

**Keywords:** *Outdoor Dining*

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| <b>Corporate Plan:</b>         |   |
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| <b>Responsible Officer(s):</b> | <i>MES/MP, PO, DO-P</i>   |
| <b>Council File Reference:</b> | <i>5.63.1</i>   |
| <b>Applicable Legislation:</b> | <i>Local Government Act 1999<br/>Development Act 1993<br/>Food Act 2001</i> |
| <b>Relevant Policies:</b>      | <i>Liquor Licencing Policy</i>  |
| <b>Related Procedures:</b>     |   |
| <b>Delegations:</b>            |   |

## Purpose

Outdoor dining is a popular activity that provides a link between businesses and pedestrians while also encouraging active street life. This adds to the amenity, vibrancy and liveability of our district while encouraging activities outside of normal business hours which can improve the overall safety for the area.

The location of outdoor dining facilities needs to be carefully considered to allow for the facilitation of business opportunities while not diminishing the amenity of a locality nor compromising patron, pedestrian or vehicular safety.

This policy applies to guide the determination of all applications by business owners seeking to establish and operate outdoor dining facilities adjacent to their business on a public footpath in the Council area.

## Principles

### Local Government Act 1999

Section 222 of the *Local Government Act 1999* prescribes that a permit is required from Council for the operation of a business of a public road. For this policy, “public road” has the same definition as that described under Section 208 of the Act and includes footpaths, road reserve, alley ways and thoroughfares. The aim of this policy is to provide a framework against which permits can be assessed for outdoor dining within our district.

## **Development Act 1993**

Unless previously considered, Development Approval for the expansion of a business onto the public road will be required under the *Development Act 1993*. Further, the use of blinds, canopies and other structures may also constitute building works which require approval. The issuing of a permit under this policy does not negate the requirement for a business to ensure that appropriate approvals are in place under the *Development Act 1993*.

## **Food Act 2001**

Council is the relevant authority for administration of the *Food Act 2001* which sets out the standards for safe food handling, including in outdoor dining areas. Prior to operation, a business must ensure that they are compliant with the relevant standards. Information can be obtained from Council's Environmental Health Officer on this matter.

## **Information to be submitted with Application**

The following information is required as a minimum with each permit application:

- Plan showing location of existing business and dining area;
- Details of furniture to be used;
- Location of any fixtures and fittings;
- Hours of operation of the business;
- Details of management (use for dining/entertainment purposes, smoking compliance etc); and
- Administrative details (appropriate fees if applicable, copies of insurances).

## **Physical Layout**

An outdoor dining area must not compromise safety for patrons, pedestrians or vehicular traffic. Walkways should extend from the building line and provide a safe, clear & consistent pathway to meet the needs of users, including parents with prams, pet owners and people of all ages and abilities.

In order to achieve this, there are three main functional areas to consider;

- Safety zone;
- Pedestrian zone; and
- Dining zone.

### **Safety Zone**

The safety zone is to ensure suitable clearance from vehicular traffic to allow for access to and from parked vehicles, including loading zones and will extend for an area 900mm from the back of the kerb. No chairs or tables are to be located within this safety zone. Planter boxes, bollards, fences, screens or blinds can not be located closer than 300mm from the back of kerb. Greater setbacks may be required if the dining area is to be adjacent parallel on street car parks.

### **Pedestrian Zone**

In order to ensure that suitable pedestrian access is available along the footpath, a minimum aisle width of 1.5 metres must be maintained. No structures can be erected within the pedestrian zone at any time. At the end of each dining zone a minimum width of 600mm must be maintained to allow for pedestrian access to the road. The location of outdoor dining areas must not compromise disabled access from the road or footpath.

### **Dining Zone**

Dining zones must not be located in areas where they can impact line of site for vehicles. Site lines shall be assessed at the discretion of relevant Council staff. Dining zones can not accommodate more than one chair per square metre of area provided.

## **Design**

Outdoor dining areas shall be of a standard that contributes to the character and appearance of the streetscape and to the satisfaction of Council. Furniture should be carefully selected for its durability and style to ensure that it complements the streetscape. Furniture and fittings that detract from the amenity of the locality shall not be approved and will warrant removal under the permit if erected (lightweight plastic furniture is not acceptable). No furniture or fixtures shall encroach the safety zone without the prior consent of Council. Bollards or other safety devices may be required at the discretion of Council when outdoor dining areas are located adjacent high traffic areas in order to ensure safety for patrons. Where operating at night, the business must provide adequate lighting to ensure safety for pedestrians and patrons.

Reinstatement of the footpath to the satisfaction of Council shall be undertaken by the business owner should any fixtures be removed or the business ceases to operate the outdoor dining area.

The application must describe if the furniture is to be fixed or moveable within the dining area. Furniture and fixtures shall avoid forming trip or other hazards. The applicant is responsible for the provision and maintenance of outdoor furniture and fittings. For the purpose of this policy, outdoor furniture includes all structures, items and objects placed within the approved permit area. The outdoor dining area used must remain in good repair at all times and damaged furniture and fittings must be removed immediately. Furniture and fittings must not be operated by members of the public.

Advertising signs must be approved either under the *Development Act 1993* or the *Local Government Act 1999* where necessary.

## **Management**

Outdoor dining areas should be operated in a manner that contributes to environmental sustainability, creates a safe and clean outdoor space, minimises unnecessary noise and nuisance, and maintains social amenity in this public space at all times to the satisfaction of Council.

The owner must display their outdoor dining permit issued by Council at all times. The permit shall include details of the hours of operation and the number of seats allowed. No amplified music shall be permitted within an outdoor dining area.

For the service of Liquor, appropriate Liquor Licences will be required.

## **Monitoring and Enforcement**

It is the responsibility of applicants and permit holders to make themselves aware of the responsibilities and compliance criteria of outdoor dining. Council can issue a permit under this policy for a maximum of 5 years. The time frame awarded to each permit is at the sole discretion of Council. For a business to continue after this time frame an application must be lodged with Council no later than 3 months prior to the lapsing of the previous permit.

Authorised Officers from Council can enter a business at any time. Operators must adhere to all directions given by Authorised Officers. Failure to adhere to the relevant conditions of the permit and directions of Authorised Officers will result in the following course of action:

- First breach - verbal warning issued (with note on operators file). Compliance to be achieved within 28 days.
- Second breach - written notice compliance to be achieved within 28 days.
- Third breach - cancellation of the permit and/or authorisation in accordance with permit and/or authorisation.

## **Public Liability**

Business operators must hold appropriate levels of public liability that notes Council as a specific person. This value shall be a minimum \$20,000,000.00 or as determined. This figure shall be reviewed as necessary by Council.

### **Fees and Charges**

Council may determine a fee payable for considering an application made under relevant sections of the Local Government Act and may determine an annual permit fee to be paid by the applicant for use of the public footpath as an outdoor dining area, which will be calculated by the number of tables approved/provided for in the permit.

Any fees and charges will be listed in Council's Fees and Charges Register which is available for viewing at [www.berribarmera.sa.gov.au](http://www.berribarmera.sa.gov.au)