

Burwood Council

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OUTDOOR EATING POLICY & LICENCE APPLICATION FORM

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Introduction

The use of Council owned and/or controlled footpath areas adjacent restaurants (being premises in which food is regularly supplied on sale to the public for consumption on the premises) provides business owners with alternative customer seating and contributes to an active street life. Outdoor eating areas provide a place for customers to enjoy the sights, sounds and atmosphere of the outdoors as well as opportunities for interaction between customers and people on the street.

Purpose

To provide advice and guidelines for business owners wishing to establish outdoor eating areas adjacent existing or proposed restaurants. A licence is required to set up such an area and this policy details the process for gaining consent to use Council owned and/or controlled land for outdoor eating.

Scope

This policy is applicable to Council and the businesses seeking to apply for an Outdoor Eating Area.

Objectives

The key objectives of this policy are to:

1. encourage vitality and ambience in restaurant precincts and shopping areas by encouraging outdoor eating in appropriate areas
2. provide controls to preserve safety and amenity and to maintain clear, safe and unobstructed access for pedestrians of all abilities on Burwood Council's footpaths, including people with a vision impairment or physical disability
3. ensure that adjoining premises are not adversely affected by the occupation of part of a footpath as an outdoor eating area
4. ensure that bus stops, taxi ranks, community bus stops, mail zones, fire hydrants, fire escapes, emergency exits, services pits, vehicle access points, disabled parking spaces or locations near pedestrian crossings and traffic signals are not adversely affected or unduly impeded by the occupation of part of a footpath as an outdoor eating area
5. ensure that outdoor eating areas are maintained in a clean and tidy manner in accordance with the requirements of the *Food Act, 2003* and Regulations and also with the relevant requirements of the *Local Government Act, 1993* and Regulations
6. encourage the use of good quality, durable and well-maintained outdoor furniture in outdoor eating areas and to complement and enhance the visual quality of streetscapes within the Burwood Local Government Area through the use of compatible outdoor furniture styles, colours and materials

Footpaths/roads covered by this Policy

This policy applies to footpaths and roads that are under the care and control of Burwood Council and deemed suitable for outdoor eating (generally within commercial/retail areas). All State and Regional Roads (for example, Parramatta Road, Liverpool Road and Georges River Road) are subject to Roads and Traffic Authority (RTA) control and the permission of both Council and the RTA may be required for outdoor eating on such roads.

Design of Outdoor Eating Areas

Location

The *NSW Roads Act 1993* allows Council to approve applications and grant licences for outdoor eating areas. These areas must be located on a footpath adjacent to an existing or proposed restaurant and the use of the footpath must be directly related to the operation of that restaurant.

Consideration will be given to land uses in the vicinity of the proposed outdoor eating area. Any new outdoor eating area will need to fit in well with nearby uses. For example, if the proposed area is close to housing it should not create too much noise or any other disturbance or produce too much of an odour. Permission to use public footpaths as outdoor eating areas in the Burwood Council area will generally only be granted for footpaths within or adjacent zones as follows:

- General Business 3(a)
- Special Business 3(c1), 3(c2) and 3(c3)
- B4 Mixed Use
- Neighbourhood Business 3(d)

Delineation (Size and Shape) of Outdoor Eating Areas

The size and shape of any outdoor eating area is a matter for Council, with safety and access issues being the main determinants. Whilst each proposed site will be considered on its merits, in general, outdoor eating areas will not be approved for locations adjacent bus stops, taxi ranks, community bus stops, mail zones, fire hydrants, fire escapes, emergency exits, services pits, vehicle access points, disabled parking spaces or locations near pedestrian crossings and traffic signals.

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Physical Safety Barriers

If Council determines that a particular application for an outdoor eating Licence cannot be granted without the installation of physical safety barriers, Council may recommend/install various safety devices to maximise safety for patrons and pedestrians, such as structural bollards, safety kerbing and/or RTA compliant fencing. Council reserves the right to charge a one-off (cost recovery) fee for the provision of such devices.

Accessibility

The outdoor eating area must be located so as to minimise conflicts for vision impaired pedestrians who may need to utilise the building alignment (shopfront) for guidance. Therefore, Council will generally only approve outdoor eating areas adjacent the kerb line (roadway), rather than the building alignment. In all locations, a pedestrian count will be required during the busiest part of the day/evening. Pedestrian counts will be undertaken by Council and each site will be monitored by Council after installation to enable the pedestrian rate to be verified.

Furniture, including umbrellas and heaters, must be positioned so that they are not an impediment to pedestrians, particularly those with a disability and people with prams, and that access to things such as manhole covers, road traffic signs and post office boxes is not obstructed.

Health & Environmental Considerations

Preparation of all food that is served at the outdoor eating area is to be undertaken within the kitchen area of the shop. No food preparation is to be carried out in the outdoor eating area. The opening hours of the eatery should be in accordance with the development consent issued for the restaurant premises concerned.

Ashtrays must be provided on all tables where smoking is permitted and are to be of a windproof design. All litter and rubbish that is generated from the outdoor eating area is to be disposed of through the business premises garbage service and is not to be disposed of in street litter bins, left on the roadway (roadway includes footpath) or swept into the street gutter or storm water drains.

Suitable lighting should be provided if the restaurant will remain open after dark. This lighting should not cause nuisance to any neighbours. The use of a footpath as an outdoor eating area should respect the heritage character and setting of any adjacent or nearby heritage listed items. Please check with Council for heritage listing information.

BYO Alcohol Application

Council will consider all applications seeking the consumption of alcohol in the outdoor eating areas as an extension of the BYO Licence. Such applications may be forwarded to the NSW Police Force for comment and reply. Council will base its approval for the consumption of alcohol in the outdoor eating areas on the recommendations from the NSW Police Force and whether all staff employed by the applicant have been trained in the responsible service of alcohol. Alcohol consumption in the outdoor eating areas will not be permitted if the outdoor eating area has been classified as an Alcohol Free Zone.

Licensed Premises

Applications submitted by licensed premises to serve alcohol in the outdoor eating area must be lodged and approved by the Liquor Board prior to the consideration for approval of the outdoor eating area. If such approval requires the installation of screens or other equipment, written approval of Council will be required prior to installation.

Furniture & Equipment

Restaurant owners must apply for and receive Council's written approval of the size, design, type of materials and colour of any chairs, tables, umbrellas, fittings or any other equipment, prior to placing such equipment within the Licensed Area.

Furniture and equipment should promote amenity to those enjoying the outdoor eating area and to complement the existing street furniture as provided by Council. No advertising is to be displayed on any furniture, equipment or other structure(s) contained within Licensed Areas.

All restaurant owned furniture and equipment must be placed inside the retail premises when the area is not in use. Under no circumstances are tables, chairs or any other item to be secured to the pavement without the written approval of Council.

Tables & Chairs

Tables and chairs used in outdoor eating areas should be portable, sturdy, safe and comfortable and should make a positive contribution to the streetscape. Table and chair dimensions should be chosen to fit with the licensed outdoor eating area relative to the specific location. Tables and chairs are to be clean, undamaged and set as near as practicable to level to provide a safe and sturdy setting.

Public safety, accessibility and comfort must be considered. All furniture must be strong, durable, waterproof and weather resistant and furniture must be designed to allow a wheelchair to easily replace the restaurant supplied chair. Sharp edges, hinges or other moving parts must not present a hazard to the public. Tables and chairs must have protective feet that provide 'good' grip levels and will not damage the pavement. Wherever possible, the outdoor furniture should visually relate to, and be physically aligned with, the existing street features such as shop fronts, bollards and screens.

Furniture must also be arranged so that there is enough room for restaurant staff and customers to comfortably move around. To ensure compliance with this requirement, Council will include a maximum number of chairs for each Licensed Area.

Umbrellas

Umbrellas must be market style (not beach umbrellas) and be of a colour deemed acceptable by Council. To ensure the safety of patrons and pedestrians alike, all umbrellas must be manufactured from fire retardant material and must be maintained in sound and aesthetically acceptable condition to Council's satisfaction.

Umbrellas must be securely fixed or weighted to withstand the effects of wind and must be closed in extremely windy conditions and removed from the Licensed Area when not in use. Umbrellas must not overhang into the 'safety zone' or across any other shop front. All umbrellas must have a minimum clearance height of 2.2 metres above ground level.

Awnings

Awnings require approval as per the provisions of Council's Development Control Plan.

Heating Devices

Heating devices must be well designed, safely located, be well maintained (to Council's satisfaction) and stored securely within the establishment when not in use. As with all other furniture and equipment, heaters must be located wholly within the Licensed Area when in use. All heating devices must turn off automatically if overturned to prevent injury to patrons and property. To ensure the comfort and safety of pedestrians, the 'radial' zone of influence of any heater must not extend beyond the Licensed Area.

Provision of Planter Boxes

In selected areas Council may permit the installation of planter boxes by the Licensee (at the Licensee's expense) to delineate between the Licensed Area and the roadway. Planter boxes shall be of a design and type approved by Council.

When approved, planter boxes are required by Council to be placed within the Licensed Area, the Licensee must maintain the plants in a healthy, neat and tidy hedge style condition (recommended watering at least twice a week). The Licensee shall remove staining or watermarks that appear on the paving and/or planter box. All rubbish located in the planter boxes must be removed by the Licensee.

Planter boxes shall contain hedge planting of one of the following hedging species:

- *Murraya paniculata* (Orange Blossom) from a 200mm container
- *Syzygium paniculata* (Dwarf Lilly Pilly) from a 200mm container
- *Raphiolepis* 'Apple Blossom' (Hawthorn) from a 200mm container

Alternatively, planter boxes may contain one of the following Strappy leaved species:

- *Clivea miniata* (Clivea) from a 200mm container (for use in locations of deep shade)
- *Dianella* 'Little Jess' (Dianella) from a 200mm container
- *Dietes vegeta* (Dietes) from a 200mm container
- *Liriope muscari* (Liriope) from a 200mm container;
- *Sansevieria trifasciata* 'laurentii' (Bowstring hemp) from a 200mm container

Only one of the above plants is to be used per licensed outdoor eating area. Council does not allow the use of artificial plants in planter boxes in conjunction with any outdoor eating area.

Application Process

New Restaurant

A new restaurant operation requires development approval from Council before opening. Where development consent for the operation of a restaurant is required, an application for an outdoor eating area may be considered concurrently with the development application. The Outdoor Eating Area Application form (attached at Appendix 1) will need to be submitted as part of the development application. Outdoor Eating Application fees will also be payable.

Established Restaurant

An established restaurant operation will already have Council's development consent and an application for an outdoor eating area can therefore be considered immediately upon the receipt of an application. The Outdoor Eating Area Application form (attached at Appendix 1) will need to be submitted and assessed by Council, prior to the granting (or refusal) of a Licence.

Public Liability Insurance

The Licensee will be required at its cost to maintain at all times with an insurance company and upon terms approved by the Council a policy of insurance for public liability in the amount of \$10 million for the respective interest of the Licensee and of the Council. The Licence Agreement will include a provision whereby the licensee indemnifies the Council from any action or claim that may arise from damage to property or injury to any person as a consequence of the use of the outdoor eating area by the Licensee.

The Outdoor Eating Application Process

This subsection details the process that is undertaken to gain approval for the use of a footpath as an outdoor eating area. It contains important information about the details that the applicant must provide to Council in order for an outdoor eating area to be considered.

Lodging an Application

In order to use a footpath as an outdoor eating area an application must be lodged with Council and the requisite application fee paid. A copy of the Outdoor Eating Application form is attached (Appendix 1). This form should be detached, completed, signed and submitted to Council with all attachments as required (see Application Form)

Note that lodging an application does not constitute approval. Applicants are NOT permitted to use Council's footpath for outdoor eating during the assessment period.

Notification to Adjoining Properties

Once the application form, application fee, and all necessary information has been received, notification of the proposal will be carried out. Council reserves the right to determine the notification area on a case by case basis, however, as a minimum, adjoining business owners/managers will be notified.

Notification will consist of a letter advising that an application for use of a public footpath as an outdoor eating area has been received by Council. A summary of the details of the proposal will also be included as well as a copy of the site plan. Those notified will be given 14 days from the notification date to respond.

Assessment by Council Staff

Once notification has been undertaken, the application and accompanying documentation, along with any responses received from members of the public as a result of notification, will be assessed by Council. If considered necessary by Council staff, the application may be referred to the Local Traffic Committee and/or the Access Committee for assessment. This will necessarily result in a delay in the assessment time for the application as these committees meet approximately monthly.

Determination

If the application complies with the guidelines set out in this policy, Council staff will make a decision as to whether the outdoor eating area is appropriate and, if approved, the proprietor (or Company) of the restaurant concerned will be required to sign a Licence Agreement. Council staff have the authority to sign these agreements under Delegation.

If the application is refused, the outdoor eating area is NOT permitted to operate. Applicants may request a review of a staff decision to refuse or amend their application for outdoor seating and such requests may be referred to the Council for determination.

Licence and Fees

A Licence Agreement must be signed by the applicant and an annual Licence Fee must be paid to Council before the operation of the outdoor eating area can commence. Fees will be charged in accordance with the Schedule of Fees and Charges adopted for the financial period. Should you require any alteration to the payment terms a letter detailing your request should be submitted to the General Manager.

If Council approves the establishment of an outdoor eating area, a letter is sent to the applicant advising that the application has been approved. However, tables and chairs or any other equipment CANNOT be placed on the footpath until the Licence Agreement has been signed and returned to Council and the licence fee has been paid. A copy of your 'Outdoor Area Eating Licence Notice' must also be displayed within the restaurant, visible from the footpath and outdoor eating area.

Amendment of Licence

If any details of the Licensee change, the Licensee must, within 30 days, apply to have the Licence transferred and/or updated. A Licence transfer/variation fee may be required. If a Licence is not updated/transferred within 30 days, it will be cancelled and the applicant will have to reapply to the Council for approval to establish (or continue) an outdoor eating area.

Each Licence is tailored to the specific site adjacent the business premises. Therefore, if the Business moves to another location, a new application for outdoor eating will be required.

Renewal of Licence

Licence Agreements are initially approved on a 12 month trial basis. After 12 months of operation of a Licensed Area, the Licence for that particular area is reviewed and if determined by Council to be operating in accordance with the terms of the Licence conditions and the objectives and controls of this policy, the Licence may be renewed for a further 12 months, and for further 12 month periods indefinitely, provided the conditions of the Agreement do not change (including the name of the Business and the area of outdoor eating). All fees are payable annually in advance based on Council's adopted fees and charges at that time.

Post Approval Monitoring

Once an outdoor eating area is approved and operating, Council staff will undertake regular site inspections to ensure Licence Holders are abiding by the conditions of their Licence. Council may deal with breaches of Licence conditions through any or all of the following methods:

1. Warning Letter - a warning letter may be issued for a breach of the Licence conditions as long as the breach did not constitute an imminent danger to the public.
2. Infringement Notice - an infringement notice may be issued for a breach of a Licence condition.
3. Licence Revocation - a licence may be revoked, at the discretion of the General Manager, if Council forms a belief that the Licensee has demonstrated a continual non-compliance of the Licence conditions, or if a breach involves an imminent danger to the public.

4. Court Action - court action may commence if the breach of the Licence is of a serious nature (danger to the public) or if the Licensee has a history of non-compliance with the Licence conditions.

Related Information

Compliance & Enforcement Policy
Council's Development Control Plan

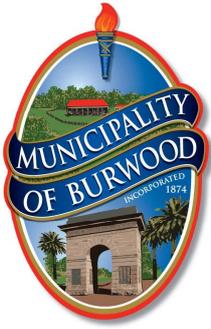
Review

Policy to be reviewed every four years from date of adoption.

Contact

Senior Manager Compliance – compliance and license matters
9911 9892

Manager Traffic & Transport – application and approval processes
9911 9884



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OUTDOOR EATING AREA LICENCE APPLICATION

BURWOOD COUNCIL - Suite 2, level 1, 1-17 Elsie Street Burwood NSW 2134
Telephone: 9911 9911 Facsimile 9911 9900

All applications to be addressed to:

Manager Traffic & Transport
Burwood Council
PO Box 240
BURWOOD NSW 1805

Applicant (Business Owner) Details

Applicants Name:

Business Name:

Business Address:

Postcode:

Phone: Work: ()

Home: ()

Mobile:

Fax: ()

ABN:

Applicant's Signature:

Company Details (Where applicable)

Company Name:

Address:

Owner's Signature:

Company Seal is also required if the property is owned by a company

Details of Proposed Activity

Proposed Hours/Days of Operation:

Description of Proposed Activity:

Additional Information

Additional Information/Requests (to assist with the assessment of the Application):

Required Attachments

Please attach the following:

1. A draft site plan of the proposed footpath area indicating:
 - dimensions and boundaries of the proposed seating area
 - number and location of tables, chairs and any other equipment proposed for the outdoor eating area
 - Details of existing and proposed lighting
2. A statement (report) which includes:
 - details (photos/diagrams) of the size, design, type of materials and colour of any chairs, tables, umbrellas, fittings or any other equipment
 - whether the premises are currently licensed to serve alcohol, and whether it is proposed to be served within the outdoor eating area
3. Public Liability Insurance Statement - the Applicant/Licensee is required to obtain Public Liability Insurance. The application should be accompanied by a signed statement to the extent that this insurance has/will be obtained.

Failure to provide any of this information will result in delays in the processing the application. An application cannot and WILL NOT be processed until all necessary information is received by Council. In certain circumstances, Council may request additional information from the applicant beyond the above list in order to assess the application properly.

COUNCIL USE: Application Fee Paid \$ _____ Date: _____
Receipt No: _____
A/C No. 01755.3201.547

For more information on Council's Outdoor Eating Policy, please contact Council's Land, Infrastructure & Environment Division on: (02) 9911 9911 or council@burwood.nsw.gov.au