

# Outdoor Dining Policy

Policy Reference Number	5634443
Responsible Department	Corporate Services
Related Policies	Footpath Development & Maintenance, Road Verge Development & Maintenance, Risk Management
Related Procedures	Nil
Date of Initial Adoption	06 October 2009
Last Reviewed by Council	15 August 2023

## 1. Purpose

The purpose of this Policy is to provide a framework for the issue and management of outdoor dining permits on public footpaths and other local government land within the Council area.

## 2. Power to Make the Policy

Council has prepared and adopted this Policy to comply with:

- Sections 222 to 225 of the Local Government Act 1999;
- The Liquor Licensing Act 1997;
- The Tobacco and E-Cigarette Products Act 1997;
- The Food Act 2001;
- The Local Nuisance & Litter Control Act 2016;
- Planning Development and Infrastructure Act 2016, with approval for temporary or permanent facilities, including Building Consents where appropriate, regulated by the Planning Development and Infrastructure Regulations 2016; and
- The Disability Discrimination Act 1992, Sections:
  - 5 – Disability Discrimination,
  - 23(1) - Access to Premises,
  - 24(1) – Goods, services and facilities, and
  - 44 - Advertisements.

## 3. Strategic Plan Link

This Policy has the following link to Council's Strategic Plan 2024:

- Supporting our Community (Goal 1)

## 4. Principles

Council recognises:

- The need for commercial activity to occur in unison with other users on local government land.

- The economic benefit and contribution to amenity that outdoor dining can bring to City streets and other public places.
- That outdoor dining facilities need to operate in harmony with pedestrian and mobility impaired persons' needs.

## 5. Definitions

<b>6. Outdoor Dining</b>	Is defined as tables and chairs situated on local government land for the purpose of increasing the capacity of a fixed facility which provides food (ie Café, Delicatessen, Restaurant or similar).
<b>Leased Area</b>	Local Government land that is subject to a separate lease agreement with Council.
<b>Local Government Land</b>	Land that is under the care and control of Council, including public footpaths and road reserves.
<b>Road</b>	Has the same meaning as in the Local Government Act 1999, and extends from property boundary to property boundary including the carriageway, footpaths and verges.
<b>Applicant</b>	Person who applies for an outdoor dining permit.
<b>Permit Holder</b>	Owner of a facility where the Owner's application for an outdoor dining permit has been approved by Council.
<b>Policy</b>	

### 6.1 Permit Issue

The issue of outdoor dining permits (including leased areas) is conducted on a case by case basis by Employees after assessment of the following:

- Public safety
- Community benefit
- Impact on pedestrian and vehicular traffic
- Impact on street amenity, including character and heritage issues
- Availability of car parking
- Adjoining land uses and likely impact of noise
- Accessibility issues and Disability Discrimination Act 1992 requirements
- Valid and adequate public liability insurance

From time to time, Council may issue temporary permits on a case by case basis for approved events.

Council's outdoor dining permit will be based on the LGA Model Guidelines for Outdoor Dining.

Permit Holders must apply for, and be granted an outdoor dining permit prior to setting up outdoor dining facilities on local government land within the Council area. Applicants should discuss their proposal with Council's Property Officer in the first instance.

A separate application to the Commissioner of Liquor and Gambling is required in the event that alcohol is to be served in the designated outdoor dining area and the specified area is not currently licensed.

Development approval must be granted prior to other permit application details being considered by Council.

Council's Property Officer must ensure that a Risk Assessment, including Treatment Plan if relevant, has been completed prior to approving a permit application. Where an applications satisfies development requirements but does not satisfy other permit requirements it will be referred to Council for consideration.

Where a permit is granted, hours of operation for the approved outdoor dining area shall be determined with consideration of neighbouring residences (if relevant) and Local Nuisance & Litter Control Act requirements.

Permits shall, excepting where permit conditions are breached, remain in force for a maximum period of 1 year, lapsing on 30 June each year. Should the business be sold, the permit shall be transferred to the new owner at their request and remain in force until the end of the following financial year.

Where a permit has been issued, the Permit Holder must clearly display it at the relevant premises for routine inspection by an appropriately Authorised Officer of the Council, at any time during which the Permit Holder is trading pursuant to the permit. Permits will include plans indicating the approved dining area, furniture and fittings, any shade provisions and must show a registered permit number.

## **6.2 Revocation and Suspension of Permits**

The Chief Executive Officer (or nominee) may revoke a permit where a breach of the permit conditions in accordance with Section 225 of the Local Government Act 1999 has occurred.

Council may require the removal (at the permit holder's expense) of an outdoor dining facility or suspension of outdoor dining activities in a permit area to enable infrastructure work to proceed on local government land, or for any other purpose warranted to be in the interests of public health and safety. In this instance, the Chief Executive Officer (or nominee) will endeavour to give reasonable notice to permit holders where possible.

## **6.3 Reissue of Permits**

Reissue of permits will have regard to any negative aspects of the applicant's current or past performance such as:

- Continued disregard for any of the permit conditions;

- Non-compliance with any planning consent conditions issued in respect of the activity;
- On-going noise complaints.

Where an outdoor dining facility meets performance requirements, the Property Officer will advise the Permit Holder of renewal notice needs at least one month before the renewal date and subject to payment within 30 days of receipt by the Permit Holder, the outdoor dining permit will be renewed.

#### 6.4 Insurance

Unless specific site conditions require an increased level of insurance, the appropriate level of public liability insurance applicable to outdoor dining permits (refer General Conditions of Permit clause 8) will be \$10 million. The insurance policy must include the area designated to be an outdoor dining facility that is situated on local government land and indemnify Council against any claims arising in connection with the permitted use.

The Permit Holder must provide the Property Officer with written notification of the following where relevant:

- Cancellation or lapse of a public liability insurance policy;
- Where requested, a copy of the public liability insurance policy held by the outdoor dining facility approved under permit by Council.

#### 6.5 Safety

The safety of people participating in outdoor dining activities is paramount.

##### *Legislation*

The Permit Holder will ensure that at all times that the business complies in all respects with the provisions of the South Australian Public Health Act 2011, the Food Act 2001 and where applicable the Liquor Licensing Act 1997.

##### *Outdoor Diners' safety*

The Permit Holder is responsible for all aspects of safety in relation to patrons sitting at tables or benches on footpaths, and for establishing and maintaining protection bollards and other safety features required, to the specification and satisfaction of the Chief Executive Officer (or nominee).

Employees will undertake a risk assessment for each permit application considering road classification, volume, speed, crash history and proximity to intersections.

- EAB's (Energy Absorbing Bollards) may be required at outdoor dining locations that would otherwise be considered unsuitable for the purpose based on local traffic conditions. EAB's must be installed to specifications outlined in AS/NZS 3845.2:2017 Road safety barrier systems and devices, Part 2: Road safety devices.

EAB's, bollards and/or any structure(s) must satisfy the Chief Executive Officer (or nominee) and meet any requirements set by the Department of Infrastructure and Transport, Australian Standards and Austroad Guides. In addition:

- Bollards and/or other structures must be set back 0.6 metres from an adjoining kerb line.
- Installation of safety devices does not obviate the need to provide all relevant clearances within the Safety, Diner and Pedestrian zones as required by the Chief Executive Officer (or nominee).

Advertising placement requirements comprising moveable signs are specified in Council's by-laws. More substantial advertising needs to comply with the Planning, Development and Infrastructure Act 2016 and the Design Code, and applications in this regard will be addressed through the usual development application process.

Meals are to be prepared in an adjacent building approved for dining use, not within the outdoor dining area unless otherwise authorised by the Chief Executive Officer (or nominee).

#### *Traffic Safety*

Outdoor dining facilities must not impact on traffic safety. Motorists' sightlines must be maintained in accordance with AustRoads Guide to Design.

### **6.6 Accessibility**

A clear space of 1.5 metres for public access, pedestrian flow, people using prams, wheelchairs, mobility devices etc is to be maintained at all times. Public pedestrian access footpaths adjacent to building frontages must not be compromised (the pathways provide a spatial guide for people with visual impairment and accessibility issues).

The Permit Holder shall not enclose the outdoor dining area with café screens, blinds, awnings or similar structures without the permission of the Chief Executive Officer (or nominee).

Permit Holders are responsible for ensuring compliance with relevant sections of the Disability Inclusion Act 2018 at all times.

### **6.7 Furniture and Accessories**

All street furniture installation and placement, including chairs, tables, umbrellas, storage / display structures, planter boxes, heaters / coolers and other fixtures and fittings are to be approved by the Chief Executive Officer (or nominee) prior to installation and use. Once in situ, all fixtures (inclusive of plants and plant containers) must be maintained within the boundaries of the permit area and to the satisfaction at all times of the Chief Executive Officer (or nominee).

Cash registers and 'dumb waiters' are not to be used in the outdoor dining area.

It is preferable to Council that structures be portable and are removed when a business is closed.

Structures remaining in the outdoor dining area during the hours of darkness must be illuminated to the satisfaction at all times of the Chief Executive Officer (or nominee).

Where the outdoor dining area is illuminated:

- 'Chasing' and flashing lights are not permitted.
- Lighting must be adequate to ensure safety of pedestrians and the amenity of the area outside daylight hours.
- Lighting must be maintained in working order and must not create unreasonable 'spill' into neighbouring properties or the roadway.

## **6.8 Shade**

Permit Holders should provide shade to protect patrons from the sun where there is no verandah or other canopy structure. Shade structures, including umbrellas must:

- Have a clearance of a minimum of 2.1 metres above the footpath level;
- Be secured against the effects of wind, and must be closed or removed during very windy conditions if not a permanent structure;
- Not have side curtains unless approved by the Chief Executive Officer (or nominee);
- Be removed from the outdoor dining area when not in use and during all non-trading hours if not a permanent structure;
- Not include a stand or fitting which protrudes above footpath level, creating a hazard, when the shade structure or umbrella is removed;
- Be structurally sound and fixed to avoid personal injury and property damage;
- Have development approval (if required); and
- Be maintained in good condition at all times.

## **6.9 Cleanliness**

The Permit Holder is responsible for cleaning the relevant area and keeping the outdoor dining area free from litter and waste materials and shall ensure that no waste material is swept or placed into the water table. The Permit Holder shall bear cleaning costs in regard to the outdoor dining area.

The Permit Holder should ensure that no nuisance to the general public is created.

## **6.10 Smoking**

Smoking is not permitted in outdoor dining areas.

Permit holders must not allow ash and cigarettes to litter outdoor dining areas including footpaths.

### **6.11 Animals**

Animals are to be managed effectively within the outdoor dining area.

Animals must not be provided with food or permitted to seek and take food anywhere in or near to the outdoor dining area. A water dish may be provided for animals, providing that it is outside the perimeter of the designated dining area and is at least one metre away from patrons seated at tables.

### **6.12 Noise**

The Permit Holder must ensure that music or other noise provided for the benefit of patrons does not cause nuisance to any other neighbouring businesses, land owners, tenants, occupiers or residents, or to pedestrians.

### **6.13 Asset Protection**

Street trees, seats, bins, paving and other Council fixtures are to be retained except with the express approval of the Chief Executive Officer (or nominee). Removal, relocation or replacement of assets will only be approved where in the opinion of the Chief Executive Officer (or nominee) such action is justified, proposed changes will not impact utility services, and shall occur at the cost of the Permit Holder.

### **6.14 Damage**

Damage to public and private property within an outdoor dining area is the responsibility of the Permit Holder, who must supervise the area so that patrons' behaviour does not lead to damage. Any damage must be repaired at the Permit Holder's cost to the satisfaction of Council.

Where fixed furniture has been installed and outdoor dining usage concludes, either through lapse / revocation of permit or conclusion of business usage, the Permit Holder must restore the footpath promptly to a condition equivalent to its state prior to furniture installation, at the Permit Holder's cost to the satisfaction of Council.

### **6.15 Fees**

Outdoor Dining Permit fees are listed in Council's Fees and Charges Schedule.

Where Council is conducting an event requiring a temporary permit, fees may be waived with approval from the Chief Executive Officer (or nominee).

Additionally, applicants should note that development application fees will apply where relevant.

### **6.16 Delegations**

The Chief Executive Officer is authorised to implement this Policy through further subdelegations.



Authorised Officers will monitor outdoor dining areas and Permit Holders are required to comply with any direction by such an Officer. Breaches of the authorisation will be dealt with in accordance with the conditions of the permit. Permit Holders are required to comply with all conditions of the permit and / or authorities and this Policy.

### **6.17 Breaches**

Deviation from this Policy or the terms and conditions under the permit and this Policy will be negotiated with each applicant based on procedural fairness whereby applicants may put submissions to Council upon what the terms and conditions of the permit and application of the Policy should be, prior to the permit being granted.

Authorised Officers will monitor outdoor dining areas and Permit Holders are required to comply with any direction by such an Officer. Repeated breaches of the permit and Policy terms and conditions may result in suspension or cancellation of the outdoor dining permit.

The following represents a guideline regarding Council's usual approach to breaches of an outdoor dining permit and Policy terms and conditions:

- First Breach – verbal warning issued (noted on Permit Holder's file). Compliance to be achieved within 14 days unless otherwise agreed.
- Second Breach – written notice, compliance to be achieved within 14 days unless otherwise agreed.
- Third Breach – cancellation of the outdoor dining permit.

Notwithstanding the guidelines, breaches of a public safety nature may result in Council taking action to suspend or cancel the permit without providing any warning or notice.

## **7. Review & Evaluation**

Within six months of each new Council term Council will review this policy. Following this initial review this policy will be reviewed annually by Employees with minor administrative adjustments being approved by the Chief Executive Officer.

## **8. Availability of the Policy**

Copies of this Policy will be available at Council's principal office during ordinary business hours and at Council's website [www.campbelltown.sa.gov.au](http://www.campbelltown.sa.gov.au).