



Application for Outdoor Dining Approval

Issued under Section 125 of the Roads Act 1993

Applicant Details:

Title: <input type="radio"/> Mr <input type="radio"/> Mrs <input type="radio"/> Ms <input type="radio"/> Miss <input type="radio"/> Other		
Family Name:		Given Name/s:
Company/Organisation (if applicable):		ABN:
Postal Address:		
Suburb:		Postcode:
Contact Person (if applicable):		
Email Address:		
Home Phone:	Business Phone:	Mobile:

I hereby declare that the information provided in this application is correct and agree to abide with the terms and conditions of the Outdoor Dining Approval and the Outdoor Dining Code.

Signature:	Date:
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A once-off application processing fee of **\$323** is payable at the time of submission of your application. There is an annual fee for the outdoor dining approval which be found in Council's Schedule of Fees and Charges available from the website www.hornsby.nsw.gov.au. The current annual outdoor dining fee for 2023-24 (no GST required) for Hornsby Mall is **\$590/m²pa** and for non-mall is **\$323/m²pa** and payable by monthly instalments after your application has been approved. A security deposit is also required – 2 months rent or \$500 whichever is greater.

A: Proposed Outdoor Dining Site Details:

Shop Address:							
Outdoor Dining Site Dimensions:							
Length(m):		Width(m):		Area(sqm):			
Outdoor Dining Site Surface:							
Tiled:	<input type="checkbox"/>	Paved:	<input type="checkbox"/>	Bitumen:	<input type="checkbox"/>	Other:	
Existing Infrastructure / Obstructions on Proposed Outdoor Dining Site:							
Public Utility			<input type="checkbox"/>	Electrical Substation			<input type="checkbox"/>
Fire Hydrants			<input type="checkbox"/>	Water Taps			<input type="checkbox"/>
Trees			<input type="checkbox"/>	Inspection Plates			<input type="checkbox"/>
Street Signs			<input type="checkbox"/>	Telegraph/Light Poles			<input type="checkbox"/>
Traffic Lights			<input type="checkbox"/>	Bus Shelters			<input type="checkbox"/>
Bike Racks			<input type="checkbox"/>	Public Seating			<input type="checkbox"/>
Manholes			<input type="checkbox"/>	Bollards			<input type="checkbox"/>
Rubbish Bins			<input type="checkbox"/>	No Structures			<input type="checkbox"/>
Other:							

B: Proposed Outdoor Dining Furniture Details

In the table below, please provide details of all furniture you are seeking approval to use in association with your proposed Outdoor Dining site. Photographs or manufacturer brochures of all proposed furniture must be provided to enable appropriate assessment to be undertaken.

Furniture Item	Maximum Number	Dimensions (length x width x height)	Colour	Construction Material(s)
Tables				
Chairs				
Planter Boxes				
Boundary Structures				
Permanent Umbrellas				
Temporary Umbrellas				
Heating				
Lighting				
Signage				
Other				

C. Proposed Outdoor Dining General Details

The Applicant must provide evidence (such as the front page of a lease or contract) that the Applicant has a lease or a right to operate the adjoining shop/premises.	<input type="checkbox"/>	Yes – front page of lease/contract attached
	<input type="checkbox"/>	No
Do you intend to serve alcohol within the proposed outdoor dining area?	<input type="checkbox"/>	Yes – copy of liquor licence is attached
	<input type="checkbox"/>	No
The Applicant must provide the Public Liability Insurance Policy of not less than \$20million with Hornsby Shire Council (ABN 20 706 996 972) listed as an interested party.	<input type="checkbox"/>	Yes – Certificate of Currency attached
	<input type="checkbox"/>	No
I have read and agree to abide by the outdoor dining approval and the outdoor dining code terms and conditions.	<input type="checkbox"/>	Yes – I will abide by the terms and conditions
	<input type="checkbox"/>	No

D. Proposed Outdoor Dining Site Plan – Checklist



Floor plan of the site drawn to a scale of 1:100	<input type="checkbox"/>
Plan to show site location in relation to the business premises, roadway, footpaths, kerb, nearest street intersection or cross street	<input type="checkbox"/>
Location and distances between existing infrastructure/obstructions indicated above	<input type="checkbox"/>
Furniture layout including orientation of tables and chairs, umbrellas, barriers	<input type="checkbox"/>
Dimensions and distances associated with above	<input type="checkbox"/>

Please complete and return this form to:

Property Services
Hornsby Shire Council
PO Box 37
HORNSBY NSW 1630

Or delivered to 296 Peats Ferry Road, Hornsby, NSW 2077.
Or by email to hsc@hornsby.nsw.gov.au

Any enquiries then please contact Sarah Bradley, sbradley@hornsby.nsw.gov.au or 02 9847 6598

METHODS OF PAYMENT	
	<p>Credit Card Payments Online Please contact Customer Service on 9847 6666 for an invoice to be generated containing a payment reference.</p>
	<p>Personal Payment at Council Bring this form to Council's Cashier on the ground floor at 296 Peats Ferry Road, Hornsby to pay by cheque or credit card.</p>

Office Use Only

RC 540	Date:	Receipt No:
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TERMS AND CONDITIONS OF OUTDOOR DINING APPROVAL

As at August 2020

1. The Permitted Use shall be conducted on that part of the footway identified and shown on the plan annexed hereto as Attachment 1 (the **Approved Area**). The Approved Operator must provide evidence (such as the front page of a lease) that the Approved Operator has a lease or a right to operate the adjoining shop/premises.
2. The Approval once granted, in accordance with Section 125 of the Roads Act 1993, shall be for a period of twelve (12) months commencing from the Approval Start Date or ending 30 June of the Financial Year whichever is earlier. Where the Approved Operator continues to use the Approved Area after the Approval Expiry Date with the concurrence of Council, the Approved Operator shall be deemed to be holding over on a monthly basis and shall be required to observe all the terms and conditions of this approval and may be terminated at any time by Council giving 1 month notice to the Approved Operator.
3. The Approved Operator shall pay to the Council for the use of the Approved Area an annual **Approval Fee** based on the rate per square metre as published in the Council's Schedule of Fees and Charges. The annual fee is payable by monthly instalments in advance. A renewal of Approval will automatically be granted for the new financial year if there is no rent owing or other adverse feedback. **Where there are outstanding rents (approval fees), renewal is not permitted** and the tenant must remove all items by the expiry date or be subject to a penalty. The Approved Operator is required to setup a **direct debit** for the monthly payment (compulsory).
4. The Approved Operator may place or use furniture within the Approved Area not exceeding the maximum number of approved tables and chairs in accordance with Section 68 of the Local Government Act 1993 and the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* – Regulation 2.40a – Footpaths – Outdoor Dining.
5. The Approved Operator shall ensure that all approved items and furniture are placed wholly within the Approved Area and they are safe, structurally sound, maintained in accordance with manufacturers requirements and do not obstruct the entrance and/or exit routes to or from any other premises along the footway. The furniture must be removed and not stored on the footway when not in use. No signage can be installed or left on the footway without Council's approval.
6. The Approved Operator shall not fence off the Approved Area. The Council will consider, at its absolute discretion, any request made by the Approved Operator for permission to install planter boxes and umbrellas within the Approved Area. No such boxes or umbrellas shall be installed without the written consent of the Council. Approved planter boxes and/or umbrellas installed by the Approved Operator shall be maintained by the Approved Operator to Council's satisfaction and plants must be maintained in a healthy condition.
7. The Approved Operator shall not use the Approved Area for any other purpose other than an outdoor dining area in conjunction with the operation of the adjoining shop. Alcohol shall not be sold, supplied or consumed in the Approved Area without the consent of the Council and appropriate approvals obtained from the Liquor Administration Board.

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8. The Approved Operator shall not use or permit the Approved Area to be used for any illegal or unlawful purpose or activity. The Approved Operator shall not use the Approved Area for any purpose or activity that requires the issue of a permit, licence or authority unless such permit, licence or authority has first been obtained and is valid for the period of use.
9. The Approved Operator shall not permit any act, matter or thing whatsoever at any time when the Approved Operator is using the Approved Area to cause annoyance, nuisance, damage or disturbance to the occupiers or owners of adjoining premises or other users of the Street.
10. The Approved Operator shall not provide entertainment including recorded music for persons using the Approved Area without the consent of the Council.
11. The Approved Area can only be used when the adjoining shop is open for business and not exceeding 10.00pm for weekdays/Sunday and 12.00am for Friday/Saturday nights.
12. The Approved Operator shall ensure that the Approved Area is kept clean and tidy at all times and that all waste is promptly removed. The Approved Operator shall ensure that food is handled and presented in a hygienic manner.
13. The Approved Operator shall ensure that no damage is caused to the surface of the footway by persons using the Approved Area. The Approved Operator shall repair any damage that may occur to the footway at its own expense without delay and under the supervision of the Council.
14. The Approved Operator shall observe all reasonable directions of authorised Council Officers, including Council's Ordinance Inspectors and Rangers.
15. The Approved Operator shall be liable for and indemnify Council in respect of any loss, claim, expense, or action suffered by or brought against the Approved Operator arising out of any accident, damage or injury connected with the Approved Operator's use of the Approved Area. The Approved Operator's liability to indemnify Council shall be reduced proportionally to the extent that any acts or omissions of Council or Council's agents contributed to such loss, claim, expense, or action.
16. The Approved Operator must hereby indemnify the Council from and against all actions, claims, demands, losses, damages, costs and expenses for which the Council shall or may be or become liable in respect of or arising from:
 - (a) loss, damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the Approved Area by the Approved Operator, its servants, agents or invitees;
 - (b) loss, damage or injury from any cause whatsoever to property or person within or without the Approved Area occasioned or contributed to by any act, omission, neglect, breach or default of the Approved Operator or any servant, agent, contractor or sub-contractor of the Approved Operator.
17. The Approved Operator must effect and keep current during the Approved Operator's occupancy of the Approved Area a public risk policy and provide Council with an updated Certificate of Currency. The Certificate of Currency must:
 - (a) identifies the risk address and include the **Outdoor Dining Area** (Approved Area)
 - (b) note **Hornsby Shire Council (ABN: 20 706 996 972)** as an interested party
 - (c) ensure the insurance cover has a **minimum of \$20 million** public liability insurance cover for each and every occurrence

The Council may from time to time require the amount of such policy to be increased by such amount as may be determined by Council. The Certificate of Currency must be submitted to Council prior to the commencement of the use of the Approved Area.

18. The right of occupancy of the Approved Area granted by the Approval is not exclusive and shall in no way deprive the Council and those authorised by it of the right of access to the Approved Area. Nothing in this Approval contained is intended to or shall confer on the Approved Operator any right as tenant between the Council and the Approved Operator and any such implication or inference is hereby expressly negated. The Approval is personal to the Approved Operator and is not assignable.
19. The Approved Operator has been granted approval for the Approved Areas on the basis that the Retail Leases Act 1994 does not apply. This is an essential term of this approval and the Approved Operator is estopped from alleging that the Retail Leases Act 1994 applies.
20. The Approval will **terminate** forthwith in the event of:
 - (a) The Approved Operator ceasing to occupy the premises;
 - (b) The adjoining premises ceasing to be used as a restaurant or café;
 - (c) Any change in effective control of the Approved Operator where the Approved Operator is a company;
 - (d) The Approved Operator ceasing to be the owner or lessee of the adjoining premises.

In the event of the Approved Operator selling the business, the Council will consider granting a new Approval on similar terms and conditions to the purchaser but the Council shall be under no obligation to grant any such new Approval and shall be at liberty to consider any such request in the light of its experience with this Approval and the circumstances existing at the time.

21. In the event that:
 - (a) any fees or monies payable under this Approval shall remain unpaid for fourteen (14) days after the due date (even though no formal or legal demand has been made); or
 - (b) the Approved Operator fails to perform or observe any one or more of the covenants or provisions expressed or implied in the Approval unless it has been waived or excused by the Council in writing. If such failure continues for fourteen days after the Council has given the Approved Operator notice in writing to cease the said non-performance or non-observance; or
 - (c) the Approved Operator becomes bankrupt or makes any arrangement with or assign the benefits to the Approved Operator's creditors; or
 - (d) where the Approved Operator is a company:
 - (i) the Approved Operator ceases or threatens to cease to carry on business or goes into liquidation, whether voluntarily or otherwise, or is wound up, or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed; or
 - (ii) an administrator is appointed to the Approved Operator; or
 - (iii) the Approved Operator is placed under official management under the Corporations Law or enters into a composition or scheme of arrangement.

Then, and in any such cases the Council shall be entitled to terminate the Approval forthwith, by notice in writing to the Approved Operator.

22. If on the lapsing of the Approval by expiration of time or otherwise the Approved Operator fails to remove any furniture or equipment from the Approved Area, the Council shall be entitled to remove

the same at the cost of the Approved Operator and the Council shall be entitled to dispose of anything so removed by sale or otherwise as if the Council were the owner thereof. The Council shall be entitled to recover from the proceeds of any such sale all monies owing to it including the cost to the Council of removing, storing, and selling any such items. The Council is entitled, but not obliged to remedy any default by the Approved Operator at the cost and expense of the Approved Operator.

23. The Approved Operator acknowledges and declares that no promise, representation, warranty, or undertaking has been given by or on behalf of the Council in respect of the suitability of the Approved Area for any particular activity to be carried on there.
24. Where the Council has given its consent to anything being done by the Approved Operator in or about the Approved Area, such consent may be withdrawn by the Council at any time.
25.
 - (a) Any notice, request, consent or other communication to be given by either party under this Approval shall be in writing addressed to a party's postal or email address specified in the Approval or any other address for a party as may be notified in writing by one party to the other.
 - (b) Each communication shall be delivered by hand or pre-paid post or sent by email.
 - (c) A communication shall be deemed to be received:
 - (i) If hand delivered, on the next following business day;
 - (ii) If posted, on the second business day after posting; and
 - (iii) If sent by email, on the next following business day unless the receiving party has requested re-transmission before the end of that business day.
 - (d) Any communication to be given to Council shall be addressed to:

The General Manager
Hornsby Shire Council
296 Peats Ferry Road, Hornsby NSW 2077
P O Box 37, Hornsby NSW 1630
Email: hsc@hornsby.nsw.gov.au
 - (e) Council may carry out any works including altering the means of access, composition and arrangement within the Precinct which it deems necessary or appropriate. Council will not be liable to the Approved Operator for nuisance, negligence, any other tort or any breach of this Approval for carrying out the works or for anything related to doing so.
26.
 - (a) Prior to commencement of the Approval, the Approved Operator shall provide a **security deposit** against breach of this Approval by depositing with Council the sum equivalent to 2 months' rent or \$500 whichever is greater.
 - (b) If the Approved Operator fails to pay the fees or other monies payable under the Approval, or if the Council suffers loss or damage because of any breach of the Approval, the Council may apply the security deposit towards the arrears of fees or other monies, or towards the loss or damage. In doing so, the Council will not waive the Approved Operator's breach and will not waive any other right or remedy arising from the breach.
 - (c) If the Council does apply the security deposit, it may notify the Approved Operator that it has done so. Within fourteen (14) days of the date of notification, the Approved Operator shall reinstate the security deposit by paying to the Council the amount applied.

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- (d) On the lapsing of the Approval, if the Approved Operator is not indebted to or otherwise liable to the Council for breach of the Approval, the Council will refund to the Approved Operator the security deposit or the balance of the deposit then held.
27. Either the Approved Operator or Council can end the Approval to use the Approved Area by giving, at any time, one month written notice to the other expiring on any date but not later than the date upon which the Approval will lapse.
28. Use of the Approval Area for outdoor dining during the term of the approval will be deemed as acceptance of the conditions listed in this approval.