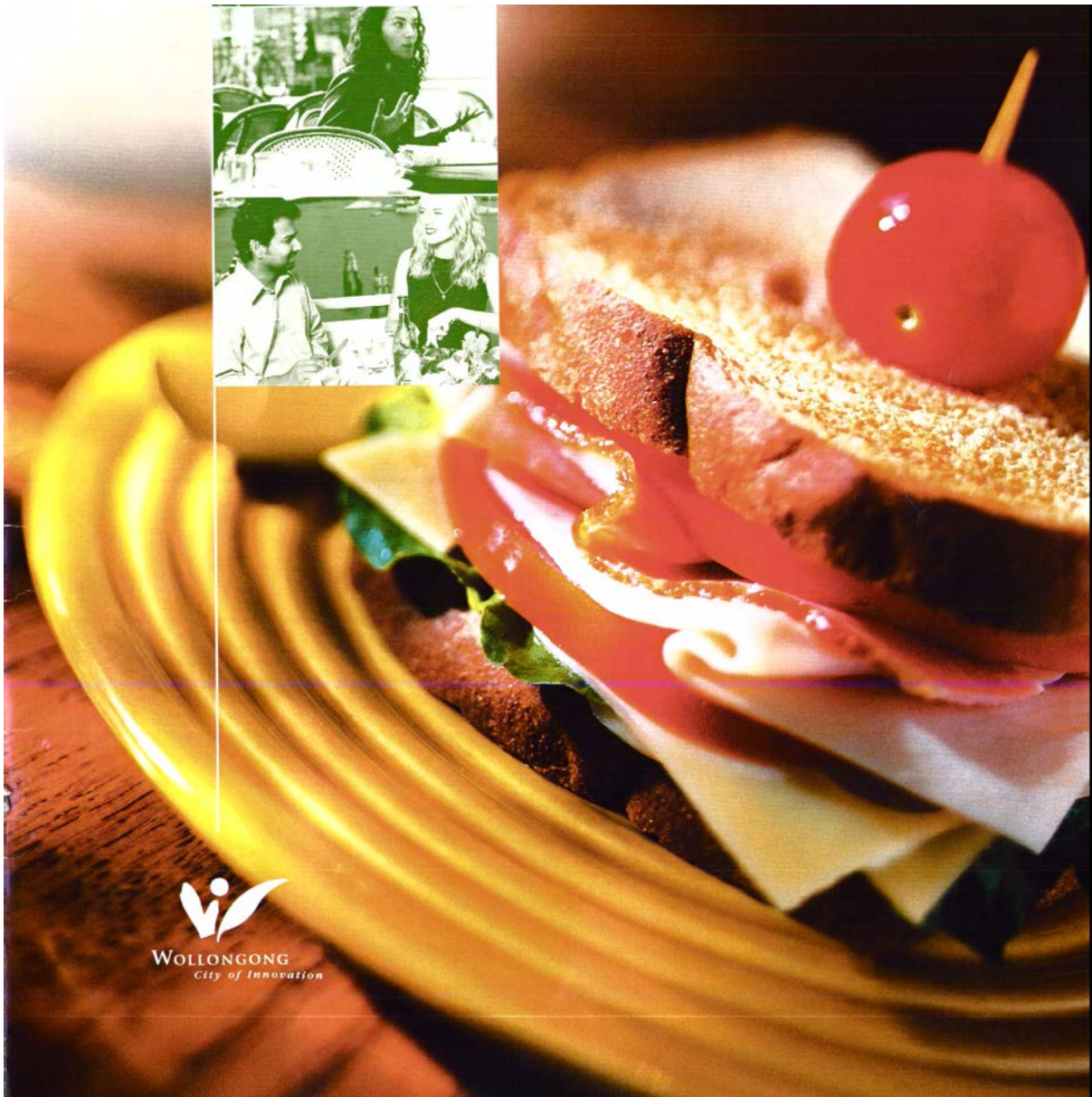


the city of wollongong

outdoorrestaurant

GUIDELINE FOR OUTDOOR RESTAURANTS ON PUBLIC ROADS





1 INTRODUCTION

Wollongong has exceptional weather for outdoor living. Outdoor eating gives people the opportunity to enjoy the outdoor urban environment, and an opportunity to participate in and observe the social activities of street life.

1.1 AIM

This Guideline provides objectives and performance criteria for outdoor restaurants on or over public road reserve areas including footpaths, malls and other public domain areas.

1.2 BENEFITS

The provision of outdoor living opportunities like outdoor restaurants encourages urban regeneration, boosts trade for other retailers and enriches the city's image and lifestyle. It also increases social interaction and contributes to the building of acquaintance networks and community trust. Furthermore, outdoor eating activities also create informal surveillance that assists in the reduction of street crime.

1.3 APPROVAL

The applicant must apply for an Approval under Sec 125 of the Roads Act 1993 to operate a restaurant on a road reserve. The application is available on Council's web site at www.wollongong.nsw.gov.au.

1.4 FEES

There is an Approval fee for the use of the public road as an outdoor restaurant charged per square metre per annum and is incorporated within the Council's Annual Fees and Charges.

Fees will be determined based on location within the following zones as shown on the Map below -:

Zone 1 – areas within Keira Street between Smith Street and Burelli Street, Wollongong Crown Street Mall, lower Crown Street, Corrimal Street, Harbour Street, Marine Drive, Cliff Road and part Bourke Street.

Zone 2 – other areas in Central Wollongong.

Zone 3 – All other suburbs of Wollongong excluded from Zone 1 and 2.

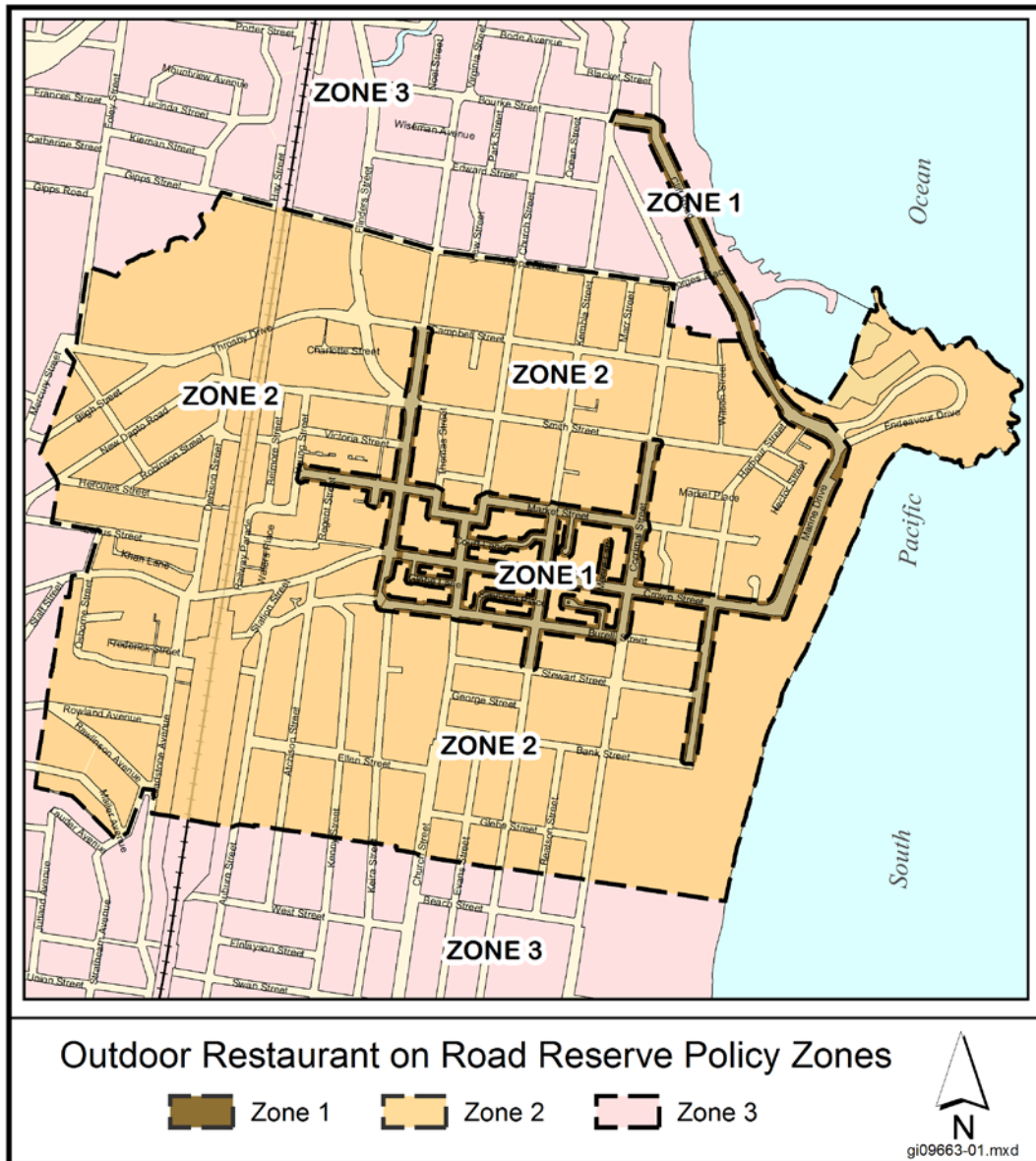


Figure 1

2 URBAN DESIGN GUIDELINES

- 2.1 To ensure that outdoor restaurant activities are restricted to designated road reserve (footway) areas only where safe and accessible paths of travels are maintained for all pedestrians and in particular the frail aged, persons with prams, persons with a visual or mobility impairment and children who require safe, continuous and logical access along footpaths.
- 2.2 To promote a high quality visual environment and to ensure that outdoor restaurant activities contribute to the streetscape character of the specific locality.

3 APPROVAL PROCESS

- 3.1 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 permits the use of a footpath within the meaning of the Roads Act 1993 for an outdoor dining area associated with a lawfully approved food and drink premises as “exempt development”, provided that the outdoor dining area:
 - (a) is not associated with a pub or a small bar, and
 - (b) is carried out in accordance with an approval granted under section 125 of the Roads Act 1993, including in accordance with any hours of operation to which the approval is subject.
- 3.2 However, the lodgement of a Development Application will still be required for any outdoor dining area which is not associated with an **existing lawfully approved food and drink premises**. In this regard, Council recommends that applicants lodge a Development Application to cover both the proposed food and drink premises and the proposed outdoor dining area, in order to streamline the assessment process.
- 3.3 Upon the issue of development consent for the proposed outdoor (footway) restaurant pursuant to the provisions of the Environmental Planning & Assessment Act 1979, a condition of the consent will be imposed requiring the separate lodgement of an application with Council in accordance with the requirements of Section 125 of the Roads Act 1993. If the outdoor restaurant is proposed upon a classified road, the formal concurrence from the NSW Roads and Maritime Services will also be required as part of the Roads Act application.
- 3.4 All costs associated with the lodgement of any Development Application and the separate application under the Roads Act shall be met by the intended Operator.
- 3.5 In the event that the Development Application and / or the separate Road Act 1993 approval are granted for the proposed outdoor restaurant, the proprietor of the business to which the outdoor restaurant relates will be required to provide appropriate insurance coverage to indemnify Council against any public liability claim that may arise from the use of the footpath area. The public liability risk insurance policy will be required to be maintained throughout the life of the outdoor dining operation and shall have a minimum \$10 Million public liability insurance coverage, at all times. A Certificate of Currency must be submitted to Council annually. Requirements for insurance coverage may also change on an annual basis depending on advice from Council’s Insurance Broker.

- 3.6 Any Roads Act approval for an outdoor restaurant may be subject to a limited 12 month trial period initially. Council at this time will re-assess the performance of the operation and whether pedestrian movement along the road reserve (footpath) area was satisfactorily maintained in the opinion of Council, throughout the initial 12 month period in order to determine as to whether a further licence will be granted.
- 3.7 Under the Roads Act 1993, the maximum term in which Council may grant a approval for the use of a part of the road reserve (footpath) for the purposes of an outdoor restaurant is 7 years.
- 3.8 Any approval will also be subject to a condition requiring that any damage caused to Council's footpaths shall be rectified at the full cost by the operator. Any such repair work will be undertaken in accordance with the requirements of Council. The failure by the operator to adhere to undertake any repair work in accordance with the requirements of Council may result in the approval being cancelled immediately and / or penalty infringement notices being imposed.

4 LOCATION AND ACCESS REQUIREMENTS

- 4.1 The area available for outdoor (footway) restaurant will be determined by the available width of the public road reserve (footpath) area and any existing or proposed street furniture or landscaping.
- 4.2 Outdoor restaurants will generally be approved on the kerbside of the footway as shown in Figure 2. Any application to vary this provision will only be considered in exceptional circumstances and considered on merit.
- 4.3 Outdoor restaurants should be generally restricted to directly in front of the premises to which the outdoor restaurant relates to. In certain circumstances, Council may permit an outdoor restaurant not directly in front of the premises to which it relates where the adjoining land use is not a food or beverage related business and where in the opinion of Council, the proposed location will not pose any significant adverse amenity impacts upon adjoining land uses or for the use of the remaining footway area, within the immediate vicinity of the proposed outdoor dining area.
- 4.4 The creation of outdoor seating on both sides of the pedestrian footway area will generally not be supported, except in exceptional circumstances where:-
 - (a) It can be demonstrated that pedestrian movement through the centre of the footway is safe for all pedestrians and in particular the frail aged, children and persons with visual or mobility impairment or
 - (b) The pedestrian footway is purpose built and safely directs all pedestrians including persons with a visual or mobility impairment towards the centre of the footway such as Crown Street mall.

- 4.5 Outdoor restaurants will only be acceptable in situations where:-
- (a) The public space is wide enough to accommodate the outdoor dining area whilst still maintaining a clear 1.5 metre wide pathway of travel for all pedestrians, including those who use mobility aids along the full length of the proposed area;
 - (b) The ground surface of the outdoor restaurant area is suitably constructed and sufficiently level to accommodate the required number of table and seating and enable the area to be used safely and without inconvenience to pedestrians or vehicles; and
 - (c) There is no unreasonable hazard to pedestrians, diners or vehicular traffic.
- 4.6 Any proposal for an outdoor restaurant must guarantee a continuous 1.5 metre wide unobstructed pedestrian path of travel along the footway and be exclusive of any obstruction or street fixtures (eg seats, bench, tree, rubbish bin, electricity pole etc), in order to provide continuous unobstructed access for pedestrians including pedestrians using wheelchairs or other mobility aids.
- 4.7 Unless otherwise approved by Council, the placement of outdoor seating shall be on the kerbside of the footway area and not directly adjacent to the building line of the building.
- 4.8 Outdoor restaurants shall be located a minimum distance of 600 millimetres from the kerb edge, in order to provide a suitable safety buffer for passengers to alight from and access parked motor vehicles.
- 4.9 The outdoor dining area is to remain visible from the main food premises at all times, to maintain staff surveillance over the dining area.
- 4.10 Outdoor seating arrangements shall not obstruct access to public infrastructure or utilities such as fire hydrants, access holes, inspection chambers, telephone and electricity underground cables, water service pipes and the like.
- 4.11 All outdoor dining areas are to be setback to maintain unobstructed vehicular sight lines in accordance with Part 5 of the AustRoads Guide to Traffic Engineering Practice.
- 4.12 Outdoor seating may be prohibited adjacent to any bus stop, taxi stand or any disabled parking space within the adjoining road reserve.
- 4.13 Outdoor dining areas shall be clearly defined by way of a suitable framed barrier, markers and/or pavement line marking in order to clearly delineate the approved area. The barrier or marked treatment to delineate the approved area will be subject to Council approval as part of the licence approval under the Roads Act 1993.

Figure 2 shows the required location and setback requirements for outdoor seating upon a footway area (ie outdoor restaurant seating is located on the kerbside rather than abutting the building line).

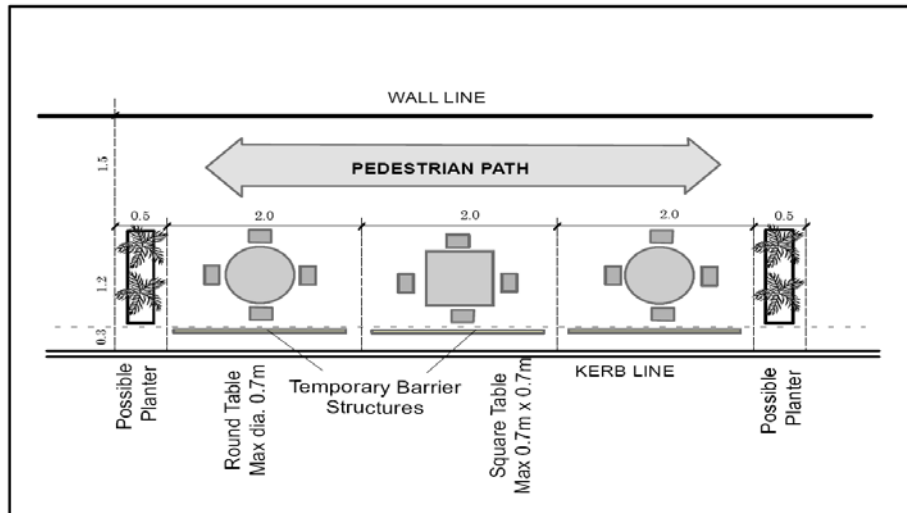


Figure 2: Location and Minimum Setback Requirements for Outdoor Seating

- 4.14 As part of any Development Application (if required), and application for an Approval under the Roads Act 1993, the applicant is required to submit a site plan (ie at an accurate 1:50 or 1:100 scale) which shows the proposed outdoor restaurant table and seating arrangement in relation to the business shopfront and the proposed setback distance to both the pedestrian footway and the road carriageway.

5 OUTDOOR FURNITURE

- 5.1 The placement of outdoor furniture (tables, chairs, planter boxes etc) must take into account suitable access arrangements for people with a disability, particularly patrons using wheelchairs and people with a vision impairment disability. Therefore, suitable manoeuvring arrangements are provided around tables and chairs for patrons using wheelchairs.
- 5.2 All outdoor furniture including tables, chairs, planter boxes, barriers and menu boards shall be contained within the boundaries of the outdoor dining area.
- 5.3 The operator is responsible for ensuring patrons maintain their outdoor furniture within the boundaries of the approved area. The licence holder is to ensure that all staff routinely supervise patrons, in order to ensure that all tables and chairs are contained wholly within the confines of the approved area, at all times.

Note: The failure of the business operator to ensure all approved tables and chairs are contained within the boundaries of the approved outdoor dining area may result in Council issuing Penalty Infringement Notice(s) to seek compliance with this requirement. Council may also take such breaches into account which may result in the Approval being terminated.

- 5.4 Outdoor furniture or structures shall not be permanently fastened to the footway without the formal approval of Council.

- 5.5 A single style of furniture (seats, tables and umbrellas etc) shall be required in order to maintain a cohesive visual pattern.
- 5.6 All furniture must be of a high structural and aesthetic quality. Seats and tables may be of timber, aluminium, stainless steel or powder coated construction. The use of moulded plastic furniture is not acceptable.
- 5.7 All furniture must be suitable for use in a corrosive coastal environment.
- 5.8 All furniture must be well maintained in the interest of public safety.
- 5.9 All furniture must be waterproof and weather resistant and be easily cleaned.
- 5.10 Planter boxes may be installed to assist in the delineation of the boundaries of the Approval area and to help maintain safe pedestrian access for visually impaired pedestrians. The maximum height of any planter box shall be 1 metre above footpath level. Groundcovers or shrubs within the planter box must be maintained by the business operator to prevent any intrusion into the pedestrian footway area.
- 5.11 The design of any planter box proposed to be installed as part of the outdoor restaurant Approval must be first approved by Council, in order to minimise any potential trip hazards for people with a vision impairment disability.

6 UMBRELLAS AND SHADES

- 6.1 Umbrellas and other shade structures are to be positioned wholly within the outdoor dining area and shall not encroach upon the airspace of the remaining pedestrian footway so to prevent any potential cause of injury to pedestrians and obstruction of vehicles.
- 6.2 Umbrellas or other shade structures are to appropriately secured or anchored to withstand all wind conditions. Any proposal to anchor umbrellas in the road must first be approved by Council.
- 6.3. Umbrellas must not overhang any road carriageway and must have a minimum clearance height of 2.1 metres.
- 6.4. New fixed building awnings or drop down blinds may be supported subject to a minimum clearance height of 3 metres from the footpath.

7 HEATING DEVICES

- 7.1 Heating devices are to be positioned wholly within the defined outdoor dining area and satisfactorily secured to prevent any injury to patrons or pedestrians and obstruction of vehicles.
- 7.2 All heating devices are to comply with the requirements of Australian Standard AS 1596 (Storage and Handling) and must be appropriately certified.
- 7.3 Any heating device must be contained wholly within the designated outdoor dining area and be placed away from any entrance / exit point or tables and chairs. All heating devices shall also be setback a minimum distance of 500 mm from the boundaries of the Approved outdoor dining area, in order to prevent any potential hazards for all patrons, especially patrons with a vision impairment disability.

8 MARKERS

- 8.1 Outdoor dining areas shall be clearly defined by way of a suitable framed barrier or markers in order to clearly delineate the Approval area boundaries. If markers are required, Council will supply and install the markers at the applicant's expense and these costs must be paid prior to issue of Approval.
- 8.2 The applicant will be required to reimburse Council for any repair or replacement of the markers;

9 LIGHTING OF OUTDOOR AREAS

- 9.1 The provision of suitable lighting is required for any night-time outdoor dining area in order to maintain suitable safety and security for patrons.

10 HOURS OF OPERATION

- 10.1 The hours of operation of the outdoor dining area will be restricted by Council to the hours of operation of the main business to which the outdoor dining relates. Council may further restrict the hours of operation of any outdoor dining area where in the opinion of Council, there is a potential for adverse noise or amenity impacts on surrounding sensitive land uses such as residential dwellings in the immediate locality or when the operation in breach of the Approval.

11 ADVERTISING

Footpath Advertising Signage

- 11.1 Only one (1) advertising sign will be allowed per licence area. The sign must relate to the business to which the outdoor dining area relates. No third party or general advertising is permitted.
- 11.2 The advertising sign will only be permitted within the approved boundaries of the outdoor dining area. A-frame signage will not be permitted.
- 11.3 The maximum size of an advertising sign shall be 900mm x 600mm. The sign must be located so that pedestrian access is unimpeded, at all times. The advertising sign must be situated contained within the boundaries of the outdoor trading area and be a minimum of 500mm distance away from the pavement tactile marking, which delineates the Approval boundaries of the outdoor dining area.
- 11.4 The advertising sign must be located at least 600mm from the kerb where there is parallel parking or at least 750mm from the kerb where there is perpendicular or angled parking.
- 11.5 Each sign shall be of a rigid construction or where made of fabric shall have a frame capable of withstanding strong winds commonly occurring in the locality to prevent any blow over.
- 11.6 Details of the proposed advertising signage are to be included with the application for the proposed outdoor dining operation or alternatively, a separate Activity Application in accordance with Section 68 Part E2 of the Local Government Act 1993 will be required for the advertising sign. Landowner's consent will be required to be obtained for the Development Application or the Activity Application. In most cases, Council will be the owner of the land.
- 11.7 The advertising sign will also require annual licensing under the Roads Act 1993. The operator of the outdoor dining area will be responsible for the annual licensing renewal of the sign. Upon licensing of the sign, Council will issue a registration disc for affixing onto the approved sign. The registration disc must be affixed to the approved sign at the time of installation of the sign.

12 OPERATIONAL MANAGEMENT

- 12.1 The day to day management of the outdoor dining area is the responsibility of the operator.
- 12.2 The operator will display in a prominent position at all times at the operator's restaurant, adjacent to the approved area the Approval issued by the Council.

Note: In the event that additional tables or chairs are installed without approval, the operator may be issued with a Penalty Infringement Notice(s) in order to seek the removal of the unauthorised tables and chairs. This breach may also result in the cancellation of the Approval.

13 AMPLIFIED MUSIC

- 13.1 The use of amplified music within an outdoor dining area will be subject to Council approval.
- 13.2 Music is generally protected by copyright. Accordingly, if an outdoor restaurant proposes to use pre-recorded music, then appropriate licensing may be required to be obtained.
- 13.3 Recorded music is generally protected by two types of copyright, so if any recorded music is proposed, appropriate licensing may need to be obtained from both APRA and the Phonographic Performance Company of Australia (PPCA).

Note: Further information concerning licensing requirements may be obtained from Australian Performing Rights Association (APRA) via telephone number (02) 9935 7900 or via the website at: www.apra.com.au.

The Phonographic Performance Company of Australia (PPCA) may also be contacted via telephone number (02) 8569 1111 or via the website at: www.pcca.com.au/music-users-/apply-for-a-licence/ for licensing requirements for recorded music.

14 CLEANLINESS

- 14.1 The outdoor dining area (chairs, tables and other fixtures) must be maintained in a clean and tidy condition, at all times.
- 14.2 Only 'assistance animals' in accordance with the Disability Discrimination Act 1992 will be allowed within any outdoor dining area.
- 14.3 The management and staff of the food establishment are responsible for undertaking regular litter patrols within the immediate radius of the outdoor dining area to collect and dispose of any litter.
- 14.4 The management and staff of any outdoor dining area are also responsible for the immediate removal and cleaning up of any broken glass, spills (especially oil or fat spills) or the like from the footpath.
- 14.5 Any outdoor furniture (not permanently fastened to the footway) is to be removed from the outdoor dining area by the business operator upon the completion of each trading day.

15 PROHIBITION ON SMOKING

The Approved Area is designated as a Non Smoking Area. The operator must ensure that smoking is not permitted by any person, at any time, within the Approved Area and shall display signage to this effect.

16 STRUCTURES

The applicant must apply for approval under sec 126 of the Roads Act 1993 to erect any structure associated with the use of the road reserve for an outdoor restaurant.

17 CONSUMPTION OF ALCOHOL

The operator shall not cause or permit alcohol to be sold or supplied on the Property without first obtaining any required liquor licences, approvals or consents. In relation to the consumption of alcohol on the approved area, it is prohibited unless it is consumed as part of a substantial meal and pursuant to any liquor license approval.