

Division: Planning and Environmental Services

Program: Monitoring Services

File No: 42032.12

Date Adopted/Reviewed: August 2012

POLICY OBJECTIVES

- 1 The policy is to encourage, where considered appropriate, the establishment of outdoor seating associated with restaurants, cafes and the like.
- 2 The use of licensed outdoor seating areas should not cause inconvenience or disruption to pedestrian circulation, adjoining businesses or nearby residential areas.

CRITERIA ASSOCIATED WITH POLICY

- 1 Part 9 Division 1 Sections 125 and 126 of the Roads Act 1993.
- 2 Local Government Act 1993.
- 3 Environmental Planning and Assessment Act 1979.
- 4 Council's Guidelines for Outdoor Dining on Council Land ("**Guidelines**").
- 5 Building Code of Australia 2012.
- 6 Austroads Guide to Road Design Part 6A: Pedestrian and Cyclist Paths.
- 7 Council's Smoke Free Outdoor Environment Policy.

POLICY STATEMENT

Through this policy Council will encourage and monitor the use of licensed outdoor seating used in association with restaurants, cafes and the like.

GUIDELINES AND CONDITIONS

▪ Definitions

"**Council Land**" means that part of a public land that is designed for use by pedestrians such as footpaths, plazas and **Seating Platforms**.

"**Commercial Seating**" means seating associated with businesses such as restaurants, cafes and the like.

"**Seating Platform**" means a purpose built public area located adjacent to a footpath and designed specifically for outdoor seating.

"**Food Shop**" means a *Food and Drink Premises* as defined in the LEP or any other use that incorporates a substantial retail food business.

"**LEP**" means the *Marrickville Local Environmental Plan 2011*.

"**Licence Agreement**" means a licence granted by the Council for the occupation of Council Land pursuant to this policy.

"**Licensed Area**" means the part of the Council Land used pursuant to a Licence Agreement.

"**Licensee**" means the party identified in the Licence Agreement as the licensee.

"**Residential Zone**" means Council Land that is zoned R1, R2, R3, R4 pursuant to the LEP.

1 Locations

- (a) A food shop may apply to occupy Council Land in accordance with this policy.
- (b) All applications shall be assessed in accordance with Council's Guidelines for Outdoor Dining on Council Land and this policy.
- (c) In particular, in assessing an application to occupy Council Land in a Residential Zone, Council will consider whether the proposed use is likely to detrimentally affect the amenity of the surrounding area.

2 Licensed Area

- (a) The extent of any Licensed Area will be limited so as to ensure that adequate pedestrian movement is maintained.
- (b) All furniture approved for use by Council shall be kept wholly within the boundaries of the Licensed Area.

3 Standard Licence Conditions

- (a) Council will only enter into a Licence Agreement where the Food Shop is operating in accordance with the terms of any development consent, approval or similar thing that regulates the use of the shop.
- (b) A Licence Agreement shall be in a form determined by Council at its discretion and shall incorporate such conditions as Council deems fit.

4 No Smoking

No smoking will be permitted within or adjacent to a Licensed Area.

5 Fees, Insurance and Legal Costs

- (a) All applications for a Licence Agreement must be supported by the required fees.

- (b) The Licensee will be required to affect adequate insurance cover over the Licensed Area.
- (c) The Licensee shall pay all Council's legal costs, stamp duty and any other costs associated with the preparation of the Licence Agreement.

6 Compliance with Conditions of Licence

- (a) Licensees will be required to comply at all times with the conditions of a Licence Agreement. A failure to do so may result in Council taking action under the Licence Agreement or any applicable law and may result in termination of a Licence Agreement.
- (b) A licence will cease upon change of ownership or change of use of the principle food premises. A new application is required for any change of ownership.

7 Toilet Facilities

A Licensee must be able to provide patrons of the Licensed Area with toilet facilities that meet any applicable standard, including the Building Code of Australia.

8 Dispute Resolution

In the event where the Council is made aware of a dispute, Council's decision will be final.

9 Exemptions to this Policy

Where a seating platform has not been occupied by food businesses, Council shall, at its discretion, consider alternate uses.