

BACKGROUND

This policy has been developed in order to encourage the establishment of outdoor restaurants wherever feasible and appropriate throughout the City. The policy aims to provide a consistent citywide policy that ensures quality, aesthetically pleasing, safe and practical outdoor restaurants whilst addressing the communities concerns of maintaining access, regulating smoking and the consumption of alcohol within licensed/consent areas.

The provision of outdoor living opportunities like outdoor restaurants encourages thriving cosmopolitan and cultural centres which increases the amenity of public spaces, improves safety by providing casual surveillance, assists business prosperity and enriches the city's image and lifestyle. It also increases social interaction and contributes to the building of acquaintance networks and community trust. Furthermore, outdoor eating activities also create informal surveillance that assists in the reduction of street crime.

OBJECTIVE

The main objectives of this policy are to –

- 1 Promote the reasonable use of Council road reserve (footway), as well as Council owned and managed (Crown) land, for Outdoor Dining associated with adjoining businesses;
- 2 Promote a liveable city;
- 3 Ensure safe and adequate public access is maintained at all times; and
- 4 Regulate smoking within approved Outdoor Dining locations.

POLICY STATEMENT

This policy aims to permit Outdoor Dining, where appropriate, on Council footpaths and Council owned and managed land, in accordance with the objectives of this policy and Council's planning controls as amended.

This policy should be read in conjunction with Council's management policies 'Outdoor Restaurant on Footways Located in Public Roads' and 'Commercial Lease of Council Land, Buildings and Public Roads'.

STATEMENT OF PROCEDURES

This policy applies to an outdoor restaurant approved on or over a public road or on Council owned or managed (Crown) land, where in the opinion of Council, the site is suitable for those purposes to operate. This includes footpaths, malls and other public places.

Outdoor Dining on Public Roads

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 permits the use of a footpath within the meaning of the Roads Act 1993 for an Outdoor Dining area associated with a lawfully approved food and drink premises as 'exempt development', provided that the Outdoor Dining area:

- a is not associated with a pub or a small bar, and
- b is carried out in accordance with an approval granted under Sections 125 and 126 of the Roads Act 1993, including in accordance with any hours of operation to which the approval is subject.

Guidelines for the Outdoor Restaurants on Public Roads have been developed to reflect the DCP provisions for Outdoor Dining and have been adopted as a management policy. These guidelines assist applicants in understanding Council's requirements and their obligations in managing the area approved for Outdoor Dining. These guidelines should be read in conjunction with this policy.

Outdoor restaurants proposed to be located on a public road that do not meet the criteria above, require development consent.

Outdoor Dining on Council Land

If the application for an Outdoor Dining area associated with a lawfully approved food and drink premises relates to Council land, development consent is currently required. However, consideration is being given to making such use an Exempt Development under Schedule 2 of Wollongong Local Environmental Plan 2009 subject to the Outdoor Dining activity not being associated with a small bar or pub. If the Planning approval is granted for this change, development consent will only be required for those applications that do not meet the criteria for exemption.

For land classified **Community** land, a commercial lease or license for Outdoor Dining can be granted pursuant to Sections 46 and 47 of the Local Government Act 1993 for a period of up to five (5) years without going to tender or for a greater period subject to the provisions of Section 46 of the Local Government Act 1993.

For land classified **Operational** land, there is no statutory limitation and each application will be assessed on merit but will generally be for a period of no greater than 10 years.

Outdoor Dining on Crown Land

If the application for an Outdoor Dining area associated with a lawfully approved food and drink premises relates to Council land, development consent is currently required. However, consideration is being given to making such use an Exempt Development under Schedule 2 of the Wollongong Local Environmental Plan 2009 subject to the Outdoor Dining activity not being associated with a small bar or pub. If the Planning approval is granted for this change, development consent will only be required for those applications that do not meet the criteria for exemption.

A lease or license must be granted under the Crown Lands Act 1989 and the Crown Lands Division will need to consent to the application.

General Conditions

In all instances, a license/consent issued for an outdoor restaurant must have regard to the legislative requirements set down by the 'The Disability Discrimination Act (DDA)' relating to disability access either to the premises or along the public road.

Any outdoor restaurant intending to serve alcohol requires a separate approval under the Liquor Act. The approval holder (licensee) may permit any patron or other persons to consume alcohol on any part of the approved area subject to any Liquor License conditions as set down by the Office of Liquor Gaming and Racing.

The licensee shall not permit any patron or other persons to smoke on any part of the approved area and shall ensure that at all times; 'No Smoking' Notices advising that smoking is prohibited are to be displayed on each table as outlined in the Smoke Free Environment Act 2000 or legislation as amended.

The maximum hours permissible for Outdoor Dining shall be between the hours of **7.00 am and 12.00 pm midnight** with each application being assessed on merit.

Once development consent is issued (if required) under the Environmental Planning and Assessment Act 1979, applicants must also obtain approval/license under either;

- Sections 125 and 126 of The Roads Act 1993 for a consent for the use of a footway on a public road reserve;
- Sections 46 or 47 of the Local Government Act 1993 for the use of Community land;
- By approval under the Local Government Act 1993 for Operational land (no statutory regulations apply); or
- Section 102 of the Crown Lands Act 1989 for grant of a licence of Crown land under Council’s trusteeship.

Approval/License holders must maintain appropriate approvals for the duration of the occupation of Council’s footway or Council owned and managed land. Outdoor Restaurant consents issued for public roads are personal and are not transferrable. Should the associated business be sold, the new operator will need to apply for a new approval should they wish to continue to operate the Footway/Outdoor Restaurant on the road.

For licences on Council or Crown land, assignment can be considered by Council if the licence provides for such action.

All approval holders and licensees of an area operating as an outdoor restaurant must display a notice issued by Council in a public area of the restaurant premises that displays the term of the approval/licence and layout of approved table configuration.

Fees Payable

Licenses granted under the Local Government Act or Crown Lands Act will have the rent assessed at market value in accordance with a valuation prepared by Council’s consultant registered valuer.

Fees for approvals issued under the Roads Act 1993 will be determined based upon the Zones shown in the map below and as approved by Council in its annual Schedule of Fees and Charges.



Fees will be determined based on:

Zone 1 – areas within part of Keira Street, Wollongong Crown Street Mall, Globe Lane, lower Crown Street, Corrimal Street, Harbour Street, Marine Drive, Cliff Road and part Bourke Street

Zone 2 – other areas in Central Wollongong

Zone 3 – All other suburbs of Wollongong excluded from Zone 1 and 2

The fees are based on the commercial value of the three zones but are not designed to reflect full market value given that the use of a footpath for Outdoor Dining is a shared arrangement with pedestrians. The fees have been established to be a charge on the adjoining operator that will cover the ongoing administration costs in managing that licence/consent and reflect the benefit to the operator in utilising the road reserve owned by Council.

Applicants are also responsible for all costs in association with the processing of an approval/license for Outdoor Dining.

Terms

Consents under the Roads Act can be granted with a maximum term of seven years or as permitted in the Roads Act 1993 as amended from time to time.

Licences issued for Council on either Council or Crown land will be in accordance with 'Commercial Lease of Council Land, Buildings and Public Roads' Management Policy.

Licensed Area Identification

Council at its own cost will install markers on the footway located within a Road Reserve if deemed necessary to clearly indicate the approved area on a Public Road. These costs will be recovered from the Operator of the outdoor restaurant.

For licences on Council or Crown land, markers may be installed where considered necessary.

Enforcement

For **unlicensed occupation** of Road or Council/Crown land, Council's officers approach will initially be one of education and a request for compliance. Council officers will initially discuss the non-compliance matters with the operator on this basis and allow a reasonable timeframe (three months) for compliance without the need for enforcement.

Should the unlicensed occupation continue beyond the period allowed, the matter will be referred to the Regulation and Enforcement Division for enforcement action. Enforcement action will be taken consistent with Council's Enforcement Policy and enforcement procedure. Initial action may take the form of a formal warning letter, a penalty infringement notice or Court action whichever appears appropriate under the circumstances by the authorised officer of the Regulation and Enforcement Division.

For **non-compliance with approved licence provisions**, Council will initially contact the licensee and discuss the non-compliance issue with a view of resolving the matter within seven days. In the event that the non-compliance continues beyond this period, a formal breach notice will be served on the licensee with intention to revoke the approval in seven days should the licensee fail to rectify the breach.

SUMMARY SHEET

Responsible Division	Property and Recreation
Date adopted by Council	13 October 2014
Date of previous adoptions	14 October 2013
Date of next review	October 2017
Prepared by	Property Services Manager
Authorised by	Manager Property and Recreation