

POLICY

Policy Name	Outdoor Dining and Street Traders Permit Policy
Policy Category	Governance
Department / Officer	Corporate and Community Services/ Property Team
Date Adopted	24 July 2017
Date/s Reviewed	
Review Frequency	Biennial
Strategic Plan Reference	<p>Objective 2 – Attractive lifestyle and inclusive community 2.1.5 Create safe open spaces and public areas through appropriate urban design 2.4 Encourage community participation and interaction (accessible and inclusive) 2.5 Cultivate a vibrant community culture</p> <p>Objective 3 – A thriving local community 3.1 Support a competitive environment for business growth 3.1.5 Support the Mainstreet Precinct as the commercial and community heart of Victor Harbor</p> <p>Objective 4 – Services and infrastructure supporting the community 4.3 Create and manage safe road and footpath networks</p>
Attachments	Outdoor Dining Guidelines, Street Trading Guidelines

1. Purpose

To provide a permit framework that provides opportunity for businesses to use the adjoining public footpath for outdoor dining or street trading while giving due consideration to statutory and best practice requirements for pedestrian safety, needs and movement, including those pedestrians with disabilities or special mobility needs.

To support the local business community and encourage community participation and interaction.

2. Scope

This Policy applies to Traders seeking Council's required approval to display goods on the public footpath or for outdoor dining from their adjoining business premises.

This Policy includes Council's *Outdoor Dining Permit Guidelines*, and Council's *Street Traders Permit Guidelines*) which are the interpretation and guidelines for the administration of this Policy.

3. Policy Statement (Summary)

Council supports the appropriate use of public footpaths for outdoor dining and street trading whilst ensuring public safety and accessibility for all whilst balancing the local economy with residential amenity.

4. Legislation and Compliance

Local Government Act 1999

Section 222(1) Permits for business purposes

A person must not use a public road for business purposes unless authorised to do so by a permit. Maximum penalty: \$2,500

Road means a public or private street, road or thoroughfare to which public access is available on continuous or substantially continuous basis to vehicles or pedestrians or both and includes; a bridge, viaduct or subway, alley, laneway or walkway.

225—Cancellation of authorisation or permit

Related legislation and standards to be considered in conjunction with this Policy includes:

- *Local Government Act 1999*
- *Development Act 1993 and Development Regulations 2008*
- *Federal Disability Discrimination Act 1992*
- Guide to Traffic Engineering Practice, Pedestrians, Part 13, Standards Australia
- *SA Liquor Licencing Act 1997*
- *Tobacco Products Regulation Act 1997 (the Act) and Tobacco Products (Smoking Bans in Public Areas – Longer Term) Regulations*
- *Work Health and Safety Act 2012*
- Australian Standards
- By-law No. 2 – Moveable Signs
- By-law No. 3 – Roads

5. Definitions

Outdoor Dining: the use of the public footpath for the purpose of extending the services of the premises whose main function is for the provision of food and beverages to the public. Such premises include restaurants, cafes, bars, hotels, delicatessen, and other food outlets.

Street Trader: a business using the footpath for the sale/display of goods from their adjoining business premises.

Permit: means a permit to use a public road (including footpath) for business purposes as prescribed in Section 222 of the Local Government Act 1999.

Public Footpaths: are defined as all footpaths and malls which are intended to provide public pedestrian access and are under the care and control of Council.

Objects: any other related outdoor dining items apart from tables and chairs, including café barriers, umbrellas planter boxes etc.

Display Objects: any structure that enables products to be displayed on or in them, such as trestle tables, hanging product displays (such as clothes racks), bins, trolleys, baskets carts etc.

Property Boundary: the building frontage.

6. Policy Content

6.1 Principles

Council's Policy directions are guided by the following principles:

- Council's support for the provision of a 'pedestrian friendly' streetscape with consistent, well maintained and accessible footpath space for all users.
- Council supports the commercial use of the footpath space for Outdoor Dining and Street Trading where this does not impinge upon Councils goals of accessibility, public safety and amenity in accordance with the Disability Discrimination Act 1992 and where it contributes to the desired precinct character.
- To encourage community participation, cultivate a vibrant community culture and support the local economy.
- Council recognises that the commercial use of footpaths for outdoor dining and street trading can enhance the amenity and appeal of public spaces through the creation of vibrant and dynamic streetscape.
- Council supports a merit based assessment of applications in accordance with Council's Outdoor Dining Guidelines and Street Trading Guidelines.
- To promote fairness, consistency and equity amongst traders in their use of public footpaths for commercial purposes.

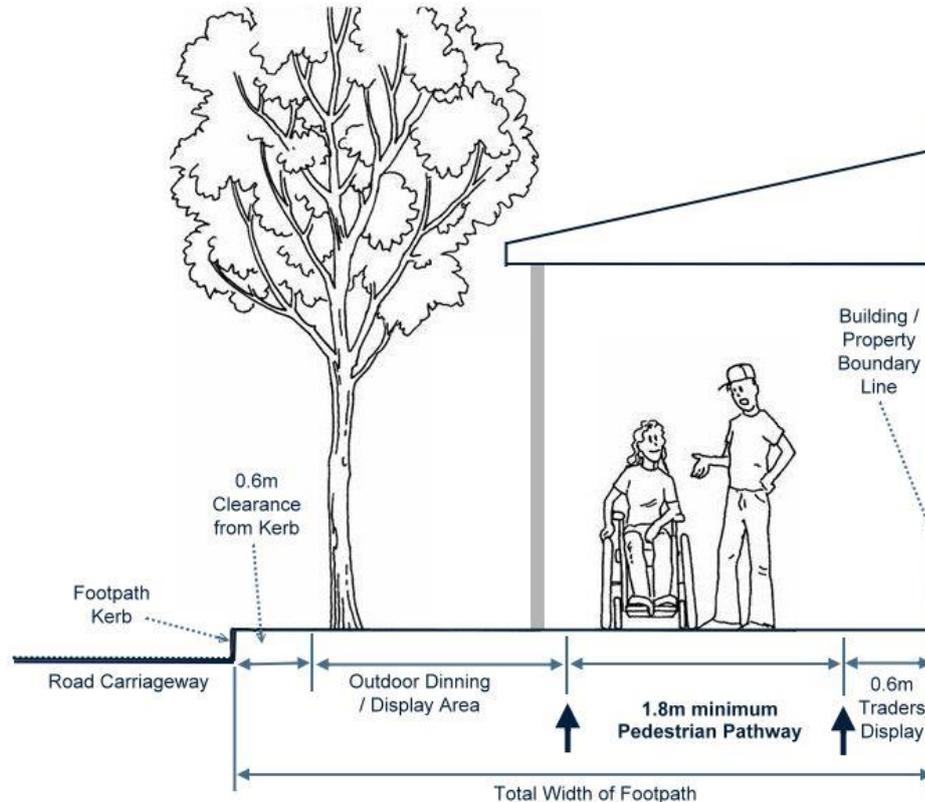
6.2 Strategies for implementation - General

Council recognises that each site may be unique and will have its own opportunities and constraints, including differing width footpaths and the presence of trees, driveways, rubbish bins and other street furniture. Council's guidelines will enable a merit based assessment of applications that takes in to account these obstacles and enables joint development of solutions that achieve safety and accessibility requirements alongside business needs.

Core guidelines, essential to the achievement of the policy purpose, include:

- The need to maintain clear pedestrian pathways of at least 1.8m width, being between 0.6m and 2.4m from the immediate frontage of the building or property boundary to ensure safety, consistency and legibility for the vision and mobility impaired as shown in **Diagram 1**

Diagram 1 – Maintain clear pedestrian pathways



- Commercial uses must not encroach on public use of the footpath or impede access to public seating, other public infrastructure, or major pedestrian crossing points.
- Sight lines for road users must be neither compromised nor restricted.
- To ensure that competing uses in the public realm are balanced and that public footpath utilization is in keeping with the City of Victor Harbor's Town Centre Master Plan.
- Applicants must hold relevant public liability insurance in accordance with Council's Guidelines.
- Council will consider applications which may include but not be limited to the set provisions as contained within this Policy and the relevant Guidelines for Outdoor Dining and Street Trading.
- To ensure that all outdoor dining and street trading is appropriately authorised and any risk to Council is mitigated.
- Risk assessments on new applications will be conducted in accordance with Council's Risk Management Policy and Procedure.
- Outdoor Dining and Street Trading Permits are generally approved for a period of twelve months and must be renewed on an annual basis. Permits will only be renewed if applicants can demonstrate continued adherence to the permit conditions and maintenance of public safety and access.

- Permits may be revoked or amended by Council by written notice to the permit holder (Section 225).

6.2.1 Outdoor Dining

- The number of outdoor dining furniture and related objects per premises street frontage allowable will be subject to Council's Outdoor Dining Guidelines being met.
- The outdoor dining area must be located directly between the business frontage of the permit holder's business premises and the nearest kerb and subject to other design requirements being met. At Council's discretion outdoor dining operators can apply for a Permit to extend their outdoor dining area to the footpath in front of an adjacent premises. Permission is required from the business owner and building owner of the adjacent premises. Should the permission be withdrawn or the business or building owner changes hands, the outdoor dining tables, chairs and furniture must be removed.
- Outdoor dining furniture should be sturdy, of high quality design and construction and positively contribute to the amenity of the streetscape. All products should be fit for purpose, clean and well-maintained.
- Umbrellas must maintain a minimum vertical clearance from the lowest point of the canopy to the footpath of 2.1m.
- Liquor may only be served to patrons in the outdoor dining area pursuant to a valid liquor licence.
- Live entertainment in/or adjacent to outdoor dining areas are generally approved provided that the entertainment is in accordance with the principles contained in the Council's Street Permit Policy for busking and the Outdoor Dining Guidelines.

Special Conditions

- Applications for large scale outdoor dining areas may be assessed as a change of use of the footpath and require a Development Application. Development Approval for such a permit would need to be authorised under the Local Government Act 1999 and be in accordance with any existing Council by-laws in place.
- Complete enclosure of an outdoor dining area is not permitted. However, barriers, screens or blinds may be approved if considered already a part of the heritage of the building.
- Applications that include significant furniture installation, such as fixed screens, road safety elements such as bollards, shade structures or signage may be assessed as building work under the Development Act 1993 and may also require a Development Application.
- Applications for outdoor dining in heritage or other significant areas may require specialist input (refer Council Outdoor Dining Guidelines).

6.2.2 Street Trading

- The number of commercial display object/s per premises street frontage for the purpose of street trading is subject to the Street Trading Guidelines being met.
- Elevated intrusions must maintain a minimum vertical height clearance from lowest point of the intrusion to the footpath of 2.1 m. Elevated intrusions will be assessed on a case by case basis.

- The display objects must be located directly between the business frontage of the permit holder's business premises and the nearest kerb and subject to other design requirements being met.
- The display of goods which are loose and/or with undefined edges and proportions will not be approved as they pose a danger to the public and visually detract from the streetscape.

Note: this Policy does not include reference to moveable signs. See Council's Moveable Sign By-law.

6.3 Permit Holders Responsibility

The permit holder must not cause, suffer or permit any damage to Council land or property. The permit holder is liable to pay Council the costs of making good any damage caused to Council land or property in connection with the outdoor dining or street trading activities authorised by the Permit. This includes pavement repairs or cleaning that Council considers to be necessary by reason of the Permit Holders use of the Permit area, which Council costs may be recover as a debt from the permit holder.

7. Risk Management

The requirement of a permit gives formal recognition of the permit holder's responsibility for Public Liability.

8. Implementation / Delegations

Before using the footpath for outdoor dining or street trading, traders must receive Council approval in the form of a written permit.

The Chief Executive Officer is delegated the authority to implement this Policy and to delegate the administration of the Outdoor Dining Permits.

9. Related Documents

Guidelines under the Disability Discrimination Act 1992
Community Plan 2022 / 2036
Victor Harbor Main Street Precinct Master Plan
Outdoor Dining Guidelines
Outdoor Dining Application Form
Street Traders Guidelines
Risk Management Policy and Procedure
Street Permit Policy
Moveable Sign By-law

Note: This Policy supersedes both the Outdoor Dining and Street Traders Policy.

10. Availability of Policy

This policy is available on Council's website at www.victor.sa.gov.au. It may also be inspected or purchased at the Principal Office of the Council at 1 Bay Road, Victor Harbor.