

Central Coast Council

Outdoor Dining Policy

September 2019

Outdoor dining can mean different things to different people, and here in Australia most restaurants and cafes in temperate climates offer a choice of either indoor or outdoor dining. It has been recognised that Central Coast throughout the year boasts a temperate climate, lending itself to varied outdoor activities. Central Coast is considered a great location for day visitors with the many eateries, coffee shops and outdoor facilities including the Leven River waterfront, Penguin foreshore, Turners Beach and Sulphur Creek beach areas and the CBDs of Ulverstone and Penguin.

To assist businesses in the Ulverstone and Penguin CBDs to expand their existing dining activities outdoors and onto the public footpath or within a public space, the Council at its Ordinary Council meeting held 16 September 2019, adopted an Outdoor Dining Policy to establish a basis, under which the Council will issue approvals for outdoor dining permits.

The Policy is designed to make it easy for businesses to expand their existing dining activities outdoors, but at the same time, it aims to protect the safety of customers, staff and members of the public using the area.

To assist the Council in the preparation of a permit application, businesses may need to consider a number of key matters:

THINGS TO CONSIDER:		
1	<p>SAFETY Maintain an equitable and safe thoroughfare around outdoor dining areas for all users.</p>	<ul style="list-style-type: none"> . public safety . accessibility . line of sight . managing animals . engagement with public
2	<p>LOCATION Facilitate the appropriate use of footpaths and public places for outdoor dining activities.</p>	<ul style="list-style-type: none"> . design of space . furniture/fixtures . day-to-day requirements

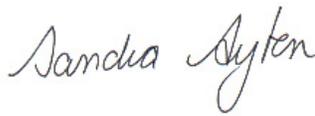
3	FUNCTION Ensure the design of the outdoor dining area, furniture, fixtures and day-to-day requirements reflects the local area.	<ul style="list-style-type: none"> . minimum distances . neighbours, pedestrians, area
4	AMENITY Facilitate improvement to the local character, street vitality, amenity and economic viability.	<ul style="list-style-type: none"> . local character . vibrancy & vitality . cleaning
5	LEGAL AND COMPLIANCE Ensure outdoor dining activities: avoid nuisance, endangerment or inconvenience; address public liability and manage risks; and comply with state legislation	<ul style="list-style-type: none"> . noise . waste . operating conditions . council inspections . insurance . compliance with legislation

The Council is supportive of local businesses taking the initiative to expand their business and contribute to making Central Coast a place to visit. In line with Central Coast Economic Development Framework, the Council is one of many contributors responsible for achieving improved economic outcomes at the interconnected local and regional scales, this includes assisting businesses at the grass roots level to grow the local economy from within. This includes Council and the community working together, where appropriate, to initiate, incubate and implement solutions to current and future challenges and opportunities.

The Council encourages any business considering the submission of an Outdoor Dining Permit Application to discuss your application with the Community Services Department, who can be contacted on 03 6429 8900.



Jan Bonde
MAYOR



Sandra Ayton
GENERAL MANAGER

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POLICY

The Outdoor Dining Policy applies to all Council Highways including both roadway and footpath reserves under the ownership or management of the Council, which would ordinarily be used by the public for pedestrian movements or recreation across the Central Coast Council municipal area.

PURPOSE

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.

This Policy governs:

- . the location, size, materials and colour of furniture placed for the purpose of outdoor dining;
- . advertising logos or signs allowable on furniture used for outdoor dining;
- . the use of umbrellas in conjunction with outdoor dining; and
- . risk management procedures to be adopted by the owners of commercial premises who are granted Outdoor Dining Permits.

STRATEGIC ALIGNMENT

The Outdoor Dining Policy is aligned with the following objectives that are included within the Central Coast Strategic Plan 2014 – 2024:

- . Provide for a diverse range of movement patterns, by developing a sense of place within our central business districts;
- . Connect the people with services by identifying opportunities to improve social outcomes/community benefit through the Council's policy/processes;
- . Facilitate entrepreneurship in the business community by identifying opportunities to attract highway traffic into towns and rural areas; and
- . Improve service provision, by continuing program of business unit service and process reviews.

STANDARD (INCLUDING RELEVANT LEGISLATION)

The Outdoor Dining Policy is developed in accordance with organisational, legislative and other related documents, specifically:

- . Local Government (Highways) Act 1982;
- . Work Health and Safety Regulations 2012,
- . Public Health Act 1997,

- . Food Act 2003,
- . Building Act 2016,
- . Disability Discrimination Act 1992, and
- . Relevant Australian Standards

REVIEW

This Policy will be reviewed every three years by the Council, unless organisational and legislative changes require more frequent modifications.

RESPONSIBILITIES

Monitoring adherence to this Policy is the responsibility of the Director Community Services.

The registering of premises under the *Food Act 2003* is the responsibility of the Environmental Health Officer.

SCOPE

Outdoor dining is defined as the use of the public footpath and road reserve for the purpose of extending the services of premises whose main function is for the provision of food and beverages to the public. Such premises include restaurants, cafes, hotels, delicatessens and other food outlets. Outdoor dining should be directly associated with the business and should only operate when those premises are open for business.

Outdoor dining should relate to, be sensitive towards; and enhance existing urban character, heritage and street values.

To facilitate outdoor dining, the Council has a process of issuing Permits to such businesses to use part of the public space in front of their premises. The 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.

The most important local conditions to be considered in locating outdoor dining are pedestrian and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and amenity in residential areas.

Outdoor dining may be allowed when the Council does not require space for public street furniture such as seats, bins etc. 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.

The ground surface must be suitably constructed and sufficiently level to support a proper layout and safe use of the required furniture and associated circulation areas. To achieve this, only minor structures or changes in the footpath will be Permitted such as fixing of umbrellas and markers for dining areas.

Only that part of the footpath/roadway directly in front of the ground floor of a business may be used for outdoor dining. The area may not normally extend to the area in front of neighbouring properties, unless permission from the adjoining landowner or tenant has been provided.

GENERAL PRINCIPLES

SAFETY

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

- be located in an area that is considered safe for patrons and avoid locations that are deemed unsuitable;
- meet the clearances and setbacks specified in this Policy;
- ensure wheelchair access to pedestrian ramps (pram ramps) is not compromised;
- ensure the safety of adjoining buildings is not compromised by restricting access or adding unreasonably to fire potential;
- not obstruct pedestrian flow; and
- clean up any spills immediately to prevent any risk to patrons or other pedestrians.

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.

EABs may be required at outdoor dining locations that would otherwise be considered unsuitable for the purpose based on local traffic conditions. Requirements for EABs in outdoor dining locations are to be assessed on a case by case basis but are likely to be required at sites which:

- have been associated with loss-of-control crashes, i.e. where vehicles have had an historical tendency to leave the roadway; or
- have inherent or special risk factors for crashes, e.g. unusual cross-fall, steep longitudinal grade, or sites situated on the outside of road curves of radius less than 40 metres.

LOCATION

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.

ENCLOSURES AND PERMANENT STRUCTURES

For the purpose of this Policy, enclosures are defined as vertical 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. Permanent structures and enclosure on three sides, with the side facing the footpath left open, will only be considered where appropriate shelter cannot be ensured by other means such as verandas, street trees or removable umbrellas.

REMOVABLE UMBRELLAS

Removable umbrellas may be used 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 etc. Footings for umbrellas must be designed and constructed so as not to pose a hazard in the footpath after removal of the umbrella.

CIRCULATION, SAFETY & CONVENIENCE

Due to disability access requirements, where practical, the preferred location for footpath seating is away from the building edge, that is close to the kerb. This allows for continuous easy movement of pedestrians along the footpath, and browsing in shop windows, entry into shops, and ease of movement for people with vision impairment or other disabilities. All seating located close to the kerb must be at least 0.8 metres from the kerb edge to provide a safety buffer from vehicles.

It is recognised, however, that within the Central Coast municipal area, the width of certain streets within the central business districts of Ulverstone and Penguin (refer Appendix 1) and the current placement of signage and trade goods on the footpath does not allow for the placement of dining tables and chairs against the kerb.

In all locations, a clear distance of at least 1.8 metres must be maintained adjacent to the seating area for pedestrian circulation, exclusive of any obstruction or street fixture, e.g. bench, tree, rubbish bin, pole. In otherwise favourable locations minor modifications of the nominated clearances may be appropriate with written approval from the Council.

At street intersections, a setback of at least 2 metres must be maintained adjacent to the seating area for pedestrian circulation, exclusive of any obstruction or street fixture.

Seating may not be located next to building edge and kerbside at the same time. Seating may not be located in the middle of the footpath.

If the business or premises is located adjacent to a defined disabled parking space, a clearance of 1.5 metres from the kerb must be maintained to allow access for wheelchairs.

Services such as sewers, electricity and road signs/signals should not be obstructed by permanent structures such as umbrellas. Removable tables and chairs are Permitted on top of underground services

ENERGY ABSORBING BOLLARDS

If it is determined that additional safety protection is required for an outdoor dining area, the Council will nominate specific EABs that are designed to have a maximum crumpling force of 30G at 60km/h on decelerating vehicles (and their occupants). The spacing of bollards should provide adequate protection of outdoor dining areas from out-of control vehicles. Spacing of 1.2 metres is considered to provide adequate protection. The Permit holder will arrange and pay the cost of the supply and installation of the bollards.

GAS HEATERS

Gas heaters may be located 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 removed outside trading hours.

CLEANING

Permit holders are required to take full responsibility for the care, appearance and maintenance of the Permitted outdoor dining area. 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, and the footpath in the Permitted area. Regular sweeping is required and no waste material, including sweepings, are to be disposed of into the gutter.

LIGHTING

Adequate lighting must be provided where outdoor dining occurs outside daylight hours. It is the Permit holder's responsibility to provide additional lighting to that already on the street, if necessary and to relevant Council and legislative requirements.

DEVELOPMENT APPROVAL

In some instances, outdoor dining may represent “development” under the Council’s Planning Scheme or the *Building Act 2016*, and thereby in addition to the Permit, require Development Approval. Items that require Development Approval are those defined as “building work” including fixed screens, full height enclosures e.g. plastic screens, permanent structures e.g. shade structures, and signage. If Development Approval is required additional fees and timelines apply.

CHANGES TO THE ROAD RESERVE

In some instances, an 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 Policy generally supports such changes for outdoor dining purposes, and 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.

HOW TO APPLY FOR A PERMIT

Applications must be submitted in writing and provide all details of the proposed outdoor dining area necessary to show compliance with this Policy. This is to include a sketch showing all of the necessary clearances relevant to the outdoor dining site.

APPROVAL PROCESS

The power to issue an Outdoor Dining Permit is delegated to the General Manager, however, applications at major variance to the Policy require a Council decision, prior to the issuance of a Permit. At the General Manager's discretion, the proposal including the application and supporting details provided, may be publicised and made available for public comment. Should adverse written comment be received then the Council may 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.

FEES

The use of a public footpath or road reserve as an outdoor dining area attracts an annual Permit fee of \$100.00 as set out in the Council's Fees and Charges. The Council reviews the Fees and Charges on an annual basis. Where development approval is required other application fees may also apply.

PERMIT PERIOD, RENEWAL AND CANCELLATION

An Outdoor Dining Permit is valid for up to five 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 the Council depending upon the level of compliance with Permit conditions during the initial period of the Permit.

REVIEW

A Permit may be cancelled or amended if:

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

PUBLIC LIABILITY 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 \$20,000,000.00 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.

INDEMNITY

The Permit holder agrees to indemnify and keep indemnified and to hold harmless the Council, its servants and agents and each of them from and against all actions, cost, claims, charges, expenses and damages whatsoever which may be brought or made or claimed against the Council or the Permit holder or both arising out of or in relation to the granting of the Permit.

SUPPORTING DOCUMENTATION AND PLANS

The following information is required for all applications.

SITE PLAN/SEATING LAYOUT

- Where the outdoor dining area is situated on the site in relation to all site boundaries and adjoining buildings or businesses;
- Location of surrounding buildings and their uses;
- Any existing and/or proposed car parking spaces or driveways within the immediate area, including any on-street parking in front of the dining area;
- The boundaries of the proposed dining area and distances from the building frontage as well as the kerb line of the street;
- Building line of the business and buildings/businesses on either side, together with distances to any existing street furniture, litter bins, street trees, light poles or any other permanent structure within 2 metres either side of the building line of the business; and
- Proposed size and position of all tables, chairs, umbrellas (or shade structures), or bollards.

SECTIONS/ELEVATIONS

- A section/elevation through the site including heights of any proposed shade structures, bollards etc in relation to business frontage and awnings; and
- A section of the proposed system to secure any shade proposed umbrellas/apparatus etc.

OUTDOOR FURNITURE

- Manufacturer's details/specifications of the proposed furniture to be used, i.e. tables, chairs, umbrellas, bollards etc.;
- Full details of the size and colour/finishes, etc.; and

- Proposed shop names or logos which are to be included on any furniture or as part of the umbrella design.

No outdoor dining use in the public right-of-way may be approved unless all of the following development and operational standards are met:

- 1 No outdoor dining use, other than that authorised by the Council, may be approved for a proposed use in a street or public area.
- 2 To provide for adequate pedestrian circulation, outdoor dining uses in the public right-of-way shall maintain a minimum of 1.8 metres of clearance between dining furnishings and any kerb line, street furniture or above ground utilities. A minimum of four radial metres of clearance, shall be maintained between dining furnishings and merchandise displays and the centre line of intersecting perpendicular driveways, alleys or streets to provide for adequate vehicle sight, unless a lesser distance is determined by the Director Infrastructure Services, to be adequate for the protection of public safety.
- 3 Outdoor dining uses in the public right-of-way shall not be required to provide any additional parking spaces for their outdoor area.
- 4 Tables and chairs used for outdoor dining shall be of substantial materials. Low grade plastic tables and chairs intended for domestic use are not Permitted. All such furnishings shall be stored indoors after hours of operation.
- 5 In addition to whatever signage may be permitted for the dining establishment use, and notwithstanding any provisions of the Planning Scheme to the contrary, one portable sign (no more than one square metre in area), such as a menu board/chalk board or a board sign shall be permitted provided that the sign is attractively designed, maintains adequate pedestrian and vehicle sight clearance per Item 2 of this section, does not block the visibility of display windows or signage of any adjacent business, is stored indoors after hours of operation. Additional signage on umbrellas may also be Permitted. The Director Community Services shall have design review authority for signs used in conjunction with outdoor dining uses and shall carry out such design review authority in conjunction with the overall review of the outdoor dining use.
- 6 No outdoor dining use in the public right-of-way, including furnishings and signs, shall block visibility of display windows or signage of adjacent businesses, unless written consent of any affected adjacent business owner to block visibility is obtained by the applicant and provided to the Director Community Services.
- 7 The outdoor dining use operator shall maintain the outdoor dining or merchandise area in a clean and safe condition at all times, including properly disposing of all rubbish generated by the operation.
- 8 The outdoor dining use operator shall provide an executed hold harmless waiver and proof of liability insurance to the satisfaction of the Council.

- 9 Applications for an outdoor dining use in the public right-of-way shall be filed by the operator of the use, or by an agent, trustee or attorney for the operator.
- 10 Smoking is not Permitted in outdoor dining areas.
- 11 Appropriate noise levels are contained by any background or piped music played via speakers located outside of the premises.

ENFORCEMENT

The following enforcement procedures will be adopted by the Council should a Permit holder/operator of an outdoor dining area on public land –

- . breach the Permit conditions and/or operate an outdoor dining area with an expired Permit; or
- . operate a new outdoor dining area without a Permit being issued; or
- . continually breach the Permit conditions relating to the operation of the outdoor dining area.

The basic enforcement procedures adopted by the Council include:

- 1 issue of a verbal warning. Details are documented in the relevant file and/or action request;
- 2 failing compliance with the verbal warning, a written “Notice to Comply” will be issued requiring the person to stop the contravention either by –
 - (a) taking specified action within a specified time to remedy the contravention; or
 - (b) undertaking immediate action to remedy a contravention if it is necessary to avoid risks to public safety.
- 3 Failing compliance with the “Notice to Comply”, a “Notice to Remove within 14 days” will be issued in accordance with Section 52 of the Local Government (Highways) Act 1982.
- 4 Failing compliance with the “Notice to Remove”, the Council will arrange for the removal of all those items involved that remain within the public right-of-way, at the expense of the Permit holder.

APPENDIX 1
CBD FOOTPATH WIDTHS

STREET	FROM	TO	LOCATION	L PATH WIDTH	R PATH WIDTH
REIBEY STREET	0.01	0.08	CRESCENT STREET END	3.5	3.5
REIBEY STREET	0.08	0.11	FOOTPATH EXTENSIONS	6.5	6.5
REIBEY STREET	0.11	0.20	JUST WEST OF KING EDWARD ST	3.5	3.5
REIBEY STREET	0.20	0.22	KING EDWARD STREET	3.6	3.4
REIBEY STREET	0.22	0.32	KING EDWARD TO VICTORIA ST	3.7	3.4
REIBEY STREET	0.32	0.33	VICTORIA STREET	3.4	3.5
REIBEY STREET	0.33	0.34	VICTORIA STREET	3.4	3.8
REIBEY STREET	0.34	0.52	VICTORIA ST TO TOWN CLOCK	3.4	3.5

STREET	FROM	TO	LOCATION	L PATH WIDTH	R PATH WIDTH
MAIN ROAD	1.50	1.52	KENTISH STREET	2.5	3.5
MAIN ROAD	1.52	1.57	KENTISH TO DOOLEY ST	3.5	3.5
MAIN ROAD	1.57	1.59	DOOLEY STREET	3	4
MAIN ROAD	1.59	1.74	DOOLEY TO ARNOLD ST	3	4
MAIN ROAD	1.74	1.75	ARNOLD ST	3	3
MAIN ROAD	1.75	1.79	ARNOLD TO CRESCENT ST	3	3
MAIN ROAD	1.79	1.83	CRESCENT STREET	3	3
MAIN ROAD	1.83	1.87	JUST WEST OF CRESCENT ST	3	1.5
MAIN ROAD	1.87	1.89	CN LEFT PB RIGHT	3	1.5
MAIN ROAD	1.89	1.90	CN LEFT CN RIGHT	3	1.5
MAIN ROAD	1.90	1.94	PC LEFT CN RIGHT	3	1.5
MAIN ROAD	1.94	1.96	END FP RIGHT	3	1.5
MAIN ROAD	1.96	2.00	CN LEFT	3	1.5
MAIN ROAD	2.00	2.03	PC LEFT	3	1.5
MAIN ROAD	2.03	2.05	HM LEFT	2.5	1.5

Date of approval: 16/ 9/ 2019

Approved by:

Sandra Ayton

Sandra Ayton
GENERAL MANAGER
September 2019