



Outdoor Dining Policy

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Relevant Legislation	Development Act, 1993; Local Government Act 1999
Related Policies	District Council of Yankalilla Development Plan Public Consultation Policy
Related Procedures	

1 Introduction

1.1 What is an outdoor dining policy?

It is well acknowledged that the outdoor dining experience is a desirable part of our lifestyle, and such facilities add significantly to the character, liveliness and style of a street, park or shopping precinct.

Public land is often utilised for this purpose and authorisation for this purpose must be sought from the Council. The Council encourages proprietors to provide such outdoor dining facilities in a responsible, safe and appropriate manner. Proprietors are required to apply to the Council for the appropriate permit and comply with the conditions of that permit. This policy details the types of conditions that are likely to apply, how to make an application and how the application will be processed.

1.2 Local Government Act 1999

Areas of public land constituting a public road (including footpaths) used by persons for business purposes, including patrons of an adjacent eating premise for the consumption of food and beverages, require the issue of a permit.

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Section 222 of the Local Government Act 1999 (the Act) provides the Council with the ability to grant permits to a person or entity for use of a public road for business purposes; an outdoor dining area is a business purpose.

This policy applies to the whole of the District Council of Yankalilla and obtaining an outdoor dining Permit will require you to make an application to the Council and agreeing to comply with the terms and conditions of any Permit issued. An application and copy of an example Permit can be obtained by contacting the Council.

An approval for an outdoor dining Permit is based on a number of considerations and issues including, safety issues and the layout being consistent with any planning laws and strategic plan for the Council area.

Council officers are available to assist applicants in applying for a Permit for outdoor dining, and will endeavour to make the process as uncomplicated and efficient as possible, whilst meeting the requirements of both legislation and policy considerations.

2 Various issues: safety, furniture and management

Applications for an outdoor dining permit will need to be assessed on a case-by-case basis and there may be some locations where, for safety reasons, a permit will not be granted. The safety of pedestrians and outdoor diners must not be unduly compromised; below are some of the relevant matters applicable to the grant of a permit:

2.1 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.

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 diagrams in Appendix 4.1, unless otherwise specified in the permit.

2.2 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.

2.3 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.

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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 policy and guidelines (refer to Appendix 4.1).

Fully moulded plastic chairs and tables are not permitted.

The use of removable tables and chairs will be encouraged and these must be removed outside trading hours. The use of fixed furniture will be discouraged.

2.4 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.

2.5 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.

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

2.6 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 Act.

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.

2.7 Planter Boxes

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

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Authorisation in accordance with s221 of the Act must be obtained for installation of planter boxes, including their design and placement, at the time of applying for an outdoor dining permit (refer to Appendix 4.2 Defined Area's – Planter Boxes).

2.8 Advertising and Signage

Advertising and signage is governed by:

- The Local Government Act 1999;
- The Development Act, 1993;
- The District Council of Yankalilla's Development Plan; and
- The Council's By Laws Moveable Signs (where relevant),

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

2.9 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.

2.10 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.

2.11 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.

2.12 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.

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2.13 Documentation

An applicant must provide the following documentation to the Council:

- Fully completed Application Form (refer to Appendix 4.4) 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;

2.14 Authorisation/Permit Fee and Bond

An Application Fee is payable for considering an application made under s221 and s222 of the 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 further 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.

2.15 Public Consultation

The Council may, prior to granting a Permit in respect of an Application in accordance with s223(1) and (2) of the Act, 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 Act and its Public Consultation Policy.

2.16 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.

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- Permit holders are required to have public liability insurance with a reputable insurer for a minimum cover of ten million dollars (\$20,000,000).
- Ideally, any outdoor dining areas should be directly associated with an adjacent eating premise but this not always the case. In the circumstances of markets or street fairs this requirement will not be insisted upon.

2.17 Period of Permit

A Permit cannot be granted for a Term greater than five (5) years but could be granted for any lesser period, including a temporary event. Any renewal will require a new application to be made.

An authorisation to alter a road can be approved for up to 42 years, however, an application associated with a s222 permit will generally be granted for the lesser time period

2.18 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.

2.19 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.

2.20 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 will result in an application taking four to six weeks to process, and perhaps longer where there are complicated issues.

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3 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 internet site: www.yankalilla.sa.gov.au

District Council of Yankalilla
1 Charles Street
Yankalilla 5203

Phone: (08) 8558 0200
Fax: (08) 8558 2022

4 Grievances

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

5 Appendix

Appendix 4.1

Defined Area's – Footpath Dining Area

Appendix 4.2

Defined Area's – Planter Boxes / Outdoor Dining Screens

Appendix 4.3

District Council of Yankalilla Furniture Guidelines

Appendix 4.4

Application Form – For an Outdoor Dining Permit

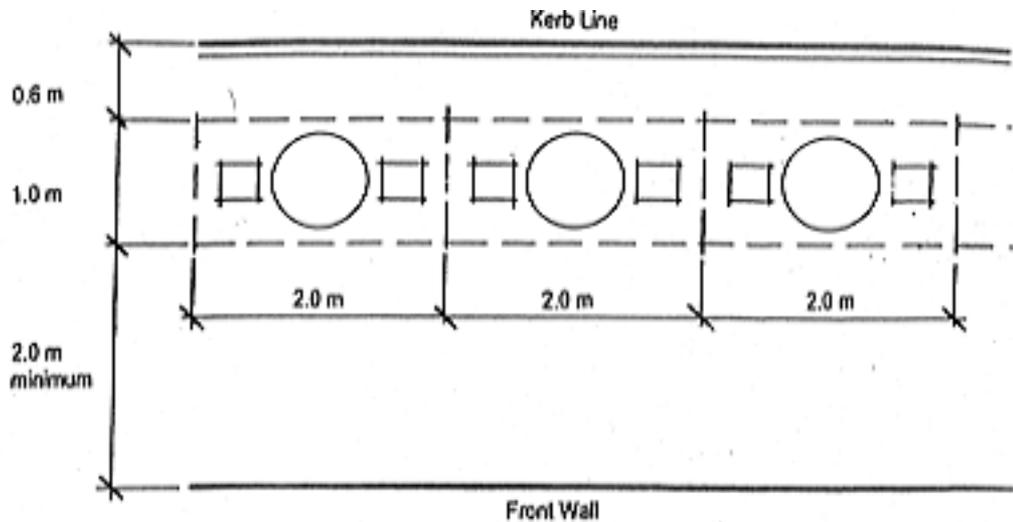
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Appendix 4.1

Defined Areas – Footpath Dining Area

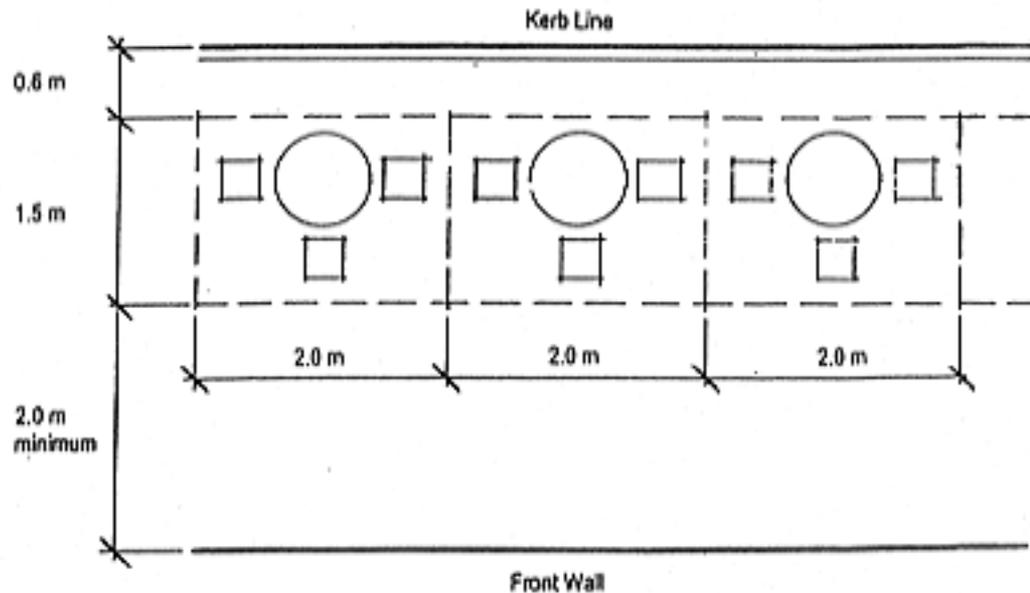
Adjacent minimum clearance for pedestrian traffic

Indicative layout for furniture with two chairs per table (chairs must not back kerb)



Adjacent minimum clearance for pedestrian traffic

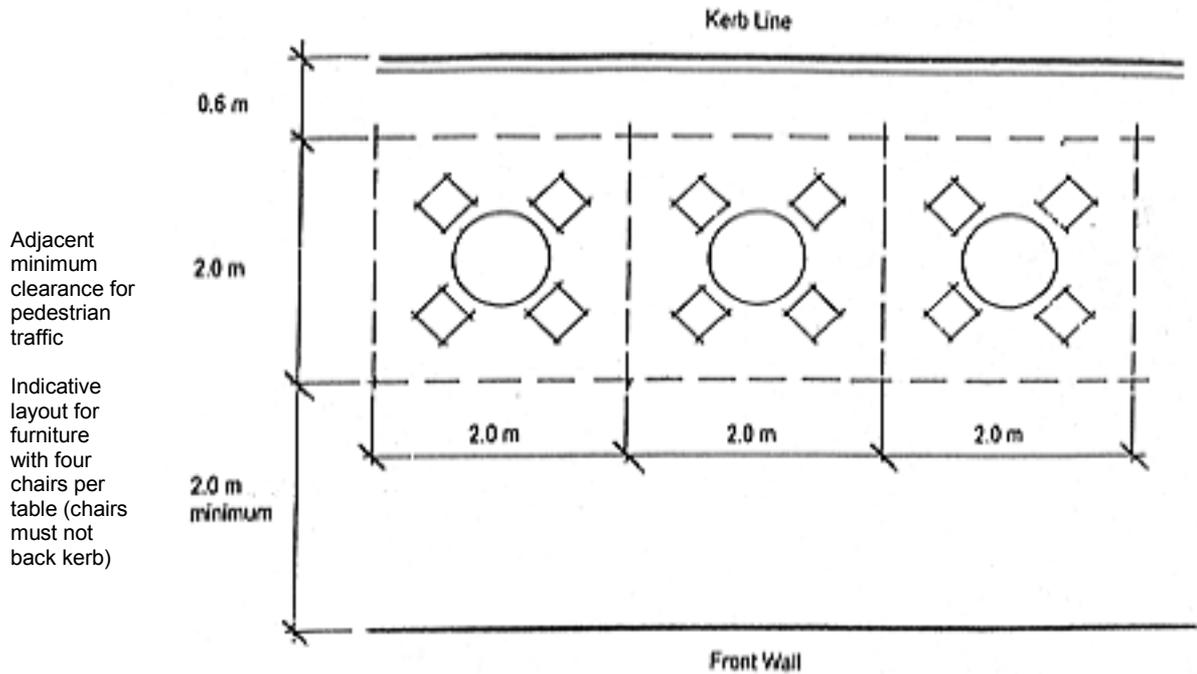
Indicative layout for furniture with three chairs per table (chairs must not back kerb)



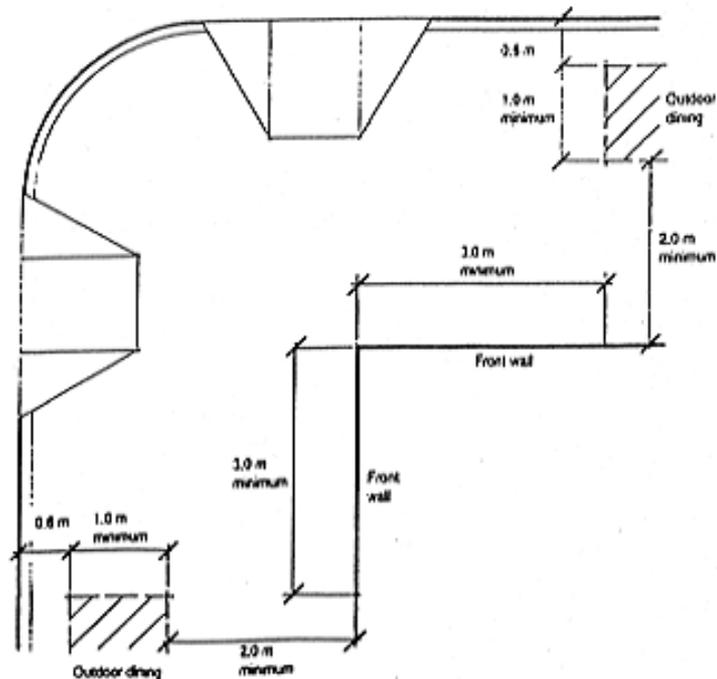
Outdoor Dining Policy

Appendix 4.1 (continued)

Defined Areas – Footpath Dining Area



Outdoor café adjacent to kerb close to intersection

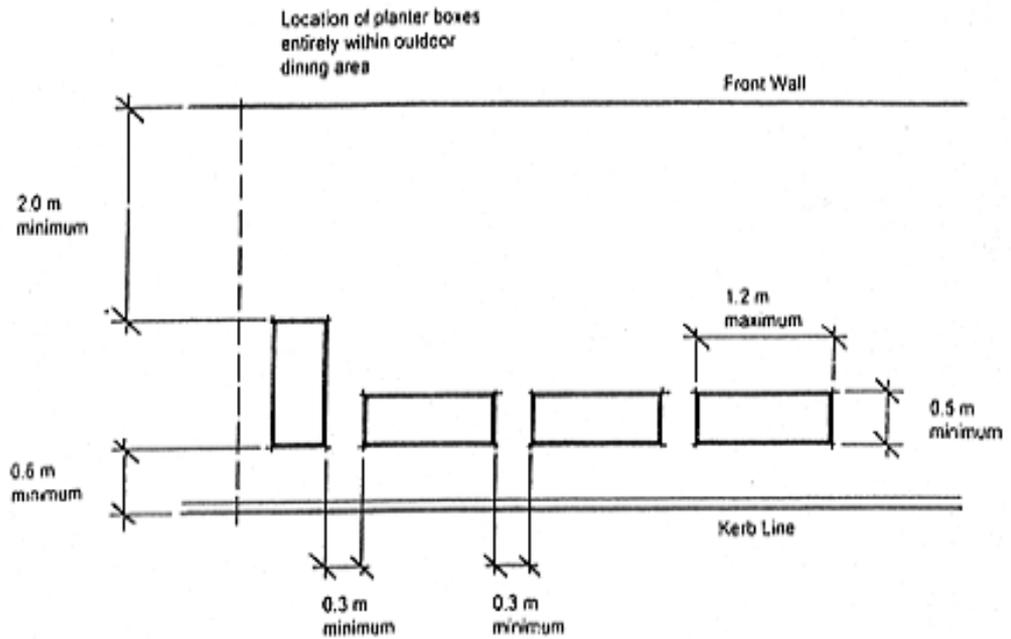


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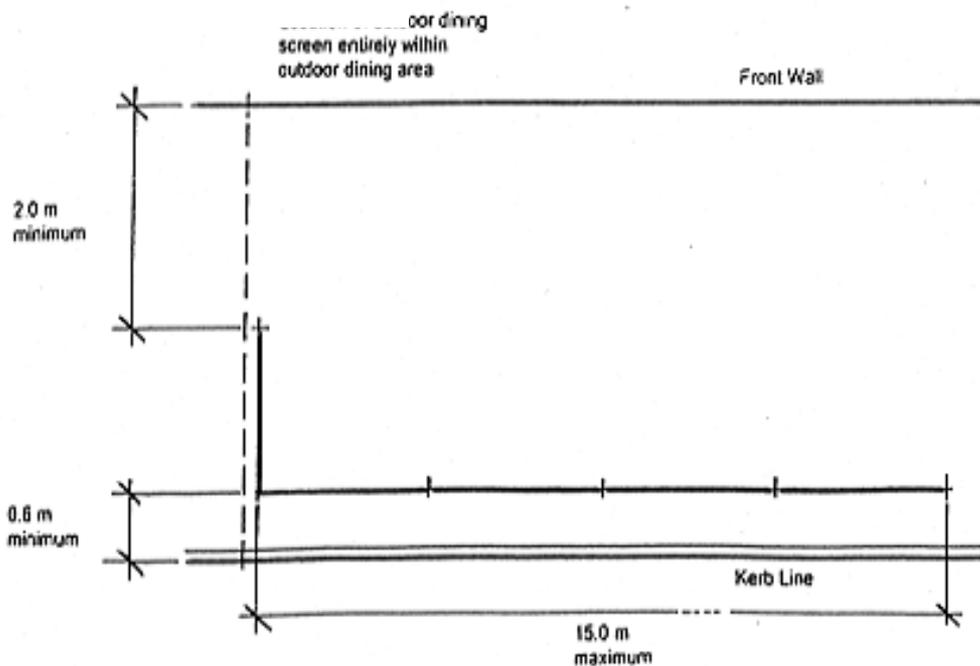
Appendix 4.2

Defined Areas – Planter Boxes / Outdoor Dining Screens

Planter



Outdoor Dining Screens



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Appendix 4.3

District Council of Yankalilla
PO Box 9, Yankalilla SA 5203

Outdoor Dining Furniture Guidelines

These guidelines apply to the whole area of the District Council of Yankalilla region. More specific guidelines may have been adopted for certain streets, and must be referred to and followed to the extent they differ.

Tables

- | | |
|-------|---|
| Tops | <ul style="list-style-type: none">• Any shape or colour.• Prefer diameter 700mm. Max 800mm.• Material to be either metal, timber, moulded laminated or similar. Plastic tops NOT permitted. |
| Bases | <ul style="list-style-type: none">• Prefer disc shape. Any size.• Any colour except white.• Material to be metal or timber. Plastic bases NOT permitted.• If fixed, to be treated against rusting, and fixing bolts to be properly finished. |

Chairs

- | | |
|-----------------|---|
| Materials | <ul style="list-style-type: none">• Preferably metal or timber, but appropriate plastic chairs are acceptable. |
| Colour & Finish | <ul style="list-style-type: none">• Any colour or finish. |
| Shape & Style | <ul style="list-style-type: none">• Cafe style preferred. Poolside, domestic and cast Italiante styles NOT permitted. |

Umbrellas

- | | |
|-------------------|---|
| Size & Colour | <ul style="list-style-type: none">• Preferably 1800mm – 2700mm diameter. Any colour. |
| Shape & Style | <ul style="list-style-type: none">• Any (preferably Italian market type) |
| Material & Finish | <ul style="list-style-type: none">• Any Material (prefer timber frame and canvas cover). Any finish. |
| Height | <ul style="list-style-type: none">• Clearance of 2200mm above footpath or ground level. |
| Fixing / Bases | <ul style="list-style-type: none">• Preferably attached to table or metal disc base. Plastic parasol bases NOT permitted. |

Planters

- | | |
|-----------------|--|
| Material | <ul style="list-style-type: none">• Compressed sandstone, concrete, or Glass Reinforced Concrete (GRC) |
| Colour & Finish | <ul style="list-style-type: none">• Natural stone. Painted when required. Anti-graffiti sealant. |
| Dimensions | <ul style="list-style-type: none">• 400-700mm high, 500-600mm wide, any modular lengths• Must not exceed 1.200mm long in any one unit |

Plantings

- | | |
|-----------------|--|
| Types of Plants | <ul style="list-style-type: none">• Edging Box (Buxus Semperviren), Lavenders, Trailing Pelagonium, Spider Plant (Chlorophytum Cosmosum), Agapanthus, Kafir Lily (Clivia Miniata), Miniature Conifers, Golden Diosma and annuals such as petunia and Marigold. |
| Soils | <ul style="list-style-type: none">• Soils should be friable and well drained. A water retainer (eg 'terra-sorb') and compost or a slow release fertiliser should be used |

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Appendix 3.4

Application for Permit to use a Road for a Business Purpose

[Section 222 – Local Government Act 1999]

Please complete this form in BLOCK LETTERS and return to:-

District Council of Yankalilla
PO Box 9
Yankalilla SA 5203
Telephone: (08) 8558 0200
Fax: (08) 8558 2022

("the Council")

Applicant Details

Name of Applicant:

Contact Person: _____
(if different to Applicant)

Address _____

Telephone: _____

Facsimile: _____

Email: _____

Application

The Applicant applies to the Council for a permit to use:

Details of Road _____
(insert name of Road and suburb)

specially that part of the Road which is hatched on the plan attached to this Application and marked "Road"

for the purpose of:

Details of Business Purpose:

Note: A detailed list of all structures, fittings and fixtures you intend on using for carrying out the Business Purpose, whether erected or installed temporarily or permanently must be included with this Application including how the structure fixture or fitting is to be erected or installed.

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Period of Permit:

Commencing the _____ day of _____ 20 _____

AND

Expiring the _____ day of _____ 20 _____

Renewal

Does the Applicant require a right of renewal Yes No

If yes, what period does the Applicant require the renewal period for _____

[Note: the total period of the permit cannot exceed 5 years, including any renewal].

Payment

An Application Fee is required to be paid at the time this Application is lodged. The Council will not consider this Application until the Application Fee is paid.

FURTHER: If you are granted a permit in accordance with this Application;

- a permit fee may be payable for the use of the Road in accordance with the terms and conditions of the Permit; and
- a bond may be payable which bond, subject to the terms and conditions of the Permit, will be refunded at the expiration or earlier determination of the Permit.

Public Consultation

The Council may, prior to granting a Permit in respect of this Application in accordance with s223(1) and (2) of the Act, 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 this Permit. 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 s223(1) and (2) of the Act.

Acknowledgement

The Applicant acknowledges and agrees:

1. that if granted a permit from the Council to use the Road for the Business Purpose, the Applicant shall comply with the terms and conditions of this Application and the Permit (a copy of which is attached to this Application) and any other special conditions the Council may impose, in its absolute discretion, in granting the Permit; and
2. it has read and understands the terms and conditions of this Application and the proposed Permit.

Executed by the Applicant

Signature: _____

Name: _____

Applicant/ Authorised Person of Applicant)

Outdoor Dining Policy

Date: _____

Outdoor Dining Policy

Permit

Background

- a. The District Council of Yankalilla (“the Council”) is a council constituted under the *Local Government Act 1999* (“the Act”) and it is entitled to exercise the powers conferred on it under the Act.
- b. The Council is vested with the fee simple of the whole of the Roads (which includes all footpaths) within the Council’s area (“the public Roads”).
- c. The Permit Holder specified in Item 1 of the Schedule wishes to use a portion of public Road being the area specified in Item 2 of the Schedule (“the Road”) for the purpose specified in Item 3 of the Schedule (“Business Purpose”) for the period specified in Item 4 of the Schedule (“the Permit Period”).
- d. The Permit Holder is not permitted to carry out the Business Purpose on the Road without a Permit from the Council issued in accordance with the Act.
- e. The Council has received an Application from the Permit Holder applying for the grant of a Permit from the Council under s22 of the Act.
- f. The Council has, if required, complied with s223(1) and 223(2) of the Act.
- g. The Council has agreed to grant a Permit to the Permit Holder to carry out the Business Purpose on the Road in accordance with the terms and conditions of this Permit.

Terms and Conditions

1. Grant of Permit

In consideration of payment the Permit Fee, the Council permits the Permit Holder under Section 222 of the Local Government Act 1999 to carry out and use the Road during the Permit Period for the Business Purpose.

2. Permit Holder’s Covenants

The Permit Holder expressly covenants and agrees with the Council that during the Permit Period the Permit Holder shall comply with the covenants, terms and conditions of this Permit as follows:

1.1 Fee

To pay to the Council the Permit Fee specified in Item 5 of the Schedule (“the Permit Fee”) in the manner specified therein;

1.2 Additional Charges

To pay any taxes, rates or charges levied by any government civic or municipal authority whether federal, state or local in respect of the use of the Road by the Permit Holder;

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1.3 Authorisations, Certificates etc

To provide to the Council prior to entering upon and using the Road for the Business Purpose a copy of all authorisations, permits, certificates and any other permits which may be required from the Council or some other governmental, civic, or municipal authority or otherwise to use the Road in the manner permitted under this Permit;

1.4 Indemnification & Release

- 1.4.1 To indemnify the Council from and against all actions, costs, claims and damages, which may be brought or claimed against the Council arising out of or in relation to the granting of this Permit or the use of the Road for the Business Purpose by the Permit Holder, except where any action, cost claim or damage is caused by the negligence or default of the Council, its officers, employees or its agents;
- 1.4.2 Without limiting Clause 1.4.1 the Permit Holder acknowledges and agrees that the Council shall in no way be responsible or liable for any loss or damage caused to any structure fixture or fitting located on or adjacent to the Road (whether it forms part of the Permit Holder's use of the Road or not) and the Permit Holder releases the Council from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from the structure fixture or fitting except where any liability or claim is caused by the negligence or default of the Council its officers, employees or its agents;

1.5 Public Risk Insurance

- 1.5.1 To effect and maintain during the Permit Period a public risk insurance policy from a reputable insurer in the joint names of the Council and the Permit Holder for the minimum amount of **TWENTY MILLION DOLLARS (\$20,000,000.00)** per claim or such other amount as the Council may reasonably require from time to time and such policy must;
 - 1.5.1.1 bear an endorsement from the insurer indicating the insurer accepts the indemnity given by the Permit Holder to the Council under Clause 1.4.1; and
 - 1.5.1.2 cover the injury, loss or damage to persons or property arising directly or indirectly from;
 - a. the use of the Road;
 - b. the maintenance of any structure fixture or fitting (if any);
 - c. damage to the Road or any structure fixture or fitting (if any); and
 - d. the making good of the Road, including the removal of any structure fixture or fitting on the Road at the expiration or earlier determination of this Permit;

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1.5.2 The Permit Holder must not enter on to the land and undertake the Business Purpose on the Road until the Permit Holder has provided to the Council a copy of the public risk insurance policy specified in Clause 1.5.1.

1.6 Industry Standards

Notwithstanding Clause 2.7, at its own cost and expense, to comply with any applicable construction industry or public health and safety standards in relation to the Business Purpose of the use of the Road.

1.7 Compliance with Statutory Requirements

At its own cost and expense to comply with any Act of Parliament, regulation or by-law relating to the Business Purpose of the use of the Road including but not limited to the sale or consumption of any alcohol on the Road under the Liquor Licensing Act 1997;

1.8 Compliance with Direction of Government Department or Authority

1.8.1 To ensure that the Business Purpose and the use of the Road by the Permit Holder and those permitted by the Permit Holder does not interfere with or cause damage to or effect in any way any wire, post, cable, pipe or other property or infrastructure belonging to a service provider including but not limited to Telstra, SA Water and/or United Water, Boral, Origin Energy Limited or any other Federal, State or local government department or authority; and

1.8.2 If any damage specified in Clause 1.8.1 does occur, without limiting the provisions contained in Clause 1.4, the Permit Holder agrees to indemnify the Council to the full extent permitted by law against any claim made against the Council for such damage and the Permit Holder agrees to make good any such damage or to reimburse the Council for any cost or expense it incurs in making good the damage.

1.9 Authorised Use

Not use the Road for a business purpose or allow any other part of the Road to be used other than in accordance with this Permit including but not limited to permitting any unauthorised use or unlawful activity to take place on the Road;

1.10 Maintenance & Repair

1.10.1 At its own cost and expense during the Permit Period to maintain any structure, fixture or fitting on the Road associated with the authorisation or permit and keep the structure, fixture or fitting in good, safe and proper repair and condition; and

1.10.2 Where the Permit Holder undertakes maintenance work to the Road or any structure, fixture or fitting on or near the Road, the Permit Holder must during the period in which the works are being carried out, erect warning signs and install appropriate warning devices on the Road in the immediate vicinity of the Road in accordance with the South Australian Field Guide and AS1742.3 Manual of Uniform Traffic Control Devices.

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1.11 Inspection of Alteration

- 1.11.1 To permit the Council at any time to inspect the Road and the Permit Holder's use of the Road and to comply with all reasonable requests of the Council in relation to the use of the Road, and any maintenance or repair to the Road; and
- 1.11.2 If the Permit Holder does not repair and maintain the Road to the satisfaction of the Council, the Council may without formal notice having been given to the Permit Holder, carry out any such repair and maintenance to the Road and the Council shall be entitled to recover from the Permit Holder any costs incurred in doing so as a liquidated debt;

1.12 Notification of Damage

- 1.12.1 To take all reasonable precautions to avoid damage to the Road or any part of the Road when using the Road; and
- 1.12.2 If the Permit Holder does cause damage to the Road or any part of the Road, or any of Council's property as a result of the Permit Holder's use or misuse of the Road, the Permit Holder must at its own cost and expense rectify the damage and reinstate the Road to the reasonable satisfaction of the Council.
- 1.12.3 If the Permit Holder fails to rectify and repair any such damage to the Road, or any Council owned property pursuant to Clause 1.12.2, the Council may undertake the rectification and repairs itself, without formal notice having been given to the Permit Holder and the Council shall be entitled to recover from the Permit Holder as a liquidated debt any costs incurred in doing so.

1.13 Location of Alteration

To ensure that use of the Road permitted under this Permit, remains within the confines of the Road and that no other part of the Road is used by the Permit Holder for the Business Purpose or any other business purpose without a formal written Permit from the Council; and

1.14 Control of Patrons

To ensure that its use of the Road including the use of it by its employees, agents, contractors and invitees does not obstruct, inconvenience or cause any disturbance or annoyance to any neighbour or other person using the Road and that the behaviour of its employees, agents and invitees is controlled and managed.

2. Mutual Covenants

2.1 Permit Not Transferable

This Permit is not transferable.

2.2 Execution of Permit

This Permit is not effective until the Permit Holder has received a copy of this Permit signed by the Council.

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2.3 Contractual Rights Only

This Permit does not confer on the Permit Holder any exclusive right, entitlement or proprietary interest in the Road.

2.4 Cancellation of Permit

2.4.1 This Permit will immediately cancel on the earlier of;

2.4.1.1 the expiration of the Permit Period;

2.4.1.2 the cancellation of the Permit by the Council as permitted under this Permit; or

2.4.1.3 subject to Clause 3.7, the expiration or earlier cancellation of an authorisation issued to the Permit Holder under s221 of the Act (“the Authorisation”), which Authorisation was granted to the Permit Holder in association with this Permit;

2.5 Consequences of Cancellation

2.5.1 Upon the expiration or earlier cancellation of this Permit and subject to the Permit Holder being granted either a renewal of this Permit in accordance with **Clause 2.6** of this Permit or the granting of a new Permit pursuant to s222 of the Act, the Permit Holder shall at its own cost and expense;

2.5.1.1 return the Road to its condition prior to this Permit having been issued, including but not limited to;

a. removing any structure, fixture or fitting; and

b. repairing any damage caused to the Road in removing the structure, fixture or fitting;

2.5.2 If the Permit Holder fails to comply with **Clause 2.5.1**, the Council may undertake the work itself and any costs incurred by the Council in doing so, may be recovered from the Permit Holder as a liquidated debt.

2.6 Renewal of Permit

2.6.1 If applicable, as determined by Item 7(a) of the Schedule, the Permit Holder may, prior to the expiration of the Permit apply to the Council for a renewal of this Permit (“Further Permit”) and provided the Permit Holder is not in breach of any provision of this Permit (“the Original Permit”) the Council agrees to grant a Further Permit to the Permit Holder for the period specified in Item 7(b) of the Schedule on such similar terms and conditions as was granted under the Original Permit excepting that;

2.6.1.1 the period of the Further Permit shall not be for a term such that the aggregate of the Original Permit and the Further Permit exceeds five (5) years;

2.6.1.2 the Council may, in its absolute discretion, vary the amount of the Permit Fee to be paid by the Permit Holder to the Council; and

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2.6.1.3 the Further Permit shall exclude this Clause 2.6.

2.7 Breach

2.7.1 If the Permit Holder breaches a provision of this Permit, the Council may give the Permit Holder a written notice in respect of the breach and the proposed cancellation of this Permit;

2.7.2 If the Council does give the Permit Holder a written notice such notice must advise the Permit Holder;

2.7.2.1 that it is in breach of this Permit;

2.7.2.2 the grounds on which the Council proposes to cancel the Permit;
and

2.7.2.3 allow the Permit Holder a reasonable time period within which it may give the Council written representations on the proposed cancellation;

2.7.3 If the Council receives written representations from the Permit Holder with respect to the proposed cancellation of this Permit, the Council must consider all representations.

2.7.4 The Council must, after having considered all representations from the Permit Holder confirm in writing to the Permit Holder that;

2.7.4.1 the Council accepts the written representations made by the Permit Holder and that the Permit will not be cancelled; or

2.7.4.2 the Council does not accept the written representations and that the Permit is cancelled, effective immediately.

2.7.5 If the Council serves a notice on the Permit Holder in accordance with Clause 2.7.2, the time period specified in the notice must be at least one (1) month unless the Council determines that a shorter period should apply to protect the health or safety of the public or otherwise to protect the public interest.

2.8 GST

2.8.1 For the purposes of this Clause 2.8;

2.8.1.1 **“the Act”** means the A New Tax System (Goods and Services Tax) Act 1999 (“Act”);

2.8.1.2 **“GST”** has the same meaning as that term in s195-1 of the Act.

2.8.1.3 **“Supply”** means a taxable supply and has the same meaning as that term in the Act.

2.8.1.4 **“Tax Invoice”** has the same meaning as that term in Section 195-1 of the Act.

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- 2.8.2 All monies payable by the Permit Holder to the Council pursuant to this Permit ("Payments") do not include a GST.
- 2.8.3 If when making a Payment to the Council, such Payment constitutes a Supply within the meaning of the Act, the Permit Holder shall also pay an amount on account of GST equal to the Payment multiplied by the current GST rate ("GST Amount").
- 2.8.4 Upon receipt of the Payment and the GST Amount, the Council will provide the Permit Holder with a Tax Invoice in a form compliant with the Act.

2.9 Costs

The Permit Holder shall reimburse the Council all of its reasonable costs incurred in granting this Permit (or any renewal thereof) and any other reasonable costs incurred by the Council as a consequence of the Permit Holder's default or breach or anticipated breach of any provision of this Permit including exercising or enforcing any rights or remedies available to the Council arising either at law or under this Permit.

2.10 Special Conditions

The parties agree that any of the Special Conditions specified in Item 6 of the Schedule, contained in the Annexure shall apply to this Permit. In the event of any inconsistency between the Special Conditions and these conditions, the Special Conditions shall prevail.

3. Interpretation

3.1 In this Permit reference to:

- 3.1.1 "**Act**" means the Local Government Act 1999;
- 3.1.2 "**Annexure**" means the Annexure attached to this Permit;
- 3.1.3 "**Permit Holder**" means the entity specified in Item 1 of the Schedule;
- 3.1.4 "**Application**" means the application made by the Permit Holder for the granting of this Permit;
- 3.1.5 "**Authorisation**" means any authorisation granted by the Council to the Permit Holder to alter the Road in accordance with s221 of the Act;
- 3.1.6 "**Commencement Date**" means the date specified in Item 4 of the Schedule
- 3.1.7 "**Council**" means the District Council of Yankalilla of PO Box 9 Yankalilla South Australia and includes its members, employees, agents and authorised representatives;
- 3.1.8 "**Permit**" means this Permit granted by the Council;
- 3.1.9 "**Permit Period**" means the period specified in Item 4 of the Schedule;

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- 3.1.10 **“Road”** means that part of the Road within the Council’s area, the subject of this Permit;
- 3.1.11 **“Schedule”** means the Schedule attached to this Permit and which Schedule forms part of this Permit;
- 3.1.12 **“structure, fixture or fitting”** means any structure, fixture, fitting or property erected installed either permanently or temporarily on the Road by this Permit Holder for the Business Purpose and approved by the Council;
- 3.1.13 reference to a Statute shall include all amendments for the time being in force and any other statute enacted in substitution therefore and regulations and by-laws for the time being under the statute and any notice demand order direction requirement or obligation under or pursuant to that statute or those regulations or by-laws and the expressions “statute” “act” “by-laws” shall mean any federal, state or local government statute, act, regulation or by-law from time to time in force and any notice demand or direction requirement or obligation issued made given or imposed under or pursuant to the same;
- 3.1.14 words importing the singular embrace the plural and words importing one gender shall embrace the other gender and vice versa respectively;
- 3.1.15 any reference to a person shall be deemed to include a corporate body and vice versa;
- 3.1.16 all moneys payable by the Permit Holder to the Council under this Lease shall be recoverable as a debt or at the option of the Council as payment of the Permit Fee in arrears;
- 3.1.17 headings are for convenience of reference only and shall not affect the construction or interpretation of this Permit;
- 3.1.18 where the words “not applicable” or “nil” appear opposite any part of any item of the Schedule each and every clause in this Permit in which specific reference is made to such part if the relevant item in the Schedule shall so far as the context shall permit be null and void and of no effect.
- 3.1.19 any Council policy relating to the issue of a permit under s222 of the Act or an authorisation under s221 of the Act does not override or derogate from this permit or an authorisation to the extent of any inconsistency unless the permit holder has been notified in writing of a variation to such a permit or authorisation.

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Schedule

Item	Details
1 Permit Holder	<hr/> (Name) <hr/> Contact (if different to Name) <hr/> (Address) <hr/> (Phone)
2 Road	<hr/> <hr/>
3 Business Purpose	<hr/> <hr/> <hr/>
4 Permit Period	<div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Days <input type="checkbox"/> Weeks </div> <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Months <input type="checkbox"/> Years </div> commencing on _____ and expiring on _____
5 Permit Fee	\$ _____ Payable <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Yearly with the first of such payment being payable on the Commencement Date.
6 Special Conditions	Nil/Refer Annexure
7 Renewal	a. <input type="checkbox"/> Yes <input type="checkbox"/> No b. <input type="checkbox"/> Day/s <input type="checkbox"/> Week/s <input type="checkbox"/> Month/s

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Annexure

Special Conditions

[strike out whichever is not applicable and add in any new Special Conditions]

Notwithstanding the terms and conditions contained in this Permit, the Permit Holder acknowledges and agrees;

1. **Bond**

To pay to the Council an amount of:

_____ [\$ _____]
representing a bond for the granting of this Permit which bond shall be returned to the Permit Holder upon the expiration or earlier determination of this Permit minus any deductions which the Council is hereby authorised to make in lieu of any payment or debt owing to the Council under this Permit.

2. **Restrictions on Use**

This Permit is subject to the Permit Holder;

3. **Hours of Operation**

(Specify those applicable)

The Council requires the permit holder to only use the outdoor dining area during those business hours of _____ unless otherwise agreed with the Council in writing.

4. **Street Furniture**

(Specify colour and materials)

All removable tables and chairs must be removed from the outdoor dining area outside the hours of operation.

5. **Umbrellas and Awnings**

Umbrella must be fixed into a concrete footing underneath the footpath pavement. No part of the umbrella stand should protrude above the pavement level so as to present a hazard to pedestrians when the umbrella is removed. Umbrellas must achieve a minimum of 2 metres height clearance from the pavement when in use. The circumference of the Umbrella when

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open must be set back at least 300mm from the kerb so as not to interfere with moving traffic.

6. Fixed Glass Screens and Plastic Blinds

The design and placement of fixed glass screens must comply with the following principles:

Design:

- The form and structural strength of screens must be adequate to meet functional requirements including wind loads, resistance to vandalism and impact from pedestrians.
- To avoid clutter in the street, screens must be simple in design and not appear as a decorative element in the street.
- Logos and other decorative elements are not permitted on screens.
- Screens may be laid out in a variety of configurations.

Location and Placement (refer to Appendix 3.2) depends on:

- Distance from kerb line (minimum 600 mm).
- Spacing with regard to buildings, trees and other elements of public street furniture.
- Positioning which allows for pedestrian amenity, including refuge from traffic.
- Existing kerbside use (ie car parking, loading zones, etc)

Screens must not be placed where they present a barrier and subsequent danger to pedestrians crossing the street. The length of any single screen along the street frontage must not exceed 10 metres, and a maximum of two screens in any one street block is permitted. Where adjacent screens are up to the maximum of 10 metres along the street frontage, the gap between screens must be a minimum of 2 metres (refer to Appendix 3.2).

Screens must not be placed on top of service covers or where they interfere with existing services. Licensees must remove screens at their own cost within three weeks of Council notifying of its intention to reconstruct the footpath.

7. Bollards and Energy Absorbing Bollards

(specify if required, placement and costs)

Where bollards are required, they must not be erected until drawings showing the height, placement and design have received the written consent of the Council. The bollards must be erected at the commencement of this permit.

The applicant proponent will pay the cost of the supply and installation of the bollards for outdoor dining purposes. Council can install bollards at the applicant's request.

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The following location and placement requirements apply to the use of bollards:

- Bollards must be set back from the kerb by 600mm for kerbside angle parking and 300mm for kerbside parallel parking. Outdoor dining furniture must be further set back from the bollards by 300mm.
- The spacing of bollards should provide adequate protection of outdoor dining areas from out-of-control cars. Spacing of 1.2m between bollards is considered to provide adequate protection.

8. Planter Boxes

The design and placement of planter boxes must comply with the following principles:

Design:

- The form and structural strength of planter boxes must be adequate to meet functional requirements including resistance to vandalism and impact from pedestrians.
- Planter boxes must not have sharp corners or edges.
- The physical appearance of planter boxes, including materials and style, must be consistent with any relevant streetscape strategy plan and the streetscape character including other street elements.
- To maintain their appearance and structural integrity, durable materials able to withstand harsh use should be used. Fully moulded plastic planter boxes are not permitted.
- Logos and other forms of advertising are not permitted on planter boxes.
- Plant material may be either planted directly into planter boxes or contained within plastic pots for ease of replacement. Where irrigation is provided, the water supply lines must be concealed underneath the footpath. Drainage may also be provided and permission gained to connect direct to the street's stormwater system. Overflow from irrigation systems or hand watering must not stain pavements or cause a safety hazard for pedestrians.

Size:

- Planter boxes may be of a variety of sizes, although a minimum width of 500mm is recommended. Planter boxes must not exceed 1200 mm long in any one unit.
- Plant Material: - (For suggested species refer to Appendix 3.3 Outdoor Dining Furniture Guidelines).
- Plant species must be suitable in terms of form, shape, hardiness and ability to be maintained.
- A list of those proposed plant species to be planted must be submitted at the time of applying for a licence.
- All dead plants must be removed and replaced with healthy specimens.

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Location and Placement depends on:

- Distance from kerb line (minimum 600 mm)
- Spacing with regard to buildings, trees and other elements of public street furniture.
- Positioning which allows for pedestrian amenity, including refuge from traffic.
- Existing kerbside use (ie car parking, loading zones, etc).

Planter boxes must not be placed where they present a barrier and subsequent danger to pedestrians using community land or crossing the street. Where a number of planter boxes are proposed, a minimum gap of 300 mm must be provided between units.

Planter boxes must not be placed on top of service covers or where they interfere with existing services. Licensees must remove planter boxes at their own cost within three weeks of notification by if the Council of notifies its intention to undertake maintenance works.

9. Advertising and Signage

Third party advertising is not permitted on items of furniture placed within the outdoor dining area. However, the outdoor furniture is permitted to have the name or logo of the premises placed on it as a minor element in the design.

A-frame signs are not permitted within the outdoor dining area or the 2.0 metre clear pedestrian zone adjacent to the dining area.

10. Canvas Screens

The following design principles apply:

- Canvas screens must be removable, and therefore of a light weight frame, easily installed and de-mounted, and securely fastened during periods of use;
- Canvas screens must not exceed 900mm in height;
- Canvas screens should be of a single primary colour; and
- Advertising on canvas screens in the form of a well-designed business name or business logo is permitted, provided approval has been granted under the Development Act 1993 and it complies with the Council's Moveable Signs By-Laws (if applicable). Advertising will not exceed a portion that covers 10% of the total available space on each panel, up to half of which may be commercial advertising in the form of product logos used or sold by the premises.

11. Any Other Issues

The placement of cash registers and dumb waiters on community land or the footpaths, in association with outdoor dining areas, is not permitted.

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Office Use Only

The Council has considered the Applicants application for a Permit to carry out the Business Purpose specified in the Application on the Road and the Council approves the Application and hereby grants a Permit to the Applicant on the attached terms and conditions.

Signature of Authorised Council Officer: _____

Name: _____

Position: _____

Date: _____

Reference of Council Resolution if applicable: _____

Copy of Insurance Policy attached: _____