

Code Title: FOOTPATH TRADING - Code

Reason for Code: A number of commercial and public activities compete for the use of the footpath area. The Code outlines the planning and design standards as well as the procedural requirements for occupation of footpath space for commercial use.

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1. Introduction

The main purpose of footpath space is to provide the community with safe and unhindered access to the many services and facilities that the Eurobodalla Shire has to offer.

Footpaths are also used for other important public purposes such as bus stops, street lights, traffic control signs, speed limit signs, litter bins and street furniture.

A number of other commercial and public activities also compete for the use of our footpath areas. As such it is important that the footpath space is managed and used thoughtfully. The purpose of this code is to outline Council's policy about the use of its footpath areas.

1.1 Legislation

Council footpaths may be available to businesses for use for a commercial purpose in some instances. Applicants should in the first instance consult Schedule 2 – Exempt Development of the Eurobodalla Local Environmental Plan 2010 to establish if development consent is required under the [Environmental Planning and Assessment Act 1979](#).

Approval for commercial use of the footpath is also required under sections 125 and 138 of the [Roads Act 1993](#) for outdoor eating and display of goods respectively.

1.2 Local Approvals

Council formalises and regulates the use of footpaths through the issuing of licences to businesses using the approval process described in section 7 of this code. The relevant approvals under the Roads Act will be issued concurrently with the licence.

The code outlines the planning and design standards as well as the procedural requirements of Council for applicants to gain a licence to occupy the footpath for a commercial use.

2. Objectives

- To encourage, where appropriate, and control the establishment of footpath trading areas in commercial areas.
- To ensure that footpath trading areas do not cause an inconvenience or disrupt pedestrian or vehicular traffic or to adjoining businesses.
- To ensure that furniture use in the footpath trading area is of high quality and complements the existing streetscape.

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3. Types of footpath uses in Eurobodalla

This code addresses the following commercial activities that may occur on the footpath spaces in the Eurobodalla Shire:

- Outdoor eating
- Display of goods

3.1 Areas Considered Unsuitable For Footpath Trading And Outdoor Eating

The use of footpath space is discretionary and may not be permitted in all instances.

Areas deemed unsuitable for footpath trading include:

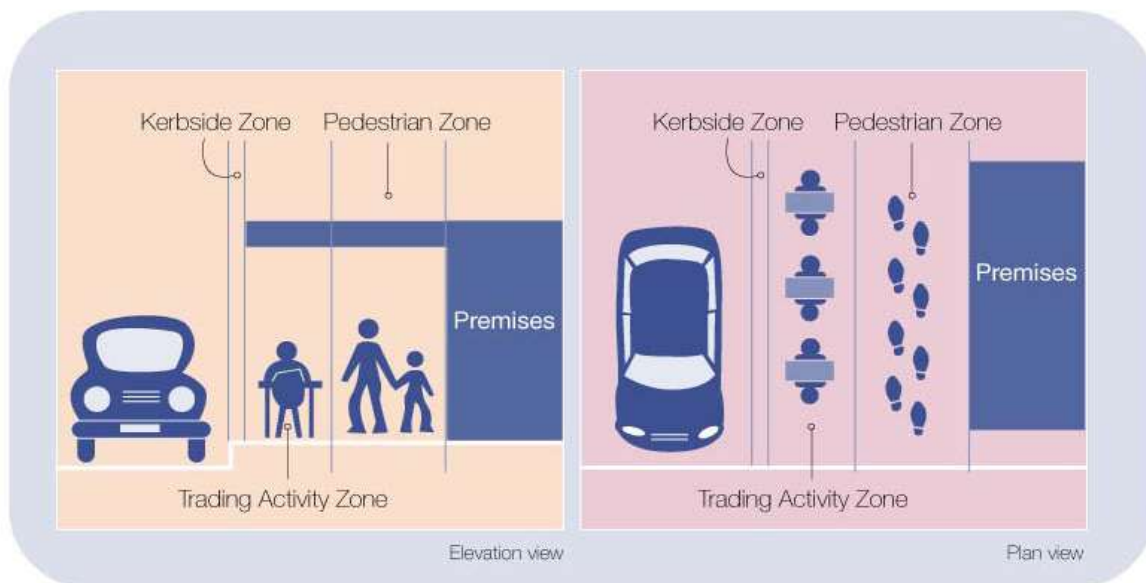
- Where the width of the footpath area is insufficient to permit simultaneous commercial activity and use by pedestrians
- Areas where the footpath use would not be directly in front of the principal place of business
- Areas where high to very high pedestrian activity exists
- Specific 'public' places including bus stops, taxi ranks, spaces directly outside a fire escape or near fire hydrants
- Potentially hazardous areas such as 'main' street corner intersections or otherwise unprotected locations

NOTE: The width of the footpath, its pedestrian activity and or the location of existing trees, artwork, street furniture and other public infrastructure, may prevent or limit the establishment of any footpath trading.

3.2 Areas Considered Suitable For Footpath Trading

In considering the options that are available for footpath trading it is important to acknowledge that footpaths are public areas and any commercial use of the footpath space is a privilege, not a right. To ensure a balanced use of the footpath area, the management of the footpath has been divided into three zones:

- walkway
- trade
- kerb



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Walkway Zone

The walkway zone extends from the building line or shop front of premises for a minimum of 2m. Items of street furniture be it planter boxes, chairs and tables etc must not extend into this zone at any time.

The purpose of the walkway zone is to enable unobstructed pedestrian access for all. This is necessary for the proper functioning of the footpath for pedestrians of all abilities and to comply with the relevant anti-discrimination legislation.

Kerb Zone

The kerb zone is a minimum of 0.7m from the kerb line to allow for access to and from parked vehicles.

Where there is an accessible parking bay the setback from the kerb must be at least 1.5m. Where this occurs, there must also be an unobstructed path measuring 1.5m at both ends of the adjacent trade zone to allow access from the kerb zone to the walkway zone.

Where there is a loading zone the setback from the kerb will need to be at least 0.7 metres. No items may be placed in the kerb zone (public assets and infrastructure excepted).

Trade zone

The trade zone is the available space between the walkway zone and the kerb zone.

This is the only area of the footpath where goods, tables and chairs and other items, subject to this policy, may be placed.

To ensure adequate access points from the footpath to the road are retained, there must be a minimum 1.5m width opening provided in the trade zone at regular 6m intervals or at a length considered appropriate for the site circumstances.

There must also be a break between each adjoining licensed area in the trade zone. The minimum width required is 1.5m, however this distance may be varied by Council should it be appropriate for the site circumstances.

4. Footpath constraints to be considered

4.1 Squeeze Points

A 'squeeze point' occurs when there is a narrowing of the footpath space due to established building lines, footpath condition, existence of street furniture, and or pedestrian activity.

Where a squeeze point occurs Council may consider varying the minimum 2m walkway zone width to an absolute minimum of 1.5m for a distance of no greater than 1.5m.

In this regard, the applicant will be required to demonstrate that there will be no increased impact on pedestrian access and or safety when tables, chairs, signage or the like are in place.

The following criteria will be used to assess an application in a squeeze point:

- The level of impact the use would have on the predominant circulation pattern in the area in terms of pedestrian convenience
- Whether ground surface conditions are appropriate or in need of modification because of the use
- What fixed items built or natural exist, and whether these items can be relocated within reason
- The level of impact the use would have on pedestrian safety and vehicle sight distances

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4.2 Existing Public Infrastructure

Tables, seats and benches, bins, pedestrian crossings, fire hydrants and other emergency assets, parking meters, traffic signal boxes, public transport shelters and other permanent fixtures placed on the footpath are public assets and have priority over commercial interests.

NOTE: A minimum clearance of 0.5 metres will be required on either side of any public asset permanently affixed to the footpath.

4.2.1 Asset Relocation

Applications can be made to relocate Council maintained assets, but should be discussed with Council officers early on in the process. A request in writing must then be submitted with the application for a footpath trading licence.

The request must include a plan showing the site of the proposed relocation and a letter signed by the trader outside whose premises the asset will be relocated. Council will charge the applicant for the cost of relocation of its public assets.

4.3 Pedestrian Safety

Pedestrian safety is a priority of Council.

As such pedestrians crossing the street should not be faced with a continuous row of planter boxes or screens that prevent access to the footpath. Sightlines for users need to be considered in each situation, and particularly at intersections.

Where the requirements of this Code are not satisfactorily complied with, and/or Council believes the proposal would create a hazard to pedestrians, and or road users, a licence will not be issued.

4.4 Crossings and Intersections

Special provisions apply at street intersections and pedestrian crossings.

No footpath trading will be permitted within the first 6m from an intersection point unless the applicant can demonstrate that pedestrian access and safety at this point will not be compromised by the use; and sufficient sight distance is retained at that point for passing vehicles.

Further, no footpath trading will be permitted within the first 2m from a pedestrian crossing point, unless the applicant can demonstrate that pedestrian access and safety at this point will not be compromised by the use; and sufficient sight distance is retained at that point for passing vehicles.

NOTE: A distance in excess of the above stated 6m and 2m may be required by Council depending on the site, in order to maintain adequate pedestrian/driver sight lines.

4.5 Service Providers and Special Events

Further, service authorities (including Council) may from time to time require access to work on underground services, or it may be necessary to remove items for annual parades, festivals or special events.

Reasonable notice will be given where possible.

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5. Footpath Trading Guidelines

5.1 Outdoor Eating Areas

5.1.1 *Defining the Outdoor Eating Area*

The outdoor eating area is the area located wholly within the trade zone approved by Council for footpath use as shown in the picture below.



The approved outdoor eating area is to be appropriately marked in a manner agreed to by Council.

The method of marking must be neat and unobtrusive and not pose a safety hazard i.e. trip or slip hazard. Appropriate methods include:

- marking out the corners of the area through pavement markers such as metal studs, stone inserts installed at or near flush with the paved surface and or use of tactiles
- using existing landscape features such as trees and bollards to indicate the boundaries of the area
- marking out the corners of the area through markers fixed to an existing or proposed awning directly above the licence area

NOTE: The markers must remain in place for the term of the licence. All items including umbrellas, planters boxes, chairs, tables and patrons must remain within the boundaries of the licensed area at all times of use.

5.1.2 *Footpath Dining Furniture*

Furniture must only be used in the licence area to which it relates, and must be confined wholly within the trade zone at all times.

Furniture must be designed and maintained in a safe condition appropriate to the location and its climatic conditions, be of sturdy construction, be easily removed and not damage the existing footpath area or other public infrastructure.

Furniture must have a contrasting colour to the background in which it is located.

Furniture must not have sharp, pointed or jagged edges, corners or protrusions.

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The base of all items placed on the footpath must be covered and maintained with a suitable rubber stopper or similar device to protect the footpath, to the satisfaction of the Council. It is the responsibility of the operator to ensure any items placed on the footpath do not cause damage to Council assets.

Council reserves the right to reject inappropriate or otherwise unsuitable furniture.

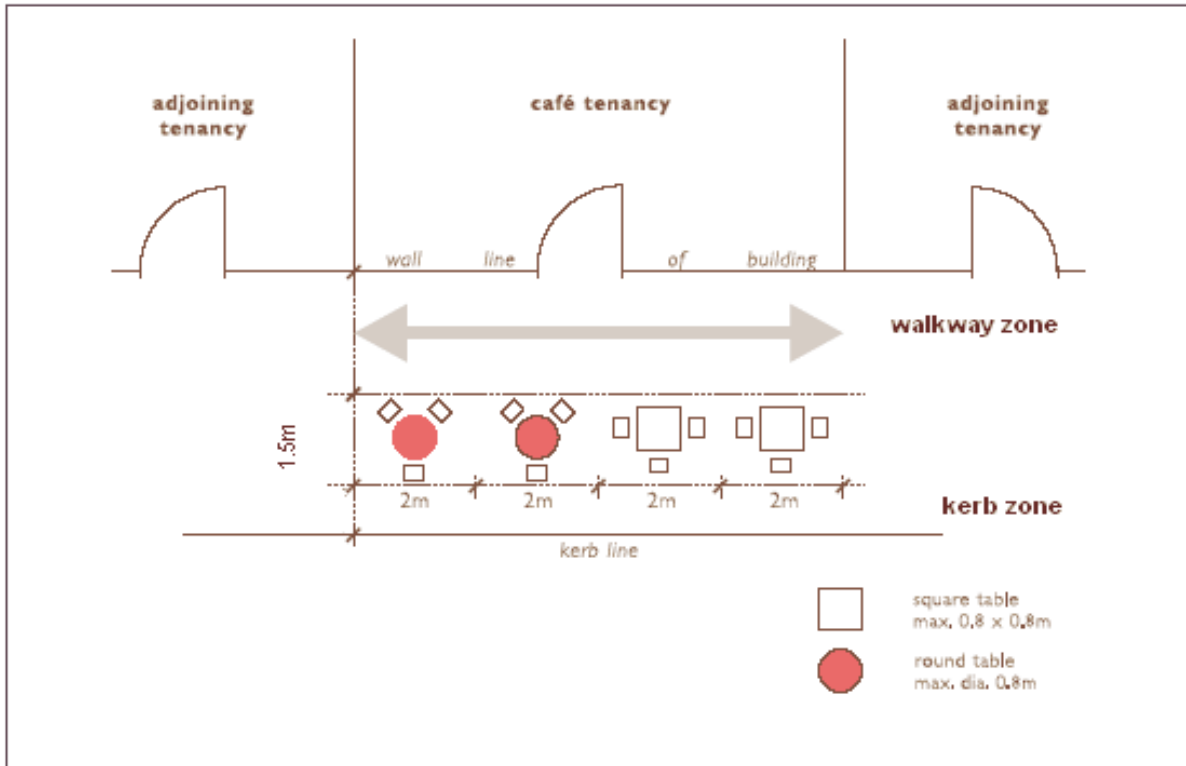


Diagram 1 Example of footpath use adjacent to the respective indoor premises (square or round table) Nominal dimensions for furniture layout with 3 chairs per table

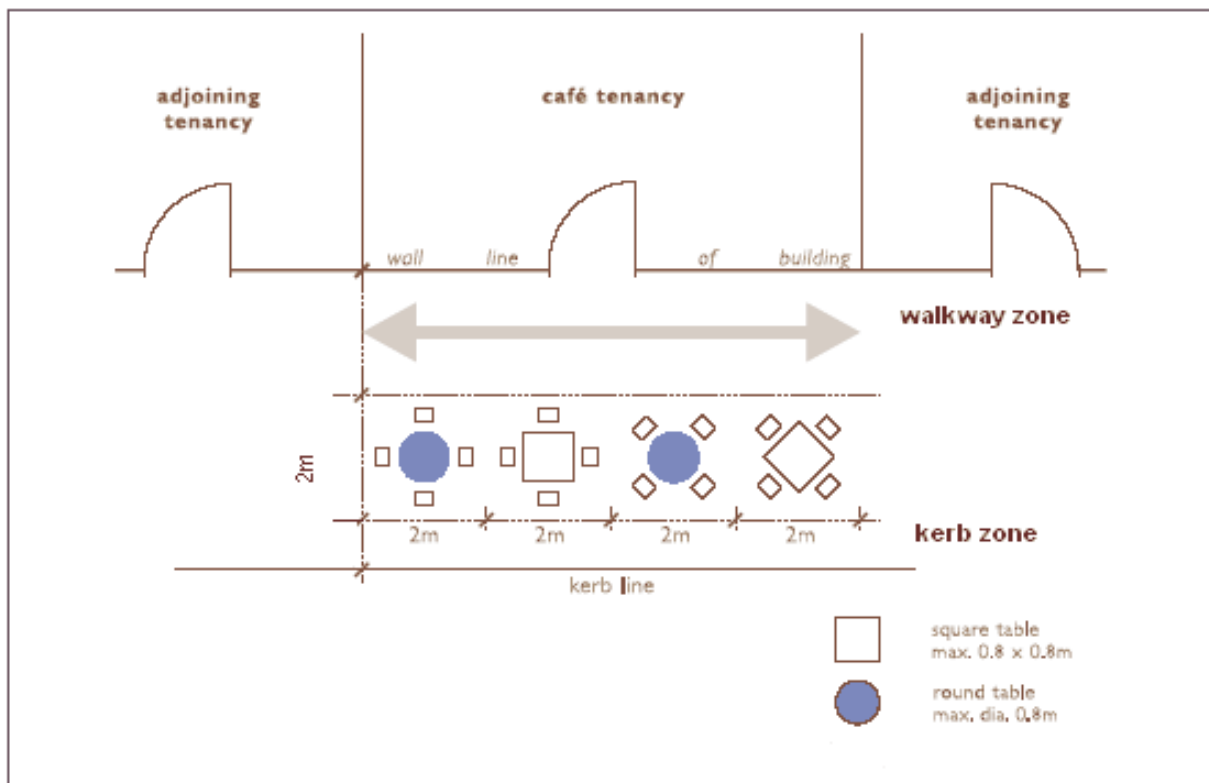


Diagram 2 – Example of footpath use adjacent to the respective indoor premises (square or round table) Nominal dimensions for furniture layout with 4 chairs per table

5.1.3 Barriers and planting boxes

The use of framed fabric, or any other style of low height barrier, including planter boxes, may be considered between adjoining outdoor dining areas to separate these areas, and /or along the kerb zone for safety and/or amenity reasons.

Council may consider several types of screens:

- temporary canvas screen;
- high barrier screens – made of safety glass or heavy duty plastic and fitted to the footpath with a locking device; and
- full length awnings/blinds attached from veranda to the footpath – normally used for protection of perishable goods displays such as fruit or flower

Advice about barriers can be obtained upon request.

Planter boxes may also be considered in open areas such as plazas or footpath widenings, which are separated from the main pedestrian desire lines. The planter boxes must be well maintained by management. Permanent planter boxes will only be considered in privately owned open space or on footpath blisters.

- 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. They must be removed from the public area when the business is not operating or designed as an integral part of the open space.
- Council reserves the right to place or remove planter boxes or fixed structures (including barriers) within footpath areas. Council will maintain these planter boxes or structures unless separate maintenance requirements form part of an individual lease agreement.

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5.1.4 Umbrellas

Umbrellas may be made available for each table provided they are 2.2m high at the lowest point and are securely weighted or fastened. The umbrella must not extend into the walkway zone so as to cause a hazard to people moving past the site.

Umbrellas are not permitted where building awnings exist up to 3.8m above the ground and cover most of the footpath to 0 - 1.0m setback from the kerb-line.

5.1.5 Heaters

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.

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

5.1.6 Advertising

Only the name or logo of the premises may be placed on any item of furniture. It must appear only once on each item and be a minor element of the furniture design. The applicant who intends to use printed umbrellas with logos or stand names must ensure that the advertising is a lesser element of the umbrella or canopy design.

No other advertisement is permitted in the licence area.

5.1.7 Liquor Licences

Liquor is not to be sold, consumed or served within the trade zone unless approved by Council, and the NSW Office of Liquor, Gaming and Racing under the [Liquor Act 2007](#).

If the premise has an existing liquor licence, the trade zone must be shown as part of the licensed area on such a licence.

NOTE: An existing liquor licence does not obviate the need for a premise to obtain Council approval for the use of the footpath space under this code.

5.1.8 Lighting

Any footpath use approved to operate outside daylight hours must provide adequate lighting, to the Council's satisfaction, to ensure the safety and amenity of patrons and the general public.

NOTE: The location of items on the footpath space must provide a clear, continuous accessible path of travel for all users of the footpath and ensure no obstruction occurs to road users.

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5.1.9 Amenity

Use of the footpath must not produce any nuisance or offensive noise.

5.1.10 Health considerations

All food must be stored and prepared within the approved food preparation area of the premises.

All furniture, other facilities and pavement must be kept clean at all times.

Table service to the outdoor eating area is mandatory.

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

5.2 Display of Goods

Any use of public footpath areas for display of goods must not result in reduced pedestrian convenience, safety or amenity, and must complement other street activities.

Such goods displays must:

- not exceed a height of 1.5 metres and a length/ width of 0.75 metres
- not be located within the walkway or kerb zones
- not be stored for any period on the footpath during loading or unloading activities (where no other suitable on-site location exists, all loading and unloading should occur immediately from the vehicle to the interior of the shop)
- be securely anchored or supported so as to ensure a safe environment for members of the public
- have a contrasting colour to their background
- not have sharp, pointed or jagged edges, corners or protrusions
- only be placed in the licence area to which they relate and only at times during which those premises are open to the public
- comply with any requirements of the Council's Environmental Health Program if food is to be displayed
- not include perishable food items including meat, fish, poultry, dairy products, cooked rice, eggs and shellfish, but excluding flowers, fresh fruit and vegetables shall be displayed
- ensure any externally displayed fruit and vegetables shall be protected from contamination
- ensure any food, including tinned and packaged goods displayed shall be at a height not less than 750mm above the footpath level.
- not operate outside daylight hours without adequate lighting, to the Council's satisfaction, to ensure the safety and amenity of patrons and the general public.

NOTE: The location of items on the footpath space must provide a clear, continuous accessible path of travel for all users of the footpath and ensure no obstruction occurs to road users.

5.3 Car Parking

Outdoor eating areas must comply with the provisions of the Parking and Access Code.

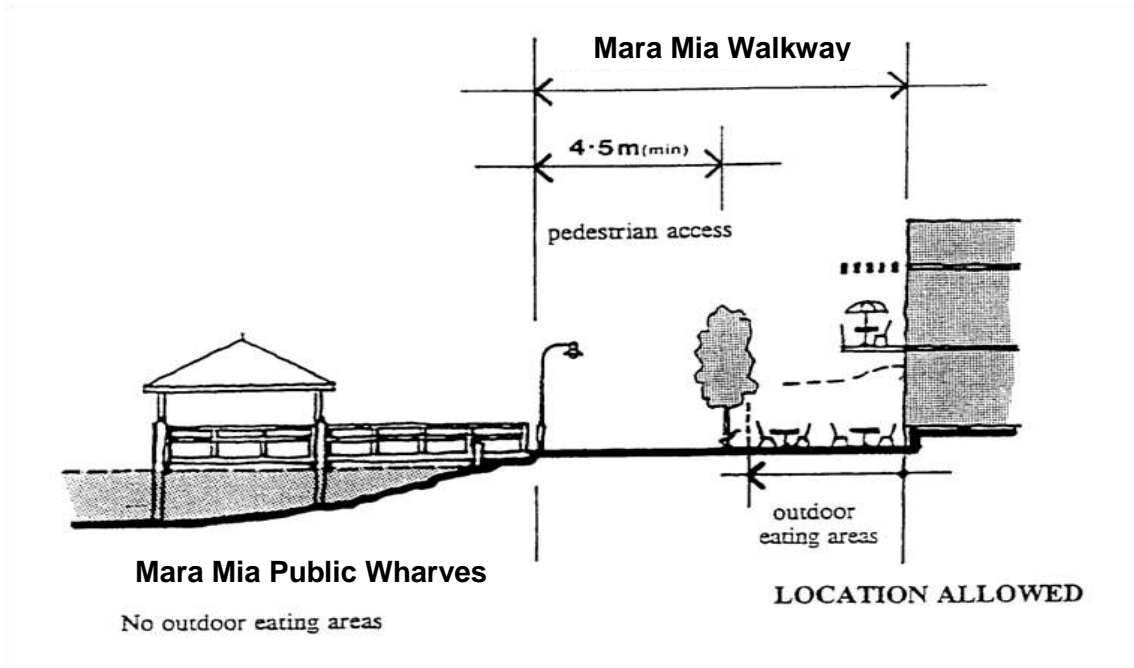
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6. Guidelines For Defined Areas

6.1 Mara Mia Walkway, Batemans Bay

A clear distance of 4.5 metres must be available for pedestrian access between the outdoor eating areas and granite strip on the water side of the Mara Mia Walkway.

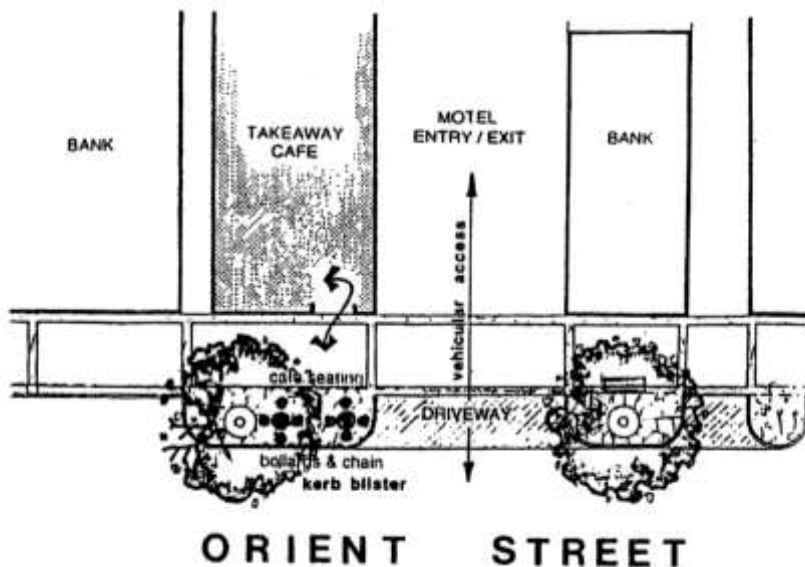
No commercial outdoor eating areas will be permitted on the Mara Mia public wharves.



6.2 Orient Street, Batemans Bay

Outdoor eating areas may be located on the kerb blisters in Orient Street, Batemans Bay provided they are

adjacent to a restaurant.



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7. What approvals do I need?

No person or business may operate commercial activities on Council's footpaths without a licence issued by Council.

In order to obtain a licence, the proposed activity must comply with this Code.

If a licence is issued by Council, then the activity is exempt from the requirement to obtain development consent.

7.1 What Information does Council require?

The following information is required from the applicant when submitting an application form.

- Completed Licence Application Form
- Site Plan of Existing Conditions
- A plan at scale 1:100 accurately showing the width of the building frontage and of the footpath from the outside edge of the kerb to the building lines, location of building lines and the type of abutting properties, existing trees, light poles, signs, existing street furniture, service pits, fire hydrants, car parking, bus zones and other features. All dimensions associated with the footpath area should be shown.
- Site Plan of Proposed Footpath Activity
- A plan at scale 1:100 accurately showing the area and layout of the proposed footpath activity. This may include the proposed location of chairs, tables, screens, heaters, umbrellas, advertising signs etc.
- Photographs of the site
- To clearly show the proposed footpath activity zone relative to buildings and existing features in the footpath area.
- Details of furniture (where applicable)
- Colour photographs or detailed design drawings of proposed furniture to be used including, screens, planter boxes, heaters and market umbrellas.
- Details of advertising (where applicable)
- A colour photograph or detailed design drawings of the proposed advertising logo, and clear indication of its size and location within the footpath activity zone.
- Application fee
- A fee will be payable to Eurobodalla Shire Council for the assessment of application, and preparation of licence.

7.2 What is the Assessment Process?

On receiving an application Council staff will:

- Check that all relevant information has been received
- Check the application to ensure it meets the intent and requirements of the Footpath Trading Code
- Inspect the site and check accuracy of submitted application plans
- Undertake an assessment of compliance with the licence conditions
- Approve or refuse licence application
- Formally advise the applicant of Council's decision

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7.3 What If I Need to Amend my Licence?

Licensees must submit an application in writing for any amendment to their existing licence. Amendments may include changing furniture design, adding furniture or increasing advertising.

The Council will notify the licensees within three (3) weeks of their decision on the amendment. An upfront amendment fee is required for officer assessment and liaison.

7.4 What If I Sell the Business?

Licences are transferable if a business is sold.

7.5 How is my Existing Licence Renewed?

Licensees are sent a letter advising them the current licence is due to expire, enclosing a new licence for a further term.

7.6 Do I Need a Development Application?

If you are proposing to carry out any footpath trading on your own land or partly on the footpath, you should check with Council as a development application may be required.

Generally under Council's LEP you do not need a development application if your footpath trading meets the exemption criteria under schedule 2 of the LEP 2010. However you are still required to obtain a licence from Council for the use of the footpath.

7.7 Is a Special Licence and Rent Payable?

The applicant will be required to enter into a licence agreement with Council prior to commencing operations. All reasonable costs associated with the establishment of the Licence will be the responsibility of the applicant.

Rental will be calculated on Council's adopted standard rate per m² per annum.

8. Operator's Responsibilities

8.1 Daily Management

The management of a footpath trading licence is the responsibility of the licensees. To ensure appropriate management, licensees must:

- operate in accordance with the conditions of the licence, endorsed plans and the requirements and objectives as outlined within this Code
- monitor the Trade zone i.e. observe patrons at all times and respond to behaviour that may interfere with the use, enjoyment and personal comfort of others using the footpath area
- maintain access for all users in and around the footpath at all times, repositioning furniture when moved outside of the Trade zone by patrons
- uphold the cleanliness of the footpath area, ensuring tables and chairs are kept clean and litter is removed and placed within bins kept inside the premises. Businesses must not sweep or deposit any litter (including cigarette butts), food scraps or any other rubbish left by patrons into the gutter. Businesses found guilty of such an offence will immediately forfeit any further rights to trade on the footpath
- remove all approved furniture (other than approved semi-permanent items) from the footpath area each evening when the premises are closed or subject to permitted hours (whichever is the lesser)

8.2 Insurance Requirements

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The licensees must ensure the footpath trading area is adequately covered by public liability insurance. To meet Council requirements, the policy must note the Council's interest, or in cases of crown land, Council and the Minister administering the [Crown Lands Act 1989](#) and be for the amount of not less than \$10,000,000 in respect of any single occurrence.

NOTE: The licensees must not do, or permit to be done or suffer anything to be done that would result in the cancellation or voiding of the insurance applying to the footpath trading area.

8.3 Annual Renewal Process

Licences for footpath trading are renewed every 3 years. At least sixty days prior to the expiry of the current licence, the licensees will receive written notification from the Council advising that the licence is due to expire. It is the responsibility of the licensees to ensure all renewal details including public liability, amendments and annual fees are forwarded to Council thirty days prior to the expiration date.

8.4 Display of Licence Registration

Licensees must display current licence clearly and legibly on their shopfront window. Failing to display the current licence is a breach of the licence conditions.

9. Council Responsibilities

9.1 Maintenance of the Footpath

The Council will continue to manage the use of the land at all times and reserve the right to reclaim access to and remove all footpath trading at any time for any purposes deemed suitable by the council.

9.2 Compensation and Loss of Trade

Where service authorities and others are required to carry out works within the road reserve which require the permanent and/or temporary removal; and/or alteration to the footpath trading arrangements, no compensation is payable for any removal of fittings, fixtures etc associated with the footpath trading licence or for the loss of trade experienced due to these works. The responsibility to reinstate these fittings, fixtures, etc. will remain the responsibility of the licensees, not the person, authority, contractor, etc. executing the works. As such Council reserves the right to cancel or suspend a licence if so required. The above terms will be included as a condition of the approval.

Any problems, inconvenience or loss of trade, which may result from activities or works, carried out by Council staff, contractors, subcontractors or agents, at or adjacent to a licensee's footpath trading area will not be considered grounds for payment of compensation.

9.3 Access to Underground Services

Services such as sewers and electricity must not be obstructed by any semi-permanent structures including fixed screens, umbrellas and planters. Removable tables and chairs are permitted above underground services.

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9.4 Monitor Compliance with Approved Licence

The following procedure will be followed in dealing with non-compliance with the provisions of this code:

1. A verbal warning will be issued by an authorized Council officer, indicating the nature of the infringement.
2. A written warning will (then) be issued, setting out the reasons for the warning being issued, and the actions required.
3. The licence will be revoked, or proceedings for the revocation of the licence will be initiated, in accordance with the code.

Reasonable opportunities will be provided between each step in the process, to permit the person(s) to either comply or otherwise explain the reason for their non-compliance.

Penalties for non-compliance with the By Law and Code include:

- On the spot fines,
- Cancellation of trading privileges,
- Impoundment of furniture, and legal action.

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