



# OUTDOOR DINING POLICY P3.0104.2

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## PART 1 – INTRODUCTION

### 1. BACKGROUND

- 1.1 This policy is developed to outline the use of footpaths for outdoor dining purposes with clear guidelines to achieve amenable outdoor dining areas that are aesthetically pleasing, safe and practical.

### 2. OBJECTIVE

The objectives of the policy are:

- 2.1 To facilitate outdoor dining on Council controlled footpaths and foster improvement in the street vitality, amenity and economic viability of Camden's business zones.
- 2.2 To permit use of public space for private gain where the use is shown to be in the public interest.
- 2.3 To provide clear guidelines for applicants, staff, Council and the community with respect to Council's expectations in relation to outdoor dining.
- 2.4 To set a high standard for accessibility and public safety for all including people with disabilities within and around outdoor dining activities.
- 2.5 To ensure that adequate, sheltered and safe space is maintained for pedestrian access and circulation.
- 2.6 To ensure that outdoor dining areas are maintained in a clean, healthy and tidy manner and remain attractive elements of the civic space.

### 3. SCOPE

- 3.1 This policy applies to all outdoor dining applications on land which is controlled by Council under the *Roads Act 1993* (roads and footpaths) within the Camden Local Government Area.

### 4. DEFINITIONS

- 4.1 **Authorised Officer** means a Council officer with the delegated function to approve Outdoor Dining Applications.
- 4.2 **Outdoor Dining Area** means an outdoor place on Council controlled footpaths, the principal purpose of which is to provide food or beverage for public consumption in association with an adjacent approved food business.

## PART 2 - POLICY STATEMENT

### 5. REQUIREMENTS

#### 5.1 Approval

Council approval must be obtained for an outdoor dining area.

## **5.2 Key Legislation**

The *Food Act 2003* also applies in relation to the operation of outdoor dining areas as food premises. The *Liquor Act 2007* applies if there is a proposal for the service of alcohol.

## **5.3 Compliance**

Outdoor dining areas should comply with the guidelines contained in this policy. Council however will assess applications for alternative arrangements where the applicant can demonstrate that, on the merits of the individual case, the alternative arrangement will better achieve the objectives of this policy.

## **5.4 Assessment**

In assessing these applications, Council will take into account:

- 5.4.1 Pedestrian circulation, continuous accessible path of travel (including for people with a mobility or visual impairment) and vehicular circulation
- 5.4.2 The existing civic character, heritage, street qualities and function
- 5.4.3 Available area for outdoor dining, including width of footpath and public spaces
- 5.4.4 Proximity to associated approved food business and access points to nearby businesses
- 5.4.5 Siting and design of any existing outdoor dining in the locality
- 5.4.6 The interests and concerns of groups already using the street, and
- 5.4.7 Proximity to residential areas.
- 5.4.8 Whether the site is suitable for outdoor dining.

## **5.5 Making an Application**

- 5.5.1 Applicants for an outdoor dining area must submit an Outdoor Dining Application Form, which is available from Council's Customer Service Centre and Council's website [www.camden.nsw.gov.au](http://www.camden.nsw.gov.au).
- 5.5.2 Prior to lodging an application, applicants are advised to contact Council to ensure that necessary plans, details, fees and insurance certificates are satisfactory for submission to Council.

## **5.6 Permanent Structures**

- 5.7.1 The erection of permanent structures and awnings in outdoor dining areas will not be approved unless in the context of an integrated streetscape design prepared by Council.

## **5.7 Roads and Maritime Services (RMS) Requirements**

5.7.1 Applications for an outdoor dining area on a classified road or adjacent to traffic control signals will require concurrence/approval from the RMS.

5.7.2 This concurrence/approval will be arranged by Council officers for applications to which these requirements apply.

## **5.8 Liquor Licence**

5.8.1 A liquor licence needs to be obtained prior to the consumption of alcohol within an outdoor dining area from the relevant authority.

5.8.2 An applicant must secure an outdoor dining approval from Council prior to applying for a liquor licence for the outdoor dining area from the relevant authority.

5.8.3 If approved, alcohol shall not be served without a meal service.

## **6. LOCATION AND SITE GUIDELINES**

### **6.1 Associated Premises**

6.1.1 An outdoor dining area application will only be considered where:

- a) It is associated with an adjacent approved food business, and
- b) The applicant is the owner or proprietor of that food business.

6.1.2 Hours of operation for the outdoor dining area shall be in accordance with the hours of operation for the adjacent associated food premises.

### **6.2 Site Requirements**

6.2.1 An outdoor dining area is only appropriate where:

- a) The public space is wide enough to accommodate the outdoor dining area while still maintaining a clear pathway for all pedestrians including those using mobility aids
- b) The ground surface of the outdoor dining area is suitably constructed, sealed and sufficiently level to accommodate the outdoor dining furniture, and
- c) The area may be used safely by and without inconvenience to pedestrians, diners or vehicular traffic.

### **6.3 Neighbourhood Amenity**

6.3.1 The location and operation of outdoor dining areas must take into consideration the amenity of neighbours and other users of the public space.

6.3.2 The use of the area shall not give rise to any nuisance to adjoining properties or offensive noise as defined in the *Protection of the*

*Environment Operations Act 1997.* Amplified music is not allowed to be played within the outdoor dining area.

- 6.3.3 No entertainment shall be permitted within the outdoor dining area without the consent of Council.

## **7. PLACEMENT GUIDELINES**

### **7.1 Delineation of Outdoor Dining Areas**

- 7.1.1 An outdoor dining area is to be clearly marked and operated within the approved area (as determined by Council).
- 7.1.2 The boundary markers of the outdoor dining area shall be installed and maintained by Council after approval is granted.
- 7.1.3 The markers that identify the boundary of the outdoor dining area must not be removed or their position altered without Council's prior written approval.
- 7.1.4 An outdoor dining area may be permitted to extend outside adjoining premises provided the written consent of the owner and tenant/proprietor are obtained and approval is obtained from Council.
- 7.1.5 The person who has been granted approval must discontinue using the extension of an outdoor dining area (at their own cost) and remove all furniture and other improvements if the owner or the tenant/proprietor of the adjoining premises withdraws consent to the extension for any reason.
- 7.1.6 Outdoor dining areas must be visible from the adjacent approved food business.

### **7.2 Access and Enclosure Requirements**

- 7.2.1 An outdoor dining area should:
- a) Provide an unobstructed pedestrian path of travel of at least two metres wide, generally adjacent to the building alignment, along the footway to ensure a continuous path of travel for those using the footpath
  - b) Generally be located adjacent to the road kerb to allow for continuous easy movement of pedestrians along the footpath, browsing in shop windows, entry into shops and ease of movement for people with vision impairment or other disabilities
  - c) In general, maintain a minimum clear width of one metre, exclusive of any obstruction or street fixtures (e.g. bench, bollard, barrier, tree, rubbish bin, pole, etc.) to provide access for pedestrians and persons using a mobility aid; in special circumstances (e.g. high-volume pedestrian or traffic areas, such as near busy intersections), greater widths if required
  - d) At street intersections, provide a setback of at least two metres from the kerb, exclusive of any obstruction or street fixture (e.g. bench, tree, rubbish bin, pole etc.)

- e) Where vehicles are permitted to park against the kerb, be at least 0.8 metres from the kerb edge for safety considerations and to enable passengers to alight from and access parked vehicles
- f) Consist of a minimum 0.8 metre setback from any adjoining premises' door opening
- g) Not allow furniture, at any time to be placed outside the outdoor dining area (including while seats are being used) at any time
- h) Ensure that the layout and space of tables and chairs provides access and complies with safety standards at all times
- i) Provides a lightweight barrier (temporary, metal-framed fabric style or comparable) suitably enclosing the approved outdoor dining area

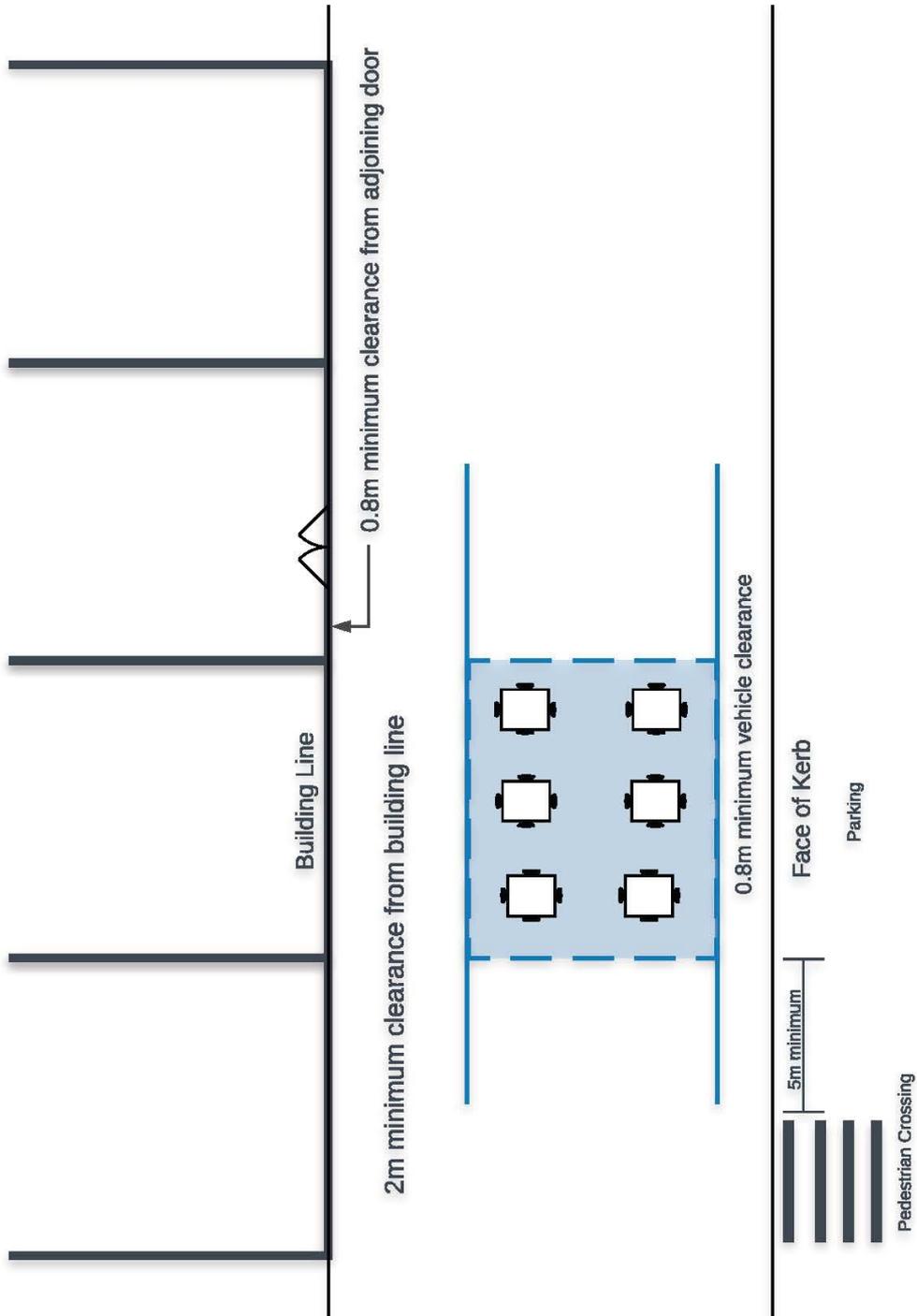
Note:

Such barrier shall be a minimum of 0.6 metres and a maximum of 1.2 metres high and charcoal in colour. The boundary furniture should have no sharp edges and any protruding feet must be contained wholly within the marked outdoor dining area. Safety rails and bollards etc. will be permitted where required for safety reasons.

- j) Not impede access to public utilities such as fire hydrants, access holes, inspection chambers, telephone and electricity underground cables, water service pipes and the like
- k) Conform to the RMS's requirements where relevant
- l) Not be located adjacent to bus stops, taxi zones, designated disabled parking spaces, construction zones and the like
- m) Not be located within five metres of any pedestrian crossing access point
- n) Not be located on both sides of the pedestrian access path unless the location has been purpose-built to accommodate placement of furniture or there is sufficient footpath width, and
- o) Be managed to ensure all items are kept clear of all required fire exits of the premises or of adjoining premises.

7.2.2 Outdoor dining areas may be approved against the shop front where, due to pedestrian crossings/site problems, they cannot be against the kerb and in otherwise favourable locations. Minor modifications of the nominated clearances may be appropriate subject to Council's approval.

# Plan of Preferred Site Layout



7.2.3 Planter boxes may not be included in an outdoor dining area without Council's prior written consent. The location of any planter boxes must be shown on all plans submitted to Council. Planter boxes may only be placed on the kerb side of the dining area and not between adjoining dining areas or between dining areas and pedestrian areas. In addition, planter boxes must:

- a) Not exceed 1.2 metres in length, 0.6 metres in width and 1.2 metres in height, including the plants
- b) Be located within the approved area at all times
- c) Not display any advertising
- d) Be planted and maintained to the satisfaction of Council, and
- e) Be removed from the outdoor dining area and stored outside trading hours.

7.2.4 Where applicants propose the use of a form of enclosure for outdoor dining areas, such as roll-up blinds and the like, the enclosures are:

- a) To be removed from the outdoor dining area and stored outside trading hours
- b) Not to be permanently rolled down (in the case of blinds), i.e. can be rolled up and down for use only in inclement conditions
- c) To be used around no more than two sides of the outdoor dining area

Note:

In the case of a row of outdoor dining areas, the enclosure should only be used on the perimeter of the entire row of outdoor dining areas so as not to work against the amenity of outdoor dining.

- d) Not to cause any obstruction to the minimum path clearance required for public access (including access for the disabled)
- e) Not to encroach on the roadway or be able to be blown onto the kerb edge/roadway area or pedestrian area
- f) Not to be located near any heating devices so as to cause a potential fire hazard
- g) To be securely fitted and installed to ensure that they withstand the effects of wind and further to be removed or closed in extremely windy conditions and removed when the outdoor dining is not in use
- h) Not to be fixtures that penetrate or damage the pavement on Council's footpaths
- i) Not to undermine the strength of the structure on which they are to be fitted, and
- j) Not to be used for the display of advertising.

### **7.3 Consumption of Alcohol**

- 7.3.1 Areas covered by footpath approvals issued by Council to licensed premises are exempt from Alcohol-Free Zone restrictions.
- 7.3.2 Footpath approved areas are covered by responsible service of alcohol provisions and therefore any alcohol-related anti-social behaviour is the responsibility of the premises' operator.
- 7.3.3 Where alcohol will be served within an outdoor dining area, the area will need to be clearly delineated to show where the licensed area ends and the alcohol-free zone begins.

### **7.4 Smoking**

7.4.1 The *Smoke Free Environment Act 2000* bans smoking in commercial outdoor dining areas from 6 July 2015 being:

- a) A seated dining area, or
- b) Within 4 metres of a seated dining area on premises that are licensed premises under the *Liquor Act 2007* or the premises of a restaurant as defined in that Act.

7.4.2 A seated dining area is:

- a) 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

Note:

The seating must have been provided by the occupier of the premises where the food is purchased or by the operator of the business from which the food is purchased.

- b) Only a seated dining area when food is being consumed there or is available to be purchased and consumed there
- c) Not a seated dining area if the area is designated as not being for the consumption of food by the display within the area of signs complying with the Regulations

7.4.3 The occupier of an area designated as not being for the consumption of food must take reasonable steps to ensure that the consumption of food does not occur in the area.

## **8. FURNITURE GUIDELINES**

### **8.1 Outdoor Furniture**

8.1.1 Outdoor furniture must be safe, comfortable, of sturdy construction, hygienic and designed for outdoor use. Surface tops should be non-reflective and be of a design that inhibits the collection of food particles.

- 8.1.2 Outdoor furniture, including but not limited to tables, chairs, planter boxes and barriers, must, at all times, be properly placed and confined within the outdoor dining area and shall not impact upon the safety of other users.
- 8.1.3 Items placed in the outdoor dining area must not cause damage to the existing footway or other public infrastructure. The outdoor dining operator is responsible for any damage caused to third parties.
- 8.1.4 It is the responsibility of the outdoor dining operator and employees to ensure that patrons do not move furniture outside the boundaries of the outdoor dining area.
- 8.1.5 No outdoor furniture is to be permanently fastened to the footway.
- 8.1.6 All items must be removed from the outdoor dining area upon completion of trading each day and stored within the adjacent approved food business.
- 8.1.7 Outdoor dining areas on footways and public spaces to which vehicular traffic has access must be protected by approved barriers.
- 8.1.8 No outdoor furniture or other items, other than those approved by Council, are permitted within the outdoor dining area.

## **8.2 Furniture Colour Scheme**

- 8.2.1 The design and colour should make a positive contribution to the street environment and complement the surrounding streetscape.
- 8.2.2 A single style and colour scheme must be selected for tables and chairs, umbrellas and edge furniture to provide consistency and identity.

## **8.3 Umbrellas and Shade Structures**

- 8.3.1 Umbrellas and shade structures must be anchored to ensure that they are secured to withstand the effects of wind. Fixtures that penetrate or damage Council's pavement will not be permitted.
- 8.3.2 The device used to anchor the umbrella must not present a trip hazard.
- 8.3.3 Umbrellas must not encroach on or interfere with pedestrian or vehicular movement.
- 8.3.4 Umbrellas and shade structures must be at least 2.2 metres above the ground level at the lowest point and be contained wholly within the outdoor dining area.
- 8.3.5 Umbrellas and shade structures must be manufactured from fire-retardant material if adjacent to a heating device.
- 8.3.6 Umbrellas must be removed or closed in extremely windy conditions and must be removed when the outdoor dining area is not in use.
- 8.3.7 Umbrellas must be maintained in sound and aesthetically-acceptable condition to the Council's satisfaction.

## **8.4 Heating Devices**

- 8.4.1 Free standing heaters located within outdoor dining areas must comply with Australian Standard AS 1596 (Storage and Handling) and must be certified by the Australian Gas Association.
- 8.4.2 Heating devices must be contained wholly within the outdoor dining area.
- 8.4.3 Heating devices must be positioned and secured to ensure that they will not cause any injury. Outdoor dining operators are responsible for any damage caused.
- 8.4.4 Access to the gas mains and use of electrical extension cords are not permitted.

## **8.5 Advertising and Signage**

- 8.5.1 The name of the associated food business or logo may be placed on outdoor umbrellas only and no other items of furniture (unless the written consent of Council has been obtained) and only if it:
  - a) Identifies the café or advertises products which are a core part of the food business and are supplied by the business to the public
  - b) Involves only one product or business name being advertised
  - c) Is in the nature of a corporate logo or identification, and
  - d) Is of a minor and integral element of the furniture design and does not have an excessive impact on the outdoor dining area or the streetscape.

## **8.6 Animals**

- 8.6.1 Animals are permitted within the outdoor dining area under the *Companion Animals Act 1998*. All requirements of the *Companion Animals Act 1998* must be met including:
  - a) The dog being under effective control by way of chain, cord or leash
  - b) The person in charge of the dog not feeding the dog or permitting the dog to be fed, and
  - c) The dog being kept on the ground.

8.6.2 The outdoor dining operator reserves the right to refuse animals within the approved area.

## **9. MANAGEMENT ISSUES**

### **9.1 Approval Conditions**

- 9.1.1 Council will charge a fee for the use of the footpath as an outdoor dining area. Application fees and annual rental fees are as set out in Council's Fees and Charges Schedule.
- 9.1.2 It is the responsibility of the outdoor dining operator to meet all the conditions of approval.
- 9.1.3 All requirements of the food safety standards adopted under NSW legislation are to be fully met.
- 9.1.4 The outdoor dining operator shall take all reasonable precautions to ensure the good conduct of employees and patrons of the outdoor dining area.
- 9.1.5 An approval may be granted for a period up to seven years and shall conclude at the end of the approval period.
- 9.1.6 An existing approval cannot be extended. To obtain a new approval, a new application will be required.
- 9.1.7 Council will not be responsible for any costs, expenses or losses if public infrastructure needs to be accessed.
- 9.1.8 Council may revoke an approval or amend the approved area due to footway layout being altered (e.g. road works or streetscaping works).
- 9.1.9 An approval lapses if the adjacent approved food business ceases to trade.
- 9.1.10 Approvals are transferable provided Council is notified and proof of an acceptable current Public Liability Risk Insurance Certificate for the new proprietor is submitted to Council.
- 9.1.11 Despite any provisions of this policy, Council may amend any approval to meet legislative requirements or altered circumstances at specific sites at any time.

## **9.2 Insurance Requirements**

- 9.2.1 The applicant/operator for an outdoor dining approval is to indemnify Council against any action taken against it by persons suffering any loss or injury as a result of the existence or operation of the outdoor dining area.
- 9.2.2 Public risk insurance must be taken out and maintained by the approval holder of the food business to the minimum value of \$20 million or any other amount as Council may stipulate from time to time (for each accident or event) with Council noted on such policy as an interested party.
- 9.2.3 The outdoor dining approval holder is required to lodge a copy of the policy with Council prior to the placement of furniture within the approved outdoor dining area.
- 9.2.4 A Certificate of Currency is required to be furnished to Council annually or on renewal of the insurance and with each outdoor dining renewal application.

### **9.3 Cleanliness and Maintenance**

- 9.3.1 The outdoor dining area, furniture, facilities and the pavement must be maintained in a clean and tidy condition at all times, free from food scraps, refuse and disfigurement etc.
- 9.3.2 Food must not be cooked or prepared in the outdoor dining area.
- 9.3.3 No equipment ancillary to food service eg cutlery, condiments etc are to be stored within the outdoor dining area.
- 9.3.4 The approval holder must also maintain the adjacent areas and keep them free of any waste generated by the activity within the approved area.
- 9.3.5 The approval holder must have suitable arrangements for a commercial waste collection service for waste to be disposed of (not to street bins).
- 9.3.6 The approval holder is to bear the cost of all pavement repairs which have been caused by the outdoor dining activities. Such damage will be repaired by Council at the approval holder's cost.

### **9.4 Toilet Facilities**

- 9.4.1 Inclusion of outdoor dining increases the number of seats to a cafe or restaurant and as such may require an increase in the provision of toilet facilities. Approval holders must ensure that toilet facilities are made available to patrons (inside and outside) in accordance with the requirements of the National Construction Code Series (Building Code of Australia).

### **9.5 Non-compliance**

- 9.5.1 The use of an outdoor dining area will be reviewed if the use is not in accordance with the approval conditions.
- 9.5.2 The use of an outdoor dining area without approval or not in accordance with an approval is an offence and may result in the issue of a warning notice or other enforcement action.
- 9.5.3 Authorised Officers may provide a direction/order either verbally or in writing. Where possible, verbal notices will be followed up by a written notice.
- 9.5.4 The business owner, outdoor dining operator and persons employed by the business owner or operator must comply with any direction/order given by an Authorised Officer with respect to the outdoor dining area.
- 9.5.5 Authorised Officers are empowered to issue a direction/order (verbally or in writing), revoke an approval and remove furniture from an outdoor dining area in the case of a threat to health and safety or where the approval holder does not cease to use the site or does not remove the furniture and restore the site when requested (at the approval holder's expense).

- 9.5.6 An approval may be revoked by Council at any time for failure to comply with a direction/order given by an Authorised Officer or for a failure to comply with any condition of approval or policy.
- 9.5.7 Pedestrian movement patterns will be continuously monitored and may lead to a variation or revocation of an approval at any time should Authorised Officers consider it to be in the public interest to do so. In these circumstances, reasonable notice should be given to the approval holder and a reasonable period of time will be provided before the notice becomes effective. Generally, a reasonable period of notice will be five working days. This period of notice may however be shortened if the particular circumstances warrant the urgency. The provision of notice will not apply where, in the opinion of the Authorised Officer there is an imminent threat to the health and safety of the community.
- 9.5.8 If, in the opinion of an Authorised Officer, there is an imminent threat to the health and safety of the community (eg. pedestrian and vehicular traffic hazards, wind blown items etc), the business owner, operator or employee must take immediate action to any direction/order issued by an Authorised Officer. Should the business owner, operator or employee fail to take immediate action, an Authorised Officer may remove all furniture and take all necessary action required to eliminate the health and safety threat in respect of the outdoor dining area at the approval holder's expense.
- 9.5.9 Any approval issued under this policy is subject to any relevant legislative requirements including but not limited to the *Food Act 2003*, *Liquor Act 2007*, *Local Government Act 1993*, *Companion Animals Act 1998*, *Smoke Free Environment Act 2000*, *Work Health and Safety Act 2011*, *Impounding Act 1993* and National Construction Code Series (Building Code of Australia).

□ \* \* \*

**RELEVANT LEGISLATIVE INSTRUMENTS:**

*Roads Act 1993*  
*Environmental Planning and Assessment Act 1979*  
*Local Government Act 1993*  
*Food Act 2003*  
*Liquor Act 2007*  
*Companion Animals Act 1998*  
*Work Health and Safety Act 2011*  
*Smoke Free Environment Act 2000*  
*Impounding Act 1993*  
*Protection of the Environment Operations Act 1997*  
*National Construction Code Series (Building Code of Australia)*

**RELATED POLICIES, PLANS AND PROCEDURES:**

**RESPONSIBLE DIRECTOR:**

Director Customer and Corporate Strategy

**APPROVAL:**

Council

**HISTORY:**

<b>Version</b>	<b>Approved by</b>	<b>Changes made</b>	<b>Date</b>	<b>EDMS Number</b>
1	Council	New policy	14/10/2014	15/216546
2	Council	Minor amendments		