

COUNCIL RESOLUTION EXTRACT FROM MINUTES

CALL OF THE AGENDA

- 227 COUNCIL'S RESOLUTION** – RESOLVED UNANIMOUSLY on the motion of Councillor Brown seconded Councillor Dorahy that the staff recommendations for Items 2, 6, and 8 to 20 inclusive, be adopted as a block.

ITEM 2 - DRAFT PLANNING PROPOSAL TO PERMIT OUTDOOR DINING AND DISPLAY OF GOODS ON FOOTPATHS AS EXEMPT DEVELOPMENT AND ENABLE OUTDOOR DINING (FOOD AND DRINK PREMISES) AS A PERMISSIBLE USE WITHIN THE SP2 ZONE

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 227).

COUNCIL'S RESOLUTION –

- 1 A draft Planning Proposal be prepared to amend the Wollongong Local Environmental Plan by:
 - a permitting outdoor dining on the footpath, community land or Crown land as Exempt Development (Schedule 2) provided it is part of an adjacent lawfully approved food and drink premises;
 - b permitting the display of goods on the footpath, community land or Crown land as Exempt Development (Schedule 2) provided it is part of an adjacent lawfully approved shop; and
 - c including food and drink premises as a permissible use (with development consent) in the SP2 Infrastructure zone.
- 2 The draft Planning Proposal be forwarded to the NSW Department of Planning and Infrastructure for a Gateway determination and requesting authorisation for the General Manager to exercise plan making delegations in accordance with Council's resolution of 26 November 2012.
- 3 If approved, the draft Planning Proposal be exhibited for a minimum period of twenty eight (28) days.

Minute No.

ADJOURNMENT OF MEETING

A PROCEDURAL MOTION was MOVED by Councillor Merrin seconded Councillor Martin that the meeting adjourn for a five minute break. At this stage, the time being 8.24 pm, the meeting was adjourned.

The meeting resumed at 8.29 pm with all Councillors in attendance, with the exception of Councillor Merrin who returned to the meeting at 8.31 pm, during debate and prior to voting on Item 3.

DEPARTURE OF COUNCILLOR

During debate and prior to voting on Item 3, Councillor Crasnich departed and returned to the meeting, the time being from 8.37 pm to 8.39 pm.

ITEM 2

DRAFT PLANNING PROPOSAL TO PERMIT OUTDOOR DINING AND DISPLAY OF GOODS ON FOOTPATHS AS EXEMPT DEVELOPMENT AND ENABLE OUTDOOR DINING (FOOD AND DRINK PREMISES) AS A PERMISSIBLE USE WITHIN THE SP2 ZONE

This report considers the preparation of a draft 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.

The draft Planning Proposal will enable outdoor dining to be permitted within the footpath, community land or Crown land provided it is part of an adjacent lawfully approved food and drink premises. The display of goods on footpaths is also proposed provided it is part of an adjacent lawfully approved land use. The display of goods and outdoor dining areas upon footpaths will remain subject to strict licencing requirements under the Roads Act 1993 and Council's Outdoor Restaurant Policy.

The SP2 Infrastructure (Road) zone applies to all main roads within the City of Wollongong such as Keira Street, Flinders Street, Lawrence Hargraves Drive and Princes Highway etc. Under Wollongong Local Environmental Plan 2009, the SP2 Infrastructure zone currently prohibits food and drink premises. The draft Planning Proposal proposes to permit food and drink premises within the SP2 zone, subject to development consent.

Recommendation

- 1 A draft Planning Proposal be prepared to amend the Wollongong Local Environmental Plan by:
 - a permitting outdoor dining on the footpath, community land or Crown land as Exempt Development (Schedule 2) provided it is part of an adjacent lawfully approved food and drink premises;
 - b permitting the display of goods on the footpath, community land or Crown land as Exempt Development (Schedule 2) provided it is part of an adjacent lawfully approved shop; and
 - c including food and drink premises as a permissible use (with development consent) in the SP2 Infrastructure zone.
- 2 The draft Planning Proposal be forwarded to the NSW Department of Planning and Infrastructure for a Gateway determination and requesting authorisation for the General Manager to exercise plan making delegations in accordance with Council's resolution of 26 November 2012.
- 3 If approved, the draft Planning Proposal be exhibited for a minimum period of twenty eight (28) days.

Attachments

Correspondence from NSW Department of Planning and Infrastructure

Report Authorisations

Report of: Renee Campbell, Manager Environmental Strategy and Planning
Authorised by: Andrew Carfield, Director Planning and Environment – Future, City and Neighbourhoods

Background

The Wollongong Local Environmental Plan (LEP) 2009 came into operation on 26 February 2010. It was one of the first Standard Template LEPs to come into operation in NSW and at the time of its preparation, there was very limited flexibility to modify the Exempt Development provisions under the Standard Template LEP process.

Permitting outdoor dining was not included in the Exempt Development provisions and therefore, prospective applicants who currently wish to set up outdoor dining areas upon footpaths, community land or Crown land in front of their lawfully approved restaurant or food and drink premises within the Wollongong LGA must formally lodge a Development Application with Council. Similarly, a Development Application is required to be lodged for any proposed display of goods upon any footpath. If the Development Application is approved, the applicant must then seek a licence agreement with Council, under either:

- i Section 125 of the Roads Act 1993 (i.e. footpath areas); or
- ii Division 2 of Part 2 of Chapter 6 of the Local Government Act 1993 (i.e. community lands); or
- iii Crown Lands Act 1989 (i.e. Crown reserve).

Additionally, the road reserves (road carriageway and footpath areas) for a number of main roads within the City such as Keira Street, Flinders Street, Corrimal Street, Bourke Street, Lawrence Hargrave Drive, Princes Highway, King Street and Shellharbour Road are zoned SP2 Infrastructure (Roads), under Wollongong LEP 2009. The SP2 Infrastructure land use zone table has a very limited range of permissible land uses and hence, the use of footpaths for outdoor dining areas (even if in front of adjacent lawfully approved food and drink premises / restaurants) is currently prohibited in this zone. Therefore, Council is unable to consider such requests for outdoor dining in these locations until such time as a solution is provided.

A number of other NSW Councils (e.g. Sydney City Council, Canada Bay Council, Warringah Council, Fairfield City Council, Kogarah Council, Ballina Council etc) have introduced Standard Template LEPs over the last three years which now include

outdoor dining areas (associated with adjacent lawfully approved food and drink premises or restaurants) upon footpaths, community land or Crown land as Exempt Development (Schedule 2) under their respective Standard Template LEPs. Similarly, they also permit the display of goods upon footpaths for adjoining lawfully approved premises as Exempt Development (Schedule 2). Exempt Development does not require any development assessment by Council, provided the use complies with the specified requirements, however would still require a licence agreement to be entered into with Council.

Proposal

This proposal seeks to amend the Exempt Development schedule (Schedule 2) under Wollongong LEP 2009 to enable outdoor dining areas (associated with an adjoining lawfully approved food and drink premises / restaurant) upon footpaths, community land or Crown reserve and the display of goods upon footpaths (i.e. associated with an adjoining lawfully approved retail or business premises). This amendment would simplify the approval process (i.e. reduce red tape) and would reflect a more contemporary approach towards land use decision making.

Further, it is proposed to amend the SP2 Infrastructure zone land use table in Wollongong LEP 2009 to include food and drink premises as a permissible land use (permitted with development consent), in order to encourage outdoor dining opportunities upon the footway areas of main roads such as Keira and Flinders Streets at Wollongong and Lawrence Hargrave Drive at Thirroul.

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 (i.e. footpaths), Chapter 6 of the Local Government Act 1993 (i.e. community lands) or the Crown Lands Act 1989 (i.e. Crown lands) as well as Council's Outdoor Restaurant Policy. Council in its assessment as to the suitability of an outdoor dining area or a goods display area upon a footpath will also ensure that suitable access arrangements are maintained for all persons along the footpath, including people with a disability, in line with the requirements of the Disability Discrimination Act 1992.

Consultation and Communication

The NSW Department of Planning and Infrastructure was consulted regarding the current prohibition of outdoor dining within the SP2 Infrastructure zone. The NSW Department of Planning and Infrastructure via correspondence dated 28 May 2013 (see Attachment 1) confirmed that the 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 zone as this definition includes restaurants, cafes and pubs.

If Council proceeds with the draft Planning Proposal it would be forwarded to the NSW Department of Planning and Infrastructure for review. The Department would consider the draft Planning Proposal and may issue a Gateway determination detailing exhibition requirements. The draft Planning Proposal would then be exhibited in accordance with the Gateway determination for a minimum period of twenty eight (28) days.

Planning and Policy Impact

There are a number of strategies and policies applicable to the draft Planning Proposal including the Illawarra Regional Strategy, Wollongong Retail Centres Study 2004 and Wollongong 2022.

Illawarra Regional Strategy

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.

The creation of outdoor dining areas (i.e. 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 (i.e. associated with an adjoining lawfully approved land use) as Exempt Development under schedule 2 of Wollongong LEP 2009 is also considered consistent with the theme of simplifying approvals for development, under the Strategy.

Wollongong Retail Centres Study 2004

The Wollongong Retail Centres Study 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 draft Wollongong LEP 2009.

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." The draft Planning Proposal seeks to encourage outdoor dining opportunities which may further strengthen certain retail precincts such as Keira Street and Crown Street West at Wollongong and hence, is considered consistent with this study.

Wollongong 2022

Council endorsed Wollongong 2022 – Our Community Strategic Plan on 25 June 2012. Wollongong 2022 is a long term plan that identifies where the community wants to be in the future and outlines the community's priorities and aspirations and how these will be achieved.

This report contributes to the Wollongong 2022 objective 2.1 *Local employment opportunities are increased within a strong local economy* under the Community Goal 2: *We have an innovative and sustainable economy.*

This report also contributes to the Wollongong 2022 objective 5.5 *Participation in recreational and lifestyle activities is increased* under the Community Goal 5: *We are a healthy community in a liveable city.*

This Planning Proposal contributes to the achievement of these goals, objectives and strategies as it seeks to permit outdoor dining and the display of goods upon road reserves (footpaths) for adjacent lawfully approved premises. This will help to provide stronger local employment opportunities for retail and food and drink businesses as well as providing outdoor eating opportunities for residents within our city.

Wollongong Development Control Plan 2009 (Chapter C12: Outdoor Restaurant and Footpath Trading (Street Vending) Activities) and the Outdoor Restaurant Policy

In the event that this draft Planning Proposal is ultimately made by the Minister for Planning and Infrastructure (or delegate), then the Wollongong Development Control Plan (DCP) 2009 Chapter C12: Outdoor Restaurant and Footpath Trading (Street Vending) Activities will no longer be relevant given that outdoor dining and the display of goods on the footpath will be Exempt Development. At that point, Chapter C12 in Wollongong DCP 2009 should be repealed.

However, a number of locational and access related requirements for both outdoor dining areas and the display of goods as contained in Chapter C12 of Wollongong DCP 2009 are proposed to be transferred to a revised Outdoor Restaurant Policy, in order to assist in the effective management and regulation of both outdoor dining activities and the display of goods on footpaths.

Options

The following options are available for Council to consider:

1. Resolve to prepare a draft Planning Proposal to permit outdoor dining upon footpaths, community land or Crown land and the display of goods upon footpaths under WLEP 2009 as Exempt Development (schedule 2) and to include food and drink premises as a permissible land use (with development consent) in the SP2 zone – **Recommended option**. The management of outdoor dining areas upon footpaths, community land or Crown land and the display of goods upon footpaths will be undertaken by Council in line with the requirements under the Roads Act 1993 (i.e. footpaths), Chapter 6 of the Local Government Act 1993 (i.e. community

lands) or the Crown Lands Act 1989 (i.e. Crown lands) as well as Council's Outdoor Restaurant Policy.

2. Resolve to prepare a draft Planning Proposal to include food and drink premises as a permissible land use (with development consent) in the SP2 zone. As a consequence, there would be no change relating to the need for development consent to permit outdoor dining and the display of goods upon footpaths, community land or Crown land.
3. Resolve not to prepare a draft Planning Proposal to permit outdoor dining and the display of goods upon footpaths, community land or Crown land as Exempt Development and not to include food and drink premises as a permissible land use (with development consent) in the SP2 zone. No amendment to the current planning controls

Conclusion

It is recommended that Council support the draft Planning Proposal, in order 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.

If endorsed by Council, the draft Planning Proposal will be forwarded to the NSW Department of Planning and Infrastructure for their review and Gateway determination. If approved, the draft Planning Proposal would be exhibited for a minimum period of 28 days. After the exhibition period, the submissions would be reported to Council for decision on finalising the draft Planning Proposal.



Planning & Infrastructure

Contact: Graham Towers
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Email: graham.towers@planning.nsw.gov.au

Mr Andrew Carfield
Director Planning and Environment
Wollongong City Council
Locked Bag 8821
Wollongong DC NSW 2500

Dear Mr Carfield

Subject: Outdoor dining on Keira Street, Wollongong

I refer to your email dated 22 May 2013 concerning the permissibility of outdoor dining within the SP2 Infrastructure zone in Keira Street, Wollongong. I note that the SP2 Infrastructure zone also applies to West Crown Street, Corrimal and Flinders Streets in the Wollongong City Centre.

I appreciate you raising this issue with the Department, as outdoor dining is considered to be an excellent way of activating streetscapes particularly outside of normal business hours.

I have reviewed your advice on the matter and encourage Council to consider submitting a Planning Proposal to the Department to ensure that outdoor dining is permissible within the SP2 Infrastructure zone. Council may wish to consider permitting *food and drink premises* with consent in the zone as this definition includes *restaurants, cafes, and pubs*. Outdoor dining could be considered to be ancillary to these uses.

Should you have any further enquiries about this matter, please contact Graham Towers on 4224 9467.

Yours sincerely

Brett Whitworth
Regional Director
Southern Region

28 May 2013



