

## OUTDOOR TRADING & DINING POLICY

Type	Governance
Category	Development & Regulation
Responsible Officer	Director Development & Regulation
First Issued / Adopted	Pre 2009
Review Period	2 years
Last Reviewed	27 August 2014 24 July 2013
Minutes Reference	OM194/14
Next Review Date	2016
Applicable Legislation	Local Government Act 1999, SA Public Health Act 2011, Development Act 1993 and Food Act 2001
Related Documents	Port Pirie Regional Council Development Plan Outdoor Trading & Dining Policy Guidelines
Public Consultation Required	Yes
File Reference	605.84
Purpose	To encourage the vitality and ambience of town and city centres whilst ensuring the safety of pedestrians and enhancement of streetscapes.

### 1. PURPOSE

Port Pirie Regional Council supports and encourages the increasing popularity of outdoor dining and outdoor trading in the Region. Outdoor dining and trading increases the social and cultural life and provides and improved vitality and viability to the commercial areas.

Public land is often used for this purpose and to facilitate outdoor dining and trading authorisation from the Council is required. Outdoor trading and dining facilities should be provided in a responsible, safe and appropriate manner having regard to the competing interests and user groups of footpaths and other public spaces.

### 1. PURPOSE (Cont'd)

This policy sets out the guidelines for the establishment of outdoor dining and trading and the process for applying for a permit and the likely conditions that would apply.

### 2. POWER TO MAKE POLICY

Section 222 of the *Local Government Act 1999* establishes the ability for the Council to grant permits for business purposes. Section 222 states:

(1) *A person must not use a public road for business purposes unless authorised to do so by a permit.*

*Examples—*

- *carrying on business from a pie-cart drawn up on the side of the road;*
- *establishing a kiosk on the side of a road;*
- *extending the business of a restaurant or café to outside tables situated on a footpath or roadside;*

(2) *A permit may grant rights of exclusive occupation in relation to part of a public road.*

(3) *A permit may be granted for a particular occasion or for a term stated in the permit.*

(4) *The term of a permit cannot exceed five years.*

Outdoor dining and trading is considered to be business purposes and is required to be authorised by the Council.

### 3. POLICY OBJECTIVES

To improve the vitality and viability of the Town and City Centres of the Port Pirie Region by encouraging outdoor dining and trading in a manner that improves the image, use and quality of the public realm whilst balancing the competing interests of commercial property owners and operators and the community at large.

### 4. POLICY STATEMENTS

4.1 Port Pirie Regional Council encourages the use of the public realm for outdoor dining and trading in appropriate locations for the improvement of street activity and vitality.

4.2 Outdoor dining and trading is encouraged where it complements the existing built form and enhances the character of the existing streetscape.

4.3 Outdoor dining and trading is supported where it recognises and caters for the competing needs of all users of the public realm.

4.4 Port Pirie Regional Council encourages businesses to provide outdoor dining and trading facilities; however recognises that right granted over the relevant public space do not exclude the general public from access and use of facilities provided.

### 5. DEFINITIONS

**Outdoor Dining** – the use of the public realm for the purpose of extending the services of premises whose main function is for the provision of food and beverages to the public. Outdoor dining includes the placement of tables and chairs and ancillary furniture such as planter boxes and bollards in the public realm.

**Outdoor Trading** – the use of the public realm for the purpose of extending the retail floor space associated with premises whose main function is the sale of goods to the public. Outdoor trading includes the placement of displays, goods and wares in the public realm.

**Local Government Land** – land that is under the care and control of Council, including public footpaths and road reserves.

**Road** – has the same meaning as the *Local Government Act 1999*, and extends from property boundary to property boundary and includes footpaths, the carriageway and verges.

**Applicant** – a person who applies for an Outdoor Dining/Trading Permit.

### 6. POLICY

Applications for an outdoor dining/trading permit shall be assessed on a case by case basis and an issue of a permit is at the discretion of the Chief Executive Officer or delegate. The safety of pedestrians and other users of the public realm is paramount and should not be compromised.

Below are relevant matters that shall be applicable to the grant of a permit:

#### 6.1 Insurance

Unless specific site conditions require an increased level of insurance, the appropriate level of public liability insurance applicable to outdoor dining permits will be \$20 million. The insurance policy must include the area designated to be an outdoor dining facility that is situated on local government land.

The Permit Holder must provide the Chief Executive Officer or delegate with written notification of the following where relevant:

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

#### 6.2 Circulation and Access

In approving a defined area for outdoor dining the Council will consider safe pedestrian circulation and access, whether it provides for convenient use, and whether it compromises or restricts the sight lines for motorists.

As a minimum a clear path of two metres in width shall be provided for pedestrian movement, where appropriate.

### 6. POLICY

#### 6.2 Circulation and Access (Cont'd)

There are certain set back distances for an outdoor dining area from things like protective barriers, and intersections. A variation to this minimum distance may be considered depending on site-specific circumstances. Areas defined for outdoor dining must be in accordance with the Council Guidelines, unless otherwise specified in the permit.

#### 6.3 Bollards and Other Protective Devices

Where deemed appropriate by Council, energy absorbing bollards or other approved devices must be installed for the protection of diners. Bollards should comply with the most current requirements of any relevant streetscape strategy plan and be approved by Council.

#### 6.4 Streetscape Character

The character and amenity of a street can be enhanced by the addition of outdoor dining where the placement and selection of outdoor furniture considers other street elements, such as existing street furniture, street trees, garden beds, street light poles, fire hydrants, building entrances, service pits and roadside signage.

The location and design of all street elements should be considered in a manner that complements or improves the existing streetscapes.

Council encourages consistency in the style and colour of outdoor dining furniture. This serves to enhance the streetscape as well as reinforcing a 'sense of identity' within specific locations.

Street furniture should be selected in accordance with any relevant Streetscape Strategy plans or to the satisfaction of Council. Placement of street furniture must also comply with Council's Outdoor Dining/Trading Furniture Guidelines.

The use of removable tables and chairs will be encouraged and these must be removed outside trading hours. The use of fixed furniture will only be permitted under special circumstances.

#### 6.5 Defined Area

For the safety of both patrons and pedestrians, the outdoor dining area is to be clearly defined and all furniture used by the applicant in connection with the outdoor eating area is to be retained in that area at all times. Planter boxes and bollards are able to provide definition to an area and are subject to an authorisation in accordance with S221 of the Act.

#### 6.6 Cleaning

Having been granted with a licence for the establishment of an outdoor dining area on Council property, the applicant shall comply with all health and maintenance aspects of the entire operation including full compliance with all the requirements of the outdoor dining permit.

### 6. POLICY

#### 6.6 Cleaning (Cont'd)

Specific issues are:

- The street furniture, including plantings in planter boxes must be kept in a safe and well maintained condition at all times;
- The area must be regularly cleaned to present a well cared for image at all times. Licensees are responsible for cleaning furniture, the outdoor dining area pavement and the adjacent footpath;
- Outdoor dining areas shall be swept and cleaned regularly. No waste material and sweepings are to be disposed of into the gutter;
- Where outdoor dining areas adjoin nature strips or garden areas the operator must ensure that all waste from the outdoor dining area is regularly inspected and all rubbish emanating from the outdoor dining area promptly removed; and
- If the above items are not adhered to, Council will give the licensee three (3) written notices for non compliance. Failure to comply Council may revoke or not renew the outdoor dining licence.

#### 6.7 Awnings and Shade Structures

Removable umbrellas may be used to provide shade from the sun, and shelter from the wind and rain. Umbrellas must be securely fixed to prevent blowing over in strong winds.

The lower side of the umbrellas and shade structures shall be at least two metres above the ground level. Side curtains to umbrellas are not permitted without Council approval.

Development Approval maybe required under the Development Act 1993 for awnings and shade structures. For further information contact Council's development assessment staff.

#### 6.8 Heating Devices

Heating devices may be placed within Outdoor Trading Areas, with the consent of Council subject to compliance with the following requirements:

- The heat source must be within a stable, secure container that is not able to easily be tipped over, and not allowed to emit smoke;
- An appropriate perforated screen must be placed around the heat source to provide a physical barrier against accidental contact with the heat source. The screen should be fixed in a manner to ensure that it does not get hot enough to cause injury and cannot be accidentally moved from a fixed position around the heat source;
- The relevant Public Liability insurance policy should jointly indemnify Council and shall be endorsed to specifically include the use of heaters;
- The heaters shall be removed from the outdoor trading area when the area is not in use.

### 6. POLICY (Cont'd)

#### 6.9 Lighting

Adequate lighting must be provided where outdoor dining occurs outside daylight hours to ensure safety and amenity for pedestrians and patrons. It is the responsibility of the licensee to provide additional lighting to that provided on the street if necessary, to the requirements of Council. All lighting must be vandal resistant, glare free and designed to be illuminated all night through the use of approved photoelectric cells.

No freestanding lighting will be permitted and details of external lighting are to be provided for approval.

All external electrical works are to be undertaken by a licensed electrician.

#### 6.10 Fixed Glass Screens, Plastic Blinds and Canvas Screens

Fixed glass-screens and plastic blinds provide protection from noise and wind, and may assist in definition of the area to be used for outdoor dining. Fixed glass screens and plastic blinds may require Development Approval under the Development Act 1993 or authorisation in accordance with s221 of the Local Government Act, 1999.

Free standing, removable canvas screens may be allowed to delineate an outdoor dining area. Evidence that such screens will be secured would need to be shown, to the satisfaction of the Council.

Approval for any particular screen will be site specific.

#### 6.11 Planter Boxes

Planter boxes may be used to provide further definition to outdoor dining areas as well as variety and colour to the street.

Authorisation in accordance with s221 of the Local Government Act, 1999 must be obtained for installation of planter boxes, including their design and placement, at the time of applying for an outdoor dining permit.

#### 6.12 Advertising and Signage

Advertising and signage is governed by:

- The Local Government Act 1999;
- The Development Act, 1993;
- The Port Pirie Regional Council Development Plan; and
- The Council's By Laws Moveable Signs (where relevant).

Enquiries regarding development approval should be directed to Council's Planning Officer.

### 6. POLICY (Cont'd)

#### 6.13 Preparation and Handling of Food

Any outdoor dining area is subject to all relevant food laws and must ensure compliance with hygiene standards, including the Public Health Act 2011 and the Food Act 2001.

#### 6.14 Consumption of Alcohol

An application for the consumption of alcohol at an outdoor dining area must be brought to the attention of the Council prior to lodging it and made initially to Council and subsequently to the Office of the Liquor and Gambling Licensing Commissioner. Alcohol must be served and consumed in accordance with any approvals granted.

#### 6.15 Smoking in Outdoor Dining Areas

Currently, the law allows persons to smoke in the open, including outdoor dining areas. Local councils and other incorporated bodies can apply to have an outdoor area or event declared smoke-free. Notwithstanding, the applicant can prohibit smoking within the outdoor dining area under his/her control.

Should the applicant consider fully or substantially enclosing an outdoor dining area (including drop down canvas blinds curtains) it is advisable to first enquire into the application of the Tobacco Product Regulations Act 1997 administered by the Tobacco Control Unit, Department of Health, PO Box 6 Rundle Mall, Adelaide. Telephone: (08) 8226 7100. This Act regulates smoking in endorsed public dining or café areas.

#### 6.16 Hours of Operation

Generally the hours of operation of the outdoor dining area should be the same as the hours of operation of the business being operated in the associated premises. However the hours of operation may be amended in consultation with the applicant depending on the location and nature of the outdoor dining area.

### 7. APPLICATION DOCUMENTATION

An applicant must provide the following documentation to the Council:

- Fully completed Application Form and payment of the Application Fee (refer to below);
- A Certificate of Currency for public liability insurance, to the value of twenty million dollars (\$20,000,000), specifically indemnifying Council (a cover note is acceptable at the Application Stage);
- Photographs / photocopies of the proposed furniture;
- A scaled (1:100 minimum) dimensioned plan showing the proposed location of the tables and chairs. Two copies are required.

### 8. AUTHORISATION/PERMIT FEE AND BOND

An Application Fee is payable for considering an application made under s221 and s222 of the Local Government Act. This fee covers the administrative costs associated with processing the Application. Where an application is made but a Permit is not granted the Application Fee will not be refunded.

The use of a public Road as an outdoor dining area attracts an annual permit fee calculated by the number of seats approved/provided for in the permit. Fees are as per Council's Schedule of Fees and Charges.

Council may also require the payment of a Bond in certain circumstances.

In special circumstances an outdoor dining area may be established on public car parking space or community land. Those spaces are recognised as a valuable community asset and a fee will be charged for the use of the area as an Outdoor Dining Area. The fee for the use of public car parking spaces is as per Council's Schedule of Fees and Charges.

### 9. PUBLIC CONSULTATION

The Council may, prior to granting a Permit in respect of an Application in accordance with s223(1) and (2) of the Local Government Act 1999, be required to follow the steps outlined in its Public Consultation Policy.

Accordingly, there may be a delay in considering and/or granting its approval to an Application. The Applicant agrees that it shall not make any claim against the Council as a result of any delay by the Council in considering or granting the Permit or not granting the Permit applied for, as a result of the Council complying with its obligations under s223(1) and (2) of the Local Government Act 1999 and its Community Engagement Policy.

### 10. VARIOUS

- Once a Permit is issued it cannot be transferred.
- Where changes to the existing furniture layout are proposed, a new Application Form is required to be made.
- Permit holders are required to have public liability insurance with a reputable insurer for a minimum cover of twenty million dollars (\$20,000,000).
- Ideally, any outdoor dining areas should be directly associated with an adjacent eating premise but this is not always the case. In the circumstances of markets or street fairs this requirement will not be insisted upon.

### 11. PERIOD OF PERMIT

A Permit cannot be granted for a Term greater than 12 months but could be granted for any lesser period, including a temporary event. Any renewal will require a new application to be made.



### 12. PUBLIC INFRASTRUCTURE

In some circumstances the public Road may require “alteration” for appropriate use as an outdoor dining area. In these instances it will be necessary for the applicant to apply to the Council for an authorisation under s221 of the Act, in addition to a Permit. An “alteration” includes erecting a structure, changes or interferes with the construction, arrangement or materials of the Road. Engineering plans of the proposed alterations (to be provided at the cost of the applicant) may need to be lodged with an application under s221 of the Act.

### 13. APPROVALS / DELEGATIONS

The Chief Executive has the delegated authority to approve / refuse standard outdoor dining applications.

More complex applications that impact beyond the site and that could involve the alteration of public infrastructure and/or use of public car parking space(s) may be referred to Council for consideration.

### 14. PERIOD FOR DETERMINATION OF APPLICATION

Upon receipt of an application for a Permit the Council will proceed to process it in accordance with Council legislative obligations and policy considerations, including whether:

- the application requires public consultation;
- an authorisation under s221 of the Act is necessary;
- the Council or its delegate can process the application.

All these issues and more could result in an application taking four weeks to process where there are complicated issues.

### 15. REVOCATION AND SUSPENSION OF PERMITS

The Chief Executive Officer or delegate may revoke a permit, in accordance with section 225 of the Local Government Act 1999, where a breach of the permit conditions has occurred.

Council may require the removal (at the permit holders expense) of an outdoor dining or trading facility or suspension of the activities in a permit area to enable infrastructure work to proceed or for any other purpose considered to be under the interests of public health and safety. In such occurrence the Chief Executive Officer or delegate shall endeavour to give reasonable notice to permit holders.

### 16. FURTHER INFORMATION

This policy will be available for inspection at the Council office listed below during ordinary business hours and provided to interested parties as per Council's Fees and Charges Register. Copies are available to be downloaded, free of charge, from Council's web site: [www.pirie.sa.gov.au](http://www.pirie.sa.gov.au) :

*Port Pirie Regional Council Administration Centre  
115 Ellen Street  
Port Pirie SA 5540  
Phone: (08) 8633 9777  
Fax: (08) 8632 5801*

### 17. GRIEVANCES

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive of Council.

This Policy was endorsed by Council on **27 August 2014**. Council endorsed the policy following public consultation on its draft policy. Written submissions commenting on the draft policy were invited within 28 days of a notice appearing in the Flinders News and Recorder on 2 and 3 July 2014. No submissions were received.