

FOOTWAY RESTAURANT SETTINGS POLICY

Purpose

1. To encourage street activity and corresponding social contact that will improve the City's image.
2. To encourage tourism as a contributor to the economy of the City.
3. To encourage and promote the expansion of activities which will contribute to economic well being and expanded employment opportunities within the City.

Scope

These guidelines have been prepared and adopted by Council as a general policy to foster, promote and control the establishment, approval and operation of footway restaurants.

The requirements of this policy will apply generally however, each application will be determined on its merits. For this purpose Council reserves the right to depart from the requirements of the policy whenever it deems that such departure is in the interest of the City or is necessary to protect the amenity of the neighbourhood.

The provisions of the Roads Act 1993, the Environmental Planning and Assessment Act, 1979, and the Local Government Act, 1993, and Regulations shall apply in all respects where not specifically provided for in this policy and no approval shall be granted unless the proposal complies with the provisions of the Acts and approval.

General Principles

1.0 DEFINITIONS

“Authorised Officer” an employee of a council generally or specially authorised by the council to be an Authorised Officer under the provisions of the Local Government Act 1993.

“Business frontage” means the ground level property alignment of the business premises to the footpath.

“Business premises” means the premises from which a business, trade or calling is conducted.

“Carriageway” means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.

“Footpath” means an area open to the public that is designated for, or has as one of its main uses, use by pedestrians and includes but not limited to a road reserve and nature strip.

“Footway restaurant setting” means, but is not limited to, any table or chair, or any other thing placed on a footway for the use of the public to sit at, whether or not that person eats or drinks.

“Intersection or junction” means the area where 2 or more roads (except any road-related area) meet, and includes:

- (a) any area of the roads where vehicles travelling on different roads might collide, and
- (b) the area of any slip lane where the roads meet.

“Kerb” means the area at the junction of the carriageway and the footpath whether it is a formed kerb or not.

“Setting” means: - footway restaurant setting, consisting of one table with not more than 4 chairs per table.

2.0 APPLICATIONS

- 2.1 All applications for footway restaurants shall be dealt with by approval under Section 125 of the Roads Act 1993.
- 2.2 All footway restaurants require approval from the Broken Hill City Council prior to any setting is placed on the footpath or road reserve.
- 2.3 Applications for approval are to be made on the required form and accompanied by the appropriate fee and details of the public risk insurance policy which covers the footway restaurant setting. Application for renewal or alterations to details of an existing approval will be dealt with as for a new approval upon payment of the appropriate fee.

- 2.4 Public risk insurance in concurrence with Council's set level of coverage is to be taken out by the applicant/holder of the approval and maintained for the period of the approval. All insurance policies shall include the following co-insurance clause:-

"It is hereby agreed that the indemnity given by this policy is extended to the Broken Hill City Council in respect to the placement of a footway restaurant setting or any other thing on the footpath or road reserve."

- 2.5 The applicant / holder of the approval shall lodge a copy of the insurance 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.
- 2.6 The holder of the approval will indemnify Council in writing against any action taken against it by persons aggrieved by the use, and liability for damage to, or loss of any setting, from the approved footpath or road reserve in the form of a signed declaration located within the application form.

3.0 FEES

A fee pursuant to the annual Schedule of Fees and Charges, for consideration of each application, shall be applied.

4.0 DURATION OF LICENCE

- 4.1 Unless revoked earlier an approval shall remain in force until the 31st December of the current calendar year.
- 4.2 The maximum period allowed shall be one (1) year.

5.0 HOURS OF OPERATION

The hours of operation of an approved area shall be restricted to the hours of operation of the host premises but shall be generally no later than twelve midnight.

Council reserves the right to review the hours of operation, if, at any time in the opinion of Council, injury is being caused to the amenity of the neighbourhood due to the creation of a noise nuisance or otherwise.

6.0 GENERAL CONDITIONS

All approvals will be subject to the following general conditions:

- 6.1. That the outdoor furniture and/or any other facilities shall be placed on the footway in accordance with any directions and to the satisfaction of an Authorised Officer.

- 6.2 That the outdoor furniture and/or any other facilities shall be kept strictly within the area designated as described in this policy, and shall not be permitted to encroach upon the adjoining footway at any time.
- 6.3 That the outdoor furniture shall not be fixed to the pavement unless directed to be so fixed or otherwise approved by Council and then only in the manner so directed.
- 6.4 All outdoor furniture and any other facilities and the pavement, shall be kept at all times clean and free of food scraps and/or any other form of litter.
- 6.5 That the Traders shall clean the pavement if so directed by an Authorised Officer of Council.
- 6.6 That the outdoor furniture and/or any other facilities shall at all times be maintained in a physically sound and visually pleasing condition to the satisfaction of an Authorised Officer.
- 6.7 That the Traders shall be responsible for any damage caused to Council's footway by the installation and/or removal, and maintenance of any outdoor furniture and/or any other facilities on the footway. Such damage shall be repaired by Council at full cost to the approval holder.
- 6.8 That no additional advertising materials shall be placed in the area or upon any outdoor furniture or any other facility without the prior consent of Council.
- 6.9 That no entertainment shall be provided within the licenced area unless specifically authorised by Council.
- 6.10 That Council may terminate the arrangements made upon one months notice in writing if, at any time, in the opinion of Council injury is being caused to the amenity of the neighbourhood due to the creation of a noise nuisance, undue inconvenience or disruption to pedestrian and/or vehicular traffic or otherwise.
- 6.11 That the Traders shall release Council from any liability for damage which may be caused to any outdoor furniture and/or facility by any public utility authority.
- 6.12 That the style and type of furniture shall be approved of by Council.

7.0 SPECIFIC CONDITIONS

7.1. Conditions for Footway Restaurants

A footway restaurant setting shall not be placed on a footpath:-

- a) unless the business to which it relates is open (unless authorised by Council).
- b) in such a position or in such circumstances that the safety of any user of the road or footpath is at risk.
- c) during the hours of darkness unless it is clearly visible.
- d) unless approval has been obtained.

8 LOCATION

8.1 Footway Restaurant Setting Location

8.1.1 A footway restaurant setting shall not to be placed on a median strip, traffic island or carriageway.

8.1.2 A footway restaurant setting shall not be placed on a footpath:-

- a) other than within the boundaries of the business frontage;
- b) where the width of the footpath is less than 3 metres;
- c) within 1.8 metres of the business frontage;
- d) within 600mm of the kerb of the road;
- e) within one metre of a ramp or disabled crossing;
- f) where the business is located in a corner property, within two (2) metres of the corner of the building.

9 REMOVAL OR RELOCATION

9.1 Removal or Relocation of Footway Restaurant Settings at the request of an Authorised Officer

9.1.1 A footway restaurant setting must be removed or relocated at the request of an Authorised Officer if, in the opinion of that Authorised Officer and notwithstanding compliance with this policy, there is any hazard or obstruction or is likely to be a hazard or obstruction arising out of the location of the setting.

9.1.2 A footway restaurant setting must be removed or relocated at the request of an Authorised Officer if so required by the Authorised Officer for the purpose of special events, parades, road or footpath works or any other exigency which, in the opinion of the Authorised Officer, requires relocation or removal of the same.

9.2 **Removal or Impounding of Unauthorised Footway Restaurant Settings by Authorised Officers**

9.2.1 Under the provisions of the Impounding Act an Authorised Officer may remove or impound from any public streets, road or footpath, any setting, display, sign or any other thing that has been placed in contravention of this policy.

9.2.2 If a footway restaurant setting is removed and impounded under subparagraph 1) and is not claimed within thirty days of such removal the authorised person may sell, destroy or otherwise dispose of the footway restaurant setting as the Authorised Officer thinks fit.

10 **PENALTIES**

10.1 A person who places a footway restaurant setting or any other thing on a public street, road or footpath otherwise than in accordance with this policy is guilty of an offence.

10.2 Under the provisions of the Local Government Act 1993 an Authorised Officer may issue an infringement notice to the owner of a setting, or any other thing that is placed on a footpath, road or street in contravention of this policy.

11 **FOOTWAY RESTAURANT SETTINGS APPROVAL DETAILS**

1. An approval may be revoked at any time when the conditions applying the approval have not been satisfactorily complied with.
2. Council may delete, amend or add further conditions to any approval to suit changing circumstances at its discretion.
3. Council reserves the right to remove or order the removal of any footway restaurant setting, or any other thing which it deems offensive.
4. Persons placing footway restaurant settings on the footpath shall produce a copy of the approval to an Authorised Officer of the Council upon request.

Associated Policies & Documents

The General Manager
Broken Hill City Council
PO Box 448
BROKEN HILL NSW 2880

Dear Sir

SUBJECT: **APPLICATION FOR LICENCE OF PUBLIC FOOTWAY
UNDER SECTION 125 OF THE ROADS ACT, 1993**

I/We the owner: _____

occupier: _____

of premises known as: _____

make application for a licence under Section 125 of the Local Government Act, 1993, of the portion of the public footway shown on the attached plan, for the purpose of using the area as a footway restaurant in conjunction with the existing/proposed use of the above premises as:

Applicant Name: _____

Applicant Address: _____

Proposed days of operation: _____

Proposed hours of operation: _____

Name of your public risk insurance company: _____

Quantity of furniture proposed _____

A copy of your Public Liability Insurance cover must accompany your application. Please note the following in relation to your insurance cover:

- **The minimum cover is \$20,000,000.**
- **The policy is to specifically include the statement “That the Broken Hill City Council is indemnified in respect of the footpath being used in the operation of a “Milk Bar, Café etc” known as “enter name of shop”.**

NOTE: A description and/or photograph of the type of furniture layout must be attached.

Policy Details

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