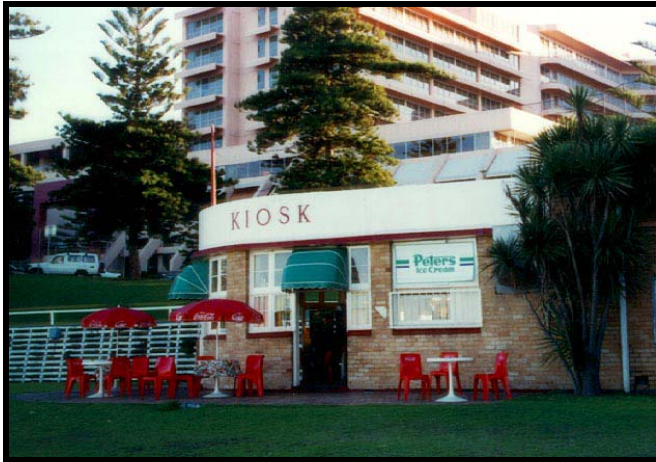




Food and Beverage Outlets on Crown Reserves

Policy Position



Version 3

Prepared by: Crown Lands Policy

Department of Lands

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Cover photograph: North Wollongong Beach Reserve

Introduction

Individuals or groups often approach the Department of Lands (Lands) and reserve trust managers to approve the establishment of kiosks and restaurants on reserved and dedicated Crown reserves. Because of the need to maintain the integrity of the special nature of public purpose reserves, a consistent approach to the establishment of these facilities across the State is required and the following advice will assist in this regard.

The gazettal of land as a Crown reserve for a specific purpose does not necessarily allow it to be used for all the possible uses that the purpose implies. The identification of acceptable land use activities on reserves is undertaken by one or a combination of two or three mechanisms being:

- Identification of acceptable uses within the scope of the public purpose nominated for the reserve under the Crown Lands Act, 1989;
- Identification of the uses that are permissible under the relevant environmental planning instruments (EPIs) made under the Environmental Planning and Assessment Act, 1979; and
- Identification of the uses indicated for the reserve in a plan of management under the Crown Lands Act, 1989.

If food and beverage outlets are not identified as a permissible use in the relevant EPI, then an amendment to the EPI or rezoning that allows these facilities is required before any food and beverage outlet can be established on Crown reserves.

Notes:

- *The Policy provides guidance for assessing the merit of proposals for these developments on Crown reserves and identifies food and beverage outlets that may be acceptable and those that may not be acceptable on Crown reserves. Circular F14 – Restaurants in Open Space Areas issued by the Department of Infrastructure, Planning and Natural Resources (DIPNR) complements the policy.*
- *The Policy addresses public purposes gazetted under the Crown Lands Act, 1989. With regard to public purposes under former Crown lands legislation, reference should be made to the relevant office of Lands.*
- *A number of requests have been received by Lands from reserve trust managers for the establishment of restaurants on Crown reserves. Restaurants are acceptable uses within most public purposes but are not always identified as permissible uses in open space zones under council's local environmental plans.*

Policy Position

Food and beverage outlets are not acceptable uses on all reserves. The public purposes for Crown reserves are gazetted under the Crown Lands Act, 1989 and the establishment of food and beverage outlets would not generally be appropriate for reserves with the nominated public purpose of “environmental protection”; “rural services”; travelling stock”; “urban services”; and “water”.

Food and beverage outlets are generally considered to be acceptable uses on other reserves for public purposes. However, these facilities need to cater to the public generally rather than an exclusive group. Trust managers should consult with Lands at an early stage with regard to the suitability of proposals in relation to the public purpose of the reserve.

To assist both trust managers and Lands officers in determining whether a proposal is appropriate, the following criteria should also be applied:

- The facility should enhance the public use of the reserve and not become the main focus of the reserve;
- The integrity of the reserve in terms of its public purpose and environmental qualities should be preserved; and
- The public’s right to access should be preserved.

The policy position categorises food and beverage outlets for the purposes of locating them on Crown reserves. It should be noted that premises in categories ii and iii may only hold an “on licence (restaurant)” to serve liquor by table service.

Food and Beverage Outlets that may be acceptable on Crown Reserves

- i. Kiosks that provide snacks, packaged and prepared light foods with non alcoholic beverages to take away are an acceptable use on public purpose reserves, where they are ancillary and supportive of the use of the reserve;
- ii Refreshment rooms, cafes and coffee shops which serve snacks, light meals and beverages to take away or to be consumed on the premises are acceptable uses on public purpose reserves, where they are ancillary and supportive of the use of the reserve.
- iii A bistro, brasserie or restaurant that serves light to substantial meals with beverage to be consumed on the premises, is an acceptable use on public purpose reserves, where it is ancillary and supportive of the use of the reserve.

Food and Beverage Outlets that may not be acceptable on Crown Reserves

- iv Restaurants that serve only substantial meals; major fast food operations and restaurants that essentially service a passing trade rather than reserve users and cannot be regarded as ancillary to the public purpose reserve;
- v Licensed premises other than those with “on licence (restaurant)” cannot be regarded as ancillary to the public purpose reserve.

Notes:

The Policy groups food and beverage outlets into 5 categories that are to be applied to the reserves as follows:

- *Categories i to iii may apply to all public purposes where food and beverage outlets are an acceptable use;*
- *Categories iv and v may apply to the public purposes of “heritage purposes”, “port services and facilities” and “racecourse and recreation facilities”;*

Function facilities for private use are not acceptable on the following reserves:

“Arboretum”, “Public Park”, “Public Recreation”, “Public Recreation and Coastal Environmental Protection”, “Public Entertainment and Public Amusement”.

Leases and Licences

Any lease or licence for food and beverage outlets that comply with the public purpose of the reserve must sufficiently protect the public in their right to use the land for the public purpose of the reserve. Food and beverage outlets may not be established for special interest groups or used for functions. Expressions of interest should be called for the leasing or licensing of new food and beverage outlets on Crown reserves.

Given that the consent of the Minister for Lands is required in the granting of any lease or licence for food and beverage outlets on Crown reserves, Trust managers should consult with the department at an early stage.

Notes:

- *Leases and licences should protect the public’s interest in Crown reserves and the processes that lead to the granting of a lease or licence should be transparent.*

Signage

Facility signage on reserves should be kept to a minimum. Product advertising that is not attached to a facility is not appropriate. Where product advertising is attached to a facility, it should be ancillary to the facility and not overshadow facility signage.

Notes:

- *The erection of signs for food and beverage outlets on reserves should be kept to a minimum and product advertising should not dominate the exterior of the building. Portable signs during the hours of operation may be acceptable if approval is given by the reserve trust manager and consent authority.*

Plans of Management

Any proposal for the establishment of a food and beverage outlet on a public purpose reserve should be contained in a plan of management made under the Crown Lands Act, 1989, to ensure that it is evaluated by the community and stakeholders and its scope defined by the Plan.

The preparation of plans of management for public purpose reserves should have regard to the matters in Annexures 'A', 'B' and 'C' attached to this policy position and the document jointly prepared by Manidis Roberts Consultants and the Department of Land and Water Conservation as it applies to Crown reserves. A plan of management that provides for food and beverage outlets on Crown reserves should also have regard to:

- the policy position for food and beverage outlets on Crown reserves; and
- Department of Infrastructure, Planning and Natural Resources Circular F14 - Restaurants in Open Space Areas

Notes:

The Plan of Management will provide for community input into the planning, development and management of the reserve and the basis for giving owner's consent to lodge development applications for the establishment of food and beverage outlets on Crown reserves. It will apply to the whole of the particular reserve where the facility is proposed to be located. An existing Plan of Management may be amended to provide for facility modifications.

Plans of Management that make provision for food and beverage outlets on reserves should indicate:

- *the size and scale of the proposed facility and the type of food and beverage outlet as per the 5 categories in the policy;*
- *any conditions that will be included in leases and licences for the proposed development; and*
- *any criteria for the erection of signs for the proposed development.*

Annexure 'A'

Regard should also be had to the observations made by the Land and Environment Court in the Garigal National Park/Davidson State Recreation Area case, Willoughby City Council v Minister Administering the National Parks and Wildlife Act (1992) LGERA 19 at page 27:

"Those charged with the responsibility for national parks and public recreation areas need to be alert to ensure that parks remain accessible to the public for their recreation and enjoyment. Great care needs to be taken in permitting commercial uses, which may lead to the public use of an area being diminished in favour of private utilization and enjoyment. I accept Mr McClellan's comment that there is sometimes a fine line to be drawn. Marking out the boundary should, however, be done with the paramount and dominant purpose of parks being kept steadily in mind. Erosions of that purpose, however small they may seem individually, have the capacity on a cumulative basis to drift imperceptibly towards commercialisation of activities within parks, and this may have the inevitable effect of limiting, restricting and inhibiting the enjoyment and recreation of the public at large".

Annexure 'B'

Crown Lands Act 1989

Objects of Act

10. The objects of this Act are to ensure that Crown land is managed for the benefit of the people of New South Wales and in particular to provide for:
 - a) a proper assessment of Crown land;
 - b) the management of Crown land having regard to the principles of Crown land management contained in this Act;
 - c) the proper development and conservation of Crown land having regard to those principles;
 - d) the regulation of the conditions under which Crown land is permitted to be occupied, used, sold, leased, licensed or otherwise dealt with;
 - e) the reservation or dedication of Crown land for public purposes and the management and use of the reserved or dedicated land; and
 - f) the collection, recording and dissemination of information in relation to Crown land.

Principles of Crown land management

11. For the purposes of this Act, the principles of Crown land management are:
 - a) that environmental protection principles be observed in relation to the management and administration of Crown land;
 - b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible;

- c) that public use and enjoyment of appropriate Crown land be encouraged;
- d) that, where appropriate, multiple use of Crown land be encouraged;
- e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity; and
- f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

Annexure 'C'

Preparing Plans of Management for Crown Reserves

Plans of Management will need to conform with the public purpose of the reserve and the provisions of environmental planning instruments (EPIs) and development control plans (DCPs) made under the provisions of the Environmental Planning and Assessment Act, 1979.

Plans of Management are to be prepared in accordance with the Crown Lands Act, 1989 and adopted by the Minister responsible for administering the Act. Where Plans of Management are to make provision for the leasing or licensing of facilities to commercial operators or special interest groups, they need to address the following issues:

- the sustainable use and management of the reserve;
- the size and scale of the proposed area or facility in relation to the size of the reserve;
- the relationship of the proposal to development on adjoining land or on other land in the locality;
- landscaping provisions that provide for the preservation of trees and other vegetation including any threatened species habitat and enhancement of the visual experience of the reserve;
- provision of adequate infrastructure, water, electricity and sewerage;
- provision for adequate protection of environmental features/hazards such as landform stability, drainage and flooding, buffer zones, bushfire hazards, waste control and noise and lighting;
- the social and economic effect of the proposal on the reserve and the locality;
- the character, location, siting, bulk, scale, shape, size, height, density design or external appearance of the proposal;
- provisions for the protection and maintenance of any heritage buildings, archaeological, aboriginal sites or other items of cultural heritage;
- criteria for the erection of signs for the proposed use that will provide for minimal signage located on the site of the activity or facility. Product advertising may only be for sponsorship and needs to be smaller in size than the locational or directional signs;
- the amount of traffic, parking, loading, unloading and manoeuvring likely to be generated by the proposal and how it can be provided without compromising other users of the reserve.