

TEMORA SHIRE COUNCIL



TEMORA
The Friendly Shire

OUTDOOR DINING AND STREET STALL POLICY

ACTIVE

Review Details

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REVIEW

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PLANNED REVIEW

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Section 1 Introduction

1.1 AIMS AND OBJECTIVES

The aim of Outdoor Dining and Street Stall Policy is to support food-based businesses to offer outdoor dining onto public land adjacent to their existing premises, as well as for retail or service premises to have footpath displays or street stalls.

The objectives of the policy are to:

- provide a framework for establishing and operating an outdoor dining area, including:
 - determining the suitability of a site
 - managing public safety including road safety
 - ensuring operations do not detract from the visual appeal of an area
 - meeting ongoing operational requirements
 - meeting all necessary state and federal legislative requirements
- reduce the time and complexity of the approval process for businesses by outlining the steps a business must take to be granted an outdoor dining permit
- encourage the use of public places for outdoor dining as a means of stimulating business growth and development in NSW
- ensure any outdoor dining activities have minimal disruption to neighbours, pedestrians and other street users
- promote vibrancy, culture, vitality, amenity, interest and ambience in the street environment of commercial areas while also protecting the existing local character of an area.
- support the provision of clear, safe and unobstructed access at all times for pedestrians of all abilities on Council footpaths in accordance with Council's statutory responsibilities

1.1 SCOPE

This policy establishes the guidelines for the use of Council footpaths for the purpose of Outdoor Dining and Street Stalls and Displays.

This policy applies to a wide range of food based businesses including restaurants, pubs, cafes and bakeries, as well as retail premises that use footpath displays or allow street stalls adjacent to their premises.

The policy will allow food and drink premises to place tables, chairs, barricades, planter boxes and umbrellas on the footpath area outside their premises. The Policy also sets

out the guidelines for the display of street stalls and sale displays that are placed on footpaths. Approval will be subject to the business complying with conditions set by the Temora Shire Council for the use of such areas.

1.2 AREA INCLUDED BY POLICY

This policy will apply to all land such as footpaths and public areas that would ordinarily be used by the public for pedestrian movement or recreation that is located within the Central Business Districts of Temora and Aria Park.

1.3 DEFINITIONS

Council - means Temora Shire Council.

Restaurant or Café - means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

Pub - means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

Footpaths - means that part of a road that is set aside or formed as a path or way for pedestrian traffic or any area such as a park or other space owned by council and used for pedestrian movement or recreation.

Outdoor dining - means activities such as placement of tables, chairs and other items such as umbrellas, planter boxes and barricades, for the commercial use of eating and socialising.

Permit - means the approval given by Council for the use of the footpath for the operation of outdoor dining or a street stall or display.

Street Stalls - means activity carried out on footpath which places either tables, stalls, displays or any like thing on the footpath for sale or display of goods, products or services. This includes the sale of raffle tickets.

Section 2 Outdoor Dining Policy

2.1 AIMS AND OBJECTIVES

1. To provide for the establishment of footpath outdoor dining.

2. To establish criteria for approval that will limit activities on footpath as to ensure the safe and convenient passage of pedestrians, including persons with disabilities and those with wheeled mobility devices and people with prams.
3. To ensure that adjoining premises are not adversely affected by an outdoor dining area.
4. To ensure that the area subject to the application is kept in a clean and tidy manner and is regularly maintained.

2.2 POLICY GUIDELINES

1: Location/site suitability

When using footpaths and other public places for outdoor dining activities, reasonable consideration should be given to the suitability of the site and all users of the location.

An outdoor dining area is only permitted where:

- a. the outdoor dining area is directly related to the operation of an existing food business and operates on the same basis as the existing food business
- b. the applicant is the owner or proprietor of that business premises
- c. the ground surface of the outdoor dining area has suitable clearance widths to allow for easy movement by staff and customers. Pedestrians must not be forced onto the road by the outdoor dining area or other non-permanent items on the footpath
- d. the ground surface of the outdoor dining area is suitably constructed and sufficiently level to accommodate outdoor dining furniture and enable the area to be used safely and without inconvenience to pedestrians or vehicles
- e. the outdoor dining area presents no hazard to pedestrians, diners or vehicular traffic
- f. the outdoor dining operator calculates clearance widths of the outdoor dining area, taking into account pedestrians and any existing or proposed landscaping, vegetation, garden beds or street furniture that may impact on the clearance
- g. the location of furniture on the footpath must maintain adequate access for pedestrians, including those persons who are mobility impaired and people with prams. The minimum width of pedestrian access is to be maintained at no less than 1.5 metres.
- h. the location and operation of the outdoor dining area has taken into consideration the amenity of neighbours and other users of the public space
- i. the service of alcohol is limited to the applicant's business frontage only

j. the outdoor dining area is contained within the frontage of the business premises, with an allowable expansion of up to 50% of the adjoining businesses' frontages, subject to revocable Outdoor Dining Adjoining Business Permission from the adjoining business owner. It is a requirement that this permission can be revoked at any time without notice and any approval will automatically lapse on change of ownership of the adjoining businesses or the applicant business

k. the outdoor dining area complies with AUSTRROADS Guide to Road Design Part 6A – Paths for Walking and Cycling (Section 5 Design Criteria) and Australian Standard AS2890

Permanent structures: Separate local Council approval is needed to erect permanent structures in a public space, including awnings that are not defined as temporary. This policy does not cover approval for permanent structures.

2: Safety

A food business expanding their premises to an outdoor dining area must ensure that an equitable and safe environment is maintained for all users.

An outdoor dining area is only permitted where:

a. a suitable risk assessment has been undertaken to ensure the safety of diners, and that other vulnerable road users are appropriately considered and there is no detrimental impact for road safety. If the dining area is adjacent to a road, the road's speed zone must be 50 km/h or less the area must have defined kerb and guttering, or other suitable delineation to separate diners from vehicles

b. an equitable, clear and safe throughway is maintained on footpaths for all pedestrians including those using mobility aids, prams and motorised scooters

c. the outdoor dining area is integrated with existing streetscape, pedestrian circulation and traffic safety by maintaining adequate clearances.

d. the safety and convenience of road users and cycleway users is not compromised. The line of sight at intersections must be maintained, so outdoor dining must be set back at a 45-degree angle from the corner of the building, equating to a three to five metre clearance from the corner to the edge of the outdoor dining area

e. the number of tables and chairs in the outdoor dining area allows unobstructed access and circulation for patrons including those using mobility aids, prams and motorised scooters, and staff

f. if the business owner agrees that dogs are permitted, dogs are kept on leashes, suitably restrained and remain on the floor

g. a high standard of public safety and amenity, including cleanliness, is established and maintained

- h. all furniture, including temporary bollards, is stored inside after hours, unless a written exemption has been provided by Council.
- i. there are clear lines of passage for people with mobility or vision impairments.

3: Amenity

Improve the local character, street vitality, amenity and economic viability of the local/surrounding area/locality.

An outdoor dining area is only permitted where:

- a. it is attractive, inviting and contributes to the amenity of the locality
- b. the business owner has regard to the existing urban character, cultural significance and street quality, and whether other existing outdoor dining is located along the building line or kerbside.
- c. the area subject of the application and its immediate surrounds are to be maintained and cleaned on a regular basis throughout the trading day and at the end of each trading day.

4: Function

A food business expanding their premises to an outdoor dining area must ensure that the design of the outdoor dining space, furniture, fixtures and day-to-day requirements reflect the local area, and that the outdoor dining area is kept clean.

An outdoor dining area is only permitted where:

- a. furniture and fixtures are easy to clean and maintain
- b. the outdoor dining operator is satisfied that furniture used is suitable and safe for outdoor dining
- c. barriers are to be used to define the outdoor dining area and are to be set back a minimum of 450mm from the roadway and are to be structurally stable. The barriers are to be of a metal frame and canvass fill. Bollards and chains will not be permitted.
- d. any barriers used by premises are to be approved by Council. Barriers are to be of style and colour that fits in with general surroundings or theme of premises. Final approval shall remain with Council.
- e. umbrellas are permitted and must have a clearance of approximately 2 meters above footpath level.
- f. umbrellas must be effectively secured against the effects of the wind and must be removed or closed during extremely windy conditions. They must be maintained in good condition at all times.

g. if the use of a heating device is proposed, details of the type, location and design must be included in the application. The main consideration for Council will be the safety of people.

h. umbrellas, furniture, barricades and other such items are to be removed from the footpath at the end of trade and stored within the building, unless Council has provided written approval for specific items to remain on the footpath, in accordance with an approved outdoor dining permit. Adequate storage facilities will be required to be provided in the associated premises for outdoor dining items.

l toilet facilities are to be made available to patrons in accordance with the requirements of the Building Code of Australia. Contact Council to obtain further information about these requirements.

i. food and drink are required to be served on non-disposable crockery and cutlery. Food and drink must not be prepared in the area designated for outdoor dining. Tables are not to be pre-set with cutlery, glasses or unprotected foods.

i. the business owner ensures that their outdoor dining area is cleaned and maintained on a regular basis. This includes ensuring tables are promptly cleared, and that all waste generated by the business and its customers is picked up and disposed of regularly.

j. meal remnants and other litter and waste are to be disposed of appropriately by the operator and are not to be deposited in public litter bins. Waste and sweepings are not allowed to enter the gutter and are to be disposed of by the operator.

5: Legal and compliance

A food business expanding their premises to an outdoor dining area must ensure management of outdoor dining activities avoids nuisance, endangerment or inconvenience and there is compliance with all requirements.

An outdoor dining area will only be considered where:

a. outdoor dining activities operate no later than midnight Monday to Saturday and 10pm on Sunday

b. noise and music are appropriately managed to not be a nuisance to patrons, surrounding businesses, pedestrians and motorists and follow the state noise pollution requirements

c. the business meets the waste management requirements of Council

d. the business owner complies with the conditions in this policy, and all other relevant local, state and federal requirements for food-based businesses

e. the business owner has public liability insurance required by Council, being \$20 million.

For restaurants and cafés provisionally approved to serve liquor, the sale of liquor in the outdoor area and the operation of that area must comply with the licence conditions under the Liquor Act 2007 that apply in relation to a licensed restaurant.

6. Criteria for change of boundary for on-premises liquor licence

Restaurants and cafés that have an existing on-premises liquor licence will need to meet the following criteria for their on-premises licence to extend their boundary to include the outdoor dining area:

- a. the restaurant or café has standard trading hours and is only authorised to serve liquor with meals, i.e. no extended trading authorisation (ETA) or primary service authorisation (PSA).
- b. within the past 12 months, the premises has not been listed under Schedule 4 of the Liquor Act 2007 as a violent venue, or has not incurred a strike under the Three Strikes scheme.
- c. the business provides consent for Service NSW to notify Liquor & Gaming NSW and the relevant local Council of its application to change liquor licence boundary.
- d. where the above criteria are met, the restaurant or café will be provisionally approved to extend the licenced boundary to the outdoor dining area.
- e. Liquor & Gaming NSW will continue to assess the change of boundary application as per existing arrangements for expansion of liquor licence boundary.
- f. if no valid objections are received during consultation, Liquor & Gaming NSW will approve the change of boundary application. If Liquor & Gaming NSW refuses the application in accordance with its existing policies for change of liquor boundary, no alcohol may be consumed in the restaurant, pub or café outdoor dining area.
- g. any outdoor dining areas that fall within a designated alcohol-free zone must be cordoned off, clearly delineated and controlled as a licensed area by the licensee.
- h. venues other than restaurants and cafés that have liquor licences that are not standard on-premises licences (including, on-premises with PSA or ETA, small bar or hotel) will still be able to apply for an outdoor dining permit under this policy. However, if/when approved, these businesses will not automatically be able to serve liquor on the footpath. They will need to apply to Liquor & Gaming NSW separately to extend their liquor licence boundary to include the footpath (please refer to the Liquor & Gaming NSW website (www.liquorandgaming.nsw.gov.au) for instructions on how to extend a licence boundary).
- i. the business operator/owner is not to sell or serve or permit to be sold or served any alcoholic or intoxicating liquor in or from the subject area except where council has granted specific approval and an appropriate liquor licence is obtained from licensing authorities.

j. any alcohol brought to the premises, such as B.Y.O. is to be consumed in the restaurant or approved outdoor dining area only and no open alcohol containers are to be taken away from the premises or approved footpath dining area.

7. Accessibility

Over 4 million people in Australia experience disability. That's around 1 in 5 Australians. People with disability, as well as their friends, relations and colleagues, constitute a significant group of consumers.

- the design of outdoor dining areas must consider how people with a disability may enter and manoeuvre around the outdoor dining area. Ensure there is enough space for someone to sit comfortably at a table in a wheelchair or mobility scooter.
- ensure provision of adequate lighting for those with vision impairment.
- monitor the condition of the footpath surfaces and report any trip hazard concerns to Council.

8. Conduct of Patrons

The licensee is responsible for the conduct of patrons at tables and chairs in the outdoor seating area and must:

- ensure that patrons do not move tables and chairs into the passageway;
- ensure that patrons do not allow pets, prams, bicycles or any other items to obstruct the passageway;
- ensure that staff do not serve food or beverages to a person in the passageway;
- ensure patrons do not congregate in the passageway;
- adhere to the endorsed site plan and licence conditions at all times; and
- ensure that patron behaviour does not interfere with other persons

9. The outdoor dining permit

A permit will be issued to each applicant if they satisfy the requirements of this policy. The permit will detail the conditions of approval that apply to the business, its location and the outdoor dining activities.

The permit holder will be responsible for ensuring the outdoor dining area is operated in accordance with the requirements outlined in this policy.

The permit must be displayed at the business to which the permit refers or produced on request.

The application may be revoked or suspended at any time during the approval period if a government agency, including Temora Shire Council:

- determines that an unacceptable safety risk is created by the outdoor dining operation
- the agency's contractors
 - undertake works in the approved footway area, or
 - undertakes or propose to undertake works or an event that otherwise impacts access to adjoining footways, roadways, transport infrastructure, parks or public places.

Footway seating or structures are not to cover or impede access to public utilities and drainage pits. Access is to be made available at any time and at no cost, if required

10. Permit period

The term of a permit will be three years from the date of approval. The permit is not transferrable. Outdoor dining approvals are given to the operator of a premises, not a business or location.

11. Compliance

Compliance is undertaken by Council, in accordance with Council's compliance policies and processes. Operating an outdoor dining area without a permit or not in accordance with a permit is an offence and may result in the issue of an infringement notice or other regulatory action by Council including cancellation of the business' permit.

Section 3 Street Stall Policy

3.1 AIMS AND OBJECTIVES

This Policy aims to allow businesses, charity groups and organisations to conduct raffles, stalls and displays in the CBD area.

The Policy sets out certain procedures which will be required to be adhered to by all applicants.

3.2 POLICY GUIDELINES - STREET STALLS, DISPLAY TABLES

- a. business premises are permitted to have sale tables, racks or stalls at the front of their premises.
- b. any table or stall or other thing used to display goods is to be placed only within the boundaries of the subject business. Tables or stalls may only be erected outside other business premises with the express permission of the business

owner/occupier and Council. Further, the business must have appropriate insurances set out in Section 4 of this policy.

- c. display tables, racks, stalls or any other thing used to display or sell goods are to be placed directly against the front of the premises and are not to be placed on the middle or roadside edge of the footpath.
- d. tables and stalls or other such things used for display of goods are only permitted in areas where it does not impede the free flow of pedestrian traffic.
- e. this includes groups selling raffle tickets. Any such group or charity is to apply to Council on a yearly basis to conduct such activities.
- f. any group or charity will be required to obtain permission from the business that they intend to set up in front of, and show same authority to Council.

Section 4 Public Liability

To provide Council with adequate protection against claims that may arise as a result of the operation of footpath dining, displays and stalls, the operator of each such activity must:

- a. obtain public liability risk insurance for the sum of not less than \$20,000,000.00
- b. insurance is to indemnify Temora Shire Council against any public liability claims within the area subject of the application.
- c. insurance should be on an "occurrence based" wording to ensure that actions arising through the course of an insurance period are covered if the claims arise in future years.
- d. a copy of the current insurance policy is to accompany an application.

Section 5 Administration

Fees: The Council will not impose fees for outdoor dining areas or stalls established on public land.

Applicants are required to complete a permit application, including a site plan showing the area proposed for use and the siting of furniture and displays or any other structures, including A-frame signs (refer PR3 – Signage Policy and Guidelines). The applicant must provide information about the type of outdoor dining, stall and display equipment that is proposed to be used.

Operators are required to comply with all conditions set out in the permit.

Authorised Officers (of the Council) will monitor outdoor dining areas and stalls, and operators are required to comply with any direction provided by such an officer.

Repeated breaches of the authorisation will result in the cancellation of the authorisation.

- First breach of the authorisation – verbal warning issued and compliance to be achieved within 7 days. Reinspection of business by Council officers after 7 days.
- Second breach of the authorisation – written notice, and compliance to be achieved within 21 days.
- Third breach will result in the cancellation of the permit for outdoor dining or street stall/display.

Applications may be notified to neighbouring property owners who, in Council's opinion, may be adversely affected by any approval that may be granted by Council.

Applications will be determined in accordance with the relevant provisions of the Roads Act 1993, Local Government Act 1993, Environmental Planning & Assessment Act 1979 and this policy.