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1 INTRODUCTION

1.1 Name of this Policy

This Policy is called the 'Outdoor Dining and Footpath Trading Policy.'

1.2 Commencement Date

This policy came into effect on 9 September 2005.

1.3 Purpose

The purpose of this policy is to:

- 1) encourage outdoor dining in Ku-ring-gai;
- 2) facilitate the appropriate use of footpaths, plazas and public areas for the purposes of outdoor dining areas and other footpath trading activities in the Ku-ring-gai Local Government Area;
- 3) facilitate improvement to the street vitality, amenity and economic viability of Ku-ring-gai's business zones;
- 4) provide opportunities for shop owners and residents to benefit from pedestrian circulation; and
- 5) set a high standard for public safety.

1.4 Objectives

The objectives of this Policy are:

- A. The appropriate use of footpaths, plazas and public areas for outdoor dining areas and footpath trading activities.
- B. Outdoor dining areas and footpath trading activities that contribute positively to the streetscape character.
- C. Outdoor dining areas and footpath trading activities that are compatible with other community uses of the public space.
- D. Outdoor dining and footpath trading areas that are safe and accessible for all users.

1.5 Obtaining a Permit

Council will use this Policy to assess all applications for the commercial use of footpath, plazas or public areas. Before applying for a permit, you should:

- obtain an application form for either a 'Footpath Trading Activity Permit' or an 'Outdoor Dining Area Permit' from Council;
- consider how your proposal complies with the objectives of Section 1.3;
- establish which sections of this Policy apply to your proposal;
- consider discussing the proposal with Council Officers to ensure relevant key matters are identified and addressed;
- ensure that your application is consistent with the aims and objectives of this Policy and complies with the requirements contained within this Policy; and
- ensure you are providing Council with all the necessary information.

1.6 Circumstances in which this Policy applies

This Policy applies to all

- commercial premises, and
- food premises within commercial areas

that are lawfully operating or that have a valid development consent to operate, where it is proposed to use Council's footpaths, plazas or public areas to either:

- establish an outdoor dining area, or
- carry out footpath trading activities

within the Ku-ring-gai Local Government Area.

Note: This policy does not apply to outdoor dining areas or footpath trading activities that are carried out on privately owned land.

1.7 Relationship to other Plans / Policies

The following Acts and Plans also apply to outdoor dining and footpath trading activities:

- *Roads Act 1993* – Sections 125, 126 and 127
- *Local Government Act 1993* – Section 68
- *Development Control Plan No 28 - Advertising Signs*

1.8 Variations to the Policy

Variations to the controls and requirements of this Policy may be permissible if, in the opinion of the Council, the objectives of the Policy have been met. A written statement and any other supporting information that details how this has been achieved must be included with the application.

2 DEFINITIONS

Consent Authority means Ku-ring-gai Council.

Food Premises means the café, restaurant or take away food shop to which the footpath / plaza / public area restaurant will be annexed.

Footpath means the part of a road that is set aside or formed as a path or way for pedestrian traffic.

Footpath Trading Activity means the display of goods for sale on Council footpaths, plazas or public areas.

Footpath / Plaza / Public Area Permit means the permit which must be held by the proprietor of the premises if they wish to carry out business operations on Council's footpaths, plazas or public areas.

Outdoor Dining Area means an area which is the portion of a café, restaurant, take away food shop or other premises directly in front of the premises and on Council owned land where food is served.

Outdoor Dining on Private Land means a dining establishment that is situated on privately owned land.

Permitted Area means the site of the footpath / plaza / public area for which a permit for commercial activity has been granted.

Renewal Date means the anniversary date of the commencement of the permit.

The permit must be renewed each year before this date.

Third Party Advertising means any advertising other than that which identifies the subject premises itself.

3 OUTDOOR DINING AREAS

3.1 Assessment Criteria

Outdoor dining on Council owned land will only be permitted where:

- i) the premises meets the relevant standards, controls and policies that apply to the establishment of outdoor dining activities on the land;
- ii) the premises includes washing-up facilities; and
- iii) either non-disposable eating utensils are provided in the outdoor dining area of the premises or appropriate receptacles for the collection of disposable eating utensils are provided.

3.2 Suitable Locations for Outdoor Dining Areas

All outdoor dining areas must:

- i) be located on a suitably constructed surface that is sufficiently level to allow for the safe use of the furniture and can support a layout that adequately meets the other requirements of this policy;
- ii) maintain a minimum unobstructed footpath width of 1.8 metres at all times between the outdoor dining area and the building;

Note: Council may consider outdoor dining areas located away from the road kerb or other locations where the applicant can demonstrate that the dining area will have no adverse impact on pedestrian flow (including people with disabilities), car parking, vehicular movement and other traffic flows. In the event that the outdoor seating is to be located adjacent to the building, a 500mm high solid-to-ground barrier with a colour contrasting with the pavement (eg. planter box or canvas frame) must be erected around the furniture.

- iii) be located adjacent to the road kerb to allow for continuous easy movement of pedestrians along the footpath,
- iv) be located so as not to interfere with car parking and vehicular movement;
- v) be designed so that furniture will not be placed within 1.5 metres of any accessible parking space; and
- vi) be located directly in front of the premise to which it relates unless written consent from the adjoining owner or proprietor is provided.

Note: If the applicant wishes to use adjoining land for the purpose of outdoor dining, this land must also be zoned for commercial use.

Note 1: Outdoor dining areas located on arterial roads will be subject to RTA approval.

Note 2: Refer to Appendix A for examples of how to apply numerical standards.

3.3 Allocation of Seating Space

The allocation of seating space is subject to the following controls:

- i) No furniture shall be located within 3.0 metres of any road corner, bus stop or taxi stand.

- ii) The minimum practical depth for an outdoor dining area is 1.0 metre. This provides adequate space for one (1) table and two (2) chairs. Each additional chair is to be allocated an extra 0.5 metres of footpath area.
- iii) No other goods or materials other than those that have been permitted by the Council shall be placed on footpaths.

Note: Refer to Appendix A for examples of how to apply numerical standards.

3.4 Outdoor Furniture

Outdoor furniture to be used by an establishment must be approved by Council and should adhere to the following guidelines:

- i) Outdoor furniture must be commercial grade and of adequate strength and durability to withstand most external weather conditions and outdoor commercial usage.
- ii) Furniture must be of a high quality, ie. powder coated, polished aluminium, brushed or stainless steel, natural or painted timber are preferred. Domestic-style furniture is not permitted as it is not generally considered to be high quality, aesthetically pleasing or durable.

Note: Examples of furniture that meet the criteria of this Policy may be found in Appendix B.

- iii) All furniture must be of a high aesthetic quality that enhances the existing streetscape.
- iv) Outdoor furniture belonging to an establishment should be of a single colour and style to provide consistency and identity.
- v) Furniture must be of a colour that does not show dirt or grime easily.
- vi) Furniture for all establishments is to be kept in a clean, hygienic and safe condition at all times.
- vii) Umbrellas are to be securely anchored, however permanent anchoring is not permitted.
- viii) Chairs must not be placed with their backs to the kerb.
- ix) All furnishings are the responsibility of the proprietor,
- x) All furnishings are to be removed from the public domain and stored elsewhere outside of trading hours.

3.5 Heating Structures

Any proposal to use heating structures within outdoor dining areas will be assessed on merit with consideration given to footpath width, type, number and location of heating structures proposed. Particular attention will be given to the safety of the diners and the public.

All gas heating structures must adhere to *Australian Standard 4565 – Radiant Gas Heaters for Outdoor and Non-residential Indoor Use*

3.6 Toilet Facilities

Toilet Facilities must be provided in accordance with the provisions and standards of the Building Code of Australia.

If additional sanitary facilities are proposed, a Development Application for such works must be lodged for consideration by Council. The use of the public area must not commence until such time as the necessary consent is obtained from Council and the sanitary facilities are constructed and operational.

3.7 Lighting

Any outdoor dining area licensed to operate outside daylight hours must be adequately lit to Council's satisfaction to ensure the safety and amenity of patrons and the general public. Lighting of any outdoor dining area must be:

- i) in the form of down lights or the like;
- ii) be directed away from the roadway;
- iii) contained to the outdoor dining area only; and
- iv) turned off outside the operating hours of the premises.

3.8 Advertising and Signage

Advertising on outdoor dining furniture or footpath trading activities that is associated with the café/restaurant or retail premises is permitted by Council in accordance with the following guidelines:

- i) The third party advertising of one (1) advertiser only may appear on the furnishings of the area.
- ii) Details of third party advertising on outdoor dining furnishings must be submitted to Council with the application for a permit.

Note: A-Frame signs and other forms of advertising signs not permissible under *DCP 28 – Advertising Signs* are prohibited.

3.9 Planter Boxes

Planter Box styles proposed for use within outdoor dining areas will be assessed by Council on merit with consideration given to footpath width, type and location of the planter boxes proposed. Planter boxes:

- i) must be located within the permit area;
- ii) must maintain a minimum unobstructed footpath width of 1.8 metres at all times between the outdoor dining area and the building;
- iii) must be located so as not to obstruct pedestrian flow; and
- iv) must be planted to the satisfaction of Council;
- v) must be well maintained; and
- vi) must be removed from the outdoor dining area and stored elsewhere outside trading hours.

Note 1: No advertising will be permitted on planter boxes.

Note 2: Refer to Appendix A for examples of how to apply numerical standards.

Note 3: Council reserves the right to order the removal of planter boxes that are not properly maintained.

3.10 Associated Works

In some cases, the applicant may wish to undertake streetscape works to accommodate an outdoor dining area. Such works may include street tree planting, landscaping, pedestrian lighting etc. Any such works require a specific approval by the Council and may require development consent.

Please contact Council's Technical Services Department to discuss this.

3.11 Public Health and Safety

The proprietor is to ensure that the requirements of *Australian Standard 4674 – 2004 Design, Construction and Fit-out of Food Premises* are met in full. Each licensee is responsible for the cleanliness and tidiness of the area in front of the premises and the immediate surrounds used for outdoor dining. Tables must be cleaned of food scraps immediately after customers leave so as not to attract birds or vermin. All debris must be swept up and disposed of appropriately.

The proprietor of the restaurant is responsible for maintaining and storing all furniture items and is to ensure that the furniture is kept neat, tidy and clean when in use. After close of business, all furniture must be removed from the footpath/plaza/public area and the area should be swept and stains removed.

Note: Debris must not be swept into the gutter. This action constitutes a pollution offence for which penalties may be incurred.

4 FOOTPATH TRADING ACTIVITIES

4.1 Footpath Trading Activity Locations:

The space directly in front of the retail premises is allocated to that shop. Footpath trading activities must be established in accordance with the following guidelines:

- i) Footpath trading activities must be located on a safe, stable, hard surface that is sufficiently level to provide adequate stability to display stands.
- ii) Supervision of trading activities / goods must be possible from the shop.
- iii) A minimum footpath width of 1.8 metres from the building must be maintained for public access.
- iv) The location of the footpath trading activity shall be consistent with any footpath trading activity or outdoor dining area at an adjoining premises.
- v) No footpath trading activity shall be located within 3.0 metres of any road corner, bus stop or taxi stand.
- vi) The footpath trading activity shall have a depth not greater than 1.0 metres.
- vii) The footpath trading activity is not to extend beyond the side property boundary of the premises.
- viii) The footpath trading activity is not to obstruct access to the premises.
- ix) The footpath trading activity is not to create litter, rubbish or other form of degradation of the footpath.
- x) Footpath trading activities (including display stands) may not be anchored.
- xi) The lodged application must show the intended location of display stands and structures.

Note: Refer to Appendix A for examples of how to apply numerical standards.

4.2 Merchandise Displayed on Footpaths

The following types of merchandise may **not** be displayed on footpaths, plazas or public areas:

- liquor
- drugs
- tobacco

- unpackaged food (excluding whole fruits or vegetables)
- gases (eg. Liquid Petroleum Gas [LPG] canisters)
- corrosives (eg. car batteries)
- oxidising materials (eg. paint stripper)
- explosives (eg. boat flares)
- flammable liquids

Note: This list is not exhaustive. Council reserves the right to order the removal of any merchandise considered to be a risk to the health and safety of the public and environment at any time.

4.3 Display of Goods on Footpath

When displaying goods on a footpath:

- i) Fresh food must be kept at least 750mm above the footpath.
- ii) All goods must be displayed on stands, racks or in containers above the level of the footpath, unless goods to be displayed are designed in a manner intended to allow for placement on the ground.
- iii) White goods may not be displayed on the footpath.
- iv) No advertising using amplification or persons calling to the public may be undertaken in association with the display of goods.
- v) No food may be cooked, processed or prepared for consumption within the leased area of footpath.

4.4 Display Stands

When using display stands on footpath areas to present goods, the following conditions apply:

- i) All goods are to be presented on display stands approved by Council.
- ii) Display stands are to be aesthetically pleasing, durable, well finished, secure and solid-to-ground at the base.
- iii) Materials and finish of display stands must be weather-resistant.
- iv) Edges and corners must be finished so as not to cause any injury to a passer-by.
- v) All display stands are to be custom made and/or designed for the goods being displayed.
- vi) All goods on display must be adequately secured to the display stand on which they are presented.

5 GENERAL CONSIDERATIONS

5.1 Hours of Operation / Noise Impacts

The hours of operation will generally be the same as the hours approved under the development consent for the premises unless a lesser period is determined due to environmental considerations.

An application for an outdoor dining area or footpath trading activity will not be approved under this Policy if the proposal is of such a scale that the noise generated will have a significantly adverse effect upon nearby residential properties.

5.2 Insurance

Proprietors of the premises must maintain a minimum \$20 million public liability insurance for utilisation of the footpath area and are required to provide evidence of that cover with their application and whenever required by Council.

5.3 Conduct of Patrons

The appropriate conduct of patrons is the responsibility of the permit holder.

5.4 Work on Council Footpaths / Plazas / Public Areas

Permit holders can not claim for any loss of income or refund of permit fees as a result of works carried out by Council or other Service Providers on Council owned footpaths, plazas and public areas.

5.5 Outdoor Dining and Footpath Trading Activity Permit Application Requirements

Applicants are required to complete and submit to Council an application form to conduct activities covered by this policy. Application forms are available from Council's Customer Service Centre.

5.6 Renewal of Permit

The permit must be renewed on an annual basis before the arrival of the renewal date.

It is the permit holder's responsibility to ensure the renewal of the permit before the arrival of the renewal date.

If the renewal is not made by this date, the activity is to cease until the permit is re-approved.

5.7 Rental Fees

Application and Rental Fees will be charged in accordance with Council's current Fees and Charges Schedule, which is reviewed by Council on an annual basis.

Note 1: Payment of Rental Fees will only be required following the approval of the application.

Note 2: Payment must be made in full before a permit can be issued.

5.8 Modification or Early Termination of a Permit

Should Council consider it within the public interest to do so, Council may terminate or cancel a permit to use a footpath, plaza or public area or have the agreed conditions of the permit modified at any time in order to maintain optimal pedestrian movement patterns or preserve the amenity of the area.

Council may also terminate a permit at any time if all or part of the permit area is required for road construction.

In any of the above circumstances, reasonable notice shall be given before the change becomes effective.

5.9 Breaches of Consent

Council may terminate a permit for breaches of the agreed conditions of the permit

or the requirements of this policy. Repeated breaches will result in termination of the permit agreement.

Breaches of consent include but are not limited to:

- non-payment of rental fee;
- encroachment beyond permitted outdoor dining area and footpath activity area; and
- non-compliance with the approved permit and the controls set out in this Policy

5.10 Council Contact

Persons making enquires regarding this Policy are advised to contact Ku-ring-gai Council's Customer Service Centre on 9424 0888.