

<b>POLICY:</b>	FOOTPATH RESTAURANTS
<b>DATE ADOPTED:</b>	Director Environmental, Planning & Building Services Report #1 Policy 3 February 2010 Council 17 February 2010 Minute Book No. 10857
<b>ORIGINAL ADOPTION:</b>	Director Environmental, Planning & Building Services Report #7 Council 31 January 2007 Minute Book No. 10040
<b>FILE REFERENCE:</b>	20.00035
<b>OBJECTIVE:</b>	To establish guidelines for the commercial use of public areas

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## 1. INTRODUCTION

Bathurst Regional Council recognises the benefits of commercial use of public areas and its contribution towards the overall streetscape atmosphere. Outdoor eating gives people the opportunity to enjoy the outdoor urban environment.

This policy has been formulated by Bathurst Regional Council under the powers contained within Part 9 Division 1 section 127 of the Roads Act 1993 as amended.

“Division 1 Footway Restaurants”

### 125 Approval to Use Footway for Restaurant Purposes

1. A Council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road (being a public road that is vested in fee simple in the Council) to use part of the footway for the purposes of the restaurant.
2. An approval may be granted on such conditions (including conditions as to payments in the nature of rent) as the Council determines.
3. An approval may not be granted in respect of a footway of a classified road except with the concurrence of the RTA.
4. The term of an approval is to be such period (not exceeding 7 years) as is specified in the approval.
5. An approval lapses at the end of its term or, if the part of the footway the subject of the approval ceases to be used for the purposes of a restaurant, when that use ceases.

### 126 Authority to Erect Structures

1. A Council may authorise the holder of an approval to erect and maintain structures in, on or over any part of the footway the subject of the approval, or may, at the request and cost of the holder of the approval, erect and maintain any such structure.

2. The Council may erect and maintain structures in, on or over any part of the footway the subject of an approval for the protection of public health and safety.

## **127 Effect of Approval**

While an approval is in force:

1. The use of the footway for the purposes of a restaurant; and
2. The erection and maintenance of structures on the footway in accordance with an authorisation given in respect of the approval are taken not to constitute a public nuisance and do not give rise to an offence against this or any other Act.

### **2. AIM**

- 2.1 The aim of this policy is to provide a consistent city wide policy that ensures quality aesthetically pleasing, safe and practical footpath restaurant.
- 2.2 The policy also provides a clear procedure on how to apply for footpath restaurant approval and comply with the appropriate standards.

### **3. BENEFITS**

- 3.1 The provision of outdoor living opportunities like footpath restaurants encourages urban regeneration, boosts trade for other retailers and enriches the city's image and lifestyle.
- 3.2 The Footpath Restaurants Policy applies to all outdoor seating areas on public land where any food and alcoholic or non-alcoholic refreshments are served to patrons.

### **4. APPROVALS FOR FOOTPATH RESTAURANTS**

- 4.1 An approval of Council is required prior to the operation of any footpath restaurant.
- 4.2 An application is to be accompanied by the following:
  - (a) An application form, ensuring that plans showing estimated area are included.
  - (b) Photograph and/or specifications of proposed furniture.
  - (c) Clear scaled plan of the proposed layout of the furniture including the location of existing fixed street furniture such as bins lighting poles fixed road signs.
  - (d) Details of the proposed hours of operation.
  - (e) Written evidence of appropriate public liability insurance.
  - (f) Fees in accordance with Council's current schedule for fees and charges.
  - (g) Council will consider each application on its merits and as per guidelines set out in this document.

#### **If the Application is Approved**

- (a) Applicant advised of approval.
- (b) Council's consent will be limited to 12 months.
- (c) The annual licence fee is to be paid prior to commencement of operations.
- (d) Permits are issued on a financial yearly basis, ie 1 July to 30 June.

#### **If the Application is Refused**

- (a) Council will advise the applicant, in writing, that the application is refused.
- (b) Application fee will not be refunded.
- (c) Private use of footpath will not be permitted.

## **5. INFORMATION FOR FOOTPATH RESTAURANT/OUTDOOR SEATING PERMIT APPLICATION**

### **5.1 Urban Design Guidelines**

5.1.1 The aim of the urban design guidelines is to enhance the character and vitality of the area and prevent safety hazards and access problems. This also means that the Laws of the Commonwealth Disability and Discrimination Act need to be adhered to.

5.1.2 A footpath restaurant may be approved in any public area where the local conditions are favorable for it to operate.

5.1.3 Footpath restaurants are not permitted in potentially hazardous areas as corners of street intersections, however some areas may be considered on merits if safety issues are adequately addressed.

5.1.4 The following design considerations are taken in to account when an application for a footpath restaurant is assessed:

- (a) Pedestrian and Vehicular circulation.
- (b) Safety and convenience of patrons and public.
- (c) Existing streetscape elements.

### **5.2 Circulation**

5.2.1 An unobstructed passage for pedestrian movement of at least 2.0 metres wide in low pedestrian areas and 3.0 metres wide in high pedestrian areas shall be maintained at all times. Examples of high pedestrian areas include:

- (a) William Street between Durham and Russell Streets;
- (b) George Street between Howick and Russell Streets;
- (c) Keppel Street between Seymour and Bentinck Streets; and
- (d) Howick Street between Bentinck and George Streets.

5.2.2 Street furniture, plants, advertisement boards etc, are not permitted at any time in to this area.

5.2.3 The preferred location of a footpath restaurant is directly adjacent to the respective indoor facility, rather than separated by a pedestrian through gate.

### **5.3 Safety and Convenience**

5.3.1 All footpath restaurants must take patron's safety in to account.

### **5.4 Existing Streetscape Elements**

5.4.1 Where possible the footpath restaurant should visually relate and be visually aligned to the existing features and elements of the street, such as trees, lighting elements, bollards, etc.

## **6. FURNITURE GUIDELINES**

### **6.1 Layout**

6.1.1 The layout of the furniture should provide enough space and practicality to ensure patrons comfort and deter patrons from moving furniture outside the licensed area.

6.1.2 The furniture layout must conform to the approved layout at all times to ensure good circulation and safety in accordance with the abovementioned.

6.1.3 Barricade fencing and solid obstructing fencing will not be permitted.

6.1.4 Umbrellas or other shade structures may be provided for shade and shelter and must be well secured in place to prevent them from being blown by wind.

### **6.2 Furniture Style**

6.2.1 Tables, chairs and other furniture should be strong durable waterproof and weather resistant, designed for commercial outdoor use and serviceable.

6.2.2 Furniture must be stackable or foldable for storage purposes.

## **7. GENERAL MANAGEMENT ISSUES**

### **7.1 Maintenance**

7.1.1 All furniture of footpath restaurant must be physically and aesthetically maintained to Council's satisfaction.

### **7.2 Storage**

7.2.1 Outdoor furniture including shade umbrellas must be stored away from the public area outside hours of operation.

### **7.3 Hours of Service**

7.3.1 The hours which the applicant intends to place tables and chairs on the public area need to be stated in the application.

### **7.4 Rubbish and Cleaning**

7.4.1 The site and furniture must be kept free from discarded rubbish and dirt at all times.

7.4.2 Regular cleaning of the area including furniture is required and rubbish bins must be provided.

7.4.3 As with any restaurant, the outdoor eating area is subject to the N.S.W. Food Regulation 2001 and Food Safety Standards.

## 7.5 Toilet Facilities

7.5.1 The Building Code of Australia requires that:

- (a) access to toilet facilities must not be through any food preparation area.
- (b) if the premises and footpath dining allows for twenty or more patrons, toilet facilities (including a disabled toilet facility) must be provided.

## 7.6 Advertising and Signage

7.6.1 Only the name or logo of the restaurant may be placed on the outdoor furniture and may only appear as a minor element on the furniture.

## 8. APPROVAL CONDITIONS

Outlined below are some of the principle conditions that one would find in any Footpath Restaurant Licence. It should be noted that this list is not exhaustive and Council reserves the right to add, remove or amend these conditions.

### 8.1 Term

8.1.1 The length of approval will generally be twelve months. A letter will be issued to the applicant, advising of renewal then of the renewal process and the fees for the financial year.

### 8.2 Maintenance

8.2.1 The grantee of Approval will be responsible for all maintenance and replacement of outdoor furniture. The grantee of approval must keep the outdoor furniture in a physically sound, clean and aesthetically conditions to Council's satisfaction.

8.2.2 Any damage caused to Council's footway by outdoor furniture and facilities will be the responsibility of the grantee of Approval. Such damage will be repaired by Council at cost to the grantee of Approval.

### 8.3 Site

8.3.1 The grantee of approval must keep all outdoor eating furniture wholly within the site.

### 8.4 Indemnity

8.4.1 The grantee of approval will be required to indemnify Council against all actions, suits, debts, obligations, claims and other liabilities which may arise during the continuance of the approval.

### 8.5 Insurance

8.5.1 An approval for footpath restaurant shall not take effect until the applicant has provided Council with a copy of a public risk policy with a minimum value of \$10 million which contains the following clause:

“It is hereby agreed that the indemnity given by this policy is extended to the Bathurst Regional Council in respect to the operation of an approved footpath restaurant”.

## **9. FEES**

9.1 There is an approval fee for the use of a public road as a footpath restaurant plus an annual fee charged per square meter per annum and to be incorporated within Council schedules of fees and charges and set out in detail in the approval conditions.

9.2 Permits issued after 31 December of each financial year will be charged the annual fee on a pro rata basis.

9.3 These fees will be determined on an annual basis by Council in association with Council's annual review of its fees and charges schedule.

## **10. BUSINESS INTERRUPTION**

10.1 Council will not accept any responsibility or liability for any interruption to business caused by the need for Council or any other authority to carry out any type of maintenance work on the approved footway area, inclement weather or any other interruption to business whatsoever caused.

## **11. RENEWAL OF LICENCE**

11.1 Council will determine the length of the approval period and it will not normally exceed one year. If the use of the footpath as an outdoor eating area ceases, the approval will expire and you will need to reapply for consent.

## **12. IMPROVEMENT OF POLICY**

12.1 Council is aware that the business environment can change and that more efficient processes may become available. It is therefore important for the business community and public advice the Council on ways to improve the policy and to make it easier to understand. Please address your comments in writing to:

The General Manager  
Bathurst Regional Council  
Private Mail Bag 17  
Bathurst NSW 2795