

An ORDINARY MEETING of LISMORE CITY COUNCIL will be held at the COUNCIL CHAMBERS, 43 OLIVER AVENUE GOONELLABAH on Tuesday, 14 September 2010 at 6.00pm.

Attachments Excluded From Agenda

Brent McAlister
Acting General Manager

7 September 2010



Attachments

13.2 Outdoor Dining Policy - Lismore City Centre

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Outdoor Dining Policy - *Lismore City Centre*

Adopted by Council:/..../2010



Pictures: Ros Diskin

Policy manual

POLICY No:	Outdoor Dining – <i>Lismore City Centre</i>
FUNCTION:	Infrastructure Services
ACTIVITY:	Asset Management
OBJECTIVE:	Develop an outdoor dining policy for the Lismore city centre to be incorporated within an overarching policy for all footpath activities in the Lismore Local Government Area.
SECTION RESPONSIBLE:	Property
AUTHORISED:	Adopted by Council on: ___/___/2010 This policy supersedes Policy 5.2.24 - Carriageway and Kerbside Land Use.

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Outdoor Dining Policy – *Lismore City Centre*

1. INTRODUCTION

Outdoor dining areas contribute to the vibrancy of the streetscape and increase activity within the city centre. Applications for outdoor dining can vary from one table located on the footpath to large scale structures located in the carriageway that greatly increase the seating capacity of an adjacent restaurant. This policy provides a framework for outdoor dining in the Lismore city centre (Map 1) to promote a vibrant, attractive and safe environment.

A precinct of significant activity has been identified in the vicinity of Magellan Street. Magellan Street and its immediate surrounds provide an important link between the proposed cultural precinct on the eastern edge of the CBD and Spinks Park adjacent to the Wilsons River. Cafe and restaurant owners in this area are encouraged to create new outdoor dining areas.

At the introduction of this policy Council will waive all outdoor dining licence fees for a term of two years (repayments for previous construction costs shall continue). Council encourages existing outdoor dining licensees to terminate their current licence and to enter into an updated licence in line with the new policy.

1.1 Objectives

The objectives of this policy are to:

- enhance the amenity of the streetscape character and contribute to the revitalisation of the CBD by providing attractive surroundings for people to eat, shop and enjoy their experience whilst in the Lismore city centre by taking advantage of the city's sub-tropical climate
- encourage and support new outdoor dining areas where appropriate and support local economic development and encourage new commercial opportunities
- invite and encourage businesses to create a new outdoor dining precinct in the vicinity of Magellan Street (Map 2) as Lismore's central entrainment/activity precinct including outdoor dining precinct
- To reduce the compliance costs for outdoor dining given its importance to providing activity out of business hours which is a key aim of Lismore Alive
- provide equitable and safe access for all people, including those with disabilities, in accordance with Australian Standards
- ensure the safety of patrons, pedestrians and vehicle traffic in and around outdoor dining areas is not compromised by outdoor dining activities and keep clear lines of vision for vehicle traffic and pedestrians
- ensure that outdoor dining areas are maintained in a clean, hygienic and tidy manner, and remain attractive elements of the streetscape
- provide procedures and guidelines for applicants, Council staff and the community for outdoor dining areas
- establish a procedure for the management and regulation of outdoor dining
- ensure appropriate licence fees are levied.



1.2 Areas where policy applies

This policy applies to all road reserves, whether constructed or not, and public land owned or under the care, control and management of Lismore City Council in the Lismore city centre (Map 1) where adjacent business owners wish to establish outdoor dining areas as an extension of their principal restaurant business.

Please note that separate policy guidelines apply to outdoor dining areas for Nimbin, villages and Lismore suburban areas.



1.3 Related documents and legislation

This policy should be read in conjunction with the *Environmental Planning and Assessment Act 1979*; the *Lismore Local Environmental Plan 2000 and Development Control Plan*; and the *Roads Act 1993*. Applicants will also need to comply with relevant sections of any other related legislation, e.g. *NSW Food Act 2003*, *Disability Discrimination Act 1992*, *Companion Animals Act 1998* and other Council policies and procedures that relate to a specific site or area of land.

Where there is an inconsistency between this policy and any planning instrument applying to the same land, the provisions of the planning instrument shall apply.

1.4 Magellan Street Precinct

Map 2 to this policy shows the scope of the proposed entertainment/activity precinct. The idea of the precinct came out of the Lismore Alive report (May 2009). The aim of this report was to identify actions to create more activity outside business hours in Lismore's CBD. Outdoor dining was seen as critical to this occurring. A common feature of vibrant CBD's is a dedicated area for entertainment and other activities where there is a concentration of cafes and restaurants, e.g. Southbank in Brisbane and Margaret Street in Toowoomba.

Magellan Street (and adjacent designated side streets/lanes) has been identified as the area for entertainment/activity in Lismore's CBD for several reasons (including outdoor dining). In Lismore Alive it was the connector street to the two proposed CBD public squares or open space areas namely Spinks Park and the former high school site. Secondly, the street has been upgraded and therefore is ideal for outdoor dining. Thirdly, and most importantly, Magellan Street is very wide compared to other streets which lends itself to outdoor dining as well as reduces the risks in terms of crime.

There is no doubt that the private sector will be the major driver for the further development of this precinct. However this policy aims at encouraging its establishment in two ways. Firstly, there is a regulatory incentive whereby if car parks are eliminated to establish an outdoor dining area, a cash in lieu contribution will not be

required. This will not result in a significant loss of car parking in that Magellan Street has already been widened. This relaxation is supported by a 2007 CBD car parking report.

The second encouragement for is through the Lismore Business Promotion Plan. For example a key feature of this plan is the establishment of a market in Magellan Street. Outdoor entertainment could also be targeted for Magellan Street.

2. DEVELOPMENT CONSENT AND SITE ASSESSMENT

2.1 Development consent is required

The establishment of an outdoor dining area requires development consent under the *Environmental Planning and Assessment Act 1979* and approval under the *Local Government Act 1993*. A condition of the development consent will be to enter into a licence agreement with Council for the use of the land in accordance with the *Roads Act 1993*.

As the roads authority, Council is required to sign the Development Application (as the owner of the land) indicating agreement is given to lodge the application.

Applications are to comply with planning controls contained in the *Lismore Local Environmental Plan 2000* and *Development Control Plan* and all relevant legislation. These documents are available on Council's website www.lismore.nsw.gov.au; and relevant legislation is available at www.legislation.nsw.gov.au. Further assistance in regard to legislative requirements can be provided by a Development Assessment Officer (Planning).

An approval lapses at the end of its term or if the licensed area ceases to be used for outdoor dining in conjunction with the principal restaurant premises. The licence term shall not exceed the term of development consent.

Where it is deemed appropriate, an application will be forwarded to the Access Committee and the Traffic Advisory Committee to ensure that the application has no detrimental effect on accessibility or traffic.

2.2 Outdoor dining area on classified roads

All outdoor dining areas on classified roads are to meet with the approval of the Roads and Traffic Authority (RTA) as well as Council. Any Development Application for an outdoor dining area on a classified road requires the consent of the RTA and Council. The RTA has imposed a clearance distance of 2.4m for outdoor dining areas on classified roads with high pedestrian volumes for areas of Woodlark Street, and 2.0m for all other areas on classified roads. Classified roads are marked on Map 1.

2.3 After Hours licence

An *After Hours* licence may be issued if development consent is granted for outdoor dining areas where the footpath width is less than 2m, or use of the area may cause congestion or safety concerns for pedestrian or vehicle access during business hours. Affected areas may be adjacent to a pedestrian crossing, bus stop, taxi rank, ATM, etc. *After Hours* outdoor dining areas may operate outside normal business hours, which are: 8.30am to 5pm Monday to Friday and 8.30am to 12.30pm Saturday. Each application will be considered on its merits and will be determined according to pedestrian and vehicle safety and accessibility and associated impact on nearby businesses.



Photo supplied by The Loft Restaurant

No permanent structures may be erected in *After Hours* outdoor dining areas. Licence fees shall be calculated on a pro-rata basis.

2.4 Levies

Levies will apply to outdoor dining areas in the following way:

- For "enclosed" outdoor dining areas constructed outside the proposed new entertainment/activity precinct around Magellan Street, levies for Section 64 (water and sewer) and Section 94 (public facilities contributions, including required additional parking spaces) will be applied.
- For "enclosed" outdoor dining areas constructed within the proposed new outdoor dining precinct, Section 64 levies will apply, however Section 94 levies will not apply.
- For outdoor dining areas in all locations that are **not enclosed**, no levies for Section 64 or Section 94 will be applied.

Additionally, if construction of a new outdoor dining area necessitates removal of car parking spaces from the road reserve, a contribution for the lost space(s) will be levied in accordance with the Lismore Contributions Plan (Section 2.5.5). However, this contribution will not be levied if the new outdoor dining area is located within the proposed entertainment/activity precinct in and around Magellan Street.

Section 94 contributions may be paid in full, deferred or paid by instalments. The applicant may negotiate with Council the preferred method of payment prior to lodging a DA, or during its assessment.

Contributions for loss of car parking spaces or other levies made prior to the adoption of this policy are not refundable.

3. LOCATION AND DESIGN

This section details the matters to be considered and addressed when preparing an outdoor dining application:

- Outdoor dining areas must be located directly adjacent to the ground floor of the principal restaurant or café, which must be registered with Lismore City Council as a food premises
- Council shall retain discretion on a case by case basis as to whether or not any proposed site is appropriate
- Outdoor dining areas shall not cause inconvenience or disruption to adjoining businesses

- Blisters in the road reserve may be initiated by the Council as part of a street upgrade or be initiated and paid for by the adjacent restaurant business for outdoor dining. Construction of a blister must not hinder sight lines or detrimentally affect safe pedestrian and traffic movements
- Not all footpaths are suitable for use as outdoor dining areas, or may not have sufficient width to meet pedestrian access/vehicle access, sightlines, etc. Where a suitable pedestrian access corridor is unable to be provided, outdoor dining will not be permitted
- Outdoor dining areas are not generally permissible directly beside pedestrian crossings, taxi ranks, bus stops, ATMs, arcade entrances, Australia Post boxes, or any other area where there is a concentrated pedestrian flow or vehicle traffic causing safety concerns or limitations to public infrastructure. Applications for after hours licences in these locations will be considered on their merit.
- Outdoor dining areas must not interfere with the provision of public utilities.



3.1 Clearance distances

An outdoor dining area must not compromise pedestrian and vehicle flow; convenience and safety of patrons and the public; existing streetscape elements and amenity.

- A minimum unobstructed footpath width of 2.0m is to be maintained at all times, and 2.4m for classified roads with high pedestrian volumes
- A minimum unobstructed vertical clearance of 2.4m is to be provided at all times
- Where the outdoor dining area is adjacent to a car parking space, clearance of 600mm from the kerb is to be maintained at all times. Bollards or other suitable barriers will be required to be installed in locations where no kerb exists to provide protection for patrons
- At street corners, setback and clearance distances may be increased to maintain safe sight distances for vehicle traffic and pedestrians. Each application will be determined on its individual circumstances for safety and access considerations
- Where sight distances for vehicle traffic and pedestrians are favourable, minor modifications of the nominated clearances may be approved provided that the objectives of this policy are met.

If in Council's opinion, the operation of an outdoor dining area is determined to be unsafe or causes undue inconvenience or disruption to pedestrian movements or to the adjoining businesses, Council may require the approved licensee to rearrange, relocate or reduce the licensed area.

3.2 Accessibility

Road reserves must allow for equitable and safe access for all people. Equitable access is to be considered and clearances must comply with Australian Standards including AS1428-2009.

Any structures located within the road reserve must comply with Australian Standards as they relate to access (AS1428-2009).



Licensees are to refer to the relevant Australian Standards, as these will be referenced during the assessment of any proposal (for more information on Australian Standards see www.standards.org.au and the Australian Building Codes Board online at www.abcb.nsw.gov.au).

Access and usability for all people must be considered when determining whether a site and layout is suitable for outdoor dining. This includes a continuous, accessible path of travel to or within the area to provide access to all services and facilities. There must not be any hazard or impediment which prevents safe negotiation by any person.

Any item located within the outdoor dining area must:

1. not obstruct nor protrude into the accessible path of travel;
2. not be placed along the shop front;
3. be of a colour that provides a contrast with their background; and
4. be designed so that it is accessible by all.

Other requirements:

- materials used for floor areas shall be slip resistant;
- pathways within outdoor dining areas shall have clear sightlines; and
- the area be well lit and colour contrasted where appropriate to assist people with vision impairment.

Outdoor dining areas shall be clearly defined and be separated by barriers which can be safely negotiated by a person with vision impairment.

It is the responsibility of the licensee to comply with the requirements of the *Disability Discrimination Act 1992* and to investigate their own responsibilities under the Act.

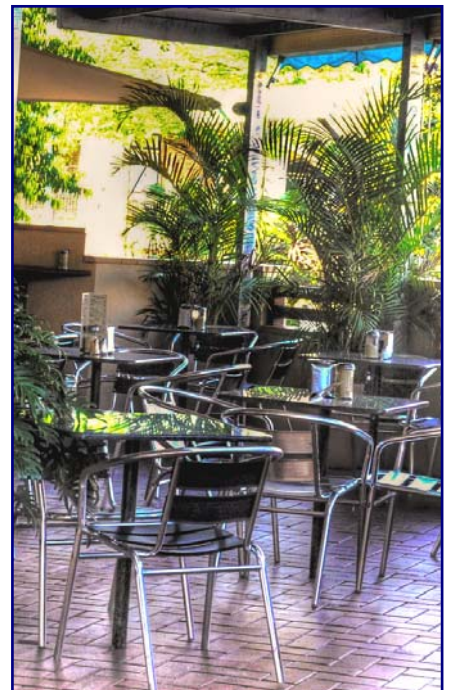
3.3 Ground surface

The ground surface must be suitably constructed and sufficiently level to provide safe circulation throughout the outdoor dining area and the safe use of furniture. Minor earthworks may be approved to achieve a suitable gradient.

3.4 Furniture, shade umbrellas and other items

For the purposes of this policy, furniture includes tables, chairs, umbrellas and shade structures, pots and pot plants, troughs, barricades, heaters, cooling devices, advertising items and any other portable element in the outdoor dining area. This section provides guidance on the design requirements for both portable and fixed furniture associated with outdoor dining.

- Details of all furniture must be included in the Development Application for the licensed area. Any subsequent change to furniture will be judged on its merits as to whether a further application is required.
- Outdoor furniture is to add to the amenity of the streetscape. Furniture style must be practical, robust and meet Australian Standards, including AS1428-2009
- All furniture must be located within the licensed area and must not at any time extend beyond the boundaries. No item



is to be placed against any shopfront

- Items must meet all required standards – manufacturer’s details and related information are to be provided with any application to demonstrate compliance with the following criteria:
 - furniture should be strong, sturdy, durable, waterproof and weather resistant, and designed for commercial outdoor use. (Plastic tables and chairs intended for domestic purposes will not be approved)
 - the design must not contain parts that are likely to cause damage to the pavement
 - the furniture must be suitable for public safety, comfort and hygiene considerations
 - particular care should be taken not to include any sharp edges, and hinges or other moving parts to ensure that they do not present a potential hazard
- All items must be anchored appropriately and safely and not pose an obstacle for pedestrians or traffic
- Shade umbrellas shall be an appropriate style, height and design to ensure public safety (no sharp edges or points). They must be securely fixed to the pavement during trading hours and shall not be utilised during extremely windy weather
- At the completion of each trading day the licensee must remove all portable items related to the licensed area and shall store all items within the restaurant premises
- Ownership, maintenance and replacement of furniture and other portable items remain the responsibility of the licensee. All items must be maintained in a physically sound, clean and hygienic condition to ensure public safety
- Water features are not permitted
- Fixed shade structures and roll-up blinds must be approved by Council, be installed at the applicant’s cost and must not reduce the minimum footpath clearance. Blinds should be transparent and not pose a hazard to pedestrians or patrons. In the case of adjoining outdoor dining areas, blinds are only permitted on the kerb side
- The licensee is responsible for ensuring that patrons maintain furniture within the boundaries of the licensed area at all times
- Any proposed items of furniture that are to carry advertising logos or brand names etc must be detailed as part of the Development Application
- All portable furniture is to be removed in extremely windy conditions.

3.5 Removal of trees and public infrastructure

No tree is to be removed from the streetscape to establish or increase an outdoor dining area. Council-owned infrastructure, such as litter bins or seating, may be relocated with Council’s agreement. The cost of such relocation is at the applicant’s cost. Any relocation of public seating is to be made as close as possible to the original location, with shaded areas being the preferred location. No reduction of public seating is to occur.



3.6 Extension of outdoor dining area beyond shopfront

A proposal to extend an outdoor dining area on the footpath beyond the shopfront of the principal restaurant or cafe requires written authorisation from all affected landowners and business operators. Changes to ownership or occupancy require renewed authorisation from the new owner or business operator.

Should the authorisation of adjoining landowners or business operators be withdrawn after the establishment of an outdoor dining area on the footpath, any structures that encroach on the shopfront of the affected party must be removed at the licensee's cost within 14 days of written notice. The licence fee will be amended according to the reduction in area.

The licensee shall have no claim against Council for any loss of trade or other claim due to the reduction in licensed area.

Outdoor dining areas constructed on blisters or carriageways are exempt from this section. Only outdoor dining areas established after the adoption of this policy shall be affected by this section.

3.7 Toilet facilities

Toilet facilities are to be made available to patrons in accordance with the requirements of the Building Code of Australia. Toilet facilities are required to be available in the building occupied by the principal restaurant premises where alcohol is served or if the total seating provided (indoors and outdoors) exceeds 19 seats.

3.8 Advertising signs

Details of advertisements to be displayed or exhibited within an outdoor dining area are to be included in the Development Application and must be in accordance with Lismore City Council's Development Control Plan, Part A Chapter 9 - Outdoor Advertising.

Approved portable signs must be located within the licensed area on the kerb side of the footpath adjacent to the relevant business, 600mm in from the kerb, and at least 2.4m from the shopfront. No obstacle or sign is to be placed against the shopfront.

3.9 Delineation of Boundaries

Walls, safety bollards, suitable barriers or planter boxes are required to separate an outdoor dining area from the kerb to prevent pedestrians from entering and exiting the outdoor dining area directly to the carriageway. Installation of such items is at the applicant's cost and must be described in detail in the Development Application.



Photo supplied by DisplayMaster

All boundaries of the licensed area must be defined by either walls, fixed bollards, barriers, markers, planter boxes or other landscaping where appropriate. The establishment of such items, as well as fasteners into the pavement surface is also subject to written approval from Council's Urban Roads Engineer. Barriers must be maintained at all times to clearly delineate the licensed area. Such barriers, other than on the kerb side, may be framed canvas or fabric free-standing barriers temporarily secured or affixed to the pavement.

Metallic discs (engraved "Outdoor Dining") shall be inserted into the pavement by Council to delineate the outdoor dining area where no other permanent element of separation exists.

3.10 Entertainment

Quiet entertainment may be permitted within the licensed area for the enjoyment of patrons and shall be detailed in the Development Application. Such entertainment shall not interfere with or cause any disturbance or annoyance to adjoining retailers, pedestrians or neighbours. There is to be no amplified music in the licensed area, unless approved by Council for special events. Buskers performing in the licensed area must have a permit to busk.

3.11 Lighting

Any outdoor dining area operating outside daylight hours must provide adequate lighting at the licensee's cost. The lighting must comply with AS4282 Control of the obtrusive effects of outdoor lighting. All details are to be included in the Development Application and must satisfy amenity and safety requirements for patrons, pedestrians and traffic. Installation and maintenance of lighting is at the licensee's cost.

Outdoor lighting should not interfere with the amenity of adjacent areas and must not present a safety hazard to patrons, pedestrians or traffic.

3.12 Heating and cooling devices

Details of any heating or cooling devices proposed for use in outdoor dining areas must be included in the Development Application. All safety requirements and costs are to be met by the licensee.

Any heating or cooling devices must be contained wholly within the outdoor dining area and be secured to the pavement. All heating devices shall possess automatic turn off devices in the event of overturning. Free-standing gas heaters must comply with the relevant standard and legislation and be certified by a qualified person. When not in use, heating and cooling devices are to be removed from the outdoor dining area.

3.13 Alcohol free areas and liquor licensing

Outdoor dining areas are excluded from the Alcohol Free Zone and shall be managed in accordance with the liquor license of the principal restaurant premises. Approval from Council is required to extend the liquor licence to include the outdoor dining area.

Prior to making an application to the NSW Casino, Liquor and Gaming Control Authority (CLGCA) for a new liquor licence or an extension to an existing liquor licensed area for outdoor dining, the applicant must submit a request to Council (as landowner).



Guidelines for the operation of a liquor licensed outdoor dining area are:

- The licensee is to operate the licensed area in accordance with the provisions of the *Liquor Act 2007*, and liquor licence conditions
- The licensed area is not to operate beyond 11:00pm
- Table service is encouraged
- Toilet facilities are to be provided in the principal restaurant premises in accordance with the requirements of the Building Code of Australia
- The licensed area must be clearly delineated from the road reserve
- The licensee is to ensure patrons of the principal restaurant premises do not loiter or congregate in the pedestrian clearance zone
- The footpath or pedestrian clearance zone is not to be utilised as a smoking area for the principal restaurant premises
- The principal restaurant premises must have meals available at all times while the outdoor dining area is open
- Termination of the outdoor dining area licence may occur due to anti-social behaviour or non-compliance with liquor licensing.

3.14 Prohibited items

The following items are prohibited in an outdoor dining area:

- bains-marie (no smorgasbord or self service is allowed)
- unsecured and unprotected heating or cooling devices
- vending and amusement machines.

Food is not to be prepared in an outdoor dining area.

3.15 Animals

It is the licensee's responsibility to comply with the provisions of all relevant legislation including but not limited to the *Companion Animals Act 1998*, and *Disability Discrimination Act 1992*.

New Section 14A of the *Companion Animals Act 1998* provides that dogs are allowed in outdoor dining areas in certain circumstances. Where café and restaurant operators decide to allow dogs in their outdoor dining area, the following conditions must be complied with:

- the outdoor dining area must not be enclosed and must be able to be entered by the public without passing through an enclosed area
- dogs must be on a leash at all times
- dogs must be on the grounds at all times
- dogs can be provided with drink but not food
- dangerous and restricted dogs are prohibited.

The provision of appropriate signage is recommended to advise patrons if dogs are allowed in the outdoor dining area.

3.16 Provision of utilities

Provision of utilities to an outdoor dining area is the responsibility of the licensee. No extension cords or electricity connections are permitted to the outdoor dining area without the written approval of Council. All such connections must be completed by a qualified electrician.



4. NEW INFRASTRUCTURE

An adjacent restaurant owner may apply to undertake streetscape works to accommodate an outdoor dining area. Such works may include footpath widening into the carriageway, paving, street tree planting, lighting, safety barriers and planter boxes, etc. Any such works including the design and all construction elements require approval by Council (development consent and approval from Council's Assets and Works Departments) and shall be at the licensee's cost.

Outdoor dining areas may be constructed by an approved contractor in accordance with development consent conditions and to specifications and standards approved by Council's Urban Roads Engineer/Works Department. Upon termination or expiration of a licence any structure remaining in the road reserve, including blisters, becomes the property of Council.

5. OPERATION OF LICENSED AREA

5.1 Licensee responsibilities

Development consent for an outdoor dining area requires the owner of the principal restaurant or café to enter into a licence with Council (as landowner). The licensee is responsible for the following:

- maintenance of all structural surfaces and landscaping elements defining the outdoor dining area. Undertaking maintenance of the outdoor dining area requires a "Works on Road Permit" from Council's Works Department. All work is to be undertaken in a safe manner and in accordance with the permit conditions.
- removal of graffiti from all surfaces
- keeping the outdoor dining area clean, tidy and free from litter at all times
- immediate removal of any spilt food, liquid or other material from the adjacent footpath adjoining the principal restaurant premises
- regularly maintaining the area by sweeping and spot cleaning
- ensuring runoff water from any cleaning activity does not enter stormwater gutters and drains. Hosing the licensed area is not permitted (fire hoses must not be used for this purpose)
- appropriate stormwater drainage be undertaken in accordance with development consent
- regular steam-cleaning and maintenance of the floor area. Council may direct that the outdoor dining area be cleaned from time to time
- disposal of waste from the licensed area. Street rubbish bins are not to be used and the licensee must have a suitable arrangement for commercial waste collection
- footpath sweeping on Sundays and public holidays
- ensuring the outdoor dining area is operated in accordance with the conditions of this policy, their licence and related development consent.

5.2 Conduct of business

Food and drink must not be prepared in the licensed area; and no smorgasbord or self service is permitted.

An outdoor dining area must not be sublet or be allowed to be used for purposes other than outdoor dining conducted by the proprietor of the adjacent restaurant.

5.3 Trading hours

Hours of operation of the outdoor dining area shall be the same or less than the approved hours of operation of the principal premises. Outdoor dining areas shall not operate beyond 11:00pm.



5.4 Smoke free area

Everyone who visits Lismore has the right to a clean and healthy environment. To preserve this right for the community, Council has made its outdoor dining areas smoke free. "No smoking" signs with the international symbol are required to be provided by the licensee and displayed at all times during operation of the outdoor dining area.

5.5 Licence fees

Licence fees for the first two years of this policy shall not be charged (repayments to Council for previous construction costs shall continue).

Licence fees for outdoor dining areas (after two years from date of adoption of this policy) shall be \$50/m² for all areas.

Licence fees are quoted exclusive of GST. Licence fees shall be adjusted annually in accordance with movements in the Consumer Price Index. Fees will be assessed periodically and may be adjusted and advertised in Council's fees and charges.



5.6 Term of licence

The standard licence term shall be two (2) years. The licence term shall not exceed the period of consent, if applicable.

5.7 Bond

A bond of \$1,000 in the form of cash or bank guarantee is to be paid to Council prior to occupation of the outdoor dining area. The bond will be held in Council's trust account and will be refunded upon receipt of a replacement bond, termination or expiration of the licence with the licensee having fully paid licence fees and the area being returned to Council in a satisfactory condition.

Existing bonds shall not be required to be increased unless or until a new licence is issued or assigned.

5.8 Assignment of licence

The licensee must make application to Council for the assignment of the licence prior to settlement for the sale of the principal restaurant; and include satisfactory business and financial references for the new business owner.

Should the licensee fail to request the assignment prior to settlement, the licence may be cancelled and the bond forfeited. A fresh application and bond must be submitted by the new owner of the adjacent restaurant to use the outdoor dining area. Council does not guarantee automatic assignment of licences and will not be held liable for any claims should a licence not be approved to be assigned.

5.9 Renewal of licence

At least sixty days prior to the expiration of the licence term, the licensee may apply for a renewal of the licence. A review of all factors affecting the area, including the term of consent and the licensee's compliance with the conditions of the previous licence will be assessed. Renewals will be considered on a case by case basis. Council does not guarantee automatic renewal of licences and will not be held liable for any claims should a licence not be renewed.

5.10 Cancellation of licence

The licence may be cancelled by either party at any time giving 28 days' notice in writing. Licence fees paid in advance shall be refunded. Outstanding licence fees or previous construction costs owing to Council shall be first deducted from the bond and then invoiced to the licensee to be payable within 30 days.

All goods and chattels located within the outdoor dining area owned by the licensee are to be removed from the area at the date cancellation. Fixed items and structures are the property of Council unless otherwise stated in the licence.

If the licence is cancelled and the outdoor dining area is no longer required, removal of all structures shall be at the licensee's cost.

5.11 Termination

The licence may be terminated if:

- The licensed area ceases to be used in conjunction with the principal restaurant premises
- In Council's opinion the pedestrian, road safety, traffic flow or visibility is detrimentally affected
- There is non-compliance with the terms of the licence or development consent.

5.12 Non-compliance with consent or licence conditions

Activities not undertaken in accordance with conditions of development consent and/or licence will be investigated and where necessary regulated in accordance with Council's Corporate Enforcement Policy.

5.13 Insurance

A licensee shall indemnify Council against all claims of public liability, and shall maintain a public risk policy for a sum not less than ten million dollars (\$10,000,000) at all times with an insurer approved by Council. A certificate of currency is to be provided to Council annually upon renewal of the policy without being requested.

6. TRANSITION PERIOD

The transition period for restaurants with existing licences for outdoor dining will extend for the life of the current licence or until there is a change of approved licensee, whichever occurs sooner. Council encourages licensees to cancel their existing licence and enter into a new licence under the terms and conditions of this policy.

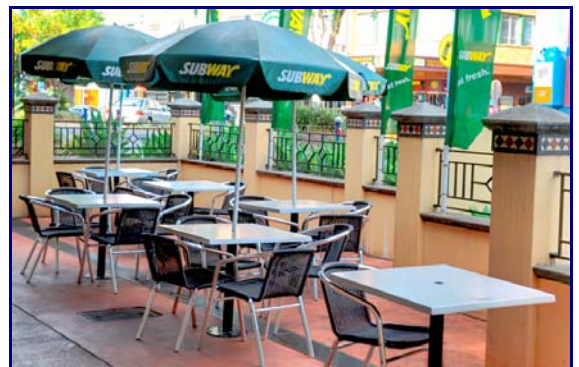
The cancellation of an existing licence with the requirement to repay Council construction costs does not exempt licensees from such repayments.

No reimbursement or back-payment of rent or other payment will be made retrospectively from the date of the adoption of this policy.

7. HOW TO APPLY

Establishing an outdoor dining area is a two-step process. Approval from Council's Assets Department as well as obtaining development consent from the Development and Compliance section is required. The steps to obtaining an approval for an outdoor dining area are:

1. Provide a plan/sketch of the proposed outdoor dining area and discuss the proposal with Council's Assets Department (Property Officer) and the Urban Roads Engineer to determine if the proposed site is acceptable in terms of traffic and pedestrian movements.
2. If the location is deemed suitable by Council's Assets Department, a quotation of Council's fees can be provided.



3. If approval is obtained from the Assets Department, a Development Application is then required to be lodged with Council. Please note that this application will require owner’s consent from Council prior to lodgement.
4. Download a Development Application form from Council’s web site at www.lismore.nsw.gov.au, or make a request to Council officers or by telephone 1300 87 83 87.
5. It is recommended that the applicant meet with a Development Assessment Officer (Planning) at this time to discuss the Development Application for pre-lodgement advice concerning compliance with planning controls and landscaping guidelines.
6. If the Development Application is approved, a condition of the development consent will be to enter into a licence agreement with Council. The standard term of licence is two years. Unless otherwise determined, development consent runs with the land.

Further information on this process is available by contacting the Customer Contact Centre for referral to the relevant Council officer - phone 1300 87 83 87.

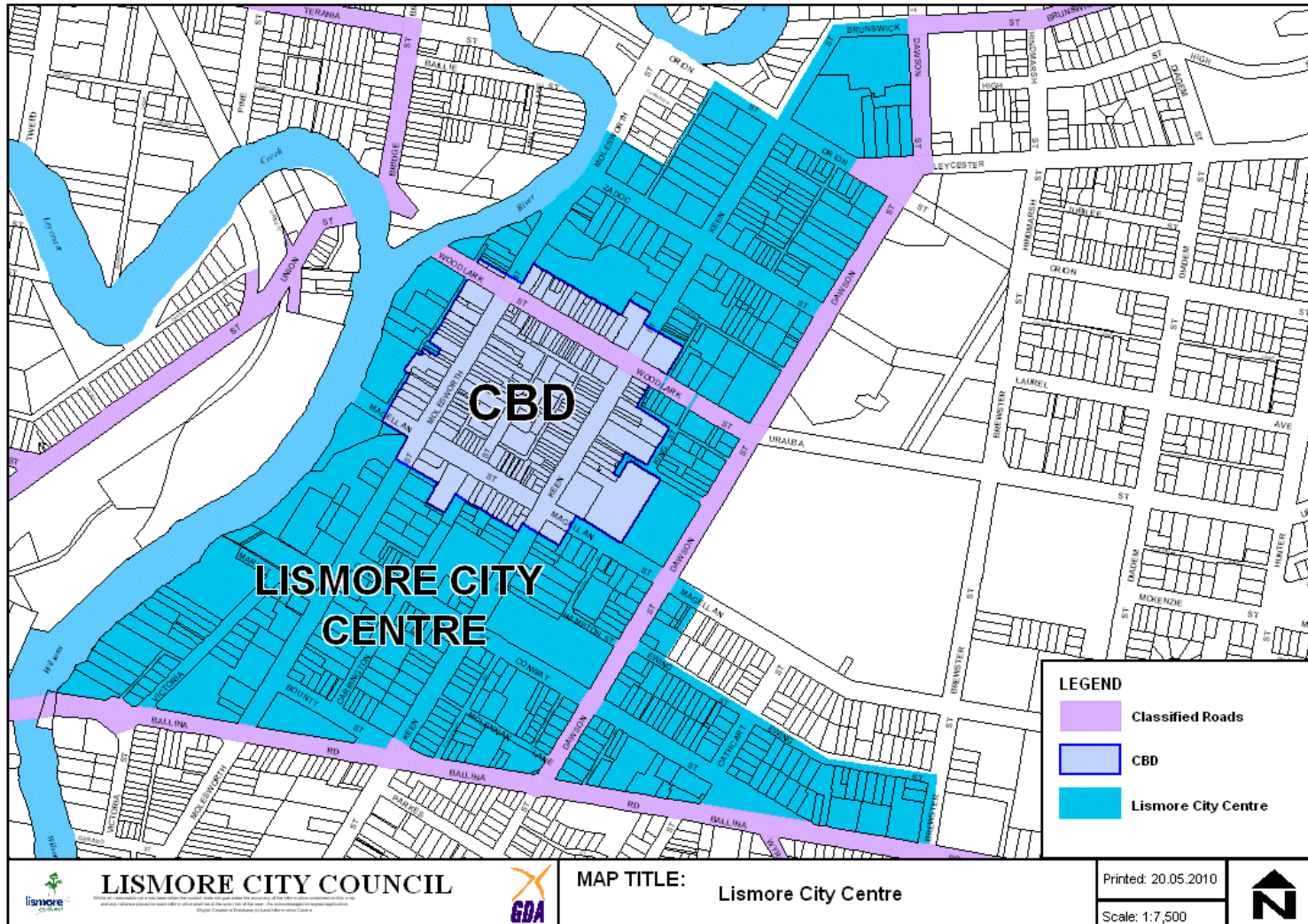


8. DICTIONARY

<i>Blister</i>	Extended area of footpath constructed on the formed road within the road reserve
<i>Classified road</i>	The classified roads in the Lismore city centre are shown on Map 1 and include: <ul style="list-style-type: none"> • Woodlark Street • Dawson Street • Ballina Road
<i>“Enclosed” outdoor dining area</i>	An area with enclosing walls which are higher than 1.4m above the footpath/surface level, permanently constructed for the purpose of enclosing an outdoor dining area.

Footpath/footway	Part of a road set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic).
Footway restaurant	A restaurant the subject of an approval in force under section 125 of the <i>Roads Act 1993</i> operated by a person or business that conducts a restaurant adjacent to a footway of a public road to use part of the footway for the purposes of the restaurant.
Furniture	Includes objects such as tables, seats, planter boxes, umbrellas and other removable items located within the licensed area
Licensee	The business owner or operator to whom a licence is issued for the operation of an outdoor dining area
Licensed area	Outdoor dining area licensed to the business proprietor of the adjacent principal restaurant
Licensed premises	Any premises to which a licence under the <i>Liquor Act 2007</i> relates.
Licensor	Lismore City Council – as the roads authority
Public road/road reserve	A road which the public are entitled to use, and includes: (a) the airspace above the surface of the road, and (b) the soil beneath the surface of the road, and (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of the road.
Streetscape	Includes all parts of the road reserve and carriageway
Restaurant	Premises in which food and beverages are regularly supplied on sale to the public for consumption on the premises that is registered with Lismore City Council as a food premises
Vehicle	Includes: (a) a motor vehicle, trailer and tram, and (b) a bicycle, and (c) an animal-drawn vehicle, and an animal that is being ridden or drawing a vehicle, and (d) a combination, and (e) a motorised wheelchair that can travel at over 10 kilometres per hour (on level ground), but does not include another kind of wheelchair, a train, or a wheeled recreational device or wheeled toy.

Map 1 Lismore City Centre



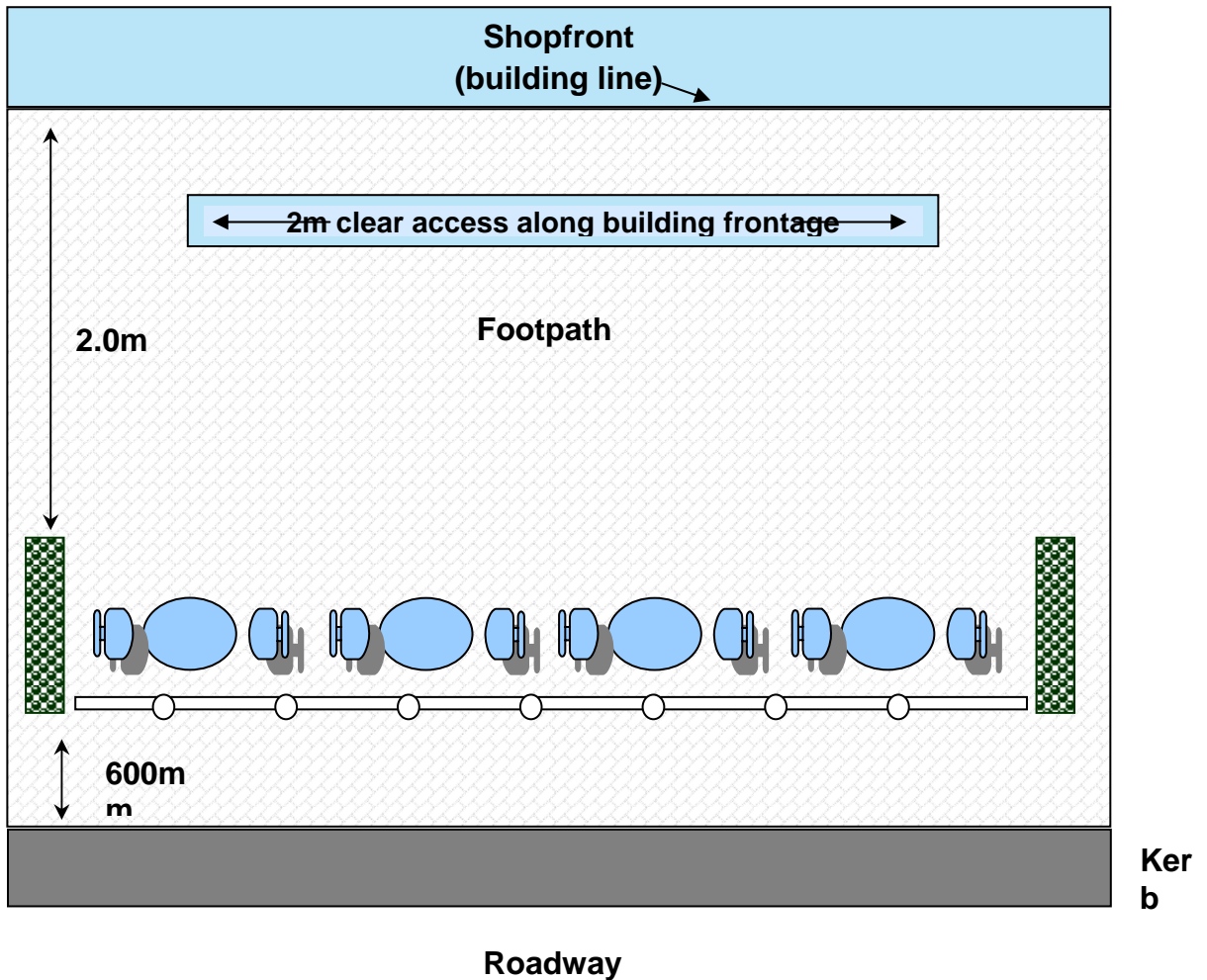
Map 2

Entertainment/Activity Precinct - Magellan Street



Diagram 1

Layout for approved outdoor dining areas on footpaths in the Lismore city centre
(clearance distance increases to 2.4m for some areas of Woodlark Street)
(Layout for corner locations and rear to kerb parking will vary)



Submissions to Draft Outdoor Dining Policy – *Lismore City Centre*

	Name	Summary of submission	CBD Reference Group comment
1.	Dr Paul Recher	<ol style="list-style-type: none"> 1. Outdoor dining usurped car park spots 2. Big W (Lismore Square) has benefited 3. Existing licensees who paid for loss of car parking spaces should get a 50% refund 	<ol style="list-style-type: none"> 1. TTM Traffic and Parking Studies conducted in 2007 indicate sufficient car parking spaces exist in the CBD 2. Noted 3. No - because there is no ability to make retrospective refunds for contributions for historical development applications
2.	Sgt Wayne Crotty Lismore Police Station	<ol style="list-style-type: none"> 1. Request that the requirement for “Alcohol can only be consumed whilst dining” as a development condition. 2. From 1/6/10 liquor licence applications for Lismore area will be requested to include this condition. 3. Liquor licensed outdoor dining areas are deemed “dining rooms” (no supervision required for persons under 18 yrs) 4. Request 10pm close as part of development consent 	<ol style="list-style-type: none"> 1. A liquor licence does not trigger a development application. 2. Noted 3. Noted 4. Liquor can be consumed in outdoor dining areas in accordance with the liquor licence for the premises, but no later than 11pm.
3.	Richmond LAC Commander, Supt Bruce Lyons and Crime Prevention Officer, Snr Const Michael Hogan NSW Police Force	<ol style="list-style-type: none"> 1. Continue 10pm curfew as per consultation with Police, businesses and community and the draft policy – they object to an extension of this timeframe previously advised as 10pm. 2. Late night food venues to cease at 12midnight. 3. Concerned for safety of the public 4. Outdoor dining areas should not become street drinking areas 5. Lack of toilet facilities late at night 6. There is an increase in rate of crime the later the trading hours 7. They call on Council to support their initiatives to continue to reduce crime rates in Lismore CBD which have reduced in last 5 years 	<ol style="list-style-type: none"> 1. 11pm is proposed. 2. This issue is not related. 3. Natural surveillance provided by late night diners 4. Agreed – measures in place for this not to occur 5. Noted - available on individual licensed premises 6. Noted 7. By extending outdoor dining to 11pm, this provides natural surveillance

	Name	Summary of submission	CBD Reference Group comment
4.	Michael Bulmer Rous Hotel	<ol style="list-style-type: none"> 1. Ensure safety of patrons in CBD 2. Hotels have to have security 3. Behavioural problem in CBD 4. Late night trading after 10pm will create “mini” bars without proper supervision and security 5. For Eat Street to be successful we must ensure visitors and locals can dine in a safe place. 	All points dealt with in Police submission.
5.	Uta Dietrich, North Coast Area	<ol style="list-style-type: none"> 1. Congratulated council for the inclusion of smoke free zones in policy 2. Request to consider a clear zone around the smoke free outdoor dining area from the downwind effect from side-stream smoke 	<ol style="list-style-type: none"> 1. Noted 2. Report to Council in the near future on adopting an expanded ‘<i>smoke free outdoor areas</i>’ policy in line with the recently released Local Government resource kit.
6.	Kaylene Fogarty	<ol style="list-style-type: none"> 1. Commended policy 2. Proposal for no smoking should be extended 3. Licence fees should stay minimal 4. Upgrades should be paid by shop owner as they benefit by increased trade 	<ol style="list-style-type: none"> 1. Noted 2. See comment above for new policy 3. Noted 4. Noted – this is reflected in the policy
7.	Mr Craig Alexander Zen Sushi	<ol style="list-style-type: none"> 1. Eat Street should be Keen Street and call Magellan Street another name 2. No restaurants open at night in Magellan Street 	<p>Eat Street “tag” will be removed from the policy. The tag was there only to flag the potential of this area in the future – the cost incentives in the policy were structured around this potential. Council is not and has no plans to promote an eat street at this stage. No street will be labelled Eat Street in the policy. The concept and designated area of ‘eat street’ should be maintained albeit the name should be changed to the ‘entertainment/activity precinct’. The concept was to identify a precinct where street entertainment, activity and outdoor dining could flourish. It is also the connector street between the proposed cultural precinct and Spinks Park. Therefore changing the designated areas name to reflect it’s wider function beyond dining would be appropriate.</p> <p>It should be noted that the proposed Eat Street area identified in the draft was not limited to Magellan Street - it included parts of Keen Street, and had a minimum of four restaurants open at night.</p>

	Name	Summary of submission	CBD Reference Group comment
8.	Craig Alexander Zen Sushi	<ol style="list-style-type: none"> 1. Opposed to Magellan Street as Eat Street 2. 17 food businesses open after dark in Keen Street 	<ol style="list-style-type: none"> 1. See comments above
9.	Steve Kreig La Baracca	<ol style="list-style-type: none"> 1. Too restrictive to state a closing time 2. Follow liquor licence laws – new licence allows restaurants to serve alcohol without food 3. Table service is provided 	<ol style="list-style-type: none"> 1. Noted 2. Noted 3. Table service will be encouraged.
10.	Lismore Business Promotion Panel	<ol style="list-style-type: none"> 1. Strongly oppose restricting trading hour 2. Delete “Table service must be provided” 3. Portable signs are supported – Add wording: “Arcades may have only one combined sign representing businesses located in the arcade. Upstairs/upper floor premises are permitted only one combined sign for all upstairs businesses.” 4. Strongly support Eat Street – entertainment planned for Eat Street; Magellan Street has ambience and additional width of pedestrian areas. 	<ol style="list-style-type: none"> 1. Dealt with previously. Policy will state that “liquor can be consumed in outdoor dining areas in accordance with the liquor licence for the premises, but no later than 11pm.” 2. Table service will be encouraged. 3. Encourage minimising the number of signs for safety and amenity reasons – maximum of two compliant signs per arcade including upstairs levels premises will be permitted. 4. Noted, however, Eat Street “tag” will be removed from the policy.
11.	Baker Mannering & Hart on behalf of TURSA Employment & Training	<ol style="list-style-type: none"> 1. For public safety public thoroughfares should remain open at all times 2. Alienation of public space for commercial use of laneway 3. Laneway must remain open for deliveries and emergency services at all times 4. Roads and laneways were created solely for public access 5. Approvals should be no longer than 12 months without automatic of right of renewal 6. After hours licences in laneways should not operate between 7am and 6pm 	<p>All points noted.</p> <p>Vehicle and pedestrian access will remain available at all times. Unobstructed pedestrian access will be maintained via Nesbitt Lane; and vehicle access via Eggins Lane at all times whilst Nesbitt Lane is partly closed for outdoor dining.</p> <p>Objection to outdoor dining in Nesbitt Lane between 7am and 6pm noted.</p>
12.	Lisa and Shane Dragonfly Café	<ol style="list-style-type: none"> 1. How much trouble will a new licence be for us, i.e. DA and legal costs? 2. Will car parking levies have to be paid again? 3. If we choose not to apply for a new licence will no 	<ol style="list-style-type: none"> 1. It is proposed that a covering DA will be completed by Council and new licences offered with the adoption of the new policy. 2. No.

	Name	Summary of submission	CBD Reference Group comment
		smoking be enforced?	3. No. The no smoking provision applies to new licences issued after Council adopts the policy.
13.	Kieran and Leisa Brett The Loft Restaurant	Proposal to undertake outdoor dining in Nesbitt Lane starting at 5pm	The Loft's proposal is included in the draft policy. Submissions received in relation to this proposal number: 20 in support and one against. All submissions are from businesses and landowners adjoining and in the vicinity who may be affected by any change of traffic arrangements in the laneway.
14.	Kieran Scott Scotts News	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
15.	Susan Bennett Bondfields Shoes	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
16.	Andrew Virtue Newcastle Permanent Building Society Ltd	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
17.	Judy Baxter Leo's Food Bar	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
18.	Graham Gooley Optometrists	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
19.	Lisa Treadwell Bananacoast Community Credit Union Ltd	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
20.	Greg Brand Brand's Pharmacy	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
21.	Sally Monti Williams (Shoemen)	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
22.	Angela Mutt Angelica's Fashion Boutique	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
23.	Christopher Jeffery Star Court Café	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
24.	Peta Wells The Garden Florist	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
25.	Fiona Cousens Anelii Jewellers	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
26.	Gary Taylor Summerland Trophies	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.

	Name	Summary of submission	CBD Reference Group comment
27.	Alan Morris Rubyesque	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
28.	Deborah Ray & David Lacey Music Bizarre	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
29.	Lyn Greig Fashion Enclave	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
30.	Graham Smith Wappetts Chartered Accountants	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
31.	Greg Jones Greg's Barber Shop	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.
32.	Warren Latimer Capminster Property Services	Support The Loft's proposal to conduct outdoor dining in Nesbitt Lane starting at 5pm	Noted.