

BUSINESS AND PRIVATE USE OF A ROAD

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Strategic Plan link: A Welcoming and Cohesive Community, A Robust and adaptive Economy that provides sustainable employment, A healthy natural environment and an attractive built environment.		
References and related Policies, Procedures and Forms: <i>Local Government Act 1999</i> Local Government (Financial Management) Regulations 2011 Planning, Development and Infrastructure Act 2016		

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1. Introduction

District Council of Streaky Bay recognises and supports the practice of selling or promoting some products from public roads within the Council area and acknowledges the need for appropriate permit procedures and guidelines for these activities to ensure public safety and fair sharing of Council's road reserve spaces.

This permit system is intended to guide how public road verges are to be used for business and other related purposes in ways that ensure an appropriate balance between the interests of the Council, street traders, residents, and visitors.

This Policy does not apply to:

- permanent or all year-round fruit sales outlets within private property
- stalls of any type intended to be located at one site for more than 3 months;
- Mobile food van vendors

The Policy applies to the following, and similar, business and other activities located on Council's road verge:

- outdoor dining;
- temporary stalls;
- street vending stalls;
- fundraising stalls;
- some casual and very short-term uses of a road verge by persons selling raffle tickets, holiday or festival appropriate flowers, home-made products, or persons seeking donations;
- busking or,
- seasonal stalls.

Council has an active involvement in the management of Outdoor Dining Areas, and may get involved in the following ways:

- as a Land Owner
- as the Development Assessment Authority administering the Planning, Development and Infrastructure Act 2016
- as the Administrator of the Local Government Act 1999 and the issuer of authorisation permits.
- as an Enforcement body in relation to the Food Act 2001

2. Strategic Focus

3. Objectives

The objectives of this Policy are:

- To provide for public health, safety and amenity;
- To establish procedures for registration and identification of traders who trade on Council's road verges;
- To manage the legal elements of road verges being utilised for private (business) purposes; and
- To indicate those types of activities which Council do not support.
- To demonstrate the accountability and responsibility of the Streaky Bay District Council to its ratepayers;
- To treat all parties involved fairly and equitably;
- To monitor and record all processes related to the assessment and issuing of Outdoor Dining Permits in the Council district;

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- To provide for and improve public health, safety and amenity in relation to outdoor dining areas. To treat all parties involved fairly and equitably.

4. Legislative Context

4.1 Footpath Trading

Under the Local Government Act 1999 a person must not use a public road for business purposes without a permit (section 222(1)). Business purposes include the use of land even if it is not intended to make a profit.

A permit may grant rights of exclusive occupation in relation to part of a public road (section 222(2)) may be granted for a particular occasion or for a specific period (Section 222(3)) but cannot exceed more than five years (Section 222(4)).

Public consultation is required if Council proposes to grant a permit that would result in any part of a road being fenced, enclosed or partitioned so as to impede traffic to a material degree (section 223(1)). Council can include conditions on a permit which it considers appropriate, requiring, for example, compliance with safety requirements, specific insurance or indemnities or payment of rent (Section 224).

Any person vending on a public road without a permit is in breach of the Local Government Act 1999 and an expiation fee of \$210 may apply. In addition, Council may impose a penalty of \$2,500 if a permit is not obtained (Section 222(1)).

Any alteration to the road requires an authorisation pursuant to section 221 of the Act.

A permit may be revoked by Council by written notice to the permit holder (Section 225)

4.2 By-Law No.2 – Movable Signs

By-Law 2 is developed to set the standards for movable signs on roads. It provides conditions for (and the) placement of signs (including A-Frame signage)

This by-law can be found on Council's website – www.streakybay.sa.gov.au

4.3 Planning, Development, and Infrastructure Act 2016

The erection of some fixtures may constitute building work for the purposes of the Development Act 2016 and therefore will require the approval of Council. Where the proposed fixtures are of a temporary nature they may be deemed not to constitute building work or change in land use. Applicants should contact the Development Services section of Council to determine if a development application would be required.

Changes of a more permanent nature or for a longer period are likely to be subject to a development application pursuant to the development legislation and Development Services staff can confirm this on a case by case basis.

4.4 Disability Discrimination Act 1992

Matters requiring consideration under the Disability Discrimination Act 1992 would include (but not limited to):

- to eliminate, as far as practicable, discrimination against persons on the grounds of disability in the areas of:
 - a) access to premises
 - b) the provision of goods, facilities, and services.

5. Definitions

“Alteration” Under Section 221 of the Local Government Act (SA) 1999: • altering the construction or arrangement of the road to permit or facilitate access from an adjacent property; or • erecting or installing a structure (including pipes, wires, cables, fixtures, fittings and other objects) in, on, across, under or over the road; or • changing or interfering with the construction, arrangement or materials of the road; or • changing,

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interfering with or removing a structure (including pipes, wires, cables, fixtures, fittings or other objects) associated with the road; or • planting a tree or other vegetation on the road, interfering with vegetation on the road, or removing vegetation from the road.

“Business purposes” includes any **“business activity”**.

“Business Activity” means any activity that is engaged in for the primary purpose of making a profit. In general, business activities can include things like sales, operations, marketing, production, administration and developing economic opportunities. This Policy relates primarily to business activities involving selling to the general public and passing trade. While other business activities can be undertaken on roadside locations, they are unlikely to be a practical or profitable use of that land. For the purposes of this Policy, land may be used for a business purpose even if the use is not intended to make a profit.

“Commercial / Special Purpose Permit” This permit is used when a road reserve or part of a road reserve is authorised for one- off special use such as café sidewalk/outdoor seating or commercial uses such as roadside petrol outlet that are not appropriate to issue as either a non-exclusive or exclusive permit.

“Fundraising stall” means a stall operating to raise money for a charity or not-for-profit organisation where 100% of the net proceeds of sales are directed to that charity or organisation.

“Imported goods and produce” means goods and farm produce not grown, dug, picked, collected, sourced or produced by the stall holder on land adjacent to the stall, and goods and farm produce, including manufactured goods, which are on-sold for a third party even if locally grown or produced.

“Manufactured goods” means goods produced on a large scale by manual labour and/or machinery. Manufactured goods do not include, farm produce dug, picked, collected, or sourced by the stall holder, or goods hand-made or produced by the stall holder.

“Mobile Trading” means the sale of items from a vehicle, where a particular item is sold to buyers from the vehicle itself.

“Outdoor Dining” is defined as tables and chairs placed on public land for the purpose of increasing the capacity of the café, delicatessen, dining or similar option for the proprietor and customers.

“Permanent stall” means a stall which is intended to be in place indefinitely, being more than six months continuously or consecutively, or in varying periods which together total more than six months over a 12 month permit period.

“Permit” means a permit to use a public road for business purposes as prescribed in Section 222 of the *Local Government Act 1999*.

“Road” Under the Local Government Act 1999, means a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicle or pedestrians or both and includes a bridge, viaduct, subway, alley, laneway or walkway.

“Roadside Verge” means a road verge is described as the portion of a thoroughfare which lies between the boundary of a carriageway (road) and the adjacent property boundary line.

“Rural Areas” means those areas outside townships.

“Seasonal” means farm produce which is available during its natural season or which is available periodically, and includes the sale of manure in accordance with best practice animal keeping.

“Small stall” means a stall no more than four (4) square metres in area.

“Street Vending” means the sale of items where the vendor is present at all times and assists buyers with their purchase.

“**Temporary stall**” means a stall which is in place for a limited time only, being not more than six months continuously or consecutively, or in varying periods which together total six months or less over a 12 month permit period.

“**Township**” means any part of the area of a council that contains at least 20 residences and that is defined as a township by the council by notice in the Gazette.

6. Policy Statement

6.1 Roadside Trading (including Footpaths)

6.1.1 The use of public footpaths in townships and urban areas and road verges in rural areas by business and other persons selling goods should be granted only where:

- a) there is no adverse impact on pedestrian safety or other road users; and,
- b) amenity of the locality can be preserved.

6.1.2. Council supports small stall (occupying no more than 4m²) and temporary street trading in townships which:

- a) does not require the construction of any permanent or fixed structure(s) within townships and urban areas; and,
- b) comprises charity or community service fundraising activities, or sales or promotions by businesses immediately adjacent to that section of street to be used for business purposes.

6.1.3 No manufactured goods shall be sold from road verge stalls on rural roads.

6.1.4 Vehicles used to sell goods, and any stall must refer to the mobile van vending policy.

6.1.5 Only those parts of a road reserve which are considered safe for pedestrian and vehicular traffic may be utilised. Assessment of acceptable sight distance for rural roadside verge stalls will be based on the following general approach for minimum safe stopping distance (SSD) either side of the location of the stall:

- a) 60kph road = 73 metres SSD;
- b) 80 kph = 114 metres SSD; and,
- c) 100 kph = 165 metres SSD.

6.1.6 A permit holder must agree to indemnify Council from all actions and damages whatsoever which may be brought against them for any wilful or negligent act. Public liability insurance for permit holders to the value of at least \$10 million to be provided.

6.1.7 Permission, either by permit or allowance under this policy, to operate in a particular location does not extend to times when a major event occurs which includes that same location – e.g. ‘New Year’s Eve (Alfred Terrace)’. Approval to operate during such events in the same location is to be obtained via the event organiser or Council.

6.1.8 Permits are only allowed for use of roadside verges. Permits will not be issued for:

- road carriageways or road surface areas, including areas set aside for the movement or parking of vehicles;
- any area where the parking or movement of vehicles is prohibited or restricted; or

- any other location, including verges, that Council determines are unsafe.

6.1.9 Impact on vehicles or road related infrastructure, A roadside trading business will not unduly interfere with:

- a) vehicles driven on roads;
- b) vehicles parking or standing on roads;
- c) a parking area for people with disabilities (within the meaning of rule 203(2) of the Australian Road Rules);
- d) public transport and cycling infrastructure (including bus zones, taxi zones and bike lanes);
- e) other road related infrastructure; or
- f) infrastructure designed to give access to roads, footpaths and buildings.

6.2 Types of permits included under this policy

6.2.1 Display and/or sale of goods on road verge

- Sale items displayed on trestle table with sale taking place in adjacent shop
- Goods placed directly on road verge with sale taking place in adjacent shop
- Fruit and vegetables in cart or on table on road verge with sales in adjacent shop
- Goods displayed on trestle table or placed directly on footpath with sale taking place outside shop

6.2.2 Roadside trading

- Seasonal stall – e.g. fruit, flowers
- Sale of rural produce from adjacent property – e.g. fruit, manure, hay, flowers
- Permanent or semi-permanent stall – e.g. fruit, flowers

6.2.3 Fundraising

- Fundraising stall

6.2.4 Outdoor Dining

- All forms of outdoor dining

6.3 Outdoor Dining

6.3.1 Council supports the use of public footpaths in townships and urban areas of the Council district for Outdoor dining, especially in association with an existing business, where no structures are to be constructed and where the use only involves the placement of tables, chairs, bollards, planters, signage and umbrellas in line with the requirements set out in this document and the associated guidelines.

6.3.2 Types of outdoor dining licence permits include;

- Extension of restaurant/café or pub seating to the front, side or rear
- Extension of seating related to fast food serving areas like Pizza Bars, Bakery, Café's, etc.
- Seasonal seating areas – e.g Summer dining or Wine and Food Festivals

6.3.3 Outdoor dining applications must be accompanied by certificates of insurance;

- That indemnifies Council
- Currency for Public Liability Insurance of \$20m

6.3.4 Where development approval is required a permit won't be issued until the Development Approval has been received

6.3.5 Permits are issued for up to a five (5) year period. Permits will expire on 30 June or upon the change in ownership of the business holding.

6.3.6 Permit Cancellations must be notified by writing to the Council

- 6.3.7 Outdoor dining areas remain public spaces. Outdoor dining operators and their patrons do not have exclusive use of the area.
- 6.3.8 Permits are subject to an annual review to determine compliance with the permit. If the Permit holder is in breach of the terms and conditions of the permit, then the Council is entitled to terminate the permit by providing written notice to the permit holder.
- First Breach – verbal warning will be issued, compliance to be achieved within 10 working days
 - Second Breach – written notice is provided, compliance to be achieved within 28 days
 - Third Breach – cancellation, Authorised Officer to provide a further extension or enforces a cancellation of the Outdoor Dining Permit. No refund is provided.

6.4 Advertising Associated with Trading

Signage shall be in accordance with;

- Planning, Development and infrastructure Act 2016
- By-Law No 2 movable signs
- Council Advertising Policy
- Completion of an application form

6.5 Exclusions

Mobile Food Van Vendors – refer to Policy

7. Fees and Charges

Fees are set and reviewed each year by Council and are listed in Council's *Fees and Charges Register*

- a permit fee will apply:
 - to the use of the road reserve within townships and urban areas to display and sell goods or for promotional and similar purposes;
 - in all areas where goods sold are imported or manufactured
 - in all areas where goods are sold from large and/or permanent stalls; subject to the exclusions noted below
 - Outdoor dining areas
- no permit fee will apply for:
 - a small temporary or permanent stall displaying and selling manure adjacent to a residential or rural property;
 - a small temporary display selling seasonal good and produce (i.e. flowers, fruit and vegetables) adjacent to a residential or rural property;
 - one day only of the sale of manufacture or imported good or for promotional purposes (up to a maximum of 5 days per annum);
 - fundraising stalls for charitable purposes

8. Application and Permit Process

- 8.1 Application form to be completed and lodged with Council together with required information (NB: a single application may be lodged for special events) at least 7 business days prior for temporary and 21 business days for outdoor dining or permanent displays.
- 8.2 Council officer, or officers inspect the site to assess suitability of the site for long term applications.
- 8.3 If it is determined the activity will require other approvals, such as approval under the Public and Environmental Health Act 1987 or development approval under the Planning, Development and Infrastructure Act 2016, the applicant will be advised that the application cannot proceed until the required approvals have been obtained.

9. Conditions of Permits

The following conditions, where applicable, will apply to all Roadside Trading Permits:

- a) the permit holder will comply with all relevant laws of the Commonwealth and State and any relevant Council by-law;
- b) the permit holder agrees to comply with permit conditions and this *Policy*;
- c) vendors must comply with all provisions of the Australian Road Rules;
- d) permit holders in townships and urban areas must remove all vehicles and equipment from the public footpath or road verge at the end of each day or at the conclusion of business unless this permit indicates otherwise;
- e) this permit must be supplied on request by an authorised officer of Council;
- f) permits must be kept on site at all times;
- g) the permit holder is required to notify Council in writing within seven (7) days of any changes of address of operations;
- h) the permit is non-transferable;
- i) a permit holder must indemnify Council from all actions and damages whatsoever which may be brought against them for any wilful or negligent act;
- j) all permit applications that relate to the sale or distribution of any food materials, must have lodged a Mobile Food Vendor Application Form and had food preparation equipment that is intended to be used, inspected by and approved by an Environmental Health Officer;
- k) signage shall be in accordance with signs per stall, with an advertisement area of not more than 0.36 square metres (e.g. 1200mm x 300mm or 600mm x 600mm) and situated immediately adjacent the stall with no approach signs allowed;
- l) this permit is not valid if a major event occurs which includes the same location as approved under this permit. Approval to operate during such events in the same location must be obtained via the event organiser;
- m) permits are issued subject to the principles, terms and conditions of Councils Roadside Trading (Use of Public Road Verges for Business Purposes) Policy; and, Guidelines.
- n) any breaches of permit condition(s) or of Councils Roadside Trading (Use of Public Road Verges for Business Purposes) Policy may result in the cancellation of the permit.

10. Delegations

As per Council Delegation Schedule relevant sections of the Act.

11. Records Management

All records shall be kept and disposed of in accordance with Councils Records Management Policy & procedure and the current General Disposal Schedule.

12. Further Information and Policy Availability

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site:

District Council of Streaky Bay
29 Alfred Terrace
Streaky Bay SA 5680
www.streakybay.sa.gov.au

Copies will be provided to interested parties upon request. Email dcstreaky@streakybay.sa.gov.au

13. Document History

Version No:	Issue Date:	Description of Change:	Date Endorsed
1.00	November 2011	First Version	18 November 2011
2.00	October 2022	Second Version – expanded scope of Policy	December 2022



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District Council of Streaky Bay
2022 Footpath Trading –
Business Use of a Road Guidelines

Reference Number:	DCSB-I-14.10
Type:	Guidelines
Responsibility:	Prosperity
Responsible Officer (s):	Economic Development Officer
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Last Review Date:	November 2022
Next Review Date:	November 2024
Legislation:	Local Government Act 1999, reference Chapter 11 (S 221/222) Development Act 1993 Disability Discrimination Act 1992 Road Traffic Act 1961
Related Documents:	<i>Business Use of a Road Policy</i> & Application for Permit Corporate Risk Management Policy Risk Management Framework Relevant Australian Standards Care, Control & Management of Roads (Highways) by the Commissioner of Highways. <i>Operational - Instruction 20.1 (DPTI)</i>



1. Overview

The purpose of these Guidelines is to provide a framework for undertaking a business activity on a public road (which includes a footpath) throughout the District Council of Streaky Bay.

Council has a legal obligation to regulate business activity and ensure a safe and accessible environment for all users of its roads within the Town. The Business Use of a Road Policy (“the Policy”) enables Council to safely manage the needs of pedestrians, road users and business owners.

In general, council recognises the increasing popularity of outdoor dining and other activities and their contribution to increased social and cultural life, enhancing a sense of identity, vibrancy, security and relaxation, and its importance for economic prosperity of the district.

Council supports and encourages the use of public footpaths and public spaces for business purposes, and may permit persons to use or, encroach upon a road within the framework provided by the policy and these guidelines.

Council is principally interested in encouraging and facilitating the use of the road verge areas in the district for business purposes such as outdoor dining, or short term stalls. This procedure and overarching policy assists Council to safely manage the competing needs and interests of pedestrians, road users and business owners by allowing outdoor dining and other business use in a manner that improves the usage, quality, and image of the district's public realms.

The purpose of this guideline is to provide a framework for the issue and management of permits for public footpaths and other local government land within the district.

2. Principles and Scope

The use of a public road to undertake a business activity (e.g., outdoor dining/temporary street stalls), has become increasingly popular.

Council recognises the importance of a diverse dining and business experience to add vibrancy and economic prosperity across the district.

Council encourages and regulates commercial and non-commercial (business) activity occurring on Council roads (which includes the footpath area).

These guidelines set out principles with regards to the use of a road for the purposes of business and trading with special consideration for locations that impact neighbouring residential areas.

It is in the best interests of the entire community that a balance is found between the interests of various key stakeholders when activating a road for the purposes of business use.

3. Notes to Document

Business activities, such as outdoor dining, the placement of goods and products, can add vibrancy to the district. (The use of A - Frame advertising boards is governed by the Local Government Act and By-Law 2 (Moveable Signs) and associated policy)

Note 1: A road extends from property boundary to property boundary and includes the carriageway, footpaths & verges.

Note 2: If a Footpath Trading/Business Use of a Road Application for a permit also requires road altering activities (pursuant to Section 221 of the Local Government Act 1999), the applicant must also complete an application to alter a road.

Note 3: Allowing business activity does not grant a person with exclusive rights to a road and in the majority of instances cannot exclude the general public from accessing the area.

Note 4: Each application is assessed on merit with regard to site characteristics as determined through risk profiling.

Note 5: If a business activity includes signage, it must also consider Council's Advertising Policy.

These Guidelines should be read in conjunction with the Footpath Trading/Business Use of a Road Policy (“the Policy”) and the Footpath Trading/Business Use of a Road Permit Application (“the Application”) – for the purposes of applying for the (formal) use of a road.

4. Application of the Policy

4.1. Business Use (of a road) Activities

A request to *permit* an activity on a road will be assessed on individual merit and against Council's Policy. A localised assessment will be undertaken from a risk perspective and may require alterations to existing infrastructure and/or the installation of additional infrastructure (E.g. Energy Absorbing Bollards).

A business owner does not have a right to extend their business operation on the adjacent road without authorisation/permission from Council. Pursuant to the Local Government Act ("the Act"), Council has powers to allow and permit such a function where there is no compromise to safety, accessibility or amenity to the general community.

4.2. Granting of a Permit

The issue of outdoor dining permits (including leased areas) is conducted on a case-by-case basis and is at the discretion of the council after assessment of the following:

- Public safety
- Community benefit
- Impact on pedestrian and vehicular traffic
- Impact on street amenity, including character and heritage issues
- Adjoining land uses and likely impact of noise
- Accessibility issues and Disability Discrimination Act 1992 requirements Outdoor Dining
- Valid and adequate public liability insurance

Council reserves the right to not grant a permit to an applicant where safety, accessibility or amenity issues are negatively impacted. Council also reserves the right to cancel, suspend or amend a permit where activities are found to subsequently negatively impact on the wider community and/or detract from, or be detrimental to, the amenity of an area after the permit is granted.

4.3. Applying for Permit

To be granted a permit pursuant to the policy, applicants must complete and sign the permit application form, which provides a number of general conditions. Special conditions will be applied dependant on local and/or specific requirements.

Non-compliance with the conditions of the permit may result in the cancellation, suspension or amendment of the permit.

A permit is required for all business activity on a council road. The permit holder is liable for any breach of the conditions set out in the policy, including those breaches committed by their employees or volunteers.

Once a permit is granted, it must be displayed in a prominent location within the premises and must remain visible within the public area of the premises.

4.4. Assessment of application

The assessment of any permit application will take into account the following issues:

- a) appropriate location of the chairs, table, stall or other temporary structure, having regard to the safety of other road users and pedestrians;
- b) assessment of acceptable sight distance for rural roadside verge stalls in accordance with clause 5.8;
- c) control of obstructions;
- d) location of nearby infrastructure, properties and driveway crossovers;
- e) control of visual amenity, cleanliness and litter;
- f) scale and nature of proposal;

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- g) the protection of Council against any public liability claims arising out of any failure by the permit holder;
- h) and any other relevant factors.
- i) Referral to other sections within Council, when relevant;
- j) Determine any conditions which should apply; and
- k) Application granted or refused
- l) If the application is granted, and the determined fee paid, then the permit will be issued.

An approved permit is valid for up to a maximum of 4 years and invoiced for associated fees each year.

4.5. Change of Ownership

A new application is required when a business changes ownership. This includes application form, site map, insurance certificate and liquor licence (if required).

4.6. Various Permits & (other) Licences

The granting of a permit is not consent to conduct any activities that are subject to control by other legislation, i.e. Liquor Licensing 1997, Tobacco Regulations, and the Development Act 1993.

5. Business Use Activities

5.1. Guiding Points

The following will be “guiding points” to assess an application in commercial and retail areas:

- Roads (including footpaths) will remain a Council asset.
- Council seeks to ensure that appropriate roads are activated for business use.
- Adjacent businesses have first option to activate the area immediately adjacent to their premises.
- The concept of ‘use it or lose it’ is the prevailing sentiment and Council will encourage the general use of all areas in commercial/retail zones to drive economic benefit and vibrancy.
- Business use does not give exclusive rights (of a road) in any capacity.
- Council retains the right to make any (and all) decisions on a permit application and will consult with adjacent businesses where appropriate.
- Trading on the footpath or road does not constitute a change of use for a business premises.

5.2. Location of (Footpath Trading Areas) on a road

In determining whether a location is appropriate for a business undertaking, safety and the reasonable ease of flow by the general public will be a core consideration of Council.

Australian Standard AS1428 (Design for Access & Mobility) provides information regarding the clear and continuous path of access for pedestrians, though does not specify the location of the access way.

Information provided by Blind Citizens Australia (Adelaide branch) recommends that a *clear and logical path of travel is best achieved by providing a clear space next to walls or shop fronts*. Council will determine the most reasonable placement of furniture & fixtures, dependent on the road and the merits of an individual application.

Where a business entry/exit opens to an outdoor dining area, the distance from the building should be 1800mm to allow adequate cross over distance i.e. a person with a pram exiting a café can easily pass a wheelchair as it travels along the footpath.

5.3. Wheelchair access

The following issues should be addressed to make the areas wheelchair accessible:

- Can a wheelchair fit easily under at least some of your tables?
- As a guide, a table surface height of 750mm - 850mm is recommended
- Can a wheelchair access at least one of your dining tables without impeding pedestrian movement space?

Whilst the above arrangements are considered best practice, all applications will be assessed on the merits of the application and from a risk perspective.

5.4. Footpath Trading on a road (footpath) areas

The capacity to facilitate and allow footpath trading at certain locations is an important part of creating an attractive, vibrant, active street scape and attract further visitation to the district. Council has the responsibility to ensure that any activities taking place on the footpath do not compromise access and general safety.

Footpath trading is appropriate as long as the footpath in a particular location is of sufficient width to enable the placement of tables and chairs and other fixtures without unreasonably limiting pedestrian access or the safe and continuous movement of vehicles on the adjacent carriageway.

Furniture not contained within the permitted area prevents pedestrian traffic flow, which may cause congestion or force pedestrians onto the road, creating serious personal safety issues. Furniture obstruction may also cause injury to both people and property.

The permit holder is responsible for ensuring patrons keep furniture within the permitted boundaries and to keep all pedestrian clearances and tactile indicator paving clear and safety requirements maintained at all times during outdoor dining and/or street trading operation.

5.5. Footpath Trading extension beyond Permit Holder's boundary

The extension of outdoor dining along the footpath into areas that are not directly adjacent the associated business will only be permitted where the relevant adjacent business elects not to utilise the area and Council agrees to a permit for that location.

Extension of footpath trading beyond the principle (adjacent) premises will be at the sole discretion of Council. Should the adjacent business change ownership permission to continue to operate must be sought from Council. The General Terms and Conditions of Permit will apply in these circumstances.

5.6. Special Events

When special events are held in the vicinity of permitted areas, the requirements for each special event will be communicated to permit holders and any revised arrangements negotiated.

6. Operating Guidelines

6.1. Conduct of Business

The following conditions apply to all permits, pursuant to the Policy:

- The permit holder must not allow a nuisance to exist on or emanate from the business area nor allow offensive activity.
- The permit holder must not allow the activity to detract from the amenity or safety of an area, nor negatively impact on the wider community.
- No storage of goods will be permitted on the footpaths
- No entertainment shall be allowed without the written consent of Council.
- Only the business activity approved by Council shall take place within the designated approved area.

- A defined pedestrian area (determined with Council) must be maintained for pedestrians at all times.
- The area must be kept clear of all rubbish/waste/refuse/food at all times.

It is the responsibility of the permit holder to ensure that patrons do not:

- Move any tables, chairs or ancillary items outside the permitted area, and to ensure that there is no obstruction created from the movement of these items.
- Obstruct the footpath with pets, prams, bicycles or other personal items.
- Congregate in the clear walkway area.

It is also the responsibility of the permit holder to make sure that their employees:

- Do not serve food or beverages outside the permitted area.
- Do not inhibit pedestrian movement in the clear walkway areas.

6.2. Road Safety

Footpath trading areas must not impact on traffic safety, including vehicular and cyclists' sightlines. Permit holders must follow Council's guidance in relation to the relevant road rules.

Where business areas are located near an intersection or are in a position perpendicular to the line of the kerb, they should be set back from the corner to a minimum of the existing building alignments, to maintain road users' sightlines. Road users' sightlines should be maintained in accord with the Austroads Guide and any other relevant standard.

6.3. Furniture

Street furniture must consider any relevant standards and should be selected for durability, style and to ensure that it complements the streetscape area. The permit holder is responsible for the provision and maintenance of the furniture.

Furniture should be of standard dimensions and should not overcrowd the area. As a guideline, the following minimum space is desired:

- Two (2) person table and chairs – 2 sqm;
- Three (3) person table and chairs – 3.5 sqm;
- Four (4) person table and chairs – 4 sqm.

Furniture and other fixtures should not cause trip or other hazards. Dining and display structures may not be fixed to the footpath (unless authorised) and are to be removed outside of business trading hours (unless fixed or semi-permanent). Furniture, awnings, barriers and other ancillary items are not to obscure or obstruct the view of any advisory or regulatory signs and traffic controls.

Furniture and other ancillary items may only be affixed to the footpath where:

- Written permission is received from Council, specifying the type and style of fixing.
- No other suitable method of fixing is considered available by Council.
- The fixing of the furniture and other ancillary items is designed for the express intention of providing shelter and safety to the public.
- All anchor points are recessed or removable so as not to present a tripping hazard for pedestrians when the furniture and other ancillary items are removed.

As the fixing of tables and chairs to the footpath is not a preferred option, Council will only support if the circumstances are unique for a specific location.

Tables, chairs and other furniture must be kept clear of all required fire exits of the premises of adjoining premises. This includes fire hydrants.

6.4. Ancillary Items

In addition to routine furniture such as tables and chairs, business activity can be enhanced via the provision of additional features such as planter boxes, heaters and umbrellas.

Any additional features should be complementary to the streetscape of the area and should be constructed and maintained to a high commercial standard (refer Standards Australia).

The establishment of accessories is at the expense of the operator/trader and must not result in the need to relocate any existing (Council) street furniture, fixtures/services or trees.

Section 234 of The Local Government Act gives Council the authority to remove any items that do not comply with these guidelines. The Act states:

- (1) A council may remove and dispose of any structure, object or substance from a road if -
 - (a) it has been erected, placed or deposited on the road without the authorisation or permit required under this Part; or
 - (b) an authorisation or permit has been granted but has later expired or been cancelled.
- (2) The council may recover the cost of acting under this section as a debt from the person who erected, placed or deposited the structure, object or substance on the road.
- (3) If, as a result of any accident involving a vehicle or vehicles, any wreckage, objects or materials are left on a road, the council may clear the area and may recover the cost from the driver of the vehicle or, if more than one vehicle was involved, the driver of any one of the vehicles.

6.5. Planter Boxes

Screens and planter boxes must not be placed where they present a physical/visual barrier or danger to pedestrians or people alighting from vehicles. This would be assessed by Council and any works would be at the expense of the applicant.

- Individual planter boxes should have a minimum width of 500mm and (if rectangular) a maximum length of 1.2 metres.
- At an intersection or roundabout, the entire box (including the height of the plant) must not exceed a maximum 1.0m as per Australian Standards to provide clear sightlines of oncoming traffic.
- At other locations (not intersections or roundabouts) the maximum height is 1.5m
- Boxes should not have sharp edges.
- When placed in a position horizontal to the kerb, there should be reasonable gap between each box, or other structure, to allow for access for pedestrians.
- Planter boxes must be constructed of durable materials.
- Discharge from the planter box is not to enter into the stormwater system and discharge is not to stain the pavement or create a hazard.
- Planter boxes and plants must be maintained to high standard. Untidy and poorly maintained planter boxes will result in the suspension of the Permit.
- Must be placed 30cm from the curb.

6.6. Umbrellas

- Umbrellas, when opened, must have a clearance of a minimum of 2.2 metres above the footpath level and not overhang onto bike lanes
- Umbrellas must be secured, and must be closed or removed during extreme wind conditions.
- Side curtains to umbrellas are not permitted.
- Umbrellas must be maintained in good condition at all times.

- Umbrellas must be removed when the area is not in use.

6.7. Heating and Cooling Units

- Heating and cooling units may be installed with the permission of the Council. Such units should be specifically designed for outdoor operation and comply with relevant standards.
- All heating and cooling units must be operated by the operator or employees and must not be able to be accessed by patrons.
- Heaters and cooling units must be serviced and maintained regularly and should be equipped with emergency shut off valves or switches.

6.8. Lighting

- Where business activity occurs outside daylight hours, adequate lighting must be provided by the operator in order to ensure safety of pedestrians and the amenity of the area is maintained.
- Chasing and/or flashing lights are not permitted in outdoor dining areas (excluding fairy lights for Christmas decorations).
- Lighting should be maintained in good working order and should not create unreasonable spill into neighbouring properties.
- Lighting must not be a distraction to road users.
- Decorative Christmas lights are encouraged between 1 November and 6 January.

6.9. Advertising

Advertising signage will only be permitted in accordance with the requirements of the Development Act 1993 and By-Law No.2-*Moveable Signs and Councils Advertising Policy*.

6.10. Maintenance

The permit holder is to maintain the area, (including the footpath) in a clean, hygienic and tidy state at all times.

Dining locations are required to be swept and mopped frequently during trading hours to ensure that spillage of food and beverages does not cause staining and litter does not escape within or outside the designated business area.

Waste and sweepings are not to enter into the gutter.

The disposal of waste and wastewater into the gutter and storm water constitutes an offence.

6.11. Table Service

Outdoor dining areas will be approved, in most instances, only where table service is provided.

Waste is to be disposed of appropriately by the permit holder and such waste under no circumstances is to be deposited in public litter bins or allowed to enter the stormwater system.

Food for table service is to be prepared in the business premises and not within the permitted area.

6.12. Consumption of Alcohol

A general permit does not allow the supply and consumption of liquor in the designated area. A separate (liquor) licence must be obtained for the consumption of alcohol through Business and Consumer Services (www.cbs.sa.gov.au).

Alcohol can only be served and consumed in the designated area with the appropriate licence. A copy of the liquor licence for the specified outdoor dining area must accompany the application or renewal form.

6.13. Animals

Enabling animals to sit quietly underneath or beside tables in outdoor dining locations provides pet owners with additional freedom and can provide additional benefit to businesses, attracting pet owner customers.

At the discretion of the permit holder, allowing animals in a designated area can only occur when they are under the effective control of the owner (must be on a leash) and are not being fed within the outdoor dining area.

The permit holder may deny the entry of animals to a defined outdoor dining area under their responsibility but may not prevent animals from passing by the pedestrian corridor.

Water bowls may be provided for dogs, during hot weather. These bowls must not be placed within the pedestrian corridor and must not become a tripping hazard.

6.14. Smoking

Smoking is forbidden within a designated permitted business area.

The permit holder must agree to a 'no smoking' environment and must refuse service to any person not complying with this requirement. A person smoking in this area is guilty of an offence and liable to a fine under the Tobacco Products Regulation Act 1997.

"No Smoking" signs must be displayed in such a way to explain that smoking is an offence in the permitted area and a fine may be incurred by the offending person(s).

Further detail can be found via www.sahealth.sa.gov.au.

6.15. Damage to Property

The permit holder is responsible for ensuring that patron behaviour does not lead to damage of public (Council) property.

If public property damage does occur, the permit holder is responsible for notifying the owner of the property and ensuring the damage is fixed at the permit holder's cost and to the satisfaction of Council.

6.16. Amplified Music

Amplification and/or live entertainment is not permitted in permitted areas without Council approval and noise levels are to be within specified requirements of applicable legislation.

6.17. General Noise

Permit holders are to display signage in an appropriate place reminding customers of nearby residents and requesting customers leave in a quiet and orderly manner.

7. Administration

7.1. Public Consultation

The Local Government Act and its Regulations require that Council undertake public consultation in relation to an application for a Footpath Trading/Business Use of a Road Permit where it may impede vehicular traffic to any material degree.

Council seeks to provide additional consultation in the case of a business that:

1. Extends a footpath and impedes vehicular traffic to any material degree and,
2. Is located on the corner of a non-residential main street and a residential side road.

In the case of a business location that is surrounded by residential zones on all sides, both planning approval and public consultation will be a part of that approval process.

7.2. Fees and Charges

Fees and Charges Fees are payable either annually, or pro-rata if approval is granted for the first installation after the commencement of the financial year and will be charged in accordance with Councils Fees and Charges Schedule.

Council reserves the right to vary the fees payable in determining individual applications in which agreement is reached to contribute to capital upgrades of public infrastructure. All item/s must be stable and be able to withstand wind gusts without any movement.

7.3. Permit, Monitoring and Enforcement

Applicants need to complete the (permit) Business Use of a Road/Footpath Trading application form and include a site plan drawn to an appropriate scale showing the actual area proposed for use.

Operators are required to comply with all conditions of the permit.

7.4. Breach of Permit

The following process will apply for breaches to the permit:

- First breach of the conditions of the permit or policy will result in a verbal warning (with notation on the permit file) and compliance to be achieved within 28 days.
- Second breach of the conditions of the permit or policy will result in a written notice and compliance to be achieved within 28 days (with notation on permit file).
- Third breach of the conditions of the permit or policy will result in the cancellation of the permit with no refund and removal of items by Council. (Fees will apply for the return of any confiscated items).

A third breach will preclude the business operator from making a subsequent application for 12 months.

Authorised Officers (of Council) will monitor permitted areas and operators are required to comply with any lawful direction provided by an Authorised Officer.

It will be at Council's discretion to cancel, suspend, amend or reinstate a Business Use of a Road Permit.

It is purely the applicant's responsibility to ensure the insurance details and liquor licence is up to date and to notify Council.

7.5. Public Liability Insurance

It is a condition that permit holders hold a current public and products liability insurance policy to the minimum value of TEN MILLION DOLLARS (\$10,000,000 AUD), for all permits (excluding Outdoor Dining).

Outdoor Dining Permit holders will be required to hold a current public and products liability insurance policy to the minimum value of TWENTY MILLION DOLLARS (\$20,000,000 AUD)

A copy of "Certificate of Currency" must accompany the application or renewal of a permit.

8. Applying for a Permit

Step 1 Obtain an application for Private and Business Use of a Road Reserve application form from the Council Principal Office or download the form from Council's website www.streakybay@sa.gov.au

It may be necessary to submit a Development Application. Please consult with Council before lodging an application, should the proposed business activity include the construction of a structure on the road

Step 2 Submit the completed Application Form, including a scaled site plan, copy of the relevant Public Liability Insurance and a copy of the Liquor License - if applicable.

Step 3 A Council Authorised Officer will undertake a site inspection to validate the site plan.

Step 6 Once Council has assessed the application, an invoice will be sent out

Step 7 Upon payment the Permit will be posted or made available for collection.

Electronic Version is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version

Step 7 Once the Permit is issued, the business activity may then commence on the road (footpath) in accordance with the conditions of the permit/policy.

Note: A permit pursuant to the policy is specifically for the person/company/association listed on the permit but can be transferred to another entity as long as Council is notified.

Unused annual Permit Fees are non-refundable.

Permits are for 4 years and must be renewed within 14 days of the expiry date. Compliance with the Policy and conditions will be a prerequisite to obtain renewal of an existing Permit.