

## EXT 013: OUTDOOR EATING FACILITIES IN PUBLIC PLACES

<b>Document Status:</b>	Current	<b>CM Ref:</b>	D16/29050 [v3]
<b>Responsible Officer:</b>	Manager Development and Statutory Services	<b>Version No:</b>	4
<b>Date Adopted:</b>	September 2012	<b>Resolution #:</b>	O0912-022
<b>Date Reviewed:</b>	December 2021	<b>Resolution #:</b>	O1221-225

### Objective

The Shire recognises that appropriately located and designed outdoor eating facilities (alfresco dining area) can make a significant contribution to the vitality and ambience of public places and urban lifestyles. They offer opportunities for spontaneous and arranged social interactions or quiet reflection while introducing a visual vibrancy that can make a place memorable.

This Policy aims to provide a framework and urban design guidelines to promote the establishment of outdoor eating facilities in public places for the purpose of alfresco dining.

### Policy

Policy aims are:

- a) To ensure that alfresco dining does not interfere with the safe and reasonable movement of pedestrian and vehicular traffic;
- b) To encourage high quality alfresco dining which enhances the amenity and vitality of the Shire of Esperance;
- c) To provide a comprehensive framework for the development, management and control of alfresco dining throughout the Shire of Esperance; and,
- d) To ensure that alfresco dining areas are accessible to all patrons, including people with disabilities.

## ALFRESCO DINING

### 1) Policy Application Area

Alfresco dining areas will only be permitted to be established on a public place adjacent to a food business that has been issued with a Certificate of Registration of a Food Business by the Shire of Esperance.

### 2) Development Approval Requirements

#### i) Pedestrian Access;

- (a) A minimum footpath width of 2.0 metres must be provided directly adjacent to the building or running parallel to the street, unless otherwise approved by the Manager Development and Statutory Services for an alfresco dining area to be considered;
- (b) In areas of heavy pedestrian traffic, the Shire of Esperance may require a wider pedestrian thoroughfare or may prohibit alfresco dining altogether; and,
- (c) Pedestrians must be able to make normal use of the footpath without being obliged to step into the road at any point or make other unwarranted detours.

#### ii) Distance from Kerb

A minimum 0.6 metre setback from the alfresco dining area to any kerb line is required to provide an appropriate separation distance from vehicles using kerbside or parallel parking adjacent to an alfresco dining area, and for the safety of diners

#### iii) Vehicle Sight Lines

Alfresco dining must not obstruct sight lines for either vehicles or pedestrians, both at road junctions and vehicle access crossovers.

#### iv) Demarcation of Outdoor Eating Facilities / Alfresco Dining

The Shire may provide footpath identification of the approved alfresco dining area utilising coloured bricks, small brass plaques or the like, placed at regular intervals (approximately every 2.0m) along the alfresco dining boundary.

### 3) Furniture

#### i) Placement of Furniture

- (a) All furniture, including barriers must be placed and kept within the alfresco dining area and at all times must not compromise the access and safety of patrons or pedestrians;
- (b) All furniture must be free-standing and removable, unless specific written approval has been given by the Shire;
- (c) Where umbrellas or similar sun protection is provided, they must be adequately secured, contained within the alfresco dining area and of sufficient height (minimum 2.1 metres) above the ground to prevent injury to patrons and pedestrians. Depending upon the structure proposed, structural certification from a practising Structural Engineer may be required.

ii) Number of Chairs

A maximum of one chair per square metre may be located in an alfresco dining area. Other items of furniture such as tables and umbrellas can be incorporated as necessary. Note: Number of patrons may be restricted by numbers of toilet facilities available.

iii) Design and Materials

- (a) The design of the furniture, including barriers used for the alfresco activity should be in keeping with the style and character of the host building and reflect the interior of the business;
- (b) White tabletops and white chairs are not permitted in alfresco dining areas adjacent to public roads due to the possibility of glare;
- (c) Plastic tables and chairs are not permitted;
- (d) All furniture should be durable, waterproof, rust proof and weather resistant and should fold or stack for storage; and,
- (e) All furniture, including barriers must be maintained in a physically sound and aesthetically acceptable condition and in a good state of repair and be designed so that corners and fastenings do not create a potential hazard for patrons and pedestrian traffic to the satisfaction of the Shire.

iv) Removal and storage of furniture

- (a) All furniture must be removed from the alfresco dining area at the close of business each day, unless otherwise permitted by the Shire of Esperance; and
- (b) The Shire of Esperance may require the removal of any furniture or structure from public areas at any time to allow the undertaking of street or footpath works, maintenance, cleaning or other works as necessary.

v) Advertising

- (a) Advertising on furniture and structures may only bear the name of the associated establishment and/or the name of a commercial product sold within the premises; and,
- (b) Any additional signage must be approved by the Shire of Esperance, and must not restrict access to any public thoroughfare as required by this Policy.

4) Operating Requirements

i) Hours of Operation

- (a) Unless otherwise specified by the Shire, hours of operation of the alfresco dining area may be determined at the discretion of the permit holder for the alfresco dining area;
- (b) Alfresco dining areas serving alcoholic beverages will be limited to the hours stipulated in the liquor licence; and,
- (c) The permit holder must ensure that no noise nuisance is created by the alfresco dining activity, and that any music complies in all respects with the *Environmental Protection (Noise) Regulations 1997*.

ii) Consumption of Alcohol

- (a) The consumption of alcohol within alfresco dining areas is only permitted subject to compliance with the proprietor obtaining the necessary approvals from the Shire of Esperance and Department of Racing Gaming and Liquor, and must ensure ongoing compliance with all Liquor Licence conditions; and,
- (b) Where alcohol is served, regular table service is mandatory and patrons must be seated at all times.

iii) Cleanliness and Hygiene

- (a) The permit holder is responsible for maintaining the alfresco dining area in a clean and sanitary condition free of visible dirt and food material at all times. This includes removing grease stains, keeping the vicinity clear of litter and waste materials and the high pressure cleaning of the pavement, as and when required. No material from sweeping of the pavement is permitted onto the road or into the stormwater system.

iv) Maintenance

- (a) The permit holder for the alfresco dining area is responsible for maintenance of the area over which the dining activity takes place and shall make good, to the Shire's satisfaction, any damage or staining to the surface

v) Lighting

- (a) Where alfresco dining occurs outside daylight hours, the permit holder for the alfresco dining area must provide adequate, clear and well distributed lighting to ensure the safety and amenity of both patrons and the public; and,
- (b) Outdoor lighting shall not cause a nuisance by way of light spill to any nearby premises.

vi) Electrical Wiring

- (a) All electrical wiring connected to lights, devices or appliances situated in or about the alfresco dining area shall not be placed:
  - (i) On or under the alfresco dining area;
  - (ii) Above any part of a public place so as to interfere or obstruct the passage of vehicles or pedestrians; and,
  - (iii) In any manner or in any place which maybe prejudicial to safety.
- (b) Any electrical wiring must be approved by the appropriate authority and must not be placed across any thoroughfare.

vii) Heating

- (a) Heaters must be Australian Gas Association (AGA) approved and be used in accordance with manufacturer's instructions, particularly in relation to required clearances from other combustible objects.
- (b) Fixed gas heaters are not permitted without the express written consent of the Shire.

- (c) Any fixed or portable gas heater within the outdoor eating area is to be installed and regularly checked by a registered gas fitter to ensure they comply with:

1. AS 5601/AG 601 – 2000 Gas Installations
2. AS/NZS 1956 – 1997 Storing and Handling of LP Gas
3. AS 4565 – Outdoor Radiant Heaters
4. And any other relevant Gas Standard

- viii) Dogs are only permitted in the outdoor eating area under the following conditions:

- (a) Area is to be sufficiently signed to advise patrons that dogs are permitted in the alfresco dining area;
- (b) Food premises to develop a dog management plan
- (c) Dogs do not enter the inside of the food premises
- (d) Area is to be kept clean at all times
- (e) Pedestrian access ways remain unobstructed at all times.

- ix) Smoking

- (a) The Shire of Esperance supports any State Government initiative to introduce state wide smoking bans in alfresco dining areas
- (b) Smoking is not permitted within the alfresco dining area and the use of appropriate non-smoking signage by the permit holder is required.

## **5) Application and Administration Procedure**

- i) Assessment and compliance

- (a) All applications shall be assessed in accordance with the requirements of this Policy and the Shire of Esperance Activities in Thoroughfares and Public Places and Trading Local Law 2016 and Local Government Property Local Law 2009, by the Shire's Health Services. The Shire's Planning Services shall be consulted during the assessment process.
- (b) Once an alfresco dining area has been approved and established, the Shire's Health Services is responsible for ensuring the permit holder complies with all imposed conditions of approval.

- ii) Application for Permit

- iii) Notwithstanding the requirements of the Shire of Esperance Activities in Thoroughfares and Public Places and Trading Local Law 2016 and Local Government Property Local Law 2009, a proprietor of a food business seeking the issue of an Outdoor Eating Facility Permit shall make application to the Shire in

writing on the prescribed form (Application for Traders License) and such application shall be accompanied by –

- (a) The appropriate fee
- (b) Two (2) sets of plans of the proposed alfresco dining area to a scale of 1:50 showing –
  - (i) the location and dimensions of the proposed alfresco dining area and the means by which the eating area is to be separated from the balance of the street or public place;
  - (ii) the position of all tables, chairs and all other structures proposed to be provided in the alfresco dining area;
  - (iii) a description of the type and make of all tables, chairs and all other structures proposed to be provided in the alfresco dining area;
- (c) Two (2) sets of plans at a scale of 1:200 depicting the alfresco dining area and all land improvements thereon within 30 metres of the boundaries of the alfresco dining area.
- (d) Colour photograph(s) of the proposed furniture and other structures to be set up in the alfresco dining area.
- (e) Proof of adequate insurance arrangements for public liability insurance, of not less than \$10,000,000.
- (f) The provision of an indemnity from the permit holder indemnifying the Shire in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder.
- (g) Such other information as may be required by the Shire to be included in the application.

iv) **Renewal of Permit**

On or by the 30 June each year the permit holder may apply to the Shire in writing, or on an application form (Application for Traders Permit), for a renewal of their Outdoor Eating Facility Permit. This written request must be accompanied by the prescribed fee and proof of adequate insurance arrangements for public liability insurance.

6) **Cancellation of Permit**

The CEO may, by notice in writing, cancel a permit at any time if the requirements of this policy or any specific condition of approval are not complied with.

7) **Fees**

Fees and charges are established in accordance with sections 6.16 to 6.19 of *the Local Government Act 1995*, listed in the Shire of Esperance Schedule of Fees and Charges.

..... Policy Ends .....