

# Chapter B14 – Use of Public Areas for Outdoor Dining

## 1.0 Introduction

### 1.1 Scope of this Chapter

This Chapter applies to all publicly owned land in the Kempsey Shire local government area.

### 1.2 Relationship to Other Chapters of this DCP

The provisions contained in Chapters included in Parts C, D, E and F of this DCP override the provisions of this Chapter to the extent of any inconsistency.

## 2.0 Chapter Objectives

The objective of this Chapter is:

- a) To facilitate outdoor dining associated with restaurants and cafes in a manner which does not adversely impact on other users of public land or place any undue financial burden on the community as a result of increased demand for public facilities and services.

## 3.0 Guidelines

### 3.1 Relationship to Other Documents

#### 3.1.1 Council Policies

At the time of adoption of this DCP, the following Council Policy is related to the requirements of this chapter:

- Council Policy No. CPOL-46: Leasing of Public Areas for Restaurants and Cafes

Council Policies and Procedures are subject to periodic review. Consequently, it is advised to regularly check Council's website for updated Policies and Procedures.

After Development Consent has been obtained, Council Policy No. CPOL-46: Leasing of Public Areas for Restaurants and Cafes requires the proponent to enter into a lease agreement with Council, including payment of annual rental, prior to the use of the outdoor dining area.

#### 3.1.2 Developer Contributions

Development Contributions will be triggered by applications for outdoor dining, through:

- Current Section 94 Contribution Plans; and
- Current Section 64 Development Service Plans.

A copy of Council's [Contributions Plans](#) are available on Council's website and will need to be reviewed to determine their applicability to each development application. Current fees and charges may be calculated by applying annual CPI to the listed contribution rate, or by contacting Council.

When applying a condition of consent requiring contributions to be paid, Council may provide an option to make payments at a rate of 10% per annum.

### 3.2 Statutory Requirements

A Development Application is required to be submitted for the use of all footpaths, and public reserves for the purposes of Food and Drink Premises seating.

Applications can only be accepted for the use of a public road where approved Food and Drink Premises are permissible in the zone within which that portion of road is located.

A separate approval in accordance with Section 125 – Approval to Use Footway for Restaurant Purposes of the *Roads Act 1993* will be required in addition to any required development consent.

### 3.3 Information to be Submitted with a Development Application

All development applications must be accompanied by:

- a) A written Statement of Environmental Effects (SEE) describing.
- b) Four (4) copies of a site plan (to scale) detailing:
  - i) The proposed location of tables and chairs;
  - ii) The exact number of tables and chairs proposed;
  - iii) The locations of any nearby street furniture, plantings, bus stops, garbage bins, etc, and any entrance or doorway of any adjoining building/s; and
  - iv) All dimensions and distances, such as the width and breadth of the dining area, the distance from adjoining building and street curb, and the minimum trafficable space reserved for pedestrians.
- c) Development application fees, in accordance with Council's current Schedule of Fees and Charges, including the following components:
  - (i) The development application fee;
  - (ii) Concurrence agency fees - Concurrence will be required from the NSW Government roads agency for such uses on any classified road;
  - (iii) The *Roads Act 1993* application fee; and
  - (iv) Additional/public notification fees, where required.

### 3.4 Public Notification

Where proposals have the potential to adversely impact on any adjoining premises, the Development Application will be advertised for public comment for a period of not less than fourteen (14) days. Such advertising will include written notification to likely affected neighbours and be advertised in a locally circulating newspaper.

## 4.0 Development Requirements

### 4.1 Maintain Use of Pedestrian Footpath and On-Street Car Parking.

#### Desired Outcomes

DO1 - A practical footway is maintained through the public area for outdoor dining.

DO2 - Seating is located so that it does not interfere with the rights of any member of the public to the use of public land.

#### Development Requirements

- a) Seating must be located so as to maintain a practical footway area with a minimum effective width of 2.0 metres. Where the street is considered by Council to be a high pedestrian traffic area, the minimum effective width must be increased to 2.4 metres.
- b) Carparking required as a result of increased seating capacity is to be provided at the rate specified by [Chapter B2 – Parking, Access and Traffic Management](#).
  - (i) Where additional carparking cannot be provided on site, Council will consider allowing lesser numbers of car parking spaces where it can be demonstrated that the calculated carparking spaces are not required in the area. Demonstrating that a lesser number of carparking spaces is appropriate is entirely the responsibility of the applicant, and Council reserves the right to require the full number of carparking space to be provided.

### 4.2 Accessibility and General Safety

#### Desired Outcomes

DO1 - Seating must be located so as not to pose a risk to the health or safety of patrons.

**Development Requirements**

- a) Seating is to be arranged to accommodate the circulation spaces around doorways required for disabled access as stipulated in Australian Standards and access legislation/guidelines relevant at the time.
- b) Seating is to be located so as to provide adequate clearance around access points required for fire egress/ingress in accordance with the requirements of the Building Code of Australia.

**4.3 Visual Impact****Desired Outcomes**

DO1 - Seating and other furniture is not to have an adverse visual impact on the streetscape.

**Development Requirements**

- a) All furniture must be located within the width of frontage of the premises.
- b) Seating is to be of a reasonable quality and be maintained in a reasonable condition.

**4.4 Use of Premises and Amenity****Desired Outcomes**

DO1 - The use of public areas for outdoor dining does not have an adverse impact on the amenity of neighbouring land uses.

DO2 - The outdoor dining area directly adjoins the Food and Drink premises it is associated with.

**Development Requirements**

- a) Noise generated from the outdoor dining area does not exceed the relevant noise control limits to the nearest sensitive receivers.
- b) The hours of operation are limited, where required, to ensure that adverse noise impacts are not experienced by neighbouring land uses.
- c) The amenity of neighbouring land uses is not adversely affected by inappropriate behaviour from patrons (eg. drunkenness).