

# OUTDOOR EATING AREAS POLICY

## OBJECTIVES

The objectives of this policy are to:

- Provide guidance for the provision and governance of outdoor eating areas within the Shire of Quairading;
- Encourage the establishment of outdoor eating areas; and
- Ensure that pedestrian and vehicular traffic is not compromised.

## POLICY STATEMENT

1. This policy applies to occupiers of a premise within the Shire of Quairading who are eligible to establish an outdoor eating area, in accordance with the *Activities in Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2016*.
2. The Shire of Quairading supports and encourages the establishment of “Outdoor Eating Areas” which:
  - 2.1 Enhance the amenity, vitality and ambience of the Shire’s trading precinct.
  - 2.2 Comply with the *Activities in Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2016*.
  - 2.3 Do not interfere with the safe and reasonable movement of pedestrian and vehicular traffic.
3. Every application will be considered by the Shire to ensure that it complies with the requirements of this Policy and the Local Law.

## PROCEDURES

### 1. Application

- 1.1 Applicants must submit to the Shire:
  - 1.1.1 The prescribed form;
  - 1.1.2 Plans showing both Plan View and Elevation;
  - 1.1.3 Accurate dimensions of the area;
  - 1.1.4 Barricades/barriers to be used; and
  - 1.1.5 The prescribed application fee.
- 1.2 Applicants are to refer to *Activities in Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2016* in conjunction with this document.

### 2. Relevant Information

- 2.1 An applicant is to provide all relevant information as requested, including, but not limited to:
  - 2.1.1 Scaled plans of 1:50 with both Plan View and Elevation and with dimensions of the proposed Outdoor Eating area;
  - 2.1.2 The plans are to include path platform structure, location of tables and chairs, barricades/barriers, street furniture, light poles, parking restriction signs, bins, advertising signs, pot plants/planter boxes, cafe banners proposed to be incorporated into, or adjacent to the outdoor eating area;

- 2.1.3 The plans will also detail all land adjoining the proposed outdoor eating area within 10 metres, showing the location of all carriageways, footpaths, public facilities, public places, streets and street alignment;
  - 2.1.4 Colour photographs or accurate sketches of the proposed outdoor eating area;
  - 2.1.5 Details and dimensions of footings and other methods of affixing barricades/ barriers to the footpath;
  - 2.1.6 Proposed days and hours of operation;
  - 2.1.7 How potential congestion caused by the outdoor eating area encroaching into the footpath will be managed;
  - 2.1.8 Whether alcohol is to be consumed in the outdoor eating area, as ancillary to food;
  - 2.1.9 Total patron numbers internally and proposed patron numbers in the outdoor eating area;
  - 2.1.10 Available sanitary facilities for the public;
  - 2.1.11 Public liability insurance certificate of currency (minimum \$20 million); and
  - 2.1.12 Any other information requested of the applicant by Shire Officers considered relevant to assessment of the application.
  - 2.2 The applicant will ensure that all services and street furniture are identified and shown accurately on the site plan submitted. The Shire accepts no liability for the cost of relocating any services and/or the Shire's street furniture, including, but not limited to, street litter bins, bicycle parking rails, and/or benches and parking restriction signs, that may be required as a consequence of the application/licence.
  - 2.3 The Shire will assess each application and if the removal and/or relocation of any item of street furniture is considered appropriate all works associated with the removal/s will be at the applicant's cost.
  - 2.4 Removals and relocations of items located on the verge will be the exception and not the rule and will be assessed on merit.
- 3. Location of Outdoor Eating Area**
- 3.1 The positioning of an outdoor eating area, either adjacent to the kerb line or abutting the property line will largely be dictated by the classification and function of the road upon which the premises is located.
  - 3.2 The majority of the Shire's streets fall into the following categories:
    - 3.2.1 Access Roads (residential streets);
    - 3.2.2 Local Distributor Roads; and
    - 3.2.3 Two (2) Lane District Distributor Roads.

- 3.3 In these road categories the applicant has the option of 'butting the building' or 'adjacent to the kerb' (if the footpath is of the minimum required width of 2900mm). These roads are not subject to Clearway restrictions and the existing kerb side and/or embayed parking lane acts as a buffer to the traffic lane.
- 3.4 Most of the outdoor eating areas within the Shire are required to conform to Figure 1. This maintains a minimum 2000mm clear zone for pedestrian access between the kerb face and the outdoor eating area boundary. It also accommodates existing structures such as litter bins and signs located adjacent to the kerb line.
- 3.5 If the applicant chooses the option of locating the outdoor eating area adjacent to the kerb line, the applicant must comply with the layout as shown in Figure 2. This ensures a minimum clear zone of 600mm between the kerb face and the outdoor eating area. It enables passengers to alight from parked cars and it accommodates street furniture and/or services. Finally, it maintains a minimum clear pedestrian zone of 1500mm between the building and the outdoor eating area boundary.
- 3.6 Where there are consecutive kerb side outdoor eating areas, a gap of 1500mm must be provided every 12 metres to allow access from the roadway to the path.
- 3.7 Premises adjacent to intersections are required to comply with Figure 1 (abutting the property line).

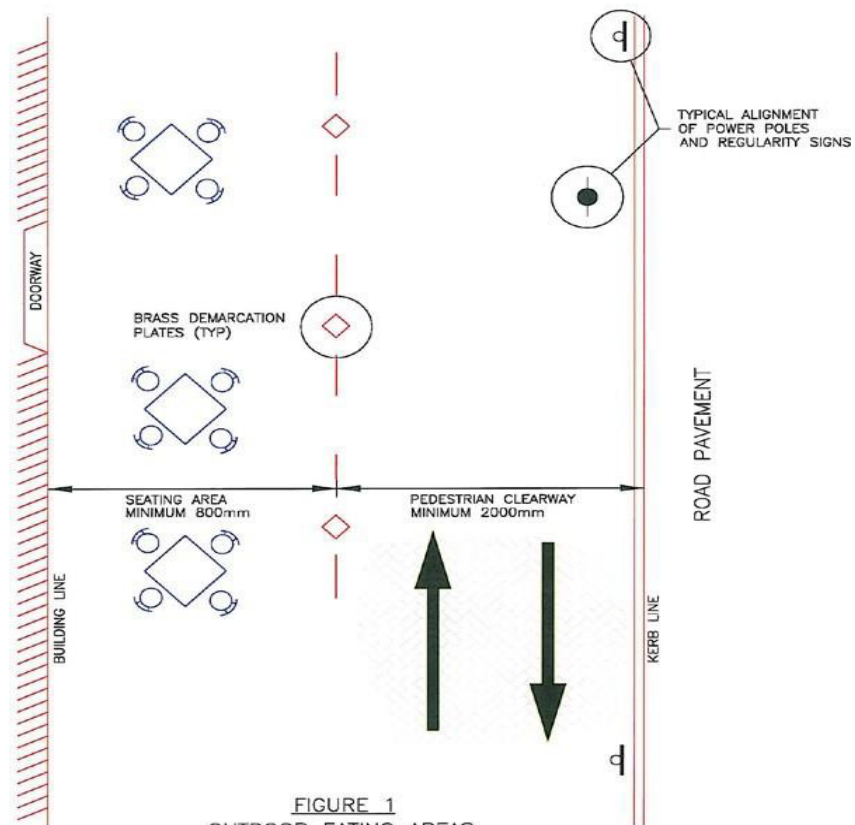


FIGURE 1  
OUTDOOR EATING AREAS  
ABUTTING THE BUILDING LINE

- 3.8 Four Lane District Distributor Roads and Primary Distributor Roads are generally subject to high traffic volumes, clearway restrictions and a posted speed limit of 60kph. Therefore, out-door dining areas adjacent to the kerb line are not encouraged from an amenity or safety perspective.
- 3.9 The location of pre-existing permit holders along sections of Shire footpath may impact the assessment and approval of individual locations (e.g., uniformity must be maintained).

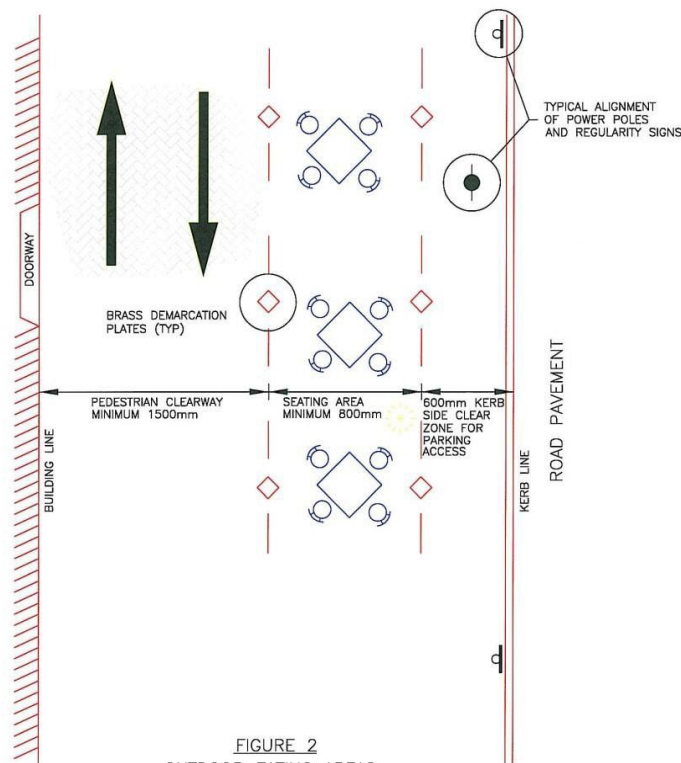


FIGURE 2  
OUTDOOR EATING AREAS  
ADJACENT THE KERB LINE

- 3.10 Arrangements to extend an outdoor eating area to include the street frontage of adjacent premises may be permitted in some circumstances.
- 3.11 The written consent of the owner and occupier of the adjacent premises must accompany an application to request usage of the street frontage abutting the adjacent premises.
- 3.12 If the owner or occupier of the adjacent premises revokes their consent for the outdoor eating area, the use of the area must be determined by the Shire. Any such revocation must be accompanied by evidenced reasons for consent being withdrawn. If the request to revoke use of the area is upheld by the Shire, the outdoor eating area licensee will be required to cease use of that area immediately and may be required to reinstate the footpath within the time specified by the Shire.

**4. Furniture Positioning**

- 4.1 All furniture and other approved structures including planter boxes are to be free standing unless prior approval is obtained from the Shire to affix.
- 4.2 All furniture, barriers and other structures must be removed from public areas at the close of each business day, unless otherwise specified in writing by the Shire.
- 4.3 The Shire may require that any furniture, barrier, or other structure be removed at any time to allow street works, maintenance, or cleaning to be undertaken.

- 4.4 Furniture and planter boxes must be maintained in good condition and be aesthetically satisfactory and safe.
- 4.5 An awning may be installed a minimum of 500mm from the road kerb, subject to Council approval being granted prior to installation. A Planning Application and Building Licence Application must be lodged with the Shire for assessment.
- 4.6 Where 'café' umbrellas are to be used as a sunshade they must be:
  - 4.6.1 Adequately secured to ensure they do not become dislodged in high winds;
  - 4.6.2 Removed at the close of business each day; and
  - 4.6.3 Not closer than 600mm to the kerb line and have a minimum height clearance of 2.75m.
- 4.7 Permanent fixing points in the footpath will only be considered where the applicant can demonstrate that they will not affect the Shire's infrastructure or other services and are concealed when not in use so not to be a trip hazard.
- 4.8 Approved cafe blinds may be installed for the purpose of weather protection within an outdoor eating area, provided they:
  - 4.8.1 Are non-reflective, transparent and light weight in appearance;
  - 4.8.2 Do not have the visual or apparent effect of enclosing a public place;
  - 4.8.3 Are removed from a public place at the close of business each day;
  - 4.8.4 Do not hinder use of a public place during and after trading hours;
  - 4.8.5 Do not cause injury or prejudicially affect the amenity of the immediate area;
  - 4.8.6 Do not have any advertising or sign writing on the blinds; and
  - 4.8.7 Are not attached to a place listed on the Shire's Heritage List or Municipal Heritage Inventory or in the Register of Places under the *Heritage of Western Australia Act 1990*, unless approved by the responsible authority.
- 4.9 Screens may be permitted on the kerb side of an outdoor eating area, subject to:
  - 4.9.1 A minimum clear pedestrian access of 600mm between the kerb and the outer perimeter of the screen;
  - 4.9.2 A maximum height of 900mm, and maximum length of 1000mm, unless otherwise approved by the Shire;
  - 4.9.3 Do not extend more than 12 metres without a 1500mm break for pedestrian access;
  - 4.9.4 Do not have the visual or apparent effect of enclosing a public place;
  - 4.9.5 Are removed from a public place at the close of business each day;
  - 4.9.6 Do not hinder use of a public place during and after trading hours; and
  - 4.9.7 Do not cause visual obstruction, or prejudicially affect public safety or the amenity of the area.

## **5. Consumption of Alcohol**

- 5.1 The consumption of alcohol is permitted within approved delineated outdoor eating areas, provided that the permit holder has obtained an appropriate approval from the Shire of Quairading and the Department of Racing, Gaming and Liquor (DRGL).
- 5.2 The permit holder must ensure ongoing compliance with permit conditions, DRGL requirements, and effectively control noise and antisocial behaviour.
- 5.3 Where alcohol is to be served in an approved outdoor eating area, it would be the Shire's preference that it is served ancillary to food.

## **6. Electrical or Gas Installations**

- 6.1 The permit holder must provide adequate, clear and well distributed lighting to ensure the safety and amenity of both patrons and the public after sunset.
- 6.2 All electrical wiring connected to lights, devices or appliances situated in or about the Outdoor Eating Area, unless approved by the Shire, will not be placed:
  - 6.2.1 On or under the Outdoor Eating Area;
  - 6.2.2 Above any part of a public place so as to interfere or obstruct the passage of vehicles or pedestrians; or
  - 6.2.3 In any manner or in any place which may be prejudicial to safety.
- 6.3 All installations must:
  - 6.3.1 Comply with relevant approvals and requirements from the Shire, respective utilities and Australian Standards;
  - 6.3.2 Be regularly serviced and maintained;
  - 6.3.3 Be located such that they do not pose a safety or fire hazard; and
  - 6.3.4 In the case of portable appliances, be stable and removed when the outdoor eating area is not in use.
- 6.4 The permit holder is to ensure that their Public Liability Insurance covers the use of such appliances in the outdoor eating area.

## **7. Public Liability Insurance**

- 7.1 All permits issued will be conditional upon the permit holder maintaining continuously acceptable public liability cover. The Certificate of Currency for Public Liability Insurance cover is to be not less than \$20 million and be from a reputable Insurance Underwriter acceptable to the Chief Executive Officer. The proprietor must submit a copy of the annually renewed public liability. In the case that the liability lapses, the tables and chairs must be removed from Council property immediately. In addition, the applicant must:
  - 7.1.1 Declare to the local government, in writing that they will provide and maintain the required public liability insurance protection;
  - 7.1.2 Take out a public liability insurance policy in the name of the permit holder for a minimum value of \$20 million dollars, or any greater amount as considered appropriate by Shire Officers or

Insurance Company, subject to the specific level of risk and liability involved with the outdoor eating area; and

7.1.3 On the request of an authorised person, provide a certificate of currency for the required insurance policy.

7.2 The permit holder is required to indemnify the Shire and its employees, agents or contractors against all actions, suits, claims, damages, losses and expenses made against or incurred by the Shire arising from any activity, action or thing performed or erected in accordance with the permit, and to maintain current Public Liability Insurance for the duration of the permit.

## **8. Sanitary Provisions**

8.1 Sanitary facilities (including provision of unisex disabled facilities) must comply with the Building Code of Australia (BCA) Table F2.3 and Table F2.4, and the design of disabled facilities must be in accordance with Australian Standard 1428.1 - 2001. As the approval of an outdoor eating area permit may increase the total patronage of a premises, sanitary provisions may need to be reviewed, or a limit may be placed on the total number of chairs located in the premises both internally and in the outdoor eating area.

8.2 Where it is identified that additional toilet facilities will need to be installed to achieve compliance with the BCA requirements, a Building Licence Application must be lodged with the Shire for assessment.

8.3 BCA requirements cannot be applied retrospectively. This condition will not impact on premises holding an existing licence at the time this policy is approved, until such time the premises reviews the number of tables and chairs they are currently approved for.

## **9. Advertising Signage**

9.4 All advertising signage to be displayed in accordance with the *Activities in Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2016*. Advertising signage cannot be approved as a part of an outdoor eating area permit application. A separate application must be completed.

## **10. Smoking**

10.1 In accordance with the *Tobacco Product Control Act 2006*, smoking in Outdoor Eating Areas is not permitted, with the exception of licensed premises that may allocate a 'smoking zone' for the premises. The total area of all the smoking zones for the premises must not exceed 50% of the total area of all the outdoor eating areas.

10.2 Unless it is deemed unreasonable for the permit holder/occupier to have been aware, that a 'person' was smoking in an outdoor eating area, then the permit holder/occupier is jointly responsible and commits an offence under the Act.

10.3 Permit holders/occupiers will take every reasonable precaution to ensure that patrons do not smoke within the approved outdoor eating area, including through:



- 10.3.1 Display of clearly visible 'no smoking' signage/stickers on all tables within the outdoor eating area;
- 10.3.2 Ensuring ash trays are not located within the outdoor eating area; and
- 10.3.3 Staff members asking people smoking within the outdoor eating area to immediately extinguish his/her cigarette and dispose of the cigarette lawfully.

## 11. Permits

- 11.1 A permit will only be issued for an outdoor eating area, when:
  - 11.1.1 The applicant has submitted the prescribed form, detailed plans,
  - 11.1.2 Any additional information that may be relevant to the application;
  - 11.1.3 The prescribed application fee; and
  - 11.1.4 The Shire is satisfied that the application complies with the Shire of *Activities in Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2016*, and the Policy relating to Outdoor Eating Areas, and other relevant legislative requirements as deemed necessary.
- 11.2 The Shire may impose conditions on a permit which relate to the outdoor eating area. Failure to comply with the conditions will result in the Shire taking action in accordance with the relevant enforcement procedures.
- 11.3 A permit may be transferred to a new permit holder, subject to the applicant submitting the prescribed form, fee, a copy of the Public Liability Insurance cover and any other relevant information requested by Shire.
- 11.4 If a permit holder wants to alter conditions of an existing, renewed or transferred permit, a new application must be submitted to the Shire with the prescribed application fee.
- 11.5 A permit for an outdoor eating area will be valid from 1 July to 30 June each financial year.
- 11.6 A permit must be renewed by the permit holder once every five years. The prescribed form, required information and prescribed fee must be submitted to the Shire for consideration.
- 11.7 The Shire reserves the right to refuse the renewal or the transfer of an Outdoor Eating Area Permit. Such refusal is subject to the normal appeal rights to the Council and/or the State Administrative Tribunal (whichever is applicable).

## 12. Enforcement

- 12.1 Compliance with the *Activities in Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2016* will be enforced by the Shire.

- 12.2 Routine inspections will be undertaken of outdoor eating areas to determine compliance with the Local Law, Policy, and conditions of an outdoor eating area permit.
- 12.3 Should non-compliance be identified, the authorised Shire Officer may implement and/or recommend any of the following enforcement provisions:
  - 12.3.1 Issue a written caution;
  - 12.3.2 Issue an infringement notice;
  - 12.3.3 Impound furniture or other structures;
  - 12.3.4 Cancel the permit;
  - 12.3.5 Issue a notice requiring remedial action or works to remedy a breach of any provision of a permit; or
  - 12.3.6 Initiate prosecution proceedings in the Magistrates Court.

**13. Cancellation of a Permit**


The Chief Executive Officer will determine whether an Outdoor Eating Area Permit is to be cancelled. The following process is to be followed in the cancelation of a permit.

PROCESS	COMMENT
1. Verbal Warnings	A verbal warning is used for less serious offences when there is no evidence or need for stronger enforcement actions.
2. Written Warnings	A written warning is used when there is evidence that an offence has occurred, but the evidence is not strong enough to use as the basis of an infringement.
3. Infringements Issued	An infringement is issued when there is clear evidence of an offence being committed.
4. Written Report to Chief Executive Officer	After three infringements a written report is to be provided to the Chief Executive Officer outlining the following; <ul style="list-style-type: none"> <li>• Full details of all actions to date including dates, issues of noncompliance and actions taken, and</li> <li>• Any other information relevant to the decision making process.</li> </ul>
5. Determination	The Chief Executive Officer will make a determination under Delegated Authority based on the information contained within the report.
6. Advise Council	The Chief Executive Officer will advise Council of the action taken via the Delegated Authority Report at the next Council Meeting.

7. Advice to Permit Holder	As soon as practicable after a decision has been made to cancel a Permit, the Permit holder will be notified in writing of the cancellation and the reasons for the decision. The Permit holder will also be advised of their right under Part 9 Division 1 of the Local Government Act 1995 to object and apply for review of the decision.
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**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

Record of Policy Review						
Version	Author	Council Adoption	Resolution	Reason for Review	Next Review Date	CEO Signature
01	Nicole Gibbs	26/05/22	183-21/22	New Policy	May 24	
02	Natalie Ness	29/08/24	038-24/25	Biennial Review	Aug 26	