

## COUNCIL POLICY NO: 062

<b>Responsible Directorate</b>	Planning and Development
<b>Responsible Section</b>	Regulatory Services
<b>Responsible Officer</b>	Manager Regulatory Services

### OBJECTIVE:

The purpose of this policy is to provide guidance for the provision and governance of Outdoor Eating Facilities within the Town of Cambridge, to encourage the establishment of “Outdoor Eating Facilities” whilst ensuring that pedestrian and vehicular traffic is not compromised.

### SCOPE:

This policy applies to all Directorates and Departments of the Town of Cambridge.

The Purpose of the Guidelines are to provide information on the application requirements to establish an Outdoor Eating Facility in the Town and the Town’s requirements in the practical operation of such a facility.

### POLICY STATEMENT:

1. this policy applies to proprietors of a premises within the Town of Cambridge who are eligible to establish an “Outdoor Eating Facility”, in accordance with the *Town of Cambridge Trading in Public Places Local Law 2017*.
2. the Town of Cambridge supports and encourages the establishment of “Outdoor Eating Facilities” which:-
  - (a) enhances the amenity, vitality and ambience of the Town's major trading precincts.
  - (b) comply with the *Town of Cambridge Trading in Public Places Local Law 2017*.
  - (c) do not interfere with the safe and reasonable movement of pedestrian and vehicular traffic.
3. all Outdoor Eating Facilities shall comply with the *Town of Cambridge Trading in Public Places Local Law 2017*, Council Policy 062 - *Outdoor Eating Facilities (Alfresco Dining) Policy* and the Guidelines.

### DEFINITIONS:

Definitions are taken as those detailed in the *Local Government Act 1995* and associated legislation.

The *Town of Cambridge Trading in Public Places Local Law 2017* prescribes the following definition:

**"Facility"** means 'an outdoor eating facility or establishment on any part of a public place in which tables, chairs and other structures are provided for the purpose of the supply of food or drink to the public or the consumption of food or drink by the public, but does not include such a facility or establishment on private land'.

Document Control	
<b>Office Use Only:</b>	
<b>Previous Policy No</b>	Policy No. 4.2.5
<b>Statutory Legislation and Compliance</b>	<i>Local Government Act 1995</i>
<b>Related Documents/Legislation</b>	<i>Town of Cambridge Trading in Public Places Local Law 2017</i>
<b>Date of Adoption by Council</b>	Council Meeting – 24 November 2015
<b>Date Reviewed/Amended</b>	24 April 2018                      28 July 2020
<b>Next Review Date</b>	April 2024

## GUIDELINES AND POLICY PROCEDURES RELATING TO OUTDOOR EATING FACILITIES

### 1. APPLICATION REQUIREMENTS

A permit must be obtained prior to the establishment of an Outdoor Eating Facility. An application for an Outdoor Eating Facility permit will only be considered where the proposed facility forms part of a registered food business and the proposal complies with Council Policy 062 - *Outdoor Eating Facilities*.

A permit is valid from the date of issue until the end of that financial year. Applications for the renewal of a permit are mailed to permit holders, together with the forms to renew food premises licences, at the start of each financial year.

To apply for a permit, a completed application form is to be forwarded to the Town, together with:-

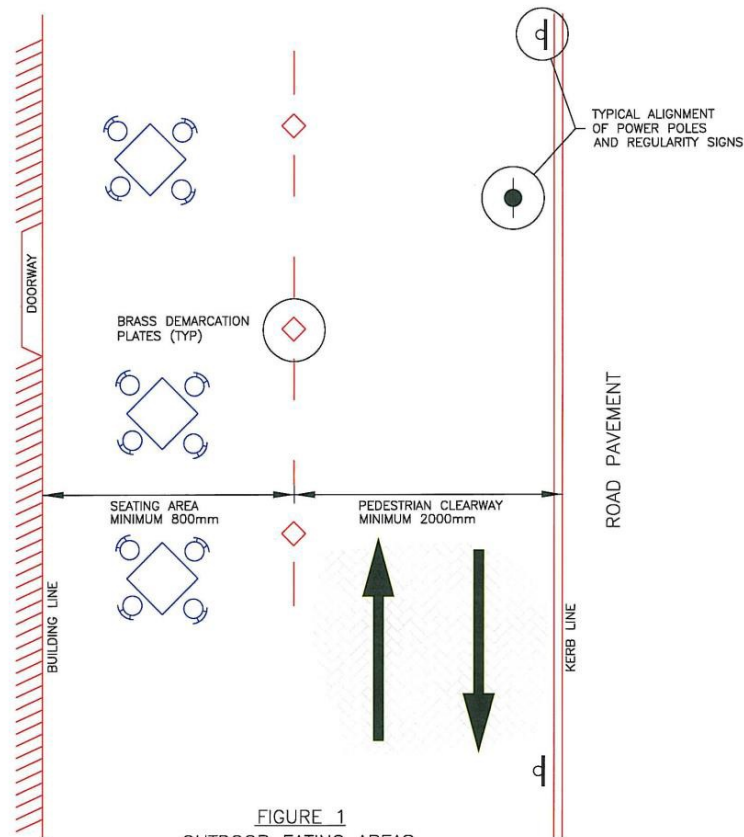
1. the appropriate fees.
2. plans (to a scale of 1:50) and specifications of the proposed facility and its relationship with the food business showing:-
  - (a) the position of tables, chairs and others structures in the proposed facility; and
  - (b) the location and dimensions of the proposed facility.
3. A site plan (to a scale of 1:100) of the proposed facility showing all footpaths, public facilities, public places, streets and street alignments outside the food premises.
4. A colour photograph or brochure that clearly depicts the tables, chairs and other structures proposed to be used.
5. Certification of Public Indemnity Insurance to the value of ten million dollars.

### 2. LOCATION:

#### 2.1 Location adjacent to property:-

- (a) The majority of the outdoor eating facilities within the Town are located adjacent the property line/building facade and are therefore required to conform to **Figure 1**.
- (b) A minimum 2 metre clear zone is to be provided for pedestrian access between the kerb face and the outdoor eating facility boundary, while accommodating existing structures such as litter bins, signs and the like located adjacent the kerb line.

Note: Premises adjacent to intersections, for all road classifications, are required to comply with Figure 1, abutting the property line. Kerb side seating would create a sight distance obstruction for motorists, while the patrons would be in close proximity to turning traffic.

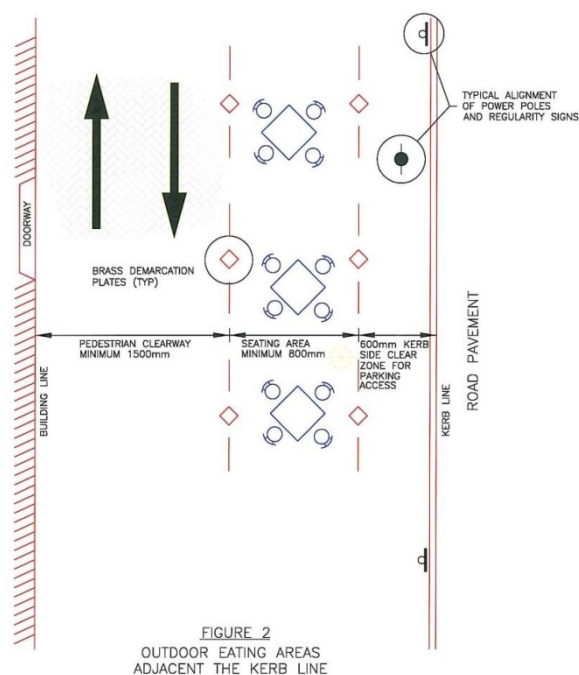


## 2.2 Location adjacent to the kerb:-

- (a) Four (4) lane District Distributor Roads and Primary Distributor Roads are categories of roads which are generally subject to high traffic volumes, clearway restrictions and a posted speed limit of 60kph. Therefore, outdoor dining facilities adjacent the kerb line is not encouraged, nor desirable, from an amenity or safety perspective. The outdoor eating facility should be located against the building line as shown in Figure
- (b) Uniformity must be maintained in sections of streets to maintain clear pedestrian access and aesthetic appeal. (ie that is, all permits granted adjacent to the kerb, or adjacent to the building line).
- (c) However, if an Applicant chooses the option of locating their outdoor eating facility adjacent the kerb line they are required to comply with the layout as shown in **Figure 2**.

Figure 2 ensures a minimum clear zone of 600mm between the kerb face and the outdoor eating facility to enable passengers to alight from parked cars, and to accommodate street furniture and/or services, while maintaining a minimum clear pedestrian zone of 1.5 metres between the building and the outdoor eating facility boundary.

- (d) Where there are consecutive kerb side outdoor eating facilities, a gap of 1.5 metres must be provided every 12 metres to allow access from the roadway to the path.
- (e) Location of pre-existing permit holders along sections of Town footpath may impact assessment and approval of individual locations (that is, uniformity must be maintained – all compliant with **Figure 1** or all compliant with **Figure 2**).



### 2.3 Use of Public Place in Front of Adjacent Premises:-

- (a) Arrangements to extend an outdoor eating facility to include the street frontage of adjacent premises may be permitted in some circumstances, and when a benefit to the streetscape can be demonstrated, subject to approval by the Town.
- (b) The written consent of the owner and/or occupier of the adjacent premises must accompany an application to request usage of the street frontage abutting the adjacent premises. In addition, the Applicant is to indemnify the Town in writing with regard to any claims that may arise in this facility. As such, the onus remains with the applicant to ensure that adequate Public Liability Insurance Cover is provided, in consultation with their insurer.
- (c) If the owner or occupier of the adjacent premises revokes their consent for the outdoor eating facility, the use of the facility shall immediately cease.

### 3. FURNITURE POSITIONING

- 3.1 All furniture and other approved structures (including planter boxes) are to be free standing, unless prior approval to affix is obtained from the Town.
- 3.2 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 Town.
- 3.3 Pot plants or planter boxes must comply with the Town's Policy relating to Plant Containers on Commercial Paved Areas.
- 3.4 Furniture and planter boxes must be maintained in good condition, and be aesthetically satisfactory and safe.
- 3.5 Outdoor eating facilities are to be delineated, only by means approved by the Town.
- 3.6 An awning may be installed a minimum of 500mm from the road kerb, subject to Town approval being granted prior to installation. A Planning Application and building permit application must be lodged with the Town's Development Services Section for assessment.
- 3.7 Where 'café' umbrellas are to be used as a sun shade they must be:-
  - (a) *adequately secured to ensure they do not become dislodged in high winds;*
  - (b) *must be removed at the close of business each day; and*
  - (c) *the outer edge of the umbrella must not be closer than 600mm to the kerb line and have a minimum height clearance of 2.75m.*
- 3.8 Permanent fixing points in the footpath will only be considered where the applicant can demonstrate that they will not affect the Town's infrastructure or other services and are concealed when not in use so not to be a trip hazard.
- 3.9 Approved cafe blinds may be installed for the purpose of weather protection within an outdoor eating facility, provided that they:-
  - (a) are non-reflective, transparent and light weight in appearance;
  - (b) do not have the visual or apparent effect of enclosing a public place;
  - (c) are removed from a public place at the close of business each day;
  - (d) do not hinder use of a public place during and after trading hours;
  - (e) do not cause injury or prejudicially affect the amenity of the immediate area;
  - (f) do not have any advertising or sign writing on the blinds; and
  - (g) are not attached to a place listed on the Town'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.
- 3.10 Screens may be permitted on the kerb side of an outdoor eating facility, subject to:-
  - (a) a minimum clear pedestrian access of 600mm between the kerb and the outer perimeter of the screen;
  - (b) a maximum height of 900mm, and maximum length of 1 metre, unless otherwise approved by the Town;
  - (c) do not extend more than 12 metres without a 1.5 metre break for pedestrian access;
  - (d) do not have the visual or apparent effect of enclosing a public place;

- (e) are removed from a public place at the close of business each day;
- (f) do not hinder use of a public place during and after trading hours; and
- (g) do not cause visual obstruction, or prejudicially affect public safety or the amenity of the area.

3.11 All advertising signage to be displayed shall be in accordance with the Town of Cambridge Trading in Public Places Local Law 2017. Advertising signage may be approved as a part of an outdoor eating facility permit application.

#### **4. ELECTRICAL OR GAS INSTALLATIONS**

4.1 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.

4.2 All electrical wiring connected to lights, devices or appliances situated in or about the Outdoor Eating Facility, unless approved by the Town shall not be placed:-

- (a) on or under the Outdoor Eating Facility;
- (b) above any part of a public place so as to interfere or obstruct the passage of vehicles or pedestrians; or
- (c) in any manner or in any place which may be prejudicial to safety.

4.3 All installations must:-

- (a) comply with relevant approvals and requirements from the Town, respective utilities, and Australian Standards;
- (b) be regularly serviced and maintained; and
- (c) be located such that they do not pose a safety or fire hazard, and in the case of portable appliances, are to be stable, and removed when the outdoor eating facility is not in use.

4.4 The permit holder is to ensure that their Public Liability Insurance covers the use of such appliances in the outdoor eating facility.

#### **5. SANITARY PROVISIONS**

5.1 Sanitary facilities (including provision of unisex disabled facilities) must comply with the National Construction Code (NCC) Table F2.3 and Table F2.4, and the design of disabled facilities must be in accordance with Australian Standard 1428.1 - 2009. As the approval of an outdoor eating facility 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 facility.

5.2 Where it is identified that additional toilet facilities will need to be installed to achieve compliance with the NCC requirements, a building permit application must be lodged with the Town.

#### **6. CONSUMPTION OF ALCOHOL**

6.1 Applicants are to indicate if they intend to serve alcohol to patrons within the facility, or if they intend to permit the consumption of 'Bring Your Own' alcohol. The Applicant is responsible for obtaining the necessary approvals pursuant to the *Liquor Control Act 1988*.

- 6.2 The hours of sale of alcohol shall not exceed those approved by the Council, or the associated liquor licence.
- 6.3 The consumption of alcohol is permitted within approved delineated outdoor eating facility, provided that the Permit holder has obtained an appropriate approval from the Town of Cambridge and the Department of Racing, Gaming and Liquor (DRGL).
- 6.3 The permit holder must ensure ongoing compliance with permit conditions, DRGL requirements, and effectively control noise and antisocial behaviour.
- 6.4 Where alcohol is to be served in an approved outdoor eating facility, it would be the Town's preference that it is served ancillary to food.

## **7. SMOKING**

- 7.1 In accordance with the *Tobacco Product Control Act 2006*, smoking in outdoor eating facility is not permitted (effective from 22 September 2010) with the exception of licensed premises that may allocate a 'smoking zone' for the premises, to which a restaurant licence does not apply, but the total area of all the smoking zones for the premises must not exceed 50% of the total area of all the outdoor eating facility to which a restaurant licence does not apply.
- 7.2 Unless it is deemed unreasonable for the permit holder/occupier to have been aware, that a 'person' was smoking in an outdoor eating facility, then the permit holder/occupier is considered to be jointly responsible and commits an offence under the Act. Also, permit holders/occupiers shall take every reasonable precaution to ensure that patrons do not smoke within the approved outdoor eating facility. The Town deems 'reasonable precautions' to include the following:-
  - (a) Display of clearly visible 'no smoking' signage/stickers on all tables within the outdoor eating facility;
  - (b) Ensuring ash trays are not located within the outdoor eating facility; and
  - (c) Staff members requesting persons identified as smoking within the outdoor eating facility to immediately extinguish his/her cigarette and dispose of the cigarette lawfully.
- 7.3 In addition to the permit holder/occupier, the Town's Compliance Section will monitor and enforce compliance in accordance with Clause 12 of this Policy, and in accordance with the *Tobacco Product Control Act 2006*.

## **8. ANIMALS IN THE OUTDOOR EATING AREA**

1. The *Australia New Zealand Food Standards Code* specifies the following:-
  - (1) A food business must, subject to clauses (2) and (3), not permit live animals in areas in which food is handled.
  - (2) A food business must permit an assistance animal in areas used by customers.
  - (3) A food business may permit a dog that is not an assistance animal to be present in an outdoor dining area.



(4) In this clause-

**"assistance animal"** means an animal referred to in section 9 of the Disability Discrimination Act 1992 (cth).

**"Enclosed area"** means an area that, except for doorways and passageways, is substantially or completely enclosed, whether permanently or temporarily, by-

- (a) a ceiling or roof; and
- (b) walls or windows or both walls and windows.

**"outdoor dining area"** means an area that-

- (a) is used for dining, drinking or both dining and drinking; and
- (b) is not used for the preparation of food; and
- (c) is not an enclosed area; and
- (d) can be entered by the public without passing through an enclosed area.

2. Where the proprietor of a food business permits a dog into the outdoor dining area, it shall be subject to the following:-

- (1) Any fouling/soiling caused by the dog shall be promptly cleaned and the area thoroughly disinfected.
- (2) Where a dog displays any aggression towards a person or another dog, the proprietor shall direct the Owner of the offending dog to immediately relocate the dog away from outdoor dining area.
- (3) An ample supply of water (eg water bowl) shall be provided for the dog.

**Note:**

**Disability Discrimination Act 1992 (cth)**

For the purposes of the *Disability Discrimination Act 1992 (cth)*, an **assistance animal** is a dog or other animal:-

- (a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a persons with a disability to alleviate the effect of the disability; or
- (b) accredited by an animal training organisation prescribed by the regulations for the purposes of this paragraph; or
- (c) trained:-
  - (i) to assist a person with a disability to alleviate the effect of the disability; and
  - (ii) to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

## 9. NOISE

The permit holder shall not, without the prior approval of the Town, cause or permit the operation of any amplifiers, sound equipment or sound instrument, or have any entertainment within the facility.

## 10. ACCESS, EGRESS AND AMENITY

10.1 The establishment and use of a facility should not conflict with, or inconvenience other retail and commercial activities, or obstruct the views of, or impede access to and egress from, adjacent properties.

10.2 Where the Town believes that such problems may arise, it may consult with the owners and/or occupiers of the affected premises before reaching a decision on an application.

## **11. UPGRADING OF PUBLIC AREAS**

If a proposed facility requires the widening of, or alteration to an existing footpath, the cost of such works, if approved by Infrastructure Services, shall be borne by the Applicant.

## **12. TRAFFIC SIGHT LINES**

12.1 In accordance with Council Policy 062, an outdoor eating facility is not permitted to obstruct sight lines for either vehicles or pedestrians, both at road junctions and at vehicles access crossovers.

12.2 A facility is not permitted to obstruct access from the footpath to kerbside parking, or a loading zone.

## **13. PUBLIC WORKS**

13.1 The Town may require that any furniture, barrier or other structure be removed at any time to allow street works, maintenance or cleaning to be undertaken.

13.2 Where works are to be undertaken to any road reserve, foot path or any other area or structure, an Authorised Person acting on behalf of a Government Department, instrumentality of the Crown or the Town, may direct that the facility be removed for the period of those works and not be re- instated until those works are completed. No compensation shall be payable for any disruption caused by such works.

## **14. PUBLIC LIABILITY INSURANCE**

14.1 All Applicants are required to obtain public liability insurance for not less than ten million dollars (\$10,000,000) in respect of any one event to provide indemnity in respect to both injury to persons and damage to property.

14.2 A copy of the Certificate of Currency is to be provided to the Town prior to the issuing of a permit and the Town is to be advised of any changes to the policy that may affect the facility.

14.3 A permit to operate a facility is automatically suspended if the insurance policy lapses, is not renewed, or is cancelled.

## **15. PERMITS**

15.1 Each permit is valid from the date of issue until the following 30th day of June. The Town can review the operation of a facility at any time to determine whether renewal for a further twelve (12) month period should be approved. As part of the review, the Town will consider the need to amend any existing Permit conditions, or to add further conditions deemed necessary to ensure its satisfactory operation.

15.2 A permit cannot be transferred as it is issued in the name of the applicant, not the premises. A new permit is required on the change of the proprietor of a food business.

- 15.3 The Town may impose conditions on a permit, which relate to the outdoor eating facility. These conditions must be complied with at all times. Failure to comply will result in the Town taking action in accordance with the relevant enforcement procedures.
- 15.4 Should a permit holder wish to alter conditions of an existing or renewed permit, they will be required to submit a new application to the Town, with the prescribed application fee. Fees for additional tables and chairs may be charged pro-rata.
- 15.5 A permit must be renewed by the Permit holder on an annual basis. The prescribed form, required information, and prescribed fee must be submitted to the Town for consideration. Failure to comply will result in the Town taking action in accordance with the relevant enforcement procedures.
- 15.6 Where it is proposed that a permit is to be cancelled, the Permit holder will receive written notice of the cancellation.

## **16. FEES AND ADMINISTRATION**

At the commencement of each financial year, the Council adopts the fees and charges for an application and the renewal of a permit to operate an Outdoor Eating Facility.

## **17. ENFORCEMENT**

- 17.1 The Council will enforce the provisions of the Town of Cambridge Trading in Public Places Local Law 2017 relating to outdoor eating facility's in accordance with the enforcement provisions of the local law.
- 17.2 Compliance with the Town of Cambridge Trading in Public Places Local Law 2017 will be enforced by the Town's Regulatory Services Section. Refer to Part 7, Offences and Penalties, and Schedule 1 of the Town of Cambridge Trading in Public Places Local Law 2017 which details the modified penalties that may be issued by an Authorised Person in the event of an offence being created.
- 17.3 In the event of non-compliance an Authorised Person may implement and/or recommend any of the following enforcement provisions:
- (a) issue a written caution;
  - (b) issue an Infringement Notice;
  - (c) impound furniture or other structures;
  - (d) recommend that the permit be cancelled;
  - (e) recommend a Notice be issued, requiring remedial action or works to remedy a breach of any provision of a permit and may specify a time frame; or
  - (f) recommend prosecution proceedings.