

SECTION 1 - INTRODUCTION

BACKGROUND

For the purposes of this policy an ‘Outdoor Dining’ area is an area that’s principle purpose is to provide food or beverage for public consumption in association with an adjacent approved food business.

OBJECTIVE AND GOALS

The policy aims to:

- Contribute to the visual quality, social activity and positive activation of the public domain (i.e. footpaths, plazas, public squares or the like) in the City, town and local centres;
- Maintain inclusive pedestrian accessibility as a primary purpose of the public domain;
- Manage the general amenity of Fairfield City’s public domain area by implementing development controls to ensure minimal visual clutter and safety impact to the general public.

AREA TO WHICH THIS POLICY APPLIES

This Policy applies to all public domain areas in Fairfield Local Government Area, which include publicly owned footpaths, plazas, civic urban spaces, public squares or the like.

FEES AND CHARGES

Fees and charges for the display items on the footpath are set out in the Annual Fees and Charges, available on Council’s website.

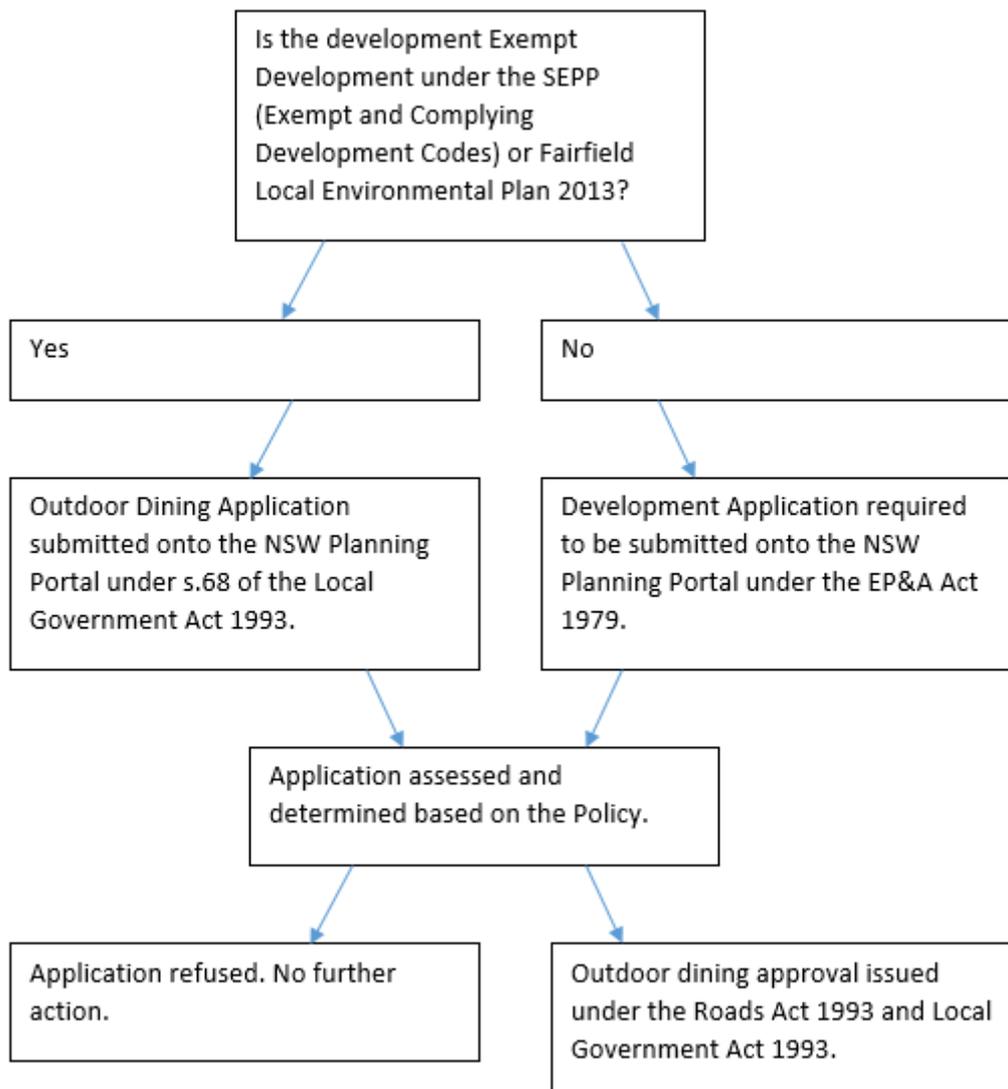
APPROVAL PROCESS

- All outdoor dining use carried out on footpaths, requires outdoor dining approval issued under Section 125 of the Roads Act 1993 and Section 68 of the Local Government Act 1993 before the commencement of use.
- Under the Schedule 2 of the Fairfield Local Environmental Plan 2013, outdoor dining can be carried out as exempt development subject to meeting specific development standards.



- Under Part 2, Division 1, Subdivision 20A of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, outdoor dining can be carried out as exempt development subject to meeting specific development standards.
- Should the proposed outdoor dining not meet the development standards for exempt development, approval is sought under the Environmental Planning and Assessment Act 1979.

What Approvals from Council do I need?



MAKING AN APPLICATION

- Applicants for an outdoor dining area must submit an Outdoor Dining Application Form, which is available from Council's Customer Service Centre and Council's website www.fairfieldcity.nsw.gov.au
- Prior to lodging an application, applicants are advised to contact Council to ensure that necessary plans, details, fees and insurance certificates are satisfactory for submission to Council.

DEFINITIONS

Word/Term	Definition
Anti-social behaviour	Behaviour that Council believes is offensive, disruptive or contrary to community expectations. Examples of this might include boisterous activity, intimidation of others, loud music and any form of obscenity that may cause offence or fear.
Business Purpose	Activities such as sale or display of goods or services, placement of tables and/or chairs for outdoor dining purposes, placement of telephones and information and promotional displays or any other purposes likely to yield income.
Footpaths and Public Places	Part of the access walkway that is made way for pedestrian traffic such as a footpath, town square, plaza, park used for pedestrian movement or recreation by the community. It includes the airspace above this area.
Licence Agreement	A permit given by Council to allow the use of Council owned land.
Outdoor Dining	A footpath, town square, plaza, or other space that, in association with an adjacent food and drink premises, is used for the purpose of placing tables and chairs for eating and socialising.
Offensive Material	Means pornographic products, tobacco products, alcoholic products or any other item or service that is illegal or likely to prove distasteful to the community if displayed in a public place.
Outdoor Smoking Area	A designated outdoor area located more than 4 metres from a commercial activity used for the purpose smoking activities. Food is prohibited to be served and consumed within the designated outdoor smoking area.
Prohibited Public Infrastructure	The business purpose is not allowed by Council. Infrastructure used for public use i.e Telstra pits.

LEGISLATIVE CONTEXT

Name

- Environmental Planning and Assessment Act 1979;
- Roads Act 1993;
- Food Act 2003;
- Local Government Act 1993;
- Fairfield Local Environmental Plan 2013;
- Australian / New Zealand Food Standards Code;
- Food Regulation 2015
- Smoke-Free Environment Act 2000;
- Any relevant Development Control Plan (DCP) for the business centres.

STAKEHOLDERS

- Place Managers
- Compliance Team
- Development Planning
- External Customers

SECTION 2 – APPROVAL CONDITIONS

DURATION

- The Licence agreement will be issued for 12 months and will require a renewal application for any further 12-month period. The approvals must be placed at the shop front visible for Compliance Officers to identify. Expiration of approval will require lodgment of a new application with the associated use.
- If the business is sold, the Outdoor Dining Approval is not transferred to the new owner. The new owner must undergo the formal process of applying for an Outdoor Dining Approval and pay the appropriate fees.

PUBLIC LIABILITY INSURANCE

A current public liability insurance policy must be in force at all times that the agreement is in operation. The following conditions apply:

- Public risk insurance to the minimum value of \$20,000,000 (twenty million dollars) must be taken out by the applicant noting Fairfield City Council as an interested party;

Note: Failure to comply with these conditions will automatically terminate Council approval.

TERMINATION

In the event that an order has been served or an approval lapses, terminates or is withdrawn, the applicant shall immediately remove all goods and services from the footpath and reinstate and remedy all affected areas.

COMPLIANCE

Council's enforcement officers will always seek to build a professional relationship in its liaison with operators of footpath dining areas. Should premises fail to comply with requirements set out in their licence, enforcement officers may action matters dependent on severity of breaches; such as, issuing verbal or written warnings in an effort to seek compliance or legal enforcement through issuing of penalty infringement notices or orders.

LIQUOR LICENCE

A liquor licence needs to be obtained prior to the consumption of alcohol within an outdoor dining area from the Office of Liquor, Gaming and Racing. Any application for a liquor licence is also subject to any applicable alcohol free zones within the Fairfield Local Government Area.

BEHAVIOUS OF PATRONS

The proprietor must ensure that patrons using the outdoor dining facilities do not cause any unreasonable interference or nuisance to pedestrians, occupants of neighbouring businesses and/or residential premises particularly in regard to noise.

PERMITTED OUTDOOR DINING AREA

Designated approved outdoor dining areas specific to town centres. Outdoor dining will only be approved within the designated areas as identified on plans in section 4 of this policy.

SECTION 3 – DEVELOPMENT CONTROLS

PERMISSABLE ITEMS

The following items are identified as permissible items to be displayed on footpaths and pedestrian area:

- Outdoor dining facilities;
- Fixed or permanent structures that include table, chairs, wind breakers, umbrellas as prescribed and approved by Council.

PROHIBITED ITEMS

The following items are **prohibited** on Council owned footpaths:

- Offensive material;
- Smoking relates to any ignited tobacco product or non-tobacco smoking product and includes smoking from a cigarette, e-cigarette, pipe, water-pipe or any other smoking device;
- Cooking, cutting or the preparation of food;
- Infrastructure used to distribute or sell alcohol;
- Fixed music machines i.e built- in amplified speakers;
- Plastic chairs and tables.

SITE REQUIREMENTS

				
Road	Kerb Zone	Pedestrian Zone	Trading Zone	Shop Front

Shop Front

- Outdoor dining boundaries that extend in front of the neighbouring premises will be considered by Council subject to written concurrence being obtained from the adjacent business owner and owner of the premises.
- There must be an unobstructed access way to the entrance of the premises.

<p>Trading Zone</p>	<ul style="list-style-type: none"> • Designated approved outdoor dining areas are only permissible in the trading zone, adjacent to an approved food business. • Outdoor eating areas may not be permitted where the pavement surface is porous (i.e. absorb liquids or grease) as these surfaces are difficult to maintain. • A height clearance of 2.1 metres and maximum height of 2.3 metres obstructed vertical clearances must be kept at all times.
<p>Pedestrian Zone</p>	<ul style="list-style-type: none"> • The area must be used safely and without any inconvenience to pedestrian traffic movement or vehicular traffic. • 2 metres of unobstructed footpaths in the pedestrian zone in the Fairfield LGA excluding Cabramatta Town Centre. • 3 metres of unobstructed footpaths in the pedestrian zone in Cabramatta Town Centre.
<p>Kerb Zone</p>	<ul style="list-style-type: none"> • 1.5 metres of unobstructed access to any public amenities including fire door exist, street trees, telegraph poles, rubbish bins, street furniture, or the like.
<p>Road</p>	<ul style="list-style-type: none"> • Applications for an outdoor dining area on a classified road or adjacent to traffic control signals will require concurrence/approval from the Roads Maritime Services.

HOURS OF OPERATION

- Outdoor dining between the hours of 6.00am to 10.00pm provided associated restaurants have development consent to operate between these hours;
- Applications that propose operation outside of 6:00am to 10:00pm must demonstrate to council satisfaction that:
 - a) that the outdoor dining use during these hours does not result in unreasonable interference or noise to pedestrians, the occupants of

neighbouring businesses and/or residential premises as supported by an acoustic report or effective noise mitigation measures that have been undertaken.

STRUCTURE AND MATERIALS

Outdoor dining facilities must demonstrate that the facility does not pose as a public safety risk or obstruct important views whilst contributing to the visual streetscape of the surrounding locality and must comply with the following provisions:

- Outdoor furniture must be safe, comfortable, of sturdy construction, hygienic and designed for outdoor use;
- A maximum of four (4) chairs per table. Tables and chairs must be constructed of stainless steel and/or timber material. Plastic chairs are not permitted on Council's footpath;
- The design and colour should make a positive contribution to the street environment and complement the surrounding streetscape, using one single style and colour scheme for the furniture to provide consistency and identity;
- If wind breakers are in use, the outdoor dining application must illustrate the location of the wind breakers. The wind breakers must not advertise an item other than the operation of business;
- Umbrellas and shade structures must be anchored to ensure that they are secure to withstand the wind. Umbrellas must be removed in extremely windy conditions.
- Umbrellas must not encroach on, or interfere with pedestrian or vehicular movement;
- Planter boxes must be of a maximum height of 1.2 metres. It is recommended that businesses consider to incorporate herb gardens into planter boxes.
- Outdoor furniture, including but not limited to tables, chairs, planter boxes and barriers must, at all times, be properly placed and confined within the outdoor dining area and shall not impact upon the safety of other users;
- Items placed in the outdoor dining area must not cause damage to the existing footway or other public infrastructure. The outdoor dining operator is responsible for any damage caused to third parties;

- All items must be removed from the outdoor dining area upon completion of trading each day and stored within the adjacent approved food business;
- No outdoor furniture or other items, other than that approved by Council, is permitted within the outdoor dining area;
- Fixed shade structures must be structurally secured into the footpath and not cause any hazard to pedestrians. Fixed shades must be white colour and be anchored using marine grade stainless steel or similar durable materials. Structural engineer plans shall provide details of in-ground sleeve, locking mechanism and specifications of the structure as part of a development application;
- A maximum of three (3) sides of fixed shade structure is required when there is concurrence from the adjoining owners. Must be transparent clear plastic roller blinds;
- Enclosed blinds must be securely attached to the fixed shade to withstand high wind events;
- Adequate lighting must be provided after 6.00pm to ensure the safety of the general public, it must not create nuisance to the surrounding neighbourhood;
- Noise generated from the use of the outdoor dining area must not be more than 5 decibels (dB(A) above background noise levels (LA 90). Noise complaints received to Council may result in termination of the outdoor dining approval;
- No entertainment or amplified music shall be permitted within the outdoor dining area without the consent of Fairfield City Council. Music and entertainment requires a separate application to be lodged with Council;
- Free standing heaters must comply with Australian Standard AS 1596 (Storage and Handling) and must be certified by the Australian Gas Association;
- Heating devices must be positioned and secured to ensure that they will not cause any injury. Access to the gas mains and use of electrical extension cords are not permitted;

- The public domain footpath area and its immediate surrounds are to be maintained and cleaned on a regular basis throughout the trading day. The area is to be left in a tidy condition at the end of the trading day and all equipment and displays removed from the footpath. This includes sweeping to be used for cleaning the area but does not permit water pressure cleaning of the footpath.

PETS IN OUTDOOR DINING AREAS

Pets that are not considered dangerous and menacing are permitted in outdoor dining areas with the food business owners consent and must comply with the following:

- The outdoor dining area must not be enclosed and must be accessible without the requirement to pass through an enclosed road,
- Pets must be on a leash at all times,
- Pets may be provided with a drink but not food, and
- Pets must be on the ground at all times.

SERVING OF ALCOHOL

Alcohol free zones apply to public footpath within the following town centres Cabramatta, Canley Vale, Canley Heights and Fairfield.

Once Council leases part of the footpath to a restaurant for outdoor dining purposes that part of the footpath is no longer considered public footpath during the hours of outdoor dining operation. As such the service of alcohol in outdoor dining areas does not breach their 'alcohol free zone' provisions in the Fairfield LGA. The services of alcohol within outdoor dining areas are permitted subject to the following:

- Where it is intended to serve alcohol a separate licence under the Liquor Act is required. Further information can be obtained from the Liquor NSW Office of Liquor, Gaming and Racing;

Note: the Liquor Licence must specifically state that service of alcohol may be extended to the footpath dining area.

- Does not occur outside the hours of the approved outdoor dining operating hours;
- If approved, alcohol shall not be served without a meal service;
- The service of 'Bring Your Own (BYO)' alcohol is only permitted up until 10pm within outdoor dining areas and must be in conjunction with the service of food.

SMOKING FREE ZONES

Smoking is not permitted in a commercial outdoor dining area under the *Smoke-free Environment Act 2000*, being:

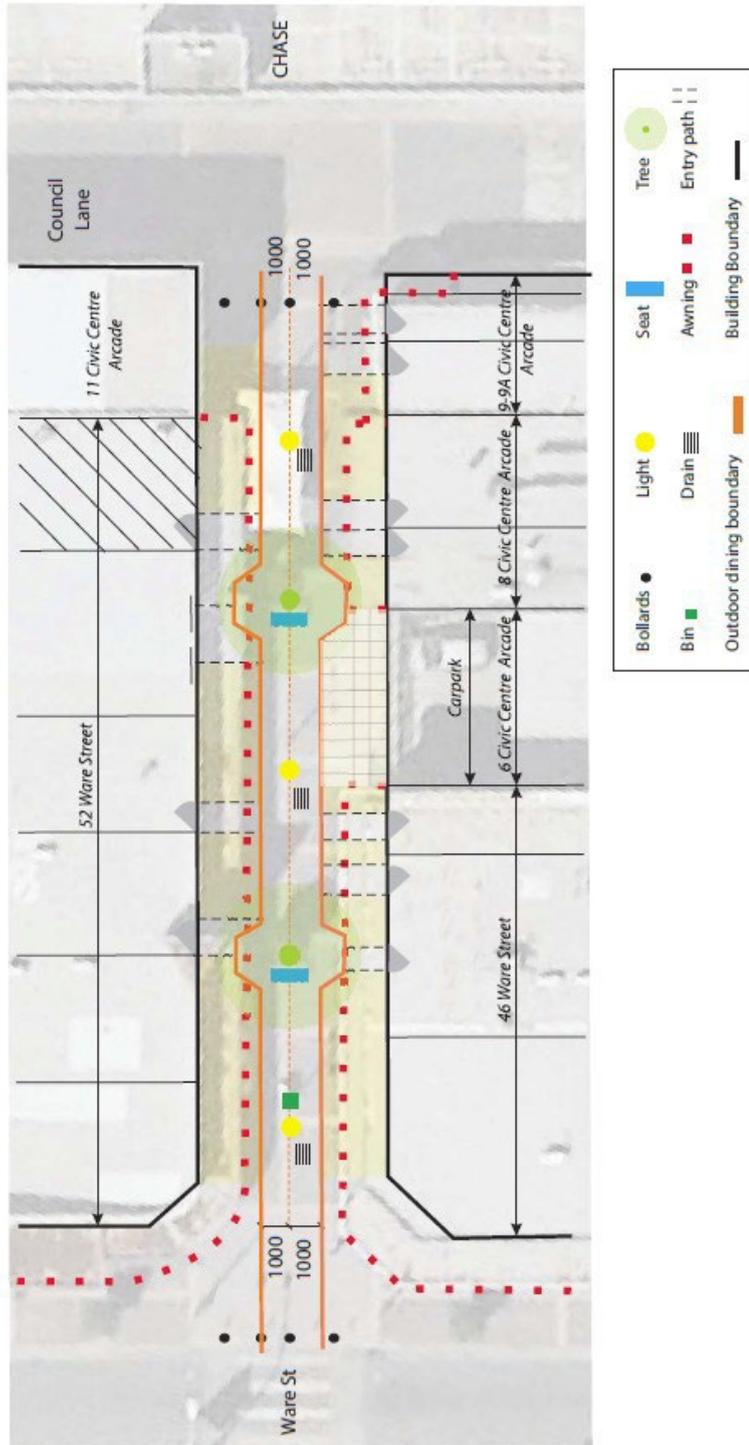
- within 4 metres of a commercial premises, including the seated dining area where food and beverage is consumed at;
- within 10 metres of a food fair stall or children's play equipment;
- Signage must be provided advising outdoor dining areas are a smoke free zone.

For more information regarding smoke-free laws or report a breach at <https://www.health.nsw.gov.au/tobacco/pages/smokefree.aspx>

SECTION 4 - SITE SPECIFIC LOCATIONS

In the certain town centres outdoor dining will only be approved in areas as identified in maps.

CIVIC ARCADE LANE, FAIRFIELD



CIVIC ARCADE - Outdoor Dining Setout

CANLEY HEIGHTS TOWN CENTRE PUBLIC DOMAIN PLAN

Purpose

The Canley Heights Town Centre Public Domain Plan is a guide to where fixed structures, street trees, public furniture may be located in the Canley Heights town centre. The public domain plan is designed to ensure pedestrian and vehicle safety will be maintained.

Background

In all other town centres Council permits outdoor dining to operate flush against the building, as well as against the kerb. The use of fixed structures in conjunction with outdoor dining is also permitted.

In 2011 a survey conducted on Canley Heights town centre revealed that a number of buildings have not been erected to the front boundary adjoining with Canley Vale Road. As a result this has created an area of footpath which is privately owned.

Due to the ownership pattern of the footpath throughout the Canley Heights town centre, permitting the use of fixed structures presents issues of public safety by raising conflict between having a consistent strategy for outdoor dining while maintaining a safe footway for the community.

Council considered a report on 12 June 2012 detailing different options to address the footpath ownership pattern conflict. (Refer to Outcomes Committee Report Outdoor Dining Canley Heights Town Centre Meeting Date 12 June 2012 for full details of the report). At this meeting Council adopted some overarching principles on where trees, public furniture and outdoor dining structures will be located in Canley Heights Town Centre.

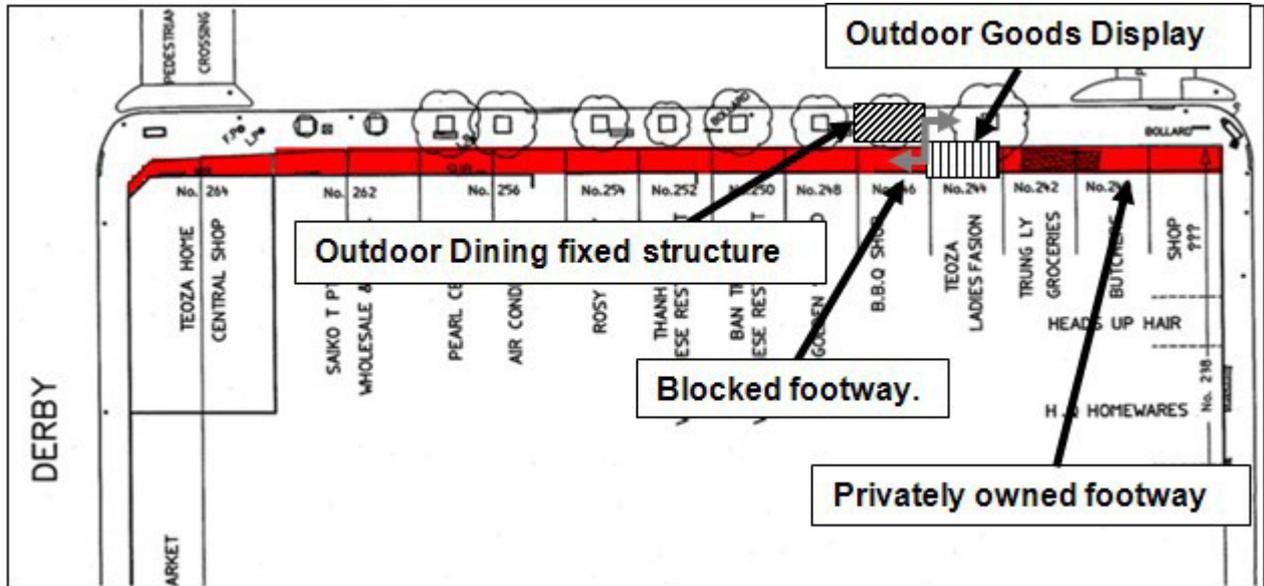
The Plan

This Public Domain Plan was prepared in accordance with Council's preferred option and the Canley Heights Town Centre Improvement Plan (CHTCIP) adopted by Council in February 2011.

The preferred option allows outdoor dining fixed structures against the kerb and also against the shop window in Canley Heights Town Centre. Should a loss of public footway or public safety occur Council can direct the removal or amendment of outdoor dining activities (without cost to Council).

Using the powers under the Section 138 of the Roads Act, Council can direct the removal of any structure on a public road at anytime for any reason. Council can also amend outdoor dining activities through conditions of approval under section 125 of the Roads Act.

This scenario is a section of Canley Heights Town Centre (between Derby Street and Peel Street) where a loss of footpath has occurred due to the locations of an outdoor dining and an outdoor goods display use.



In this circumstance Council may use its powers under the Section 138 of the Roads Act, to direct the removal of the outdoor dining fixed structure. Following this, Council may use its' powers under the Section 125 of the Roads Act (through conditions of consent) to reduce the outdoor dining area to allow pedestrian access between the conflicting uses (as shown in figure 2). This may include the removal of any structure and/or reduction in approved number of outdoor dining tables and chairs.

The maps detailed where street trees, bollards, planter boxes, street furniture, bollards for bikes, and outdoor dining with associated fixed structures may be located.

The plans only sets out where fixed structures used for the purpose of outdoor dining in Canley Heights Town Centre. For all other controls regarding outdoor dining please refer *Section 3 – Development Controls* of this policy



SECTION 5 – GOVERNANCE

RELATED POLICIES/PROCEDURES

This policy should be read in conjunction with:

Policy Number	<ul style="list-style-type: none"> • Fairfield Citywide DCP; • The Development Control Plan (DCP) for the relevant business centre (if any); • Fairfield City Council Public Domain Manual; • FCC Policy for Structures within or under Public Roads 1999; • The Food Premises Policy; and • Any other Council policies relevant to Outdoor Dining not listed above.
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RESPONSIBILITY

Policy Owner	Strategic Land Use Planning
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VERSION CONTROL AND CHANGE HISTORY

Version number	Approval date	Approved by	Amendment
01	12 February 2013	Council	Item No. 7 in Council Outcomes Committee File No. 09/05594 Item No. 43 in Council Outcomes Committee File No. 09/05594.
02	8 April 2014	Council	Item No. 74. In Council Outcomes Committee File No. 18/21700
03	13 August 2019	Council	Item No. 7 in Council Outcomes Committee File No. 09/05594 Item No. 43 in Council Outcomes Committee File No. 09/05594.
04	11 October 2022	Council	Item No. 106 in Council Outcomes Committee File No. 22/00505

The management of Council reserves the right to cease, modify or vary this Policy and will do so in accordance with Council’s established consultation processes.

REVIEW DATE

Council will review this policy every three years or more often if required.

AUTHORISATION

This policy was adopted by Council Resolution on 12 February 2013 Item No. 7 in Council Outcomes Committee File No. 09/05594

This policy was amended by Council Resolution on 8 April 2014 Item No. 43 in Council Outcomes Committee File No. 09/05594.

This policy was amended by Council Resolution on 13 August 2019 Item No. 74 in Council Outcomes Committee File No. 18/21700.

This policy was amended by Council Resolution on 11 October 2022 Item No. 106 in Council Outcomes Committee File No. 22/00505.

APPENDIX A

- How to obtain Outdoor Dining Approval (with or without development consent)

APPENDIX A

How to obtain Outdoor Dining Approval (with or without development consent)

These steps should be followed when applying for a Licence;

1. Obtain an 'Application for Approval' form from Council
2. Supply
 - Name, address and phone number of business,
 - Name, address and phone number of applicant,
3. Prepare plans of a scale 1:100 of shop and intended use of area to be licensed.

Plans must show:

- The dimensions and boundaries of the proposed use of footpath.
 - The kerb line of the street.
 - The width of the business premises frontage and location of entrances.
 - The width of the existing footpath adjacent to the business premises frontage and the remaining width of the footpath after allowing for goods on display.
 - The location of pedestrian or vehicular entrances, which serve the adjoining premises or adjacent areas.
 - The location of any public utility structures such as power poles, bus stops, trees, street furniture, signposts or other items, which are adjacent to the site.
 - The area to be covered by public liability insurance. This will include the permitted goods on display area and the connecting area to the shop through which goods are delivered.
4. Details of the items to be displayed on the footpath and details of any the shelving.
 5. The applicant must provide photographs for each aspect of the footpath.
 - A photo showing the minimum of width of unobstructed footpath under Section 3.4 of this Policy.
 6. Supply a copy of a "Certificate of Currency" (example next page) from the Insurance Company under which the business is covered.
 - The certificate must show: Public Liability \$20m and Fairfield City Council as "interested party".

On receipt of all above documents, Council will then assess the application. The Licence Agreement will be issued if the Development Application is approved.