



OUTDOOR EATING POLICY

PURPOSE

The purposes of this policy are to:

- a) encourage, develop and implement a consistent approach for outdoor eating areas;
- b) encourage the provision of outdoor eating areas to existing and new premises that have a lawful approval to carry out the existing use;
- c) improve the vitality and atmosphere of areas within the Municipality, particularly the small neighbourhood centres;
- d) ensure adequate access is provided to all footpaths and privately owned land to ensure the use is carried out in a controlled and safe manner;
- e) ensure that all outdoor eating areas are safe and that appropriate safety barriers are installed as well as provide for adequate access for the disabled.

SCOPE

This policy applies to all Councillors, Council staff, staff exercising delegated authority and people seeking to establish outdoor eating facilities within the Hunters Hill Municipality.

This policy applies to all applications to the Council seeking outdoor eating approval.

This policy has been prepared to encourage outdoor eating as well as manage designated outdoor eating areas to ensure adequate provisions are made for pedestrians and patrons alike.

Outdoor eating areas can be restaurants, refreshment rooms, bars, cafes or small street vending units. They can be in public places like parks, forecourts and shopping centres, on lanes and on privately owned land. If the outdoor eating areas are well-designed, well-located and well-used, they make area more liveable and friendly, and add life to the urban environment.

Outdoor eating venues also provide alternative eating areas which satisfy the requirements of the Work Health and Safety Act 2011 and the Smoke Free Environment Act, 2000.

This policy also sets out a streamlined approval process in order to reduce the sometimes complex and detailed development applications that may be required in certain circumstances.



DEFINITIONS

Council-owned land: means land either owned by Hunter's Hill Council or Crown Land under the care, control and management of Hunter's Hill Council and land that is being leased by Council.

Outdoor Eating: means those areas associated with an existing or approved shop, restaurant, café, take away food or drink premises or tavern/pub located on land owned by the Council or under Council's care, control and management where Council has issued a licence for the purpose of outdoor eating.

POLICY STATEMENT

PART 1 POLICY GUIDELINES

1. INTRODUCTION

An applicant must apply for a licence and in some cases a development approval to use Council's footpath for tables, chairs, umbrellas and vehicle impact devices directly in front of the applicant's premises or behind the premises if the property has rear street frontage. An annual fee is required to maintain an "Outdoor Eating Footpath Licence".

2. APPLICATION PROCESS

Guidance as to the application and approval process is given in Appendix 1. Application forms can be obtained from Council's Customer Services Section.

No furniture is to be purchased nor are any outdoor dining services to be offered before the completed Application for an Outdoor Eating Footpath Licence and if necessary a Development Application have been submitted and approved by Council.

For existing premises, the onus is on the applicant to provide the details of the development consent under which the business currently operates, so as to establish that the existing use has been lawfully created. This consent is referred to in the application form and the application will not be accepted unless complete.

3. DESIGN CRITERIA

Well-designed and well-located outdoor eating areas add character and vitality to the street and should not create any safety hazards or make the areas in which they are situated less attractive, less accessible or more dangerous.

The diagrams detailed in Appendix 2 are the adopted guidelines and will only be varied in limited circumstances where sound justification is provided by the applicant. Any variation to the design criteria must not unreasonably impact on the safety and existing and future amenity of the area.

3.1 Area to be used for Outdoor Eating

- (1) The area shall be part of existing or new premises that has an approved use that has been lawfully commenced and operated.
- (2) The area shall have a site that is level with an all-weather, non-slip surface suitable for tables, chairs and umbrellas.
- (3) The area shall fit in well with other land uses and, if situated close to residential housing, shall not unreasonably impact on properties so as to create a nuisance.
- (4) The area shall not have lighting that creates a nuisance and, in this regard, all lighting shall comply with Australian Standard AS 4282 – The Control of the Obtrusive Effects of Outdoor Lighting. Council may require a report prepared by a qualified electrical engineer to confirm compliance with the standard.
- (5) The area should have easy access to public transport and not hinder the use of existing public transport facilities.
- (6) Adjoining and surrounding areas should be pleasant and non-hazardous, and not be located too close to fast-moving vehicles, unfenced water, noisy areas or areas with excessive pollution.
- (7) Where the designated area adjoins a main arterial road or roadway with fast moving traffic, the area shall be protected by energy absorbing bollards, which will protect persons from a 1200kg car travelling at 60 km/hour.
- (8) The area shall provide adequate disabled access in accordance with Council's DCP 2013 Part 5.2 Access and Mobility.

3.2 Site Layout

- (1) Tables, chairs and umbrellas should not be too close to the road or be placed where pedestrians, including the visually impaired, the disabled or those with prams, cannot easily use the footpath.
- (2) At no time shall the owner or agent cause to permit the use of "A" frame advertising on Council's footpath.

(3) If possible, the outdoor eating area should be located near the indoor part of the restaurant so there is no conflict between waiting staff and pedestrians.

(4) Areas are to be designed to be open and not fully enclosed, so that they add life on the street and avoid problems of passive smoking. Nuisances such as noise are not to be dealt with by enclosure as it may be a case where the outdoor area is not suitable for the location.

(5) If the seating is on a pavement by a road, a distance of at least 2.0 metres should normally be left between it and the kerb (refer to Appendix 2 for site layout controls). This is to ensure that it meets the guidelines of the NSW Roads and Traffic Authority (RTA) on minimum distances required for two wheel chair users to pass.

(6) Site layout examples are provided in Appendix 2 and provide a guide for proposed development.

3.3 Design of Furniture

(1) The styles of tables, chairs and umbrellas shall complement and not detract from the setting or give rise to conflicts with existing external colour schemes. Colours should be selected to fit in with the existing and adjoining colour schemes. Tables, chairs and umbrellas should not damage the pavement or cause a trip hazard to pedestrians. Furniture must be able to be stowed away wholly within the subject property when not in use.

(2) The styles, sizes and types of tables, chairs and umbrellas are subject to the approval of Council and, in this regard, the items shall be of a high quality and acceptable design. The manufacturer's details, including drawings or photographs, shall be submitted with the development and licence applications to ensure that visual qualities are maintained.

3.4 Amenity Considerations

(1) An outdoor eating area on private property should have reasonable cover from the sun, wind and rain to encourage use of the outdoor area as much as possible.

(2) Litter bins are to be provided as deemed necessary by Council's Group Manager Works and Services and the area is to be kept clean and tidy at all times. It is the owner's or lessee's responsibility to keep Council's footpath clean at all times.

(3) Any required heating devices shall be of an approved type and shall be positioned well clear of any pathway or access route. All details are to be submitted with the development application.

(4) The opening hours of the outdoor eating area must be appropriate and not contravene the development consent.

(5) Council may actually require the hours of use of the area to be reduced regardless of the consent hours. It is the applicant's responsibility to demonstrate in the application submission that a lawfully activated consent exists for an existing eatery's outdoor eating area.

(6) The development and use shall comply with the sanitary provisions of the Building Code of Australia (BCA) 1996-Volume 1. Appendix 3 provides details of the requirements prescribed under this policy so as to satisfy the BCA requirements.

3.5 Safety

Ensuring each outdoor eating area is safe for pedestrians and patrons alike is an important objective of this policy and will ensure that the level of risk is reduced as far as practically possible. There are basic principles which can be adopted to reduce the exposure to risks from vehicles.

This policy adopts the following principles in order to create a safe outdoor eating area:

- (1) There must be a tested impact barrier system in place or historical features (e.g. trees, poles, walls etc.) judged to be of equal or greater vehicle stopping capacity to an impact barrier system or a combination of both.
- (2) The impact barrier system must be set back a distance from the kerb in order to minimise any snag or obstruction hazard to cyclists and to people exiting vehicles.
- (3) The area immediately behind the impact barrier system should be free of seating so that any penetration by an impacting vehicle will not endanger patrons.
- (4) The footpath shall be wide enough to accommodate the number of pedestrians passing by.
- (5) Outdoor eating furniture shall not impede any line of sight that would create any situation where driver or pedestrian vision is unreasonably restricted.

The assessment process will involve a review by Council's Group Manager Works and Services who will assess the proposal against these objectives and relevant Australian Standards.

Vehicle impact barriers are required where the outdoor eating area is less than 15 metres from a main arterial road or where the vehicle speed is not appropriately regulated in the circumstances of the case. Most planter boxes, windscreens, ornamental bollards and other street furniture commonly used to delineate dining areas are insufficient to offer adequate impact protection. Council's Group Manager Works and Services will make an assessment of each situation given the site features, the history of the locality and potential vehicle speed and obstructions.



Energy-absorbing bollards are encouraged and, in some instances, are mandatory provided they are able to stop a 1200kg vehicle travelling at 60km/hour. These bollards should not unduly impede pedestrian use of the footpath.

3.6 Heritage Considerations

All applications for outdoor eating areas associated with a State Heritage Item require the submission of a development application. This policy will be used in the assessment of such an application in conjunction with assessment by Council's Heritage Adviser.

3.7 Transfer of Outdoor Eating Footpath Licence

The new owner of a premises must notify the Council that the premises or business has been sold. If the existing licence is valid at that time, it will be transferred to the new owner or lessee provided the transfer of licence form is completed and submitted to Council together with the prescribed administration fee. (See Councils Annual Fees and Charges Schedule)

4. THE SALE OF LIQUOR

A licence under the Liquor Act 2007, called an On-Premises License, is required if alcohol is to be sold. An on-premises licence for a restaurant only allows alcohol to be sold or supplied with or ancillary to the service of meals to the public. A primary service authorisation can be obtained to allow alcohol to be sold without meals in a restaurant. This can be obtained as part of a licence application for a new restaurant or as an additional trading entitlement. Where a primary service authorisation allows alcohol to be sold without meals, meals must still be available at all times.

If the restaurant is BYO, a licence is not needed.

The information in this section must be confirmed with the NSW Office of Liquor, Gaming and Racing given the separate function to the Council controls.

5. LICENCE TERM

The licence to occupy Council's footpath for outdoor eating purposes is valid for a period of five (5) years from the date of issue and must be renewed annually with payment of the prescribed fee.

6. ASSESSMENT

The application will be assessed in accordance with the requirements of this policy and any matter as deemed relevant under the Heads of Consideration pursuant to Section 79C of the Environmental Planning and Assessment Act 1979.

The proposed outdoor eating area must comply with the Building Code of Australia. All areas must meet the standards on toilet provision and sanitary facilities, which are detailed in Appendix 3. In many cases, it will be necessary to upgrade the building,



which requires development consent, and all details and plans must be submitted with the development application. Any newly created outdoor eating area must not reduce the level of fire safety currently afforded to the building and, in some cases, the building will need to be upgraded where obvious fire safety hazards exist. Any approval of an application shall be subject to the standard conditions of consent (Appendix 4) and the Licence Agreement (Appendix 5).

7. DISPLAY OF APPROVAL AND PERMIT

Following the approval of the licence and payment of fees an Outdoor Eating Display Permit will be issued to the operator. The Outdoor Eating Display Permit will summarise the use, hours of operation and licensed area and the approved number and layout of tables and chairs and the expiry date of the licence. This must be prominently displayed in the front window of the premises to which the Display Notice refers.

A copy of the Outdoor Eating approval that includes a plan of the approved area must be kept on the premises and is to be produced on request by any authorised person.

8. ANIMALS

Animals, excluding assistance animals, in outdoor eating areas are subject to the provisions of the Food Act 2003 and the Companion Animal Act 1998. This requirement relates to the responsibilities attached to food handling and it is the responsibility of the licensee to comply with the requirements of relevant legislation. (Note; Assistance animals are defined under the Commonwealth Disability Discrimination Act 1992).

9. SMOKING

Under Council's No Smoking in Playgrounds & Public Places Policy (Corp.S.27) smoking is prohibited in all fresco dining areas on public land and in Council's pedestrian malls/plazas, in all bushland, parks and reserves.

Agreements to lease outdoor eating spaces, will have smoke-free clauses inserted into their licence agreements for use. The lessee and or licensee will be responsible for enforcing the restrictions on smoking and for any non-compliance. If there are continuous breaches, penalties may apply in accordance with S626 (3) of the Local Government Act 1993 and licences may not be renewed.

Outdoor Eating License and Permit Holders are responsible for enforcing the restrictions on smoking and for any non-compliance in the area covered by the Permit/Licence Agreement. Appropriate Non-Smoking signage to be prominently displayed in Outdoor Eating Area.

Amendments to the NSW Smoke-Free Environment Act 2000 will ban smoking in all commercial outdoor dining areas from 6 July 2015. This will include:



- a seated dining area – an area in which seating is provided and in which food that has been purchased and served on plates or packaged for immediate consumption is consumed - but only while food is being consumed or is available for purchase and consumption there.
- within 4 metres of a seated dining area on licensed premises or at a restaurant.
- within 10 metres of a place at a food fair where food is sold or supplied for consumption

RELATED POLICIES

CORP.S.27 No Smoking in Playgrounds & Public Places

8. OTHER RELEVANT APPROVALS

A licence to occupy Council's footpath, following issuing of the development consent and the payment of the required licensing fee, is deemed to be an approval to carry out the activity under the following legislation:

- Roads Act 1993
- Environmental Planning and Assessment Act 1979
- Local Government Act 1993
- Food Act 2003 (as amended)
- Work Health and Safety Act 2011
- Smoke Free Environmental Act 2000
- Companion Animals Act 1998

POLICY AUTHORITY

The policy authority is the Group Manager Development & Regulatory Control.



RELATED RESOURCES

GETTING HELP

For interpretations, resolution of problems and special situations please contact Council's Senior Environmental Health & Building Surveyor.

POLICY OWNER

The policy authority is the General Manager.

AUTHORISATION AND REVIEW

This policy is due for review in 2018 or with any change to relevant legislation or Council policy.

Version Control Table

Date	Version	Res. No.	Key Changes	Author
08/07/2002	1.0	265/02	Adoption of Policy	S Kourepis
07/04/2014	1.1	96/14	Updates to Policy	W McGuirk