated or polished aluminium, brushed or stainless steel, natural or painted timber, or canvas. Under no circumstances shall outdoor furniture consist of “cheap” bulk manufactured plastic chairs. Surfaces such as table tops should be non- reflective. All outdoor furniture will be subject to the approval of Council.
- Outdoor furniture is not to be placed outside the approved area under any circumstances.
- Each business should adopt a single colour and style for tables and chairs in its particular area to provide consistency and identity.
- All outdoor furniture must be temporary and must be able to be removed in extreme weather conditions.
- Umbrella’s must be securely mounted at all times and in the advent of high winds must be managed so that they do not cause harm to patrons, pedestrians or vehicles.
- Where the use of a heating device is proposed, details of the type, location and design must be included in the application. Heating devices must be designed in a manner which minimises risk and as such shall turn off automatically if overturned to prevent injury to patrons and property. Heating devices must be removed when not in use and suitably screened from public view. All outdoor heaters must comply with the relevant Australian Standards.
- Food and drink must be served on non-disposable crockery and cutlery. Food and drink must not be prepared in the area approved for outdoor eating.
- Paper, foam or plastic plates, cups and cutlery shall not be used for footpath outdoor dining areas.
- Appropriate footpath service shall be provided which includes as a minimum the removal of any dirty plates, cups, cutlery, footpath staining, and rubbish on a regular basis during each operating day.

### Dining/Liquor Licensing area

- Footpath dining areas associated with pubs or small bars require development consent under the *Environmental Planning and Assessment Act 1979* in addition to a permit under Section 125 of the *Roads Act 1993*.
- All applications for a dining/liquor licenced area permit will be referred to the NSW Police Liquor Licensing Sergeant. Local Police can make representations to Liquor & Gaming NSW as part of the consideration of the liquor license boundary extension application and; comment directly to the Council on the proposed local permit being issued.
- Council will issue to applicants a letter outlining the local conditions of the permit; this letter may be used by businesses when applying to Liquor & Gaming NSW to extend their liquor licence boundary to include the designated area of footpath.

### Conditions may include:

- Barricades 1 metre in height clearly defining the boundaries of the licenced area will be approved in consultation with the council. The barricades must be linked together and constructed so that they cannot be easily moved by patrons and can tolerate wind events.
- The maximum capacity of patrons to be seated at tables in the permitted footpath dining area will be limited by the available square metres of footpath divided by 3 multiplied by 4 which equates to the maximum number of patrons at one time in the designated area (4 persons per 3 square metres).
- Seated table service of alcohol with meals by authorised staff of the licenced premises only will be permitted service of alcohol with meals is restricted to be undertaken between the hours 12 noon and 10 pm, and;
  - no more than one alcoholic drink may be supplied to any one person at any one time and;
  - the following drinks must not be sold or supplied;
    - any drink (commonly referred to as a 'shot') that contains more than 30 ml of spirits or liqueur and that is designated to be consumed rapidly and;
    - any drink containing more than 50% spirits or liqueur and;
    - any ready to drink (RTD) beverage with an alcohol by volume content more than 5% and;
    - any drink prepared on the premises that contains more than one 30ml nil nip of spirits or liqueur
  - Wine and beer sold by the glass cannot exceed the following individual serve quantities; wine not exceeding 150 ml and beer not exceeding 425mls.
  - Liquor must only be sold or supplied in vessels opened by authorised staff of the licenced premises.
  - No liquor may be taken out of the footpath defined licenced area NB: in this condition, ready to drink (RTD) beverage means an alcoholic mixed beverage that is prepared by the manufacturer.
- In the case of BYO the proprietor shall serve and store the alcohol provided by patrons within the premises (not the footpath area) as single drinks as above.
- Signposting of the licenced area will be displayed on the outside panels of the barricades to inform the public of the licenced area.
- Signposting of the Alcohol Free Zone will be displayed on the inside of the barricades informing patrons that as they leave the licenced area they are entering an alcohol free zone.
- Outdoor furniture should be strong, durable, waterproof and weather resistant designed for commercial outdoor use. Tables and chairs should fold or stack for storage.
- Outdoor furniture may be powder coated or polished aluminium, brushed or stainless steel, natural or painted timber, or canvass. Under no circumstances shall outdoor furniture consist of

“cheap” bulk manufactured plastic chairs. Surfaces such as table tops should be non-reflective. All outdoor furniture will be subject to the approval of Council.

### 2.9. Temporary Use Permits

- Temporary use permits are required by businesses, community organisations and individuals wanting to access the footpath/nature strip for once off/occasional activities including advertising, promotions, fundraising, and entertainment and busking. Applications must contain the following;
  - A description of the activity to be conducted e.g. sale of raffle tickets, busking, promotion, advertising, choir etc.
  - The date and times of the activity including setup and takedown e.g. 10.30 am to 12.30 pm
  - A description of furniture and fittings to be placed on the footpath/nature strip
  - A letter/email of consent from the business that is supporting the activity to be conducted on the footpath in front of their shop
  - Proof of public liability insurance coverage is required as detailed in the above section of these guidelines titled Public Liability Insurance.
- Temporary use permits issued by council will be dated, signed by the authorising officer and state the permitted activity. Permits must be made available upon request.

For businesses requesting a temporary permit to use the footpath;

- A maximum of two (2) Temporary Business Use of Footpath applications can be submitted during any one calendar year, and
- Such an application cannot exceed more than four (4) weeks at any one time.
- Businesses requesting to use the footpath in excess of the above restrictions will be required to submit a Permanent Business Use of Footpath form and pay the appropriate fees and charges.