

## **SECTION 19 – USE OF PUBLIC FOOTPATHS**

This chapter comprises part of the Muswellbrook Shire Council Development Control Plan and has been prepared in accordance with the provisions of the Environmental Planning and Assessment Act, 1979.

### ***19.1 PRELIMINARY***

#### **19.1.1 Introduction**

This plan provides guidance to applicants seeking outdoor dining or display of goods immediately adjacent to and in association with an approved refreshment room, tavern or hotel within the Shire of Muswellbrook.

Council is seeking to create viable and vital commercial centres within the Shire, encouraging the local economy and promoting pedestrian safety. There are a wide range of development issues, which need to be addressed to achieve a proper planning outcome for these sites. These include location and siting, pedestrian access, health and safety, visual quality, car parking, insurance and protection of heritage.

Development Consent is required for all outdoor dining and display of goods under the Environmental Planning and Assessment Act 1979, unless the proposal is exempt development under the provisions of schedule 2 of the Muswellbrook LEP. In addition any permanent construction works will require a Construction Certificate.

Where outdoor dining is proposed for a footpath, public mall, or other public area, Council Approval is also required under the Roads Act 1993. Where the road is a 'classified road', approval in principle is required from the NSW Roads and Traffic Authority.

The provision of seating, goods or signage on footpaths is allowed at the discretion of Council and subject to an annual permit renewal process. An annual permit fee is applicable for dining, display of goods and signage in public areas.

Failure to comply with conditions of consent, or a permit, or to not have a valid permit in place will result in Council taking action to enforce compliance, and may result in non-renewal of an annual permit to allow the use of the footpath.

This plan has been prepared in accordance with the requirements of the Environmental Planning and Assessment Act 1979, and the Environmental Planning and Assessment Regulation 2000. The plan comprises a written statement, plans and maps.

#### ***19.1.2 SUBJECT LAND AND APPLICABILITY***

The plan applies to all public land within the Muswellbrook Local Government Area

Outdoor dining on private land, is dining which is undertaken in the open air on land which is within the control of applicant.

Outdoor dining on public land is dining which is undertaken in the open air on land which is in public ownership. Such land may consist of a footpath pavement, mall or

the walkway under the control of Muswellbrook Shire Council. This is also known as footpath dining.

### **19.1.3 AIMS OF THE PLAN**

The principal aims of this plan are as follows:

- a) To encourage, where appropriate, the establishment of outdoor dining areas to support local economic development and commercial viability;
- b) To increase and facilitate tourism potential and create active and vital street frontages;
- c) To promote a high quality visual environment, ensuring that outdoor dining contributes to the improvement of the streetscape;
- d) To regulate the use of outdoor dining areas to avoid nuisance or inconvenience to the public, and to ensure that pedestrian or other forms of traffic are not unduly impeded by the use of a public area for outdoor eating;
- e) To provide guidelines for implementing and maintaining the use of public footpaths and land to ensure that adjoining premises are not adversely affected and that the area is kept in a clean and tidy manner.

### **19.2 PREFERRED LOCATION FOR OUTDOOR DINING**

Outdoor dining may be undertaken with prior written approval from Council in a number of places including footways, mall, or other public land, subject to Council providing owner's consent for the use of the land.

Council's advice should be sought prior to submitting any application.

### **19.3 DEVELOPMENT MATTERS**

#### **19.3.1 Location**

##### Objectives

- a) To encourage the appropriate location of outdoor dining within the Muswellbrook LGA;
- b) To create a sense of identity for individual localities;
- c) To encourage the appropriate reuse and conservation of vacant heritage buildings, heritage incentives will apply.

##### Controls

The use of public footpaths for commercial purposes will not be permitted where:

- (i) The proposed use is not ancillary to an approved business or retail activity;
- (ii) There is an unreasonable hazard to pedestrians, diners or vehicular traffic;
- (iii) The public space is not wide enough to accommodate the use of the area while still maintaining a clear pathway of travel for all pedestrians including those who use mobility aids;
- (iv) The ground surface of the footpath area is not suitably constructed and sufficiently level to accommodate outdoor dining furniture and enable the

area to be used safely and without inconvenience to pedestrians or vehicles;

- (v) It extends past the building line at a road intersection;
- (vi) It is located in or adjacent to Heritage Conservation Areas and/or in the vicinity of Heritage Items and does not consider the character of these places;
- (vii) Access to public utilities, such as fire hydrants, access holes, inspection chambers, telephone and electricity underground cables, water service pipes, traffic signs and the like are inhibited;
- (viii) The use of existing street furniture such as seating, litter bins, letter boxes or telephone boxes are obstructed.

### **19.3.2 Site Considerations**

#### Objectives

- a) To provide sufficient clearance for pedestrian movements.
- b) To maintain visual and physical set backs at street corners to enable safe pedestrian and vehicle movement
- c) To ensure that relevant considerations are made with regards to on street car parking, where footway dining is proposed.

#### Controls

Where activities are undertaken or placed on the public footpath:

- (i) Tables and chairs or displays placed on the footpath or in a public area, in accordance with this policy, shall be positioned in such a way that a minimum unobstructed footpath width of 2.0 metres with a minimum height clearance of 2.0m is maintained for pedestrian thoroughfare at all times. Greater widths may be required in areas of high pedestrian and/or high vehicle traffic.
- (ii) Umbrellas must have a minimum clearance of 1.8m from ground level (existing), and must not project into the area referred to in (i) above.
- (iii) A minimum distance of 600mm shall be maintained between the limit of the seating area and the face of kerb of the road or any other area where vehicles may park and require door swing space.
- (iv) A minimum of a 3 metres splay, from the building line, of the dining area shall be provided on corner properties to enable a clear view at intersections for vehicular traffic.
- (v) A minimum gap of 0.5 metres between neighbouring adjacent outdoor dining areas shall be maintained.
- (vi) Dining and display areas may be demarcated by barriers/screens/planting boxes.
- (vii) Outdoor furniture (or display structure) is to be confined to the approved area and must not encroach upon the adjoining footway.
- (viii) No outdoor furniture, barrier or structures are to be permanently fastened to the footway or Mall unless Development Consent and Approval is obtained from Council. (The erection of structures may require a construction certificate.)
- (ix) The outdoor dining or display area must be paved or sealed for its full width.
- (x) The operator shall bear the cost of all pavement repairs carried out by Council, which have been caused by outdoor dining or display activities.

- (xi) The applicant/holder of the approval may be required to carry out improvements to the footway at his/her expense where the surface of the footway in the proposed area is damaged, cracked or deteriorated or is otherwise unsuitable for a dining or display area.
- (xii) Access for the repair, emergency or otherwise, of utilities or other services under the footpath may be required at any time.
- (xiii) Convenient access to facilities (where these are required) and easy surveillance by staff shall be considered in the siting of any dining or display area.

### **19.3.3 Car Parking**

#### Objectives

- a) To ensure that the relevant car parking provisions are met for outdoor dining areas.
- b) To permit the relaxation of car parking requirements for some outdoor dining localities to create vibrant and vital core business district and neighbourhood centres.

#### Development controls

- (i) outdoor dining shall be included in the calculation for required off street car parking, irrespective of whether this is on public or private land. See section 16 of the this DCP, which will be applied at the gross floor area rate applicable to the land use to which the outdoor dining is ancillary

### **19.4.4 Health, Licensing, Insurance and Facilities**

#### Objectives

- a) To ensure that any nuisance caused by the outdoor dining area is kept to a minimum.
- b) To ensure that the relevant licenses and other permissions are in place to regulate the outdoor dining area.

#### Controls

##### Health

- (i) The outdoor dining area shall be kept in a clean and tidy condition, shall not be used for food storage or preparation nor result in the discharge of liquid wastes on to the footway or street.
- (ii) The preparation, storage and serving of all food for sale must comply with the Food Act 2003 and the AS4674 (Design, Construction and Fit out of Food Premises).

##### Insurance

- (i) The holder of the approval is to indemnify Council in writing from and against all claims arising from the holder's legal liability as a result of its occupancy. Council will not accept liability for damage to or loss of furniture

or personal property from the approved area. A Public and Products Liability insurance Policy must be taken out by the applicant/holder of the approval. A Certificate of Currency of the relevant Policy, endorsed with the interests of Muswellbrook Shire Council, is to be provided to Council on each renewal of the Policy.

#### License

- (i) Where outdoor dining or display of goods is proposed on public land the holder of the approval shall hold a valid footpath permit.

#### Facilities

- (i) Toilet facilities are to be available to dining patrons when the combined seating capacity of both internal and outdoor dining areas totals twenty (20) or greater places per establishment, based on the applicable rates under the Building Code of Australia (BCA), as if the outdoor dining area were included as floor space under the BCA.

### **19.4.5 Amenity**

#### Objectives

- a) To provide high quality, practical street furniture (or display structure) to enhance the visual quality of the environment.
- b) To provide a pleasant outdoor dining environment to encourage diners
- c) To contain the footpath area utilised

#### Controls

#### Furniture

- (i) The operator's furniture (or display structure) is to make a positive or neutral contribution to the streetscape. Furniture (or display structure) styles must be practical and integrate with the surrounding area. It should be strong and durable and weather resistant, designed for commercial outdoor use and serviceable.
- (ii) Furniture (or display structure) must be stackable or foldable for storage purposes.
- (iii) Public safety must be considered and furniture (or display structure) must not present a potential hazard to the public.
- (iv) Furniture (or display structure) shall be designed or located such that wheelchair access is possible.
- (v) The outdoor dining furniture (or display structure) shall be retained within the prescribed outdoor dining area at all periods, when the business is in operation.

#### Advertising and signage

- (i) Compliance with the New South Wales State Environmental Planning Policy No. 64 (Advertising and Signage) (SEPP 64), the Muswellbrook Local Environmental Plan and section 14 of this DCP.

#### Amenity

- (i) There is to be no interference with the residential amenity of the area by reason of the emission of any noise, odour or smell.

#### Hours of Operation

- (i) The hours of operation of the outdoor dining or display of goods area shall not exceed that of the use to which it is ancillary. All furniture (or display structures) shall be removed from footpath area during the hours that the business is closed.

### **19.4.6 Heritage**

#### Objectives

- a) To ensure that materials and siting of street furniture are appropriate to the heritage location
- b) To ensure that damage is prevented to heritage items and heritage conservation areas.
- c) To encourage the appropriate reuse and conservation of vacant heritage buildings, Heritage Incentives will apply.

#### Note

In a Heritage Conservation Area or at or adjacent to Heritage Items or items subject to a conservation instrument advice should be sought from Council's Heritage Officer prior to submission of any application.

#### Controls

##### Street Furniture

- (i) Style & Colour: Colour will only generally be allowed on umbrellas. However, the colour palate for heritage areas is likely to be limited to the natural range.
- (ii) Blinds and awnings will be considered on their merit.
- (iii) Screens: these may be appropriate in some areas.

##### Sandstone Kerbs

Sandstone kerbs and gutters are a significant part of the heritage in Muswellbrook. Sandstone is relatively soft and in many cases older pavements have suffered from wear and tear. Council's Heritage Officer will advise on the appropriate type of repair and appropriately experienced specialists.

- (i) The use of footpaths shall not interfere or be located such that they may cause damage to sandstone kerbs.

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