

DCP 28

Leasing of Public Areas

For Restaurants & Cafes



Kempsey
Shire Council

Development Control Plan 28



DEVELOPMENT CONTROL PLAN NO 28

LEASING OF PUBLIC AREAS for RESTAURANTS AND CAFES

1.0 INTRODUCTION

1.1 CITATION

This plan may be referred to as “Development Control Plan No 28: Leasing of Public Areas for Restaurants and Cafes”.

1.2 SCOPE OF THIS PLAN AND WHERE IT APPLIES.

This Plan applies to all publicly owned land in Kempsey Shire which immediately adjoins approved restaurants or cafes.

1.3 AIMS AND OBJECTIVES

The aim of this Plan is to facilitate outdoor dining associated with restaurants and cafes in a manner which does not adversely impact on other users of public land or place any undue financial burden on the community as a result of increased demand for public facilities and services.

1.4 RELATIONSHIP TO OTHER PLANS

Environmental Planning Instruments

This Plan shall apply to the extent of any inconsistency with the provisions of North Coast Regional Environmental Plan 1988 or Kempsey Local Environmental Plan 1987 applying before or after the date of commencement of this Plan.

Other Council plans and policies of relevance include: -

- Section 94 Plan for Off-Street Carparking
- Section 94 Plan for Sewerage
- Section 94 Plan for Water Supply
- Parking Code
- Advertising of Development Applications

2.0 STATUTORY REQUIREMENTS

- a A Development Application is required to be submitted for the use of all footpaths, and public reserves for the purposes of

restaurant or café seating which will incorporate approval under the Environmental Planning and Assessment Act 1979, Roads Act 1993 and Local Government 1993.

- b Applications can only be accepted for the use of a public road where restaurants and cafes are permissible in the zone adjoining that road.
- c Approval will be required from the Roads and Traffic Authority for such uses on any arterial road. The costs of any application must be met by the applicant.
- d A licence will be required from the Department of Land and Water Conservation to use any Crown reserve for such purposes, the costs of which must be met by the applicant.
- e All applications must be accompanied by 4 copies of a plan (to scale) indicating the proposed location of tables and chairs.
- f All applications are to be accompanied by a minimum fee of \$220 plus an advertising fee of \$150, or in accordance with Council's adopted Schedule of Fees and Charges applying at the time.

3.0 PUBLIC EXHIBITION

Where proposals have the potential to adversely impact on any adjoining premises, applications will be advertised for public comment for a period of 14 days including written notification to likely affected neighbours and in the newspaper.

4.0 MATTERS FOR CONSIDERATION

Without limiting Council's consideration of the merits of individual applications, Council will have regard for the following matters: -

- a Seating must be located so as to maintain a practical footway area with a minimum effective width of 2 metres.
- b All furniture must be located within of the frontage of the premises.
- c Seating must be located so as not to pose a risk to the health or safety of patrons.
- d Seating must be located so as not to interfere with the rights of any member of the public to the use of public land.

- e Furniture will be required to be of colours which contrast with the existing pavement so as not to create a hazard to the visually impaired, without being visually obtrusive.
- f Carparking required as a result of increased seating capacity will be calculated at the rate of 1 carspace per 7 square metres of public space required to provide seating or 1 space per 3 seats, whichever is the greater.
- g Where additional carparking cannot be provided on site, cash contributions will be payable in accordance with any relevant Section 94 Plan applying to the locality and Council's Fees and Charges applicable at the time.
- h Where contributions are payable, the following options for payment are available: -
 - EITHER
 - i Payment of the entire contribution at the rate applicable at the time;
 - OR
 - ii Payment in annual instalments in conjunction with the required lease agreement at the rate of 10% of the balance owing;
 - OR
 - iii The capacity of the premises (inclusive of external seating) is not to exceed the stated number of seats provided (or to be provided) internally at any time.
- i Where, by agreement in the required annual lease, restrictions are placed on the period of placement of seating, contributions may be reduced on a proportional annual basis.
- j Applicants will be required to enter into a lease agreement with Council for a period not exceeding 12 months incorporating but not limited to the following: -
 - i Payment of an annual rental 12 months in advance and thereafter upon renewal of the lease.
 - ii Payment of all contributions as determined in conjunction with the development consent.
 - iii Submission of Public Liability Insurance Cover to the value of not less than \$10 million nominating Kempsey Shire Council as being indemnified in the event of any claim of damages

resulting from the placement of such furniture as permitted under the consent.

- iv The licensee to be responsible for the maintenance of all furniture in the area, the subject of the lease.
- v No goods will be permitted to be displayed within the lease area, except on an infrequent basis in conjunction with an organised promotion.
- vi Kempsey Shire Council shall retain the right to terminate the lease upon non-compliance with conditions of consent.
- vii Until the 31st of January 2007, Council may consent to the placement of tables and chairs on Council land without the need to pay rental or carparking contributions, subject to the following **additional** conditions:
 - The applicant will be required to enter into a lease agreement with Council expiring on 31 January 2007, non-extendable
 - At the expiration of the lease, all tables and chairs are to be removed until such time as a fresh lease agreement has been entered into that will include payment of all fees and charges in accordance with this plan