

**LOCAL PLANNING POLICY**

<b>POLICY NO:</b>	<b>LPP.12</b>
<b>POLICY SUBJECT:</b>	<b>ALFRESCO DINING</b>
<b>ADOPTION DATE:</b>	<b>20 August 2009</b>
<b>LAST REVIEW</b>	<b>13 May 2010</b>

**STATEMENT OF INTENT**

This policy provides guidelines for the establishment of alfresco dining activities within the Shire of Toodyay to ensure that such activities do not adversely affect the enjoyment and convenience of persons, or the character and amenity of the surrounding area. The policy aims to ensure that the operations of alfresco dining are undertaken in such a manner that will not conflict with or prejudice the adjacent businesses, residential activities and/or any other normal functions of the area.

This policy is made pursuant to the relevant Local Planning Schemes and the Thoroughfares and Trading in Thoroughfares and Public Places Local Law. While these documents provide general requirements with regard to the establishment of restaurants, eating houses and other uses that involve the consumption of food, this policy sets the specific provisions for the alfresco dining activities.

**DEFINITIONS**

'Eating House' means a premises where food is stored, kept, prepared, manufactured, processed, cooked or served or otherwise dealt with for subsequent sale to the public, either directly or indirectly and shall include a fast food outlet, lunch bar and restaurant.

All other definitions shall have the meanings applied to them within the Shire of Toodyay Local Planning Scheme No 4 and the Thoroughfares and Trading in Thoroughfares and Public Places Local Law.

**OBJECTIVES**

The policy establishes guidelines that will:

- Apply to all alfresco dining activities within the Shire of Toodyay;
- Permit the establishment of outdoor eating areas within the Shire of Toodyay in such a way that they do not jeopardise the safety of patrons, pedestrians or motorists;
- Ensure that the alfresco dining area is not detrimental to the surrounding uses in terms of interference of pedestrian or vehicular access, visual amenity or the creation of excessive noise or rubbish.

## **STATUTORY POWERS**

This Local Planning Policy is made pursuant to Clause 2.2 of the Shire of Toodyay Local Planning Scheme No 4 and Clause 7.4 of the Thoroughfares and Trading in Thoroughfares and Public Places Local Law.

## **POLICY STATEMENT**

### **1.0 Application Requirements**

- 1.1 No person shall establish an alfresco dining area or conduct alfresco dining activities within the Shire without first obtaining the written approval of Council.
- 1.2 Applications for alfresco dining will be treated as a Development Application and considered in accordance with this policy, the Shire of Toodyay Thoroughfares and Trading in Thoroughfares and Public Places Local Law and the Shire of Toodyay Local Planning Scheme No 4.
- 1.3 An alfresco dining area will be approved only where the proposal is part of an application to establish an eating house within an adjacent building, or is proposed as an extension of an existing eating house already operating within an adjacent building.
- 1.4 An application for approval to establish an alfresco dining area, in addition to the usual application requirements, should be accompanied by the following information:
  - a) Plans, drawn to scale (1:50), indicating the number, location and dimension of proposed tables and chairs and their relationship to the building in which the eating house is located;
  - b) A colour photograph, or manufacturer's brochure, of the tables, chairs and other structures to be set up in the alfresco dining area;
  - c) Details of the total number of patrons seats, including those existing and those proposed (both inside and outside the premises) as well as details on the total number of sanitary conveniences; and
  - d) Certificate of currency for public indemnity insurance to a minimum value of \$10 million.
- 1.5 Alfresco dining areas will only be supported where the Council considers them to be appropriate to the character and functions of the area in which they are proposed to be located.
- 1.6 The Council may vary the requirements of this policy, where it is considered that full compliance with the policy is impractical or such variation is warranted in the circumstances of the case.

## **2.0 Vehicle and Pedestrian Movement**

- 2.1 Alfresco dining areas will not be approved where the gathering of customers or the elements of design will impede pedestrian or vehicular movements or negatively impact on vehicle or pedestrian sight lines at road junctions and vehicle access crossovers.
- 2.2 Alfresco dining areas should not obstruct pedestrian movement. A minimum clear footpath width of 2m should be maintained in all cases. Pedestrians should 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.
- 2.3 Where an alfresco dining area is situated adjacent to a major roadway, consideration should be given to the protection of the dining area from vehicles through the use of bollards or other similar features.
- 2.4 Alfresco dining areas should not be located in such a way that access from the footpath to kerbside parking is obstructed.
- 2.5 The exits from the main building that the alfresco dining area is associated with are not to be impeded in any way.
- 2.6 The alfresco dining area is to be designed to accommodate disabled access.
- 2.7 The alfresco areas will need to be designed to accommodate emergency vehicle movements.

## **3.0 Adjoining Uses**

- 3.1 The establishment and use of alfresco dining areas should not conflict with or inconvenience other retail and commercial activities, or obstruct the views of or access to adjacent properties.

## **4.0 Conditions of Use**

- 4.1 A maximum of five (5) tables within verge or thoroughfare areas shall be approved for the purpose of alfresco dining per eating house. Dependent upon the nature and size of the tables used, the Council reserves the right to approve a lesser number of tables.
- 4.2 In granting approval, the Council may impose conditions requiring that the dining facilities be of a movable nature, and/or that the facility may only operate at certain specified times.
- 4.3 Structures associated with alfresco dining areas may only be fixed to the footpath or to any other structures with the approval of Council.

- 4.4 Structures and furniture must be stable under windy conditions and provision made for out of sight storage when not in use unless Council approves otherwise.
- 4.5 The alfresco dining area should be contained within a clearly and physically demarcated area.
- 4.6 The operator shall not, without the prior approval of the Council:
- a) Make use of any method of noise making (i.e. live music, record, tape, radio, etc); and/or
  - b) Carry out any specific functions (i.e. fashion parades, art exhibitions, etc).
- 4.7 The proprietor of the eating house, of which the alfresco dining area is part, shall:
- a) Ensure that the alfresco dining area is kept clean and tidy and free from rubbish at all times;
  - b) Maintain the chairs, tables and other structures set up in the alfresco dining area in good and serviceable condition at all times;
  - c) Ensure that those who are not patrons of the eating house or alfresco dining area are not permitted to use the chairs, tables and other structures in the alfresco dining area; and
  - d) Agree to indemnify the Shire of Toodyay against any and all claims for compensation in respect to bodily injury (including death and illness) or damage to property (including loss of property) howsoever arising from the conduct of the eating area and shall further agree to hold not less than \$10 million public liability insurance at all times. A copy of the insurance policy will need to be provided to the Shire prior to the commencement of trading and the Shire shall be advised directly by the proprietor of any possible changes to the policy.
- 4.8 In submitting an application to establish alfresco dining, applicants will be requested to indicate whether it is intended to serve alcohol to patrons at the alfresco dining tables.
- 4.9 Where a new proposal includes the sale of alcohol, or it is proposed to modify an existing licence to allow for that possibility, the following conditions will be applied:
- a) The service of alcohol shall not commence until the relevant approval has been obtained from the Liquor Licensing Division of the Office of Racing and Gaming;
  - b) Alcohol shall be served only with bona fide meals;
  - c) No alcohol shall be served other than with meals provided by the associated eating house;
  - d) The hours of sale of alcohol shall not exceed the licensed hours of the eating house; and

- e) The Council may impose any other conditions considered necessary to ensure that the service of alcohol to the patrons of alfresco dining areas takes place in a satisfactory manner.

## **5.0 Other Council Matters**

- 5.1 Any removal or relocation of existing street furniture, trees or services shall not occur without the prior written approval of the Council. All costs associated with such works will be wholly at the applicant's expense. The Council will require a cash bond to ensure the works are undertaken in accordance with the development approval.
- 5.2 The existing eating house, the proposed alfresco dining area and its manner of operation, is to comply with all requirements of the Health Act, the Building Code of Australia and any other relevant policy of the Council
- 5.3 Where existing and additional patrons combine to exceed 20 persons, sanitary facilities are to be provided in accordance with the Building Code of Australia.

## **6.0 Alfresco Dining – Fees & Renewal**

- 6.1 The imposition of application and renewal fees for alfresco dining establishments will only apply to activities that will occur on Council controlled land.
- 6.2 Council shall charge an initial application fee and annual renewal fee as set in the Shire of Toodyay Schedule of Fees and Charges.
- 6.3 The application to operate an alfresco dining area must be renewed on a twelve monthly basis.
- 6.4 Council reserves the right to refuse renewal for an alfresco dining area or to revoke approval at any other time if it considers that the alfresco dining area has not or does not fully comply with the requirements of this policy, the Council's Town Planning Scheme No 4 and the Shire of Toodyay Thoroughfares and Trading in Thoroughfares and Public Places Local Law.

**Adopted as TP Policy 25 August 2005**  
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