

# Planning Proposal

**LOCAL GOVERNMENT AREA:** Wollongong City Council

**NAME OF DRAFT LEP:** Outdoor Dining upon Footpaths, Community Land or Crown Land and Display of Goods on Footpaths as Exempt Development under Schedule 2 of Wollongong Local Environmental Plan 2009 and to enable Food and Drink Premises within the SP2 Infrastructure zone

**ADDRESS OF LAND:** City Wide

**MAPS (if applicable):**

**Current Planning Controls** – A Zoning Map is attached which shows the SP2 Infrastructure (Road) zones throughout the City of Wollongong Local Government Area, under Wollongong Local Environmental Plan 2009.

**BACKGROUND:**

**Part 1: OBJECTIVES OR INTENDED OUTCOMES OF THE PLANNING PROPOSAL:**

**What is the purpose of the Planning Proposal?**

To permit outdoor dining upon footpaths, community land or Crown land and the display of goods on footpaths as Exempt Development (Schedule 2) under Wollongong Local Environmental Plan 2009 and to also permit food and drink premises as a permissible use (with Council's consent) within the SP2 Infrastructure zone.

**Part 2: EXPLANATION OF THE PROVISIONS OF THE PLANNING PROPOSAL:**

**Statement of how the objectives or intended outcomes are to be achieved by means of new controls on development imposed via a LEP.**

The Planning Proposal will enable outdoor dining to be permitted upon footpaths, community land or Crown land as Exempt Development under Schedule 2 of Wollongong Local Environmental Plan 2009 provided it is part of an adjacent lawfully approved food and drink premises.

In this regard, Council requests that the written instrument (ie making outdoor dining Exempt Development under Schedule 2 in Wollongong Local Environmental Plan 2009) contain a blended version of both the Warringah Local Environmental Plan 2011 (Schedule 2) for outdoor eating areas (associated with an approved restaurant) and Canada Bay Local Environmental Plan 2013 (Schedule 2) for outdoor dining (associated with food and drink premises) provided that the written instrument ensures that outdoor dining is as an Exempt Development upon footpaths (ie section 125 of the Roads Act 1993), community land (ie Division 2 of Part 2 of Chapter 6 of Local Government Act 1993) and Crown reserve land (ie under the Crown Lands Act 1989).

The display of goods on footpaths is also proposed to be Exempt Development under Schedule 2 of Wollongong Local Environmental Plan 2009 provided it is part of an adjacent lawfully approved land use.

In this regard, Council requests that the written instrument for the display of goods under Schedule 2 in Wollongong Local Environmental Plan 2009 be the same wording as contained in Warringah Local Environmental Plan 2011 (Schedule 2) for the display of goods on footpath (ie sub-clauses 1,2 and 4 only).

The SP2 Infrastructure (Road) zone applies to all main roads within the City of Wollongong Local Government Area such as Keira Street, Lawrence Hargraves Drive and Princes Highway etc. Under

Wollongong Local Environmental Plan 2009, the SP2 Infrastructure (Road) zone currently prohibits food and drink premises. Therefore, the Planning Proposal also proposes to permit food and drink premises within the SP2 zone, subject to development consent.

**Part 3: JUSTIFICATION OF OBJECTIVES, OUTCOMES AND PROVISIONS AND PROCESSES FOR THEIR IMPLEMENTATION:**

**Section A – Need for the planning proposal**

<p><b>1. Is the planning proposal a result of any strategic study or report?</b></p>	<p>The Wollongong Retail Centres Study 2004 was completed by Hill PDA in September 2004. The Study reviewed the City's existing and emerging retail centres to assist Council in addressing the challenge of future growth and to establish retail centres hierarchy to guide future retail development. The Study was used to inform the preparation of Wollongong Local Environmental Plan 2009.</p> <p>The Study makes no specific reference to outdoor dining but notes that "...the survival and sustainability of traditional retail precincts will be dependent upon the creation of a point of difference through the depth and breadth of goods and services offered, the quality of the built environment and public domain and the implementation of cohesive planning frameworks."</p> <p>The Planning Proposal seeks to encourage outdoor dining opportunities and the display of goods which may further strengthen retail precincts such as Keira Street and Crown Street West at Wollongong City Centre and hence, the Planning Proposal is considered consistent with this study.</p>
<p><b>2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?</b> (</p>	<p>The Planning Proposal is considered the best means of reducing red tape in the approval process and stimulating economic growth by permitting outdoor dining activities upon footpaths, community land or Crown reserve land and the display of goods upon footpaths as Exempt Development, provided it is part of an adjoining lawfully approved land use.</p> <p>The report to Council's Ordinary Meeting of 28 October 2013 included three options, including Option 1 which was ultimately adopted as part of this Planning Proposal. A copy of the Council report is attached.</p>
<p><b>3. Is there a net community benefit?</b></p>	<p>The Planning Proposal will enable outdoor dining activities upon footpaths, community land or Crown land (provided it is part of an adjoining lawfully approved food and drink premises) and the display of goods upon footpaths (provided it is part of an adjoining lawfully approved land use) as Exempt Development. The Planning Proposal will also permit food and drink premises within the SP2 Infrastructure (Road) zone.</p> <p>The management of outdoor dining areas upon footpaths, community land or Crown land and the display of goods upon footpaths will however continue to be subject to strict licencing requirements under the Roads Act 1993 (ie footpaths), Chapter 6 of the Local</p>

	<p>Government Act 1993 (ie community lands) or the Crown Lands Act 1989 (ie Crown reserve lands) as well as Council's Outdoor Restaurant Policy.</p> <p>Therefore, the Planning Proposal is likely to result in a net community benefit since it will encourage greater retail activity and is likely to help improve local employment opportunities, particularly for younger labour force participants. This represents a significant net community benefit to the Illawarra Region given the region's relatively high unemployment rate.</p> <p>The Planning Proposal will also increase social outdoor dining opportunities for residents and tourists visiting the City of Wollongong LGA.</p>
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### Section B – Relationship to strategic planning framework

<p><b>4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?</b></p>	<p>The Illawarra Regional Strategy indicates that economic development and employment growth is a key aspect in the Strategy. The Strategy does not specifically deal with outdoor dining or footpath trading issues but it does encourage economic development and employment growth in retail and service industries.</p> <p>The creation of outdoor dining areas (ie associated with an adjoining lawfully approved food and drink premises) upon footpaths, community land or Crown reserve land together with the display of goods upon footpaths (ie associated with an adjoining lawfully approved land use) as Exempt Development is also considered consistent with the theme of simplifying approvals for development, under the Strategy.</p>
<p><b>5. Is the planning proposal consistent with the local council's Community Strategic Plan or other local strategic plan?</b></p>	<p>The Planning Proposal contributes to the Wollongong 2022 objective 2.1 <i>Local employment opportunities are increased within a strong local economy</i>, under the Community Goal 2: "We have an innovative and sustainable economy."</p> <p>The Planning Proposal also contributes to the Wollongong 2022 objective 5.5 <i>Participation in recreational and lifestyle activities is increased</i>, under the Community Goal 5: "We are a healthy community in a liveable city."</p>
<p><b>6. Is the planning proposal consistent with applicable state environmental planning policies?</b></p>	<p>Refer to Table A – Checklist of State Environmental Planning Policies.</p> <p>The proposal is not inconsistent with any SEPP.</p>
<p><b>7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?</b></p>	<p><i>Indicate the relevant Directions, identify departures, justify departures, confirm that the direction does not have its own consultation requirements.</i></p> <p>Refer to Table B – Checklist of Ministerial Directions.</p> <p>The proposal is not inconsistent with any section 117 Direction.</p>

**Section C – Environmental, social and economic impact**

<p><b>8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?</b></p>	<p>The Planning Proposal will not affect any threatened species, population or endangered ecological community or their habitats.</p>
<p><b>9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?</b></p> <p>This might include natural hazards such as flooding, land slip, bushfire hazard etc. If it is necessary to undertake technical studies or investigations to address an identified matter, these should be undertaken following the initial gateway determination.</p>	<p>The Planning Proposal will not cause any flooding, landslip or bushfire hazards and / or any other environmental effect.</p>
<p><b>10. How has the planning proposal adequately addressed any social and economic effects?</b></p>	<p>The Planning Proposal will enable outdoor dining to be permitted within the footpath, community land or Crown reserve land as Exempt Development provided it is part of an adjacent lawfully approved food and drink premises.</p> <p>The Planning Proposal will also permit the display of goods upon footpaths as Exempt Development provided it is part of an adjacent lawfully approved land use. The Planning Proposal will also permit food and drink premises upon the SP2 Infrastructure zone.</p> <p>Therefore, the Planning Proposal will help encourage stronger economic growth opportunities for retail and food and drink premises and hence, may help to improve local employment opportunities.</p> <p>The Planning Proposal will also provide outdoor dining opportunities for residents and tourists visiting the City of Wollongong LGA and the wider Illawarra Region.</p>

**Section D – State and Commonwealth interests**

<p><b>11. Is there adequate public infrastructure for the planning proposal?</b></p>	<p>The Planning Proposal will not cause any increase on the demand for infrastructure.</p>
<p><b>12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?</b></p>	<p>The NSW Department of Planning and Infrastructure was consulted regarding the current prohibition of outdoor dining within the SP2 Infrastructure zone. The Southern Regional Office of the NSW Department of Planning and Infrastructure via correspondence dated 28 May 2013 (copy attached) confirmed that the</p>

	<p>Department would encourage Council to consider submitting a Planning Proposal in order to ensure that outdoor dining is permissible within the SP2 Infrastructure zone. In this regard, the Department advised that Council may wish to consider permitting food and drink premises with consent in the SP2 zones as this definition includes restaurants, cafes and pubs.</p> <p>The Planning Proposal will be referred to relevant government departments / agencies including the NSW Roads and Maritime Service, as part of the required exhibition phase.</p>
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**Part 4: MAPS, WHERE RELEVANT, TO IDENTIFY THE INTENT OF THE PLANNING PROPOSAL AND THE AREA TO WHICH IT APPLIES**

Please find attached a relevant zoning map which shows the current SP2 Infrastructure (Road) zones under Wollongong Local Environmental Plan 2009.

**Part 5: DETAILS OF COMMUNITY CONSULTATION TO BE UNDERTAKEN ON THE PLANNING PROPOSAL:**

<p>Any Gateway Determination will confirm community consultation requirements. If the Planning Proposal is supported, the Proposal will be exhibited for a minimum period of twenty-eight (28) days, and include:</p> <ul style="list-style-type: none"> <li>• Hard copies at Council's Administration building and relevant Libraries;</li> <li>• Electronic copy on Council's website;</li> <li>• Notification letters to surrounding and nearby property owners; and</li> <li>• Notification letters to relevant State agencies and other authorities nominated by the NSW Department of Planning and Infrastructure including: <ul style="list-style-type: none"> <li>○</li> </ul> </li> </ul>
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## Part 6: PROJECT TIMELINE

**A primary goal of the plan making process is to reduce the overall time taken to produce LEPs. This timetable tentatively sets out expected timelines for major steps in the process. These timeframes are subject to change and are to be used as a guide only. The Minister may consider taking action to finalise the LEP if timeframes approved for the completion of the Planning Proposal are significantly or unreasonably delayed.**

#	Action	Estimated Timeframe	Responsibility
1	Anticipated date of Gateway Determination	20/1/2014	DoP&I
2	Anticipated completion of required technical studies	NA	NA
3	Government agency consultation	5/2/2014– 14/3/2014	Agencies
4	Public exhibition period	5/2/2014-14/3/2014	Council
5	Date of Public Hearing (if applicable)	NA	NA
6	Consideration of submissions	March 2014	Council
7	Assessment of proposal post-exhibition	April 2014	Council
8	Report to Council	May 2014	Council
9	Final maps and Planning Proposal prepared	June 2014	<b>Council</b>
10	Submission to Department for finalisation of LEP	July 2014	Council
11	Anticipated date RPA will make the LEP	August 2014	<b>Council (if under delegation)</b>
12	Anticipated date Council will forward final Planning Proposal to Department for notification	August 2014	Council
13	Anticipated date LEP will be notified	September 2014	Parliamentary Counsel and DoP&I

**Table A - Checklist of State Environmental Planning Policies**

State Environmental Planning Policy		Compliance	Comment
<b>State policies</b>			
SEPP No. 1	Development Standard	Not Applicable	
SEPP No. 4	Development Without Consent and miscellaneous Exempt and Complying Development	Yes	Clause 6 and parts 3 and 4 of SEPP were repealed by Wollongong LEP 2009
SEPP No. 6	Number of Storeys in a Building	Not Applicable	
SEPP No. 14	Coastal Wetlands	Not Applicable	
SEPP No. 15	Rural Land Sharing Communities	Does not apply to Wollongong	
SEPP No. 19	Bushland in Urban Areas	Does not apply to Wollongong	
SEPP No. 21	Caravan Parks	Not Applicable	
SEPP No. 22	Shops and Commercial Premises	Not Applicable	
SEPP No. 26	Littoral Rainforests	Not Applicable	No littoral rainforests identified by the policy in the Wollongong LGA
SEPP No. 29	Western Sydney Recreational Area	Does not apply to Wollongong	
SEPP No. 30	Intensive Agriculture	Not Applicable	
SEPP No. 32	Urban Consolidation (Redevelopment of Urban Land)	Not Applicable	
SEPP No. 33	Hazardous and Offensive Development	Not Applicable	
SEPP No. 36	Manufactured Home Estates	Not Applicable	
SEPP No. 39	Spit Island Bird Habitat	Does not apply to Wollongong	
SEPP No. 41	Casino/Entertainment Complex	Does not apply to Wollongong	
SEPP No. 44	Koala Habitat Protection	Not Applicable	
SEPP No. 47	Moore Park Showground	Does not apply to Wollongong	
SEPP No. 50	Canal Estate Development	Not Applicable	
SEPP No. 52	Farm Dams, Drought Relief and Other Works	Does not apply to Wollongong	
SEPP No. 55	Remediation of Land	Not Applicable	
SEPP No. 56	Sydney Harbour Foreshores and Tributaries	Does not apply to Wollongong	
SEPP No. 59	Central Western Sydney Economic and Employment Area	Does not apply to Wollongong	
SEPP No. 60	Exempt and Complying Development	Yes	
SEPP No. 62	Sustainable Aquaculture	Not Applicable	
SEPP No. 64	Advertising and Signage	Not Applicable	
SEPP No. 65	Design quality of residential flat development	Not Applicable	
SEPP No. 70	Affordable Housing (revised schemes)	Does not apply to Wollongong	
SEPP No. 71	Coastal Protection	Not Applicable	
SEPP	Housing for Seniors or People with a Disability 2004	Not Applicable	
SEPP	Building Sustainability Index: BASIX 2004	Not Applicable	
SEPP	Major Projects 2005	Not Applicable	
SEPP	Development on Kurnell Peninsular 2005	Does not apply to Wollongong	
SEPP	Sydney Region Growth Centres 2006	Does not apply	

State Environmental Planning Policy		Compliance	Comment
SEPP	Mining, Petroleum Production and Extractive Industries 2007	to Wollongong Not Applicable	
SEPP	Infrastructure 2007	Not Applicable	
SEPP	Temporary Structures 2007	Yes	
SEPP	Kosciuszko National Park – Alpine Resorts 2007	Does not apply to Wollongong	
SEPP	Rural Lands 2008	Does not apply to Wollongong	
SEPP	Affordable Rental Housing 2009	Not Applicable	
SEPP	Western Sydney Employment Lands 2009	Does not apply to Wollongong	
SEPP	Exempt and Complying Development Codes 2008	Yes	The Planning Proposal aims to permit outdoor dining upon footpaths, community land or Crown reserve land (ie provided it is part of the an adjoining lawfully approved food and drink premises) and the display of goods on footpaths (ie provided it is part of an adjoining lawfully approved land use) as Exempt Development under Schedule 2 of Wollongong Local Environmental Plan 2009. Therefore, the Planning Proposal is considered consistent with SEPP Exempt and Complying Development Codes 2008.
SEPP	Western Sydney Parklands 2009	Does not apply to Wollongong	
<b>Deemed SEPPS( former Regional Plans)</b>			
Illawarra REP 1	Illawarra	Repealed within Wollongong	
Illawarra REP 2	Jamberoo	Does not apply to Wollongong	
Greater Metropolitan REP No.2	Georges River catchment	Does not apply to Wollongong	



**Table B - Checklist of Section 117 Ministerial Directions**

<b>Ministerial Direction</b>		<b>Comment</b>
<b>1. Employment and Resources</b>		
1.1	Business and Industrial Zones	
1.2	Rural Zones	Not Applicable
1.3	Mining, Petroleum Production and Extractive Industries	Not Applicable
1.4	Oyster Aquaculture	Not Applicable
1.5	Rural Lands	Not Applicable
<b>2. Environment and Heritage</b>		
2.1	Environment Protection Zone	Not Applicable
2.2	Coastal Protection	Not Applicable
2.3	Heritage Conservation	Not Applicable
2.4	Recreation Vehicle Areas	Not Applicable
<b>3. Housing, Infrastructure and Urban Development</b>		
3.1	Residential Zones	Not Applicable
3.2	Caravan Parks and Manufactured Home Estates	Not Applicable
3.3	Home Occupations	Not Applicable
3.4	Integrating Land Use and Transport	Not Applicable
3.5	Development Near Licensed Aerodromes	Not Applicable
3.6	Shooting Ranges	Not Applicable
<b>4. Hazard and Risk</b>		
4.1	Acid Sulfate Soils	Not Applicable
4.2	Mine Subsidence and Unstable Land	Not Applicable
4.3	Flood Prone Land	Not Applicable
4.4	Planning for Bushfire Protection	Not Applicable
<b>5. Regional Planning</b>		
5.1	Implementation of Regional Strategies	The Illawarra Regional Strategy does not contain any specific actions relevant to the Planning Proposal apart from general economic development and employment growth aspirations including the revitalisation of the Wollongong City Centre. Therefore, the Planning Proposal through the promotion of outdoor dining areas may assist in encouraging economic growth and local employment prospects for the labour force.
5.2	Sydney Drinking Water Catchments	Not Applicable

5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable to Wollongong
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable to Wollongong
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Not applicable to Wollongong
5.8	Second Sydney Airport: Badgerys Creek	Not applicable to Wollongong
<b>6. Local Plan Making</b>		
6.1	Approval and Referral Requirements	Not applicable
6.2	Reserving Land for Public Purposes	Not applicable
6.3	Site Specific Provisions	Not applicable
<b>7. Metropolitan Planning</b>		
7.1	Implementation of the Metropolitan Plan for Sydney 2036	Not applicable