

OUTDOOR DINING AREAS

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OBJECTIVE

This policy provides for the placement of street furniture upon footpaths and public places outside food premises in the City, to add to the vibrancy and visual amenity of the City whilst maintaining adequate access and safety to pedestrians and the users of mobility scooters and the like.

APPLICABILITY

This policy applies to that area of Summer Street where the footpath has been widened to at least 5.4 metres or such other areas within the City where Council determines outdoor dining areas are appropriate.

GENERAL

Council has developed guidelines for managing outdoor dining areas. Approval to use public space for outdoor dining must be in accordance with this policy, the guidelines and any approval issued by Orange City Council.

RELATED POLICIES/DOCUMENTS

Outdoor Dining Areas Guidelines
 Roads Act 1993
 Local Government Act 1993
 Environmental Planning and Assessment Act 1979
 Food Act 2003
 Work Health and Safety Act and Regulation 2011
 Smoke Free Environment Act 2000
 Outdoor Dining Area License

Responsible Area – Corporate and Commercial Services

REVISION					
	DATE	RESOLUTION		DATE	RESOLUTION
1	January 2002	Operational	6	4 Feb 2014	14/38
2	January 2006	Operational	7	2 June 2015	15/230
3	January 2008	Operational	8	6 September 2016	16/381
4	January 2009	09/453	9	3 July 2018	18/308
5	21 May 2013	13/223			
All policies can be reviewed or revoked by resolution of Council, at any time.					

SUMMARY OF AMENDMENTS

Amendment Date	Section/Reference and Amendment
December 2013	Include provisions prohibiting placement of furniture outside approved area and increasing width for pedestrian and mobility scooter access on footpath. Clarification regarding the lapse of approval.
December 2014	Formatting amendments. Change of name to Outdoor Dining Areas to be consistent with SEPP Exempt and Complying Development provisions.
July 2016	Alter processing and payment of applications and addition of exempt approvals. Provision for license to be for the term of the approval with annual invoicing for rent in accordance with the Delivery/Operational Plan.
April 2018	Applicability of policy extended to the City rather than just the Central Business District. Added Food Act 2003, Work Health and Safety Act and Regulation 2011, Smoke Free Environment Act 2000 as relevant legislation. Responsible area changed to Corporate and Commercial Services Change to Guidelines to clarify that rent is set in accordance with Council's Schedule of Fees and Charges.

Outdoor Dining Areas Guidelines

Procedures

1 GENERAL

1.1 Interpretation

Street furniture includes tables, chairs, umbrellas, wind barriers, awnings, bollards and plant containers.

1.2 Street furniture

Street furniture is required to be sturdy, durable and of an approved colour. Umbrellas and wind barriers may contain advertising; such advertising is to be tasteful, of minimal scale and relate to products available at the food premises. Umbrellas and wind barriers are required to be secured at the base so as to prevent injury to people and/or damage to property or motor vehicles.

Plant containers cannot be larger than 800 millimetres in diameter or width and depth.

1.3 Placement of Street Furniture

Street furniture must be located in accordance with the Approval applicable to the premises. Street furniture shall not be placed on a public street in a location that will interfere with the operation of a loading zone, bus stop or the like.

Street furniture must not obstruct pedestrian traffic or emergency egress from any premises and the 2.5m wide pedestrian corridor shall be maintained in Summer Street for use by pedestrians, users of mobility scooters and the like at all times. Street furniture is to be removed from the footpath at the end of business on each day.

On corner properties, street furniture is permitted within only one frontage, except where the provision of street furniture on both frontages can be justified.

Plant containers are required to be located wholly within the licence area and preferably within the confines of any wind barriers and tables and chairs.

1.4 Summer Street

Street furniture is required to be located on the footpath within the property frontage and between 500 millimetres from the kerb and 2.5 metres from the front boundary of the property.

Council may allow street furniture to be placed adjacent to the property boundary, provided that the street furniture is not located more than 2.4 metres from the property boundary, where such a location can be justified and such arrangement will not interfere with the use of adjoining land and with access by pedestrians and users of mobility scooters and the like.

1.5 Outside Summer Street

Council will permit the placement of street furniture upon streets and public places other than Summer Street where it can be demonstrated that the placement of street furniture will not restrict pedestrian traffic along the footpath, the ability of vehicles to reverse into the kerb and the ability of persons leaving or entering motor vehicles to access the footpath.

On streets other than Summer Street, the minimum width that is to be made available for pedestrian traffic clear of any street signs or Council-owned structures is 2.1 metres.

1.6 Exclusions

This policy does not permit the sale and/or display of goods from the footpath. Council does permit the display and/or sale of goods from the footpath on specially approved days.

This policy does not permit the display of billboards or any article on footpaths. Council's resolution 91/745 prohibits the display of billboards and the like from footpaths within the CBD.

2 PROCEDURE

When making application for Consent, the process will include:

- Under the provisions of the Roads Act 1993 and Local Government Act 1993, an application is required to place street furniture on Summer Street or other classified road.
- An application is to be made and approval obtained prior to any street furniture being placed upon the footpath.
- When making the application, three copies of a plan drawn to an appropriate scale showing the area to be used and a written submission detailing the amount, type and colour of the street furniture is required to be submitted together with the appropriate fees.

2.1 Licence agreement

Prior to the commencement of outdoor dining, the shop proprietor shall enter into a licence agreement with Council. This licence agreement shall provide for, amongst other things

- Renewal at the expiration of the Consent
- Issue of tax invoice on 1 July each and every year for the payment of rent, as set by Council annually.
- The provision of public liability insurance to the value of \$10 million and providing Council with a copy upon request
- Exclusion from any relevant Alcohol Free Zone established by Council (where relevant)
- The need for renewal of the licence agreement upon change of tenancy or proprietor of the food premises and/or at the expiration of the Consent.

The placement of street furniture and the operation of the outdoor dining area shall be consistent with the area approved by Council under the Consent and within the licensed area at all times.

Approval under the Roads Act 1993 lapses after seven years.

Council reserves the right not to renew a licence.

2.2 Rent

Upon approval of an application to place street furniture upon the footpath, the Licensee shall pay rent as set in Council's Schedule of Fees and Charges on an annual basis unless otherwise agreed to by Council.

2.3 Breaches

Failure to operate an outdoor dining area in accordance with the approval and licence may result in the termination of the licence and/or action taken for a breach of the Roads Act 1993 and Local Government Act 1993.



APPLICATION & LICENSE OUTDOOR DINING AREA

Roads Act 1993 and Local Government Act 1993

Office Use Only	
Application #	
PR	
Account	1.502.72.1501
Date	
Amount	
Receipt	

Applicant Details

Name _____

Address _____

Telephone Number (work) _____ (mobile) _____

Email _____

Signature _____ Date _____

Subject land (refer to rates notice for assistance)

Street Address _____

City/Town _____ Lot Number _____ Section _____ DP _____

Name of Business _____

Telephone Number (work) _____ (mobile) _____

Detailed description of proposed furniture _____

Furniture	No of items	Dimensions	
Tables			
Chairs			Total area to be approved M ²
Umbrellas			
Wind barrier			

Council must receive the following to process your application:

- Payment is required on application** by Orange City Council (ABN: 85 985 402 386) and a tax invoice/receipt will be issued.
 - Scaled plan showing the area of furniture in relation to the front of the building and the road must be attached to this application (three copies are required).
- 1 A copy of the approved location plan (from the Consent) **drawn to scale** (min 1:50) is to be attached to this Application Form. Location and number of proposed tables and chairs are to be shown on the plan.

The subject outdoor dining area shall at all times operate in accordance with the terms of Council's approvals, the plans approved under that approval and with Council's Outdoor Dining Areas Policy.

Under no circumstance shall the Licence allow an increase in the number of tables and chairs, or an increase in the area of the outdoor dining area from that shown on the approved application plan.
 - 2 Before Council issues the granted Outdoor Dining Area Licence, the applicant is required to pay rent to the 1 July of the current financial year on a pro-rata basis and thereafter 28 days after the issue of a tax invoice on an annual basis.

Under the provisions of the Roads Act (including street furniture) Council charges a rental fee based on the square meterage being occupied. This fee is determined each year in Council's Delivery/Operational Plan, Schedule of Fees and Charges.

These fees will be payable in advance. Fees are not refundable.
 - 3 A copy of the current Public Liability insurance to the value of \$10 million with endorsement noting Orange City Council's respective rights and interests and indemnifying Orange City Council for the licensed area is to be attached to this application. It is the responsibility of the applicant to provide a copy of any and all renewed Public Liability insurance as required in this clause. Failure to do so will be grounds to void this licence agreement.
 - 4 Licences are granted only to restaurants and or cafes that supply table service and are willing to extend such table service to the Outdoor Dining Area. China plates, cutlery and glassware etc are acceptable materials within the Outdoor Dining Area. Disposable materials are not acceptable, other than foam, plastic or paper coffee cups.
 - 5 An Outdoor Dining Area Licence can be transferred from one licensee to another. If a Licence is to be taken over by another owner/lessee, it is the current licensee's responsibility to notify Council, so that all records can be updated promptly.
 - 6 The Licensee agrees to keep the area in a clean and tidy state and to pay Council for any additional cleaning as agreed to by the applicant and Council.
 - 7 Orange City Council will repair any damage to pavers resulting from the licensee's use of the footpath at the licensee's expense. The Licensee will notify Council immediately if pavers are in need of repair.
 - 8 The Licensee will not sell or serve or permit to be sold any alcoholic or intoxicating beverage in or from the licensed area except, where Council has granted specific approval and an appropriate Liquor Licence has been obtained from the relevant liquor licensing authorities.



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Alcohol can only be sold or served (as with BYO) ancillary to a meal in the Outdoor Dining Area. In the case of BYO the proprietor shall serve the alcohol provided and store any unopened alcohol within the premises. This provision shall apply as a covenant between the Licensee and Orange City Council despite any provision of the Liquor Act, 1982 (as amended) which may permit the sale of alcoholic beverages to a person without consumption of a meal (eg a Dine or Drink Licence).

Where an Outdoor Dining Area is in an alcohol free zone, under this licence agreement alcohol will be able to be consumed in the outdoor dining area only by patrons of the applicant’s business during the operating hours of the business, and in accordance with the Liquor Licence and this Licence Agreement.

- 9 Orange City Council reserves the right to revoke this licence if objections are raised or problems arise.

I hereby apply for an Outdoor Dining Area Licence under Section 125 of the Roads Act 1993. I agree to the conditions in this application and request that Orange City Council considers my submitted proposal for a Licence Agreement for a period of two years, subject to past and continuing compliance with all Licence conditions and review of fees in accordance with the annual fees and charges set.

This Licence Agreement is not transferable and, subject to these Licence conditions, expires seven years from the date of approval under the Roads Act for placement of this street furniture.

Signed on behalf of Orange City Council in the presence of

Authorised Person _____

Name _____

Witness _____

Name _____

Signed on behalf of Applicant in the presence of

Authorised Person _____

Name _____

Witness _____

Name _____

Office Use Only		
APPROVAL NUMBER _____		
DATE OF APPROVAL _____	DATE OF EXPIRATION _____	

THE INFORMATION YOU PROVIDE IS CONFIDENTIAL UNDER THE PRIVACY & PERSONAL INFORMATION PROTECTION ACT. IF YOU DO NOT PROVIDE THE DETAILS REQUESTED COUNCIL MAY BE UNABLE TO PROCESS YOUR APPLICATION.

Outdoor Dining Fact Sheet

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides exempt development (development consent NOT required) for the use of a footway or public open space within the meaning of the [Roads Act 1993](#) as an outdoor dining area associated with lawful food and drink premises, provided the following development standards can be achieved:

The standards specified for that development are that the development must:

- (a) not be associated with a pub or a small bar, and*
- (b) be 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, and*
- (c) be carried out in accordance with any approval granted under section 68 of the Local Government Act 1993.*

The relevant application form is for approval under the two aforementioned Acts. Approval under the Roads Act is limited to seven years and a new application will be required at that time. The application for Footpath – Outdoor Dining must be consistent with Council’s Outdoor Dining Areas Policy and a scaled plan must be submitted that demonstrates the placement of furniture on the footpath or public open space is consistent with that policy.

This process remains a separate process to Council’s Outdoor Dining Areas Licence. A licence remains a requirement subject to these approvals being granted.

Application must be made via the appropriate form found on Council’s web site and be accompanied with three copies of scaled plans. Graph paper accompanies the application form to provide assistance with the preparation of the plans.

An example of an appropriately prepared plan is attached as a guide. Items such as Council bins, loading zones, bus stops, park benches, street trees etc must also be shown on the plan.

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Site Location of Activity

