

POLICY: DS-HC-001

ALFRESCO DINING IN PUBLIC PLACES

PURPOSE

To ensure that the placement of tables and chairs on the footpath (either on ground level or a raised platform) does not pose a safety threat to the public and is in accordance with the relevant legislation.

DEFINITIONS

Nil

STATEMENT

Background

Prior to the placement of chairs and tables on the footpath area, approval from the Council is required. It is considered important to encourage Alfresco Dining as it improves the atmosphere and provides the opportunity for passive surveillance of the street. There are two options available when applying for approval for Alfresco Dining; to have the tables at street level or elevated above the verge.

Applications for Alfresco Dining at street level require the consent of the City's Health and Engineering departments to enable the Health section to assess the capacity of the kitchen to serve more patrons and to assess the suitability and compliance of the furniture proposed to be used and for Engineering to assess the proposed location of the Alfresco Dining in relation to the impact on other users and the overall functionality of the verge areas.

Applications for raised Alfresco Dining require the consent of the Department for Planning and Infrastructure (DPI) as landowner. Together with the local government, DPI ensures that land under its care and control is being used in the best public interest. Planning approval is required for raised Alfresco Dining as the planning assessment considers design, amenity and environmental implications in relation to other buildings and uses in the area.

This policy includes provision for amending the warrant of each individual including consideration of whether a premise has internal facilities to cater for a smoking breakout area in which case use of external alfresco dining area would not be warranted.

The requirements of part 3, Division 3 of the *Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000*, will be considered in conjunction with this policy when assessing applications.

1. Health Requirements

Hygiene

- 1.1 The proposed alfresco area and its management and operation must comply with the *Health Act 1911*, regulations made under that Act, the City of Kalgoorlie-Boulder's Local Laws, the *Litter Act 1979* and all other relevant legislation.
- 1.2 The permit holder is not permitted to prepare food or beverages in the alfresco dining area. For example, cappuccino machines are not permitted in the alfresco dining area.

Cleanliness/Refuse

- 1.3 Permit holders will maintain the footpath to a high standard of cleanliness and hygiene, to the satisfaction of the City of Kalgoorlie-Boulder. This will include removing grease and stains, keeping the vicinity clear of litter and waste materials (including cigarette butts) and the daily washing down of the pavement. No waste or sweepings are to be swept or placed in the gutter.
- 1.4 In the case of a fast food or takeaway establishment, the City of Kalgoorlie-Boulder may require the permit holder at its cost to install rubbish bins of an approved design.
- 1.5 Adequate provision should be made within the proposed alfresco area for the minimisation of wind blown rubbish.

Maintenance

- 1.6 Outdoor alfresco areas and all structures associated therewith should be maintained in good, clean and sound condition at all times and failure to do so may adversely affect the chances of renewal of permit being obtained.
- 1.7 Where considered necessary by Council the pavement surface should be treated at the applicant's expense to prevent staining and facilitate cleaning.

Furniture

- 1.8 A maximum of one chair and/or patron per square metre may be located in an alfresco dining area subject to any restrictions imposed by other laws including but not limited to the Building Code of Australia.
- 1.9 Seating and tables must be provided for the maximum number of people approved for the alfresco dining area.
- 1.10 Tables, chairs and other structures should be of such design as not to harbour dirt or food.
- 1.11 Public safety and comfort must be considered. For example, sharp edges and hinges or moving parts that could be a potential hazard for patrons should be avoided.

Lighting

- 1.12 If alfresco dining occurs outside daylight hours, the permit holder must provide adequate, clear and well distributed lighting to ensure the safety and amenity of both patrons and the public.

Electrical wiring

- 1.13 (1) All electrical wiring connected to lights, devices or appliances which are situated in or about the alfresco dining area shall not be placed –
- (a) on or under the alfresco dining area;
 - (b) above any part of a public place so as to interfere or obstruct the passage of vehicles or pedestrians; or
 - (c) in any manner or in any place which may be prejudicial to safety.
- (2) Any electrical wiring must be approved by Western Power and must not be placed across the footpath.

Portable Gas Heaters

- 1.14 Portable gas heaters may be considered for approval where the heaters are:-
- (1) placed completely within the approved alfresco area and the alfresco area is considered to be substantially unenclosed (i.e. less than 50%

- enclosed);
- (2) placed where they pose no safety or fire hazard;
 - (3) removed when the alfresco area is not being used;
 - (4) demonstrated that they comply with:-
 - (a) *Gas Standards (Gas fitting and Consumers Gas Installations) Regulations 1999;*
 - (b) *AS 5601/AG 601 – 2000 Gas Installations;*
 - (c) *AS/NZS 1596 – 1997 Storage and Handling of LP Gas;*
 - (d) *AS 4565 – Outdoor Radiant Gas Heaters;*
 - (5) free standing and self contained, but they must be securely fixed and stable.

Smoking in Alfresco Dining Areas

1.15 Smoking is prohibited in all Alfresco Dining Areas in accordance with the *Tobacco Products Control Act 2009* and the *Tobacco Products Control Regulations 2006*.

- (1) Smoking in licensed premises to which a restaurant licence does not apply must have adequate receptacles for rubbish and cigarette butts and are to be kept clean at all times.

Consumption and Service of Alcohol

1.16 The consumption and service of alcohol in the Alfresco Dining Area must comply with the following:

- (1) Alcohol may be consumed subject to compliance with Liquor Licensing conditions and the *Liquor Act 1988* (as amended).
- (2) Where an alfresco area is accessible via a non licensed area, table service is mandatory and patrons must be seated at all times.

Standard Conditions

1.17 Where applicable, the following conditions are to be imposed against any permit, its renewal or its transfer:-

- (a) The alfresco area shall not be set up or conducted except in accordance with the Permit Plan and only on the days and during the hours specified hereunder:
- (b) Seating and tables must be provided at all times. No more than (#) tables and (#) chairs shall be permitted to remain in the alfresco area. All tables, chairs and other structures shall conform to those specified in the application for the Permit.
- (c) No tables, chairs or other structures shall be set up or permitted to remain in the alfresco area except on the days and during the hours specified in condition a) hereof.
- (d) The alfresco area shall be conducted strictly in accordance with the provisions of the *Food Act 2008*, *Food Regulations 2009* and all other regulations and Local Laws governing the conduct of an alfresco area.
- (e) The alfresco area shall be kept free of litter, refuse, rubbish and other disused material at all times during its conduct.
- (f) Adequate receptacles for rubbish and cigarette butts must be provided and the area must be kept clean and tidy at all times.
- (g) All tables, chairs and other structures shall be removed from the alfresco area forthwith upon the direction of any person or body authorised to carry out any works in the street or public place in which the alfresco area is situated or of any employee of such person or body.
- (h) Where the alfresco area is to be conducted during the hours of darkness, the alfresco area is to be well lit and all electrical wiring is to be placed in such a manner so as not to cause or present a danger to any person.
- (i) The proprietor hereby agrees to indemnify the City and the Crown against any and all claims for compensation howsoever arising from the conduct of the alfresco area and further to hold Public Indemnity Insurance to a value determined by the City from time to time (currently \$10 million). Evidence of such insurance having been

affected is to be submitted to the satisfaction of Council prior to the establishment of the alfresco area.

- (j) The proprietor of an alfresco area shall not, without the prior written consent of the Council, cause or allow the transfer of the permit, the playing of any musical instrument, amplified sound apparatus or electronic apparatus within the alfresco area or cause or allow the conduct of any other form of trading within the alfresco area other than that permitted by the permit.
- (k) The Permit, the Permit Plan and the conditions of the Permit shall, on demand, be shown to an authorised officer of the Council.
- (l) Alcohol may be consumed subject to compliance with Liquor Licensing conditions and the *Liquor Act 1988* (as amended).
- (m) The approved Alfresco Dining Area is to be 'closed' to the public between 4am and 6:30am.
- (n) Security officer/s must be present on the premises and situated within sight of the Alfresco Dining Area when accessible to the public between 10pm-4:00am.

2. Engineering Requirements

The following information is to be provided with all applications submitted:-

- A site plan indicating where tables and chairs are to be placed in relation to the footpath, road, buildings, verandah posts, any street furniture (i.e. power poles, telephone poles, fire hydrants, park benches and rubbish bins) and on-street parking bays, including bus parking bays.
- A photograph or manufacturer's brochure of the type of tables, chairs and other fittings intended for use and AS Standards compliance.
- The total number of seating for patrons, including the existing and proposed (both inside the premises and outside on the footpath) as well as the total number of male and female sanitary conveniences (WCs, hand basins and urinals).
- Proof of public indemnity insurance (in the joint names of the City and the applicant), indemnifying the City against any claim for damages which may arise in, or out of, the

placement of chairs and tables on the verge to a value determined by the City from time to time (\$10 million) and the relevant cleaning contract signed. Alternatively, if requested, the insurance policy may be a condition of approval.

3. Pedestrian Clearance Requirements

Engineering Officers are to assess all applications that relate to the verge area, in accordance with the following criteria:-

- In high pedestrian volume areas as determined by the Engineering Department (i.e. Hannan Street and Burt Street and the immediate surrounding streets), the clearance distances from the alfresco dining area to the primary kerb line* shall be a desirable minimum of 3 metres. The absolute minimum** clearance to the primary kerb line shall be 2.5 metres.
- In lower pedestrian volume areas as determined by the Engineering Department, the clearance distances from the alfresco dining area to the primary kerb line* shall be a desirable minimum of 2.5 metres. The absolute minimum** clearance to the primary kerb line shall be 2 metres.

** Note: The primary kerb line excludes any traffic control nibs, kerb extensions or channelisation.*

*** Note: The absolute minimum will only be considered when accompanied by a written request to the Engineering Department justifying why the absolute minimum should be approved.*

- In the case of ground level alfresco, consideration will be given to permit the pedestrian clearance way to be located adjacent to the building, whilst maintaining a minimum 600 mm clearance between the primary kerb line and the alfresco area. Desirable and absolute minimum pedestrian walkway clearances as detailed in point 1 and 2 above will apply.
- When assessing applications for alfresco dining, the Engineering Department will consider the pedestrian volumes, the type of on-street parking and the presence of a verandah over the verge.
- There may be a requirement to 'identify' the alfresco dining area in the verge. This will be at the applicant's expense under the direction of Engineering Officers.

4. Raised Alfresco Dining

The following information is to be provided with all planning applications for Raised Alfresco Dining:-

- Written clearance from all service authorities and the written approval of the Department for Planning and Infrastructure (DPI).
- A scaled elevation of the proposed raised area including details of materials to be used and how the raised area is to be secured to the footpath.
- Written confirmation that the applicant will enter into a legal agreement in the names of the City of Kalgoorlie-Boulder and the applicant for the use of the footpath for the raised dining area. The legal agreement is to be prepared by the City's solicitors at the applicant's expense and should include:-
 - Applicant and lot details;
 - Permission to use the footpath, defined area for the creation of an alfresco dining area;
 - The period of the trader's permit;
 - Trader's permit fee (for use of the footpath) which is determined by the Council;
 - Requirement for indemnity insurance;
 - Requirement to maintain the area;
 - Any other condition that the Council considers necessary (for example a lease agreement).

Note: Once Council has agreed to entering into the Legal Agreement, the agreement will need to be advertised as per Section 3.58 (93)(a)(iii) of the Local Government Act 1995.

Note: Building Licence is required to be applied for and as part of that assessment process; the consent of the Minister for Local Government will be required prior to the trader's permit being issued.

RELEVANT DOCUMENTS