

ITEM 6 PUBLIC EXHIBITION - OUTDOOR DINING COUNCIL POLICY

The Outdoor Dining Council Policy (Policy) has been revised as part of the Council policy review process. In addition, this report seeks approval to investigate and if feasible implement current State Government initiatives in relation to outdoor dining.

RECOMMENDATION

- 1 Council endorse the draft Outdoor Dining Council Policy to be placed on public exhibition from 9 August to 11 October 2021.
- 2 Council support the investigation and where feasible, the implementation of the Streamlined Outdoor Dining Approvals process as supported by the NSW Government.

REPORT AUTHORISATIONS

Report of: Lucielle Power, Manager Property + Recreation
Authorised by: Kerry Hunt, Director Community Services - Creative and Innovative City

ATTACHMENTS

- 1 Draft Outdoor Dining Policy

BACKGROUND

The Policy (previously known as the Outdoor Restaurant on Public Land Policy) aims to encourage the establishment of outdoor dining or outdoor restaurants wherever feasible and appropriate throughout the Local Government Area. It aims to provide a consistent policy that ensures quality, aesthetically pleasing, safe and practical outdoor dining whilst addressing concerns of access and safety.

The provision of outdoor dining opportunities encourages thriving commercial and cultural centres which increase the amenity of public spaces, improve safety by providing casual surveillance, assist business growth and enriches the city's image and lifestyle.

Since the previous review of the Policy, there has been significant changes to economic conditions triggered by the COVID-19 Pandemic which has also triggered an increased understanding of the importance of utilising outdoor spaces for dining. Likewise, these conditions have triggered some additional changes and an increased emphasis on outdoor dining as supported by the NSW Government. Specifically, these changes have included changes to planning legislation to support reduced planning requirements for outdoor dining connected with small bars and pubs, support for general process changes and the implementation of the NSW Outdoor Dining Policy.

In addition, the NSW Government has implemented a streamlined Outdoor Dining Approvals process to reduce processing times and improve consultation between public authorities. Councils are being encouraged to opt into the process. This report recommends that Council investigates and where feasible implement this approvals process.

The review of the Policy considering the above has resulted in the following changes being made to the Policy:

1. The term "Outdoor Restaurant" has been replaced with "Outdoor Dining" to reflect the terminology utilised in the Wollongong Local Environmental Plan 2009.
2. The main objectives of implementing a clear, accessible, and transparent process to encourage businesses to apply for outdoor dining approvals, supporting economic activity and recovery for business throughout the Local Government Area and maximising the positive and safe use of public spaces by the community have been added as a clear emphasis to the Policy.
3. A clear emphasis on the policy description within the Policy has been included which aims to clarify the requirements and the considerations when granting outdoor dining approvals.

4. The Policy has been amended to reflect Council's Policy Framework which includes the removal of the Statement of Procedures. The removal of the Statement of Procedures which will remain included in the relevant Management Policy is also in line with Council's Policy Framework.
5. The Policy removes the exemption for outdoor dining for small bars and pubs in line with the recent changes to planning legislation. The Policy still emphasises that the relevant planning legislation including the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, need to be considered however allows for flexibility as or when these may change.
6. The revised Policy introduces five criteria that need to be considered when assessing outdoor dining approvals. These mirror those introduced in the NSW Outdoor Dining Policy and are listed below:
 - **Location/site suitability:** facilitating the appropriate use of footpaths and public places for outdoor dining activities.
 - **Safety/Accessibility:** maintaining an equitable and safe thoroughfare around outdoor dining areas for all users.
 - **Amenity:** facilitating improvement to the local character, street vitality, attractiveness, and economic viability.
 - **Function:** ensuring the design of space, furniture, fixtures and day-to-day requirements of the outdoor dining space reflect the local area and quality required.
 - **Legal and Compliance:** ensuring that the management of outdoor dining activities avoids nuisance, endangerment or inconvenience to neighbours and the general public. Addressing public liability, managing risks and ensuring compliance with state legislation.

Recently there has been an increased emphasis on promoting the use of outdoor spaces for outdoor dining noting the social and economic benefits associated. Restrictions imposed throughout the COVID-19 period has highlighted the importance of using these outdoor spaces to ensure that the hospitality industry can continue to operate safely. It is noted that outdoor dining will also play an important part during any recovery period, allowing hospitality businesses to expand and maximise operations whilst activating areas and in turn activating surrounding businesses. Proposals for relief for Outdoor Dining are therefore contained within the COVID-19 Assistance for the Community Report also before Council at this meeting.

State Government Initiatives

In recent times, the NSW Government has released the document "Streamlined Outdoor Dining Approvals – A guide for NSW Councils". The aim of the document is to reduce red tape to allow for food and beverage businesses to offer a temporary expansion of outdoor dining through streamline processes. Whilst this commenced specifically for certain Sydney CBD areas, the State roll out has followed. The trial runs until 31 October 2021 (or as otherwise extended).

There is a separate approval process that has been implemented by Service NSW however this only relates to six local government areas who were approached to take part in the trial, Wollongong City Council was not one of these local government areas.

Provided that the application received by Council is exempt development under the provisions in the Exempt and Complying Development (Codes) SEPP, the streamlined process is as follows:

1. Council receives an application for outdoor dining from a business (either directly or via the ePlanning platform).
2. If a liquor licence boundary change is needed, Council notifies Liquor & Gaming NSW and NSW Police who each do their compliance checks and advise an outcome.
3. Council completes the relevant approval, whether under the Roads Act 1993, Local Government Act 1993 or Crown Land Management Act 2016.
4. Liquor & Gaming NSW finalises the liquor licence boundary change.

5. Venues are advised that their application has been successful (via the ePlanning portal if being used or through normal Council notification processes), following this the Venue can commence outdoor dining as approved.

Part of the implementation of the above streamlined process includes Liquor & Gaming NSW waiving their fee to change liquor licence boundaries and whilst Council still has the right to charge fees under the streamlined process, the NSW Government encourages fee waiving for businesses wherever possible.

Council has for some time had an online application process for outdoor dining applications and has been utilising this as the main channel to accept applications of this nature. In order to encourage the reduction of processing times and efficiencies, it is proposed that Council make the relevant enquiries and seek to adopt the streamlined process as supported by the NSW Government. As the streamlined process allows either the use of the existing application processes and/or the ePlanning portal, it is proposed that Council review both processes to determine the one best suited and most efficient to process the applications.

PROPOSAL

It is proposed that Council endorse the draft Outdoor Dining Council Policy to be placed on public exhibition from 9 August to 11 October 2021. It is also proposed that Council proceed to investigate and if appropriate, participate in the NSW Government Outdoor Dining streamlined process.

CONSULTATION AND COMMUNICATION

Consultation has been undertaken with:

- Property and Recreation
- Development Assessment Certification
- Governance and Customer Service

Consultation in relation to outdoor dining in the Local Government Area has been undertaken with Business Illawarra.

Advice and information have been obtained from the Office of Local Government along with the NSW Small Business Commission.

PLANNING AND POLICY IMPACT

This Policy contributes to Goal 5 - "We value and protect our environment", in particular, the core business of Property Services, in particular "Manage Council's commercial property portfolio including purchase, sale and leasing" as well as "Manage the statutory requirements of Council's property portfolio for Community Lands and management of Crown Lands held under trust".

This also contributes to Goal 2 - "We have an innovative and sustainable economy" including contributing to the Major Project "Deliver increased city centre marketing and activation initiatives to support local and regional economic recovery in response to COVID-19".

SUSTAINABILITY IMPLICATIONS

Through the adoption of streamlined processes to further improve Council's outdoor dining approvals, there are potentially efficiencies to be gained in relation to the delivery of these services.

FINANCIAL IMPLICATIONS

The adoption of the revised Outdoor Dining Policy and the streamlined processes can be undertaken within Council's current operational budget for Property Services Core Services.

CONCLUSION

The adoption of the revised Outdoor Dining Policy, investigation and potential implementation of the streamlined processes will demonstrate Council's support for the use of these outdoor spaces within the Local Government Area.



OUTDOOR DINING COUNCIL POLICY

ADOPTED BY COUNCIL: : [TO BE COMPLETED BY GOVERNANCE]

PURPOSE

This policy has been developed to encourage the establishment of Outdoor Dining wherever feasible and appropriate throughout the Local Government Area. The policy aims to provide a consistent Local Government Area wide framework that ensures quality, aesthetically pleasing, safe and practical Outdoor Dining opportunities whilst addressing the communities concerns of maintaining access, regulating smoking and the consumption of alcohol within licensed/consent areas.

The provision of Outdoor Dining opportunities encourages thriving commercial, social and cultural places which increase the amenity of public spaces, improve safety by providing casual surveillance, assist business growth and enriches the city's image and lifestyle.

POLICY INTENT

In recent times especially, the importance and benefits of utilising outdoor spaces for commercial activities such as Outdoor Dining have been widespread and as such this policy aims to provide a clear and transparent framework and efficient pathway to encourage businesses to seek approval and utilise these outdoor spaces as efficiently as possible.

The main objectives of this policy are to:

- 1 Enable 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 Implement a clear, accessible, and transparent process to encourage businesses to apply for Outdoor Dining approvals.
- 3 Support economic activity for businesses throughout the Local Government Area.
- 4 Maximise the positive and safe use of public spaces by the community.

WOLLONGONG 2028 OBJECTIVES

This policy supports our Community Goals outlined in Wollongong 2028, with interconnected objectives being:

- We value and protect our environment
- We have an innovative and sustainable economy
- We have a creative, vibrant city
- We are a connected and engaged community

This Policy contributes to Goal 5 - "We value and protect our environment", in particular, the Core Business of Property Services, in particular "Manage Council's commercial property portfolio including purchase, sale and leasing" as well as "Manage the statutory requirements of Council's property portfolio for Community Lands and management of Crown Lands held under trust".

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This also contributes to Goal 2 - "We have an innovative and sustainable economy" including contributing to the Major Project "Deliver increased city centre marketing and activation initiatives to support local and regional economic recovery in response to COVID-19".

POLICY

Council's position is to permit and promote Outdoor Dining, where appropriate, on Council footpaths and Council owned and managed land subject to the following requirements:

- 1 Compliance with the relevant planning legislation, for example the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Wollongong Local Environmental Plan 2009, Wollongong Development Control Plan, and any other relevant legislative considerations as amended from time to time.
- 2 Must be associated with a lawfully approved food and drink premises
- 3 Must have all required approvals under the Liquor Act 2007 to serve alcohol.
- 4 Must obtain and hold an Outdoor Dining approval and pay any associated fees.

When assessing Outdoor Dining Sites, Council should consider the following:

- 1 **Location/site suitability:** facilitating the appropriate use of footpaths and public places for outdoor dining activities.
- 2 **Safety/Accessibility:** maintaining an equitable and safe thoroughfare around outdoor dining areas for all users.
- 3 **Amenity:** Facilitating improvement to the local character, street vitality, attractiveness, and economic viability.
- 4 **Function:** ensuring the design of space, furniture, fixtures and day-to-day requirements of the outdoor dining space reflect the local area and quality required.
- 5 **Legal and Compliance:** ensuring that the management of outdoor dining activities avoids nuisance, endangerment or inconvenience to neighbours and the general public. Addressing public liability, managing risks and ensuring compliance with state legislation.

Additional considerations

- Separate approval is required to erect permanent structures in a public space, including awnings, umbrellas or shade structures that are not defined as temporary. Depending on the nature of these structures a development application process and/or separate approvals process may be required.
- The term of a permit will be a maximum of seven years from the date of approval on road reserve or five years on other public lands.
- The permit is not transferable, they are given to the operator of a premises, not a business or location
- Compliance is undertaken by Council where the business is conducting outdoor dining activities without a permit or not in accordance with a permit.

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LEGISLATIVE REQUIREMENTS

The following instruments of legislation must be considered and are applicable to this policy (as amended from time to time):

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Local Government Act 1993
- Crown Lands Management Act 2016
- Roads Act 1993
- Environmental Planning and Assessment Act 1979
- Wollongong Local Environmental Plan 2009
- Wollongong Development Control Plan 2009
- Disability Discrimination Act 1992
- Liquor Act 2007
- Smoke Free Environment Act 2000

If any legislation changes occur that are contrary or inconsistent with this management policy, the updated legislation will prevail.

REVIEW

This Policy will be reviewed every two years from the date of each adoption of the policy, or more frequently as required.

ROLES AND RESPONSIBILITIES

Property & Recreation is the Division responsible for the implementation of actions under this policy, in particular the Property Services Team who are responsible for assessing applications and ultimately providing the relevant approval.

Community Cultural and Economic Development are responsible for supporting Property & Recreation in the application of this Policy by liaising with businesses and assisting with possible activation or support opportunities.

Regulation & Enforcement is responsible for any compliance action if required.

RELATED PROCEDURES

Outdoor Restaurant on Footways Located on Public Roads Management Policy

Guideline for Outdoor Restaurants on Public Roads

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APPROVAL AND REVIEW		
Responsible Division	Property & Recreation	
Date/s adopted	<i>EMC</i> [updated by policy owner]	<i>Council</i> [To be inserted by Governance]
Date/s of previous adoptions	13 October 2014 14 October 2013	
Date of next review	[Not more than two years from last adoption]	