

	<h1>Outdoor Dining Policy</h1>	Version No:	2.3
		Issued:	April 2007
		Last Review	September 2020
		Next Review	June 2022

Name of Council	Wudinna District Council
GDS40 File reference	5.8
Responsibility:	Strategic Management
Policy Level	Discretionary
Minutes reference:	10.6.1 – 15 September 2020
Applicable Legislation:	<i>Planning, Development and Infrastructure Act 2016</i> <i>Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017</i> <i>Planning, Development and Infrastructure (General) Regulations 2017</i> <i>Local Government Act 1999 Section 222</i> <i>Local Government (General) Regulations 2013</i> <i>Disability Discrimination Act 1992 (Federal)</i> <i>Liquor Licensing Act 1997</i> <i>Tobacco Products Regulation Act 1997</i> <i>Work Health and Safety Act 2012</i>
Next review date:	Council will endeavour to review this policy every 2 years, including within 6 months following Council election

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1. INTRODUCTION

Outdoor dining is defined as the use of the public footpath or a public space i.e. portion of road reserve for the purpose of extending the seating space of an adjacent business whose main function is the provision of food and/or beverages to the public. Outdoor dining should be directly associated with the business and should only operate when those premises are open for business.

To facilitate outdoor dining, Council has a process of issuing permits to such businesses for the use of part of the space in front of their premises. Council must however also consider other competing uses of footpaths which are primarily the property, refuge and transit lanes of pedestrians. The issuing of a permit for private use, such as outdoor dining, does not grant exclusive rights over the relevant public space and cannot exclude the general public from it.

2. POLICY OBJECTIVES

To manage the competing needs and interests of pedestrians and business owners by allowing outdoor dining in a manner that supports the business, is safe and hygienic, and does not promote the creation of nuisance or adversely affect pedestrian traffic.

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3. SCOPE

Generally, outdoor dining applications will be considered on their individual merits and assessed against the policy. Proposed outdoor dining locations may require the installation of Energy Absorbing Bollards (EABs) if the site is deemed to be an unsuitable (unsafe) location without them. In such instances, Energy Absorbing Bollards or any Road Safety Barrier systems and devices to comply to Australian Standards and be at the applicant's expense. Requirements for EAB's, unless prescribed by legislation are to be assessed on a case by case basis but are likely to be required at sites which:

- 3.1 have been associated with loss-of-control crashes ie. where vehicles have had an historical tendency to leave the roadway;
- 3.2 inherently present risk factors for crashes, eg unusual cross-fall, steep longitudinal grade, or sites situated on the outside of road curves.

4. GENERAL PRINCIPLES

4.1 Safety

As safety is of major importance for both pedestrians and patrons, outdoor dining is required to:

- 4.1.1 be located in an area that is considered safe for patrons and avoid locations that: are deemed unsuitable;
- 4.1.2 meet the clearances and setbacks specified in this policy or as prescribed by legislation.;
- 4.1.3 ensure wheelchair access to pedestrian ramps ('pram ramps') is not compromised;
- 4.1.4 ensure the safety of adjoining buildings is not compromised by restricting access or impacting on essential safety and fire safety provisions; and
- 4.1.5 not obstruct pedestrian flow.

For outdoor dining areas to be approved, applicants will need to meet requirements for public access and circulation including for people with disabilities and diner safety. Council reserves the right to nominate specific health and safety features to ensure essential safety and fire provisions.

4.2 Location and Siting

Outdoor dining is only permissible when associated with existing or proposed premises whose core function is to provide food and beverages for the public, such as cafes, restaurants, hotels and delicatessens. An outdoor dining area must generally be located along the kerb and allow a clear movement path along the building frontage and set back from intersections of streets.

4.3 Enclosures & Permanent Structures

For the purpose of this policy, enclosures are defined as structures positioned to enclose an outdoor dining area and include plastic, canvas or glass screens. Permanent structures include fixed umbrellas, 'sails', awnings, or structures such as 'gazebos' and permanent canopies.

Complete enclosure of an outdoor dining area is not permitted. Subject to a development approval or authorisation where required, permanent structures and enclosures on three sides, with the sides facing the footpath left open, may be considered where appropriate shelter cannot be ensured by other means such as verandas, street trees or removable umbrellas.

4.4 Removable Umbrellas

Removable umbrellas may be considered to provide shade from sun, and shelter from wind and rain. They should be used only where existing shelter (such as verandas, canopies or trees) is inadequate. Umbrellas must be removable but properly secured to prevent blowing over in strong winds/inclement weather when in use so as not to pose a hazard or risk of injury or cause property damage. Footings for umbrellas must be designed and constructed so as not to pose a hazard in the footpath after removal of the umbrella.

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4.5 Planter Boxes

Planter boxes may be considered to provide definition of outdoor dining areas. Planter boxes should be secured, not obstruct walkways, not create pooling of water or should not pose any hazard or risk to patrons, pedestrians or members of public.

4.6 Gas Heaters

Gas heaters may be considered within the outdoor dining area, to provide additional comfort for patrons, but must not be placed where they may pose a safety or fire hazard and must be safely removed and secured outside trading hours.

4.7 Management

An important part of running an outdoor dining facility is for the permit holder to take full responsibility for their care, appearance and maintenance. Hygiene is essential, including the clearing and cleaning of tables quickly after patrons have departed and cleaning up of any litter. Permit holders are responsible for cleaning furniture, their part of the pavement, and the adjacent footpath. Regular sweeping is required and no waste material, including sweepings, is to be disposed of into the gutter.

4.8 Consumption of Alcohol

Applicants are required to advise if they are applying for a liquor licence. An application for the consumption of alcohol at an outdoor dining area must be made to the Office of the Liquor Licensing Commission. Alcohol can only be served and consumed in the area designated.

4.9 Toilets

The capacity of toilets within the adjoining/supporting premises must be verified as adequate for the combined outdoor and indoor dining areas of the premises applying for an Outdoor Dining Permit. The provision of sanitary facilities is regulated by the National Construction Code (Building Code of Australia) Outdoor Dining will only be permitted where such premises have appropriate toilet facilities on site available for their patrons. Liquor licensing laws also stipulate that if a liquor licence is held, the provision of toilets for patrons is mandatory, regardless of seating capacity.

4.10 Lighting

Adequate lighting must be provided where outdoor dining occurs outside daylight hours. It is the permit holder's responsibility to provide additional lighting with development approval/authorisation to that already on the street, if necessary and to Council requirements.

4.11 Development Approval

In some instances, outdoor dining may represent 'development' under the or *Planning, Development and Infrastructure Act 2016*, and thereby in addition to the Permit, require Development Approval. If Development Approval is required additional fees and timelines apply.

4.12 Changes to the Road Reserve

In some instances, an outdoor dining applicant may want to propose changes to the road reserve to accommodate or improve outdoor dining activity, such as widening of the footpath or relocation of existing public infrastructure. The Outdoor Dining Policy generally does not support such changes for outdoor dining purposes but any such application will be considered on its merits. All costs associated with changes to the road reserve by request of the applicant are to be borne by the applicant.

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5. HOW TO APPLY FOR A PERMIT

Applications must submit an application in a form specified by Council and provide all details of the proposed outdoor dining area necessary to show compliance with this Policy.

5.1 Approval Process

The power to issue an Outdoor Dining Permit is delegated to the Chief Executive Officer (CEO), however applications at major variance to the Policy require a Council decision. At the CEO or Council's discretion the proposal, including the application and supporting details provided, may be publicised and made available for public inspection and comment. Should adverse written comment be received then Council will make a decision on the application after consideration of all comments received.

Approval is required for any alterations to an existing Outdoor Dining Permit. Minor changes will be added to the existing permit. Where significant changes are proposed, a new application is required.

5.2 Fees

The use of a public footpath as an outdoor dining area attracts an annual permit fee as set out in Council's schedule of fees and charges. The Council has the right to review fee levels on a regular basis. Where development approval is required, application fees apply as set by the state government under the *Planning, Development and Infrastructure Act 2016*.

5.3 Permit Period, Renewal and Cancellation

An Outdoor Dining Permit is valid for up to 5 years' subject to timely payment of the annual fee and production at the same time of evidence of adequate public risk insurance cover. A permit may be renewed for a further term at the discretion of Council depending upon the level of compliance with permit conditions during the initial period of the permit.

A permit may be cancelled or amended if:

- 5.3.1 The proprietor fails to comply with the permit conditions;
- 5.3.2 There are changed conditions affecting the outdoor dining area in its particular location, such as increased risk to health or safety; or
- 5.3.3 Other valid reasons such as streetscape upgrades or refurbishment.

5.4 Public Risk Insurance

Permit holders must take out and keep current a public risk insurance policy noting specifically the interest of the Council as an insured party. The policy must insure for the amount of at least TWENTY MILLION DOLLARS (\$20,000,000) and must cover injury, loss or damage to persons or property arising out of the activity carried out under this Permit or the granting of this Permit by the Council. A *Certificate of Currency* for the policy must accompany payment of the annual fee for the Outdoor Dining Permit.

6. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.wudinna.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.