



POLICY No: WSC020

POLICY FOR OUTDOOR EATING AREAS

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CERTIFIED A TRUE COPY OF POLICY ADOPTED BY COUNCIL

AUTHOR SIGNATURE	
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History of Revisions:

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1	10/7/2007	D00912266
2	9/4/2014	D06270305

A. POLICY SUMMARY

- A1 To encourage the establishment of outdoor eating areas in accordance with clearly documented guidelines.

B. POLICY BACKGROUND

- B1 Council is a roads authority under the Act for most public roads in the Wyong local government area. RMS is the roads authority for all other public roads.
- B2 Council has a statutory discretion to grant approval to use a footpath adjacent to a Restaurant to be used for the purposes of that Restaurant.
- B3 Council is also a consent authority for the purposes of the EP&A Act.

C. DEFINITIONS

For the purpose of this policy, the following definition applies:

- C1 **Commercial Business**
A building or place used for the purpose of selling goods.
- C2 **Council**
Wyong Shire Council
- C3 **Footpath**
Has the same meaning of "footway" in the Act, which means that part of a public road as is set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic).
- C4 **Proprietor**
The person who operates the Restaurant adjacent to an outdoor eating area.
- C5 **Restaurant**
Premises where food is regularly provided to people, for consumption on the premises.
- C6 **RMS**
Roads and Maritime Services
- C7 **The Act**
Roads Act 1993
- C8 **The EP&A Act**
Environmental Planning and Assessment Act 1979
- C9 **The SEPP**
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

D. POLICY STATEMENTS

Jurisdiction

- D1 This Policy covers all elected members of Council, all personnel employed by Council, any person or organisation contracted to or acting on behalf of Council, any person or organisation employed to work on Council premises or facilities and all activities of the Council.
- D2 This policy does not confer any delegated authority upon any person. All delegations to staff are issued by the General Manager.
- D3 This policy applies to the public footpaths and public malls located adjacent to Restaurant businesses throughout the Wyong local government area.

Licence

- D4 A licence agreement shall be entered into between the Proprietor and Council in accordance with Section 125 of the Act. The licence is to contain provisions indemnifying Council against any claims resulting from the placement or use of the outdoor eating furniture.
- D5 No sub-licences or other approvals may be granted by the Proprietor in respect of the licence area without the prior written approval of Council.

Term

- D6 In accordance with Section 125(4) of the Act, the term of any licence shall not exceed 7 years.

Termination

- D7 Any licence must include a provision that Council may terminate the Licence without notice if the Licence Area ceases to be used in conjunction with the adjacent Restaurant conducted by the Proprietor or if the Proprietor fails to remedy any breach of the Proprietor within seven days of receiving written notice thereof from Council.
- D8 The Proprietor is responsible for the removal of any improvements installed by the Proprietor and re-instatement of the area, on the termination of the licence.

Fees

- D9 An annual fee will be charged to the Proprietor on the basis of the furniture and fittings used in part of the footpath subject to the licence.

Consent under the EP&A Act

- D10 Where the use of the footpath is exempt development by the operation of CI 2.40A and 2.40B of the SEPP, there is no requirement for development consent to be granted under the EP&A Act for that use of the footpath.
- D11 If CI 2.40A and 2.40B of the SEPP do not operate to provide that the use of the footpath is exempt development, a development application under the EP&A Act is required. Any such development application should accompany the license application. Development applications are to be accompanied by a plan indicating the extent of the proposal, access, maximum number of tables and chairs, location of toilets in adjacent restaurant, car parking provided and furniture storage.

Car parking

- D12 The footpath area used with the approval of Council under this policy is not included as "floor space" for the purposes of car parking calculations.

Location

- D13 The area subject to an approval under this policy must be adjacent to the land upon which the restaurant is erected.

Insurance

- D14 The Proprietor is required to hold a current Public Liability Insurance Policy to the amount of \$10 million, which specifically indemnifies the interests of the Council against any damage that may arise out of the activity. Such cover to be varied at the discretion of the Council and the Proprietor will provide proof of renewals.

Pedestrian Access

- D15 Outdoor eating will only be permitted in those areas where there is sufficient width of footpath to permit adequate space for the volume of pedestrians and where such an operation will not present a hazard or nuisance to the public, including those members of the public that have impaired vision or impaired mobility.
- D16 Tables and chairs placed on the footpath in accordance with this policy shall be positioned in such a way that a minimum clearance of 2 metres is maintained for pedestrian thoroughfare on the footpath. Council may increase this minimum clearance where circumstances, such as pedestrian traffic, warrant it. In addition, where furniture is placed adjacent to the kerb, a minimum clearance to the kerb of 600mm is to be maintained.

Cleaning

- D17 The area is to be kept clean and tidy at all times. The Proprietor is responsible for disposal of litter and cleaning of the footpath subject to the licence under this policy. The Proprietor shall provide litter bins (if required) as approved by Council which shall be located within the licensed area. These bins are to be emptied by the Proprietor at least daily or as required and it will be the responsibility of the proprietor to arrange disposal of the waste. No waste shall be disposed of in Council provided litter bins. The Proprietor shall steam clean the pavement of the licensed area when required to by Council. The proprietor shall ensure that no debris or litter is washed down the stormwater system and the use of detergents and cleaning agents must be minimised.

Furniture

- D18 All furniture to be placed on footpaths subject to this policy is to be supplied and maintained to meet agreed guidelines for style, colour and materials. Furniture must not be fixed to the pavement unless directed to do so by Council, and then only in the manner stipulated. Off-street storage is required for all furniture when not in use. All furniture shall be kept strictly within the bounds of the licensed area and is not permitted to encroach upon the adjoining parts of the Footpath at any time.
- D19 If tables and chairs are to be placed in unshaded areas, they must also have umbrellas erected over them to provide adequate protection to patrons. It is accepted that umbrellas may be in a closed position due to rain, wind or cold weather. Umbrellas must be securely anchored to a weighted removable object to ensure safety and minimise damage.

Damage

D20 The Proprietor shall not cause or allow to be caused any damage to any part of the licence area of the Footpath or any furniture subject to the licence. In the event of any damage occurring, it is to be repaired or restored at the Proprietor's cost. The Proprietor is required to lodge the sum of \$500 in cash before signing the licence as security against damage and this will be available to Council at its sole discretion for repair/restoration of damage. Such monies will be refunded following termination of the licence by either party subject to Council being satisfied that no repairs/restoration is required.

Hours of Operation

D21 The hours of operation of the outdoor eating facilities shall be determined by Council having regard to the hours of operation of the related Restaurant and consideration of impacts on nearby residential areas. In any event, no licence shall permit the use of a Footpath as an outdoor dining area outside the hours 7.00am and 12 midnight, Mondays to Saturdays and 7.00am and 10.00pm, Sundays - depending on the proximity of the licence area to residential areas.

Other Uses

D22 No music or amusement machines will be permitted, without the prior written approval of Council, within the licensed area. Any artificial lighting is only to be erected after the approval of Council has been obtained, so as to avoid nuisance to the public or neighbouring premises.

D23 No alcohol is to be consumed or served within the licensed area unless specific approval is given by Council and any other relevant authority.

Legal Costs

D24 The Proprietor is required to pay all legal costs incurred by Council in the preparation and execution of the licence. These costs are incorporated into the application fee.

General Manager's Authority

D25 The General Manager has delegated authority to authorise lodgement of a development application and approval of a licence for the establishment of an outdoor seating area on all roads except certain specified roads for which the concurrence of the RMS is also required.

Health Requirements

D26 No food is to be offered for sale or displayed within the licensed area. The Proprietor and all staff of premises in which food is handled for sale must acquire a "Certificate of Competency in Food Hygiene" from Council within 60 days of commencing trading. Toilet facilities must be available to all patrons to Council's satisfaction.

Advertising Material

D27 No advertising signs or material is to be displayed within the licensed area other than a menu (maximum size of A3 - 420mm x 594mm). All signs must comply with Council's "Advertising Signs DCP".

Maintenance

D28 The Proprietor is responsible for the maintenance of the licensed area.

Public Nuisance

D29 Any activity within the licence area must not constitute a public nuisance and must not give rise to an offence against any Act.

Goods And Services Tax

D30 Where any charge, fee, supply of products or services under this policy is subject to a goods and services tax (GST), an amount equal to the GST paid or payable in respect of the charge, fee, supply of products or services, shall be included in the amount of consideration paid or payable under this policy.

E. POLICY IMPLEMENTATION - PROCEDURES

E1 This policy should be read in conjunction with the Wyong Council Code of Conduct.

E2 It is the personal responsibility of all Council employees and agents thereof to have knowledge of, and to ensure compliance with this policy.

E3 Associated documents

- a) Wyong Council Code of Conduct
- b) Section 125 of the Roads Act 1993
- c) The SEPP