



Outdoor Dining Policy

Policy Classification	Council Policy
First Issued:	11 May 2007
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Applicable Legislation:	<i>Sections 222 to 225 of the Local Government Act 1999</i> <i>Liquor Licencing Act 1997</i> <i>The Tobacco and E-Cigarette Products Act 1997</i> <i>The Food Act 2001</i> <i>South Australian Public Health Act 2011</i> <i>The Local Nuisance & Litter Control Act 2016</i> <i>Planning Development and Infrastructure Act 2016</i> <i>The Disability Discrimination Act 1992 requires equality for people with disabilities.</i> <i>The following Sections have relevance to the issue and operation of a permit to place an outdoor dining area on a road:</i> • <i>Section 5 Disability Discrimination</i> • <i>Section 23(1) Access to Premises</i> • <i>Section 24(1) Goods, Services and Facilities</i> • <i>Section 44 Advertisements.</i>
Related Policies or Documents:	Leases and Licences Policy
Associated Forms:	Application to use Local Government Land or Roads
Responsible Manager:	Chief Executive Officer
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Outdoor Dining Policy

1. Preamble

- 1.1. The Kangaroo Island Council [Council] supports the use of public road reserves (such as footpaths) and spaces for outdoor dining, within the framework provided by this policy and in accordance with the terms and conditions of any relevant Permit or Authorisation issued in respect thereof.
- 1.2. The objective of this Policy is to find a balance between the various stakeholders' interests in public roads (and areas) that are used for outdoor dining, and to ensure that Outdoor Café Permits and/or Authorisations are operated at a high standard throughout the area under the care and control of Council.

2. Purpose

- 2.1. The purpose of this Policy is to provide guidelines that facilitate outdoor dining in the Kangaroo Island Council.

3. Scope

- 3.1. All Outdoor Dining Facilities.

4. Definitions

- 4.1. **CEO** means the Chief Executive Officer of the Kangaroo Island Council.
- 4.2. **Council** means the Elected Body.
- 4.3. **Kangaroo Island Council (KIC)** means the administration.
- 4.4. **Enclosed** means an area that is, except for doorways, passageways and internal wall openings, completely or substantially enclosed by a permanent ceiling or roof and walls or windows, whether the ceiling, roof, walls or windows are fixed or moveable and open or closed.
- 4.5. **Outdoor Dining** is defined as tables and chairs placed on public land for the purpose of increasing the capacity of the café, delicatessen, dining or similar option for the proprietor and customers.

5. Policy Statement

- 5.1. Outdoor dining areas, whether temporary or permanent, may require approval under the *Planning, Development and Infrastructure Act 2016* and associated Regulations. Such proposals may constitute a change in land use and require to be assessed against the Planning and Design Code. The placement of some fixtures may also constitute building work and therefore will require Building Consent.
- 5.2. Sections 222 to 225 of the *Local Government Act 1999* prescribe the powers, conditions and processes under which the Council may issue and cancel permits for business purposes such as outdoor dining. Section 224 enables the Council to grant authorisations or permits "on conditions the Council considers appropriate". The installation of some structures is governed by Section 221 of the same Act, which deals with alterations associated with roads.

- 5.3. Section 224 provides that where the Council grants Authorisations and/or Permits under Sections 221 and/or 222 of the Local Government Act 1999, it may do so "on conditions the Council considers appropriate".
- 5.4. In some instances, an applicant may require both a Permit and an Authorisation.
- 5.4.1. It is an offence for a person to use a public road for a business purpose without a permit. A maximum penalty of \$2,500.00 may be incurred.
- 5.4.2. It is an offence for a person to alter a public road without an authorisation from the Council. A maximum penalty of \$5,000.00 may be incurred.
- 5.5. In accordance with Section 223 of the *Local Government Act 1999*, before granting an Authorisation under Section 221 or a Permit under Section 222, the Council may be required to consult the community (in accordance with its Public Consultation Policy). Circumstances when Council is requested to consult include if the proposed Authorisation or Permit will result in any part of a road being fenced, enclosed or partitioned so as to impede the passage of traffic (including pedestrian traffic) to a material degree.
- 5.6. Outdoor dining proposals will be individually assessed on a case-by-case basis. Applicants are encouraged to discuss their proposed application with an Officer of Council when submitting an application for an Outdoor Café Permit and/or Authorisation. Aspects to be considered include, but are not limited to:
- a. the location of the proposed dining area;
 - b. the design, quality and maintenance of proposed furniture;
 - c. the installation and maintenance of fixtures and fittings;
 - d. plans detailing the requested Permit/Authorisation area or area to be altered and the proposed arrangement of any furniture, fixtures and fittings;
 - e. the extent of any enclosure and exclusive use proposed;
 - f. the extent of pedestrian access and circulation spaces, with reference to the Disability Discrimination Act (1992);
 - g. the applicant's provision of insurance;
 - h. the relationship between the food preparation area and the proposed dining area;
 - i. the provision of shade to protect patrons from the sun; and
 - j. the safety of patrons, pedestrians and motorists.
- 5.7. An Outdoor Café Permit and/or Authorisation must operate in association with an approved restaurant, café or other premises which provides meals and table service where the operator is responsible for serving to and clearing from tables in the outdoor area.
- 5.7.1. Meals are to be prepared in the adjacent building and not within the outdoor dining area.
- 5.7.2. The hours of operation of an approved outdoor dining area shall be in accordance with the Development Approval (if required) and the terms and conditions of the Outdoor Café Permit and/or Authorisation.
- 5.7.3. Outdoor Café Permit and/or Authorisation areas are subject to the requirements of the *South Australian Public Health Act 2011*, the *Food Act (2001)*, and any other legislation governing health and hygiene in the associated premises.
- 5.7.4. Music or other noise for the benefit of outdoor diners must not cause nuisance to any other neighbouring businesses, land owners, or to pedestrians.

- 5.8. Outdoor dining activities and all furniture, fixtures and other approved accessories must not extend beyond the boundaries of the Permit and/or Authorisation area.

5.9. **Safety**

- 5.9.1. Outdoor dining areas on footpaths must not adversely impact traffic safety. Motorists' sightlines must be maintained in accordance with the current Austroads guidance relating to intersection sight distance and visibility requirements, as amended from time to time. The location of outdoor dining areas must take into account adjacent road conditions, traffic movements and pedestrian safety.
- 5.9.2. There is to be a safety zone of 600mm from the kerb to any structure, furniture, fixtures or fittings on a footpath where outdoor dining has been approved.
- 5.9.3. Where there are risk factors associated with the locality of a proposed outdoor dining site, a crash barrier system which meets recognised crash test protection standards must be installed. Examples of high risk areas include sites opposite or adjacent to intersections and in line with the driven alignment of vehicles.
- 5.9.4. Crash Barriers, as a guide, should be no closer than 600mm from the kerb.
- 5.9.5. Where a crash barrier is required, diners, furniture and other fixtures must be positioned a minimum of 600mm from the kerb, or crash barrier, whichever is closer to the traffic alignment.
- 5.9.6. No user of an Outdoor Dining Facility shall be seated closer than 600mm from the line of an adjacent kerb or trafficked area.
- 5.9.7. Where bollards are used as a crash barrier system, they should be installed with a gap not exceeding 1200mm between bollards in accordance with relevant standards nominated by the Council and must complement the streetscape design and colour. Bollards will be installed at cost to the Permit and/or Authorisation Holder.
- 5.9.8. In the case of new outdoor dining areas being established or alterations to existing outdoor dining areas, a Road Safety Audit must be undertaken at the Permit and/or Authorisation Holder's cost and conducted by a Certified Practising Traffic Engineer

5.10. **Streetscape**

- 5.10.1. Outdoor dining areas must complement and enhance the existing streetscape character of the relevant precinct. The design, layout, furniture, advertising signage and accessories of outdoor dining areas must be in keeping with the key character elements of the precinct, including the colour scheme.
- 5.10.2. All additional features (e.g. plant boxes, umbrellas, heaters, coolers etc.) must be approved by the Council as part of the conditions of Outdoor Café Permits and/or Authorisations, must be durable and constructed and maintained at a high standard.
- 5.10.3. The establishment of accessories must be at the expense of the Permit and/or Authorisation Holder and should not require the relocation of any public

street furniture, trees or services. Any alterations to public infrastructure that may be approved in special circumstances, are to be undertaken at the cost of the Permit and/or Authorisation Holder.

- 5.10.4. In general, the construction of new protuberances [being an extension of the footpath/road reserve onto the existing road surface to increase seating space.] to facilitate outdoor dining areas will not be considered via Outdoor Café Permit and/or Authorisation applications. Such requests should be submitted separately via the Works and Infrastructure Department traffic management section of Council.

5.11. Furniture and Accessories

- 5.11.1. All furniture and accessories in outdoor dining areas are to be well designed, practical, durable, attractive and in keeping with the streetscape character. Good quality outdoor furniture that includes some plastic elements is acceptable.

- 5.11.2. The placement and style of furniture and all accessories are to be specified when applying for and issuing Outdoor Café Permits and/or Authorisations, and must comply with the following conditions:

- a. All furniture is to be placed adjacent to the kerb side of the footpath, allowing a clear pathway along the building frontage.
- b. The fixing, or otherwise, of tables is to be determined as part of the terms and conditions of the Permit and/or Authorisation on a case-by-case basis. Unfixed tables should be sturdy and stable to minimise the possibility of encroachment into safety and pedestrian zones and to prevent trip or other hazards.
- c. Chairs and unfixed tables should be removed from the Permit and/or Authorisation area at the close of business each day.
- d. When fixed furniture is removed, the footpath must be promptly reinstated to a condition equivalent to that prior to installation, at the Permit and/or Authorisation Holder's cost.
- e. No furniture or accessories are to be placed on top of service covers or where they will interfere with existing services and access to them.

- 5.11.3. Individual **planter box** units should:

- a. have a minimum width of 500mm and, if rectangular, a maximum length of 1200mm;
- b. not have sharp or pointed edges;
- c. be positioned to provide a minimum gap of 600mm between them and the face of kerb or traffic flow;
- d. not allow water and discharge to enter the stormwater system, stain the pavement or create a hazard for pedestrians;
- e. be positioned on the dining area side of any crash barrier system/device;
- f. contain plant species suitable for the site, which are maintained in a healthy condition;
- g. not contain insert tubs which leave gaps permitting the build-up of refuse in the plant box.

- 5.11.4. **Shade** should be provided in areas where there is no veranda or other canopy structure. Shade structures, including umbrellas:

- a. should have a clearance of a minimum of 2.2 metres above the footpath level;
- b. must be secured against the effects of the wind, and must be closed or removed during very windy conditions if not permanent structures;
- c. should not have side curtains;
- d. should be removed from the outdoor dining area when not in use and during all non-trading hours if not a permanent structure;
- e. must not have any part of a stand or fitting protruding above the footpath level, creating a hazard when the shade structure or umbrella is removed;
- f. must be structurally sound and fixed to avoid personal injury and property damage; and
- g. should be maintained in good condition at all times.

5.11.5. **Heating and cooling** units may be installed with the permission of the Council.

- a. Such units should be specifically designed for outdoor operation.
- b. Brazier type units are prohibited
- c. Heating units should be fixed to the underside of the veranda where such is available.
- d. All heating and cooling units must be operated by the Permit and/or Authorisation Holder or his/her staff and unit controls must not be accessible to patrons.
- e. Heating and cooling units must be well maintained and serviced regularly.

5.11.6. **Lighting** of outdoor dining areas must be provided by the Permit and/or Authorisation Holder and must be adequate to ensure the safety of pedestrians and the amenity of the area outside daylight hours.

- a. Lighting must be maintained in working order and must not create unreasonable "spill" into neighbouring properties or onto roadways in a manner that would cause a hazard to road-users/drivers.

5.11.7. Full enclosure of footpaths or other public spaces will not be permitted. Outdoor Café Permit and/or Authorisation Holders do not have exclusive use of the existing common footpath, so must ensure that they are not unduly impeded. However, unwanted intrusion into the authorised Outdoor Dining area is a matter for the Permit Holder to deal with.

5.11.8. Partial enclosure of outdoor dining areas in public spaces may be considered subject to the following provisions:

- a. partial enclosures should not require the relocation of public street furniture, trees or other facilities; and
- b. partial enclosures must respect the role of the footpath/pathway as a public access area and must not interfere with continued public access.

5.11.9. Any partial enclosure:

- a. must not obscure visibility, alienate pedestrians or promote a sense of exclusiveness in the area that is subject to an Outdoor Cafe Permit and/or Authorisation or its environs;
- b. should have screens/perimeter fencing constructed in a manner that does not detract from the general ambiance of the streetscape;

- c. must not exceed the horizontal width of the associated premises, outdoor dining area, or 15 metres, whichever is the lesser, subject to Clause 5.9(a), (b), and (c) of this policy;
- d. enclosed with blind-style screens and a ceiling should have that enclosure affixed to the underside of the building canopy for structural integrity;
- e. must not be of a blind style where building canopies or verandas are more than 4 metres in height;
- f. may only use general advertising and business identification that does not detract from the general streetscape ambiance;
- g. must be durable, structurally sound and fixed to avoid personal injury and property damage;
- h. should be maintained in good condition at all times; and
- i. must be provided, installed and maintained at the Permit and/or Authorisation Holder's cost.

5.12. Cleanliness

5.12.1. Outdoor Café Permit and/or Authorisation Holders are expected to maintain outdoor dining areas, including the footpath, in a clean, hygienic, tidy and safe condition at all times.

- a. This usually requires a constant presence as well as sweeping and spot mopping the area during trading hours to ensure that spillage of food and beverages and/or breakages do not cause a hazard or damage and that litter does not escape the designated dining area.
- b. If requested, the Permit and/or Authorisation Holder must provide a suitable waste receptacle within the dining area. Waste and sweepings must not enter the gutter and must be disposed of in the appropriate manner. Such refuse and waste is not to be deposited in public litter bins.
- c. The approved area should be pressure cleaned at least once every six months or as required by the Council.

5.12.2. Animals are to be managed effectively within outdoor dining areas.

- a. The National Food Safety Practices & General Requirements, Standard 3.2.2 clause 24 allows a food business to permit a dog in a designated outdoor dining area. An animal must be under the control of their owners and must not cause a nuisance to other diners or pedestrians in accordance with the Dog and Cat Management Act (1995) and Council's By-Laws No. 5 - Dogs and No 6 – Cats.
- b. An Outdoor Café Permit and/or Authorisation Holder may deny the entry of animals to a defined outdoor dining area under his/her control, in sections containing furniture, but may not prevent animals from passing by on public footpath space.
- c. Animals should not be provided with food or permitted to seek and take food anywhere in or near to outdoor dining areas. One water dish may be provided for animals, providing it is on the perimeter of the designated dining area and is at least 1 metre away from patrons seated at tables.

5.13. Smoking

5.13.1. Under current legislation, smoking is only permitted in specified outdoor dining areas that are not fully or substantially enclosed as defined under the Tobacco Products Regulation Act 1997. However, an Outdoor Café Permit

and/or Authorisation Holder may prohibit smoking within a Permit and/or Authorisation area under his/her control.

- a. Where Permit and/or Authorisation Holders allow smoking within outdoor dining areas, ashtrays must be provided and must be emptied and replaced on a regular basis.
- b. Ash and cigarette butts must not be allowed to litter the area including the footpath or other public areas.

5.14. Damage

5.14.1. Damage to public and private property within an approved outdoor dining area is the responsibility of the Permit and/or Authorisation Holder, who must supervise the area so that patrons' behaviour does not lead to damage.

- a. In the event that damage does occur, the operator is responsible for notifying the owner of the property so damaged.
- b. Any damage must be repaired at the Permit and/or Authorisation Holder's cost.

6. Issue of Outdoor Café Permits and/or Authorisations

- 6.1. A person to whom an Outdoor Café Permit and/or Authorisation has been issued shall clearly display it at the relevant premises for inspection by any Officer of Council to whom the power to enforce those Permits and/or Authorisations has been delegated at any time during which the Permit/Authorisation holder is carrying on the business of an Outdoor Café pursuant to that Permit/Authorisation.
- 6.2. Outdoor Café Permits and/or Authorisations are to include plans indicating the approved dining area, furniture and fittings, any shade provisions and must show a registered Permit and/or Authorisation number.
- 6.3. Any Permit and/or Authorisation may be revoked by the Council for breach of the conditions subject to and in accordance with the Local Government Act (1999) Section 225.
- 6.4. The Council may require the removal of outdoor dining facilities and the suspension of outdoor dining activities in an Outdoor Café Permit and/or Authorisation area to enable infrastructure work to proceed on Council land, or for any other purpose that the Council deems warranted in the interests of public health and safety. Except in the case of emergency, the Council will give reasonable notice to Permit and/or Authorisation Holders where such a requirement will arise.
- 6.5. Outdoor Café Permit and/or Authorisations Holders are required to hold public liability insurance that specifically notes the Council as a "specified person" for the purposes of Section 48(1) of the *Insurance Contracts Act 1984*, to the value of twenty million dollars (\$20,000,000). A Certificate of Currency must accompany applications for the issue and renewal of Outdoor Café Permits and/or Authorisations.
- 6.6. All Outdoor Café Permits and/or Authorisations shall, unless revoked, remain in force until the 31st of August each year.
- 6.7. When a new Permit and/or Authorisation is granted, the annual fee shall be calculated on a pro-rata basis.

- 6.8. The request for a renewal of an annual Outdoor Café Permit and/or Authorisation are to be submitted in writing by the Outdoor Café Permit and/or Authorisation Holder to the Kangaroo Island Council prior to the 30th of June annually.

7. Availability of Policy

- 7.1. This Policy will be available for inspection via the Council's website:
www.kangarooisland.sa.gov.au
- 7.2. Copies will be provided to the public upon request, and upon the payment of a fee in accordance with the Council's Schedule of Fees and Charges.

SIGNED:



Chief Executive Officer

Date: 14 July 2026

History:		
Date Reviewed:	Version:	Reason for Amendment:
11 May 2007	Version 1	Adopted by Council.
September 2014	Version 2	Periodic Review.
November 2017	Version 3	Periodic Review. Minute Ref# C377:2017
14 July 2026	Version 4	Full review and new Policy template