



Policy

39 **OUTDOOR DINING AND STREET TRADING POLICY**

File Reference No:	28.167.7
Strategic Outcome:	Good government
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Date for Review:	01/10/2019
Responsible Officer:	Director Corporate Services

1. **POLICY STATEMENT**

Council is supportive of footpath trading and has developed this policy to encourage its establishment, streamline the approval process and reflect local circumstances.

The benefits of footpath trading areas include:

1. Making our towns more liveable and friendly and adding life to the urban environment;
2. Enhancing social interaction;
3. Boosting trade for retailers; and
4. Adding to our towns' image and lifestyle.

2. **PURPOSE**

The purpose of this policy is to:

1. Ensure a trafficable throughway on town footpaths for pedestrians including users of wheelchairs and motorised scooters
2. Encourage outdoor dining in the Commercial Business District of the towns of Barooga, Berrigan, Finley and Tocumwal;
3. Facilitate the appropriate use of footpaths and public areas for the purposes of outdoor dining areas and other footpath trading activities including the use of free standing signage, flags and like items to promote business activity;
4. Facilitate improvement to the street vitality, amenity and economic viability;



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5. Provide opportunities for shop owners and residents to benefit from pedestrian circulation; and
6. Set a high standard for public safety and amenity, including cleanliness.

The objectives of this Policy are:

1. The appropriate use of footpaths and public areas for outdoor dining areas and footpath trading activities.
2. Outdoor dining areas and footpath trading activities that contribute positively to the streetscape character.
3. Outdoor dining areas and footpath trading activities that are compatible with other community uses of the public space.
4. Outdoor dining areas and footpath trading activities areas that are safe and accessible for all users.
5. To provide an incentive-based fee structure for business traders to conduct their activity on Council owned or managed land

3. SCOPE

This Policy applies to all retail premises, and food premises within commercial areas that are lawfully operating or that have valid development consent to operate, where it is proposed to use Council's footpaths or public areas to either:

1. establish an outdoor dining area, or
2. carry out footpath trading activities
3. place items on footpath or public areas as promotional items for business trading purposes.

Note: This policy does not apply to outdoor dining areas or footpath trading activities that are carried out on privately owned land.

4. OBJECTIVE

This policy is developed to assist the Council with Delivery Plan Objective 1.1.1.3

Process and approve/refuse development applications in accordance with relevant legislation, codes and policies.

5. DEFINITIONS



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Commercial Business District. the area where normal retail activity extends in the towns of Barooga, Berrigan, Finley and Tocumwal.

Consent Authority means Berrigan Shire Council.

Food Premises means the café, restaurant or take away food shop to which the footpath/plaza/public area restaurant will be annexed.

Footpath means the part of a road that is set aside or formed as a path or way for pedestrian traffic.

Footpath Trading Activity means the display of goods for sale or placing promotional flags or items on Council footpaths or public areas.

Permit means the permit which must be held by the proprietor of the premises if they wish to carry out business operations on Council's footpaths or public areas.

Outdoor Dining Area means an area which is the portion of a café, restaurant, take away food shop or other premises directly in front of the premises and on Council owned land where food is served.

Outdoor Dining on Private Land means a dining establishment that is situated on privately owned land.

Permitted Area means the site of the footpath / plaza / public area for which a permit for commercial activity has been granted.

Renewal Date means the anniversary date of the commencement of the permit. The permit must be renewed every two years before this date.

Third Party Advertising means any advertising other than that which identifies the subject premises itself.

Renewal Date is 31 December. It is the common expiry date for all permit holders.

Rental Fee is that fee nominated in Council's annual fees and charges included in the annual Management Plan referring to Outside Dining Areas and Footpath Trading Activity.

6. POLICY IMPLEMENTATION

6.1 Administration

The policy is broken down into four sections:



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Section 6.1 - Administration.

It is important to read this section. It sets out the intention of the policy, where it applies and where it does not. It also lists some activities that are exempt from the need to apply for a permit.

Section 6.2 - General Conditions.

These apply to all activities undertaken in sections 6.3 and 6.4 and includes the terms of approval permits.

Section 6.3 - Outdoor Dining Areas.

This section defines the criteria for dining on footpaths and public areas under the control of the Council.

Section 6.4 - Footpath Trading Activity.

This section defines the criteria for extending business trading from premises onto footpaths and public areas under the control of the Council. It also includes the use of free standing signage, flags and like items to promote business active.

6.1.1 Obtaining a permit

Council will use this Policy to assess all applications for the commercial use of footpaths or public areas. Before applying for a permit, you should:

1. obtain an application form for either a 'Footpath Trading Activity Permit' or an 'Outdoor Dining Area Permit' from Council;
2. consider how your proposal complies with the objectives of this policy;
3. establish which sections of this Policy apply to your proposal;
4. consider discussing the proposal with Council officers to ensure relevant key matters are identified and addressed;
5. ensure that your application is consistent and complies with the requirements contained within this Policy; and
6. ensure you are providing Council with all the necessary information.

6.1.2 Advertising structures



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Outdoor Dining and Footpath Trading is not to be used as a vehicle for increasing advertising to a business's activity. The use of advertising material and signage outside the provisions of this policy will require separate development consent.

6.1.3 Variations and exemptions

Variations to the controls and requirements of this Policy may be permissible if, in the opinion of the Council, the objectives of the Policy have been met. A written statement and any other supporting information that details how this has been achieved must be included with the application.

Community organised events, such as street stalls and raffles, and special one-off celebrations are not required to lodge an application for approval, provided businesses comply with the criteria set out in this policy.

Individual businesses are permitted 10 non-consecutive promotional days during each calendar year without the need to lodge an application provided they comply with the criteria set out in this policy.

6.1.4 Application requirements

Applicants are required to complete and submit to Council an application form to conduct activities covered by this policy. If approved a time limited permit will be issued for the activity. Application forms are available from Council's Customer Service Staff or downloadable from the Council Website.

6.1.5 Required information with an application

Applications must be made on the standard **Applications Form ENV042** and include a sketch indicating:

1. the street;
2. your property;
3. your neighbour's property;
4. distance from the boundary line to the kerb & gutter;
5. distance from the boundary line to any awning posts;
6. areas (with dimension) of the footpath to be occupied;
7. location of any street furniture to be included in the area e.g: planter boxes & chairs and table;



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8. details of any signs or flags; and
9. details of the design and colour of the outdoor furniture proposed, including photographs.

6.1.6 Renewal

The permit must be renewed every two years before the arrival of the renewal date. It is the permit holder's responsibility to ensure the renewal of the permit before the arrival of the renewal date. If the renewal is not made by this date, the activity is to cease until the permit is re-approved.

Permits are issued to business proprietors and are not transferable. Any new proprietor will need to make a new application and provide an new indemnity for the Council.

6.1.7 Development Application form

The development application form does not form part of this policy and may be changed from time to time.

6.2 **General considerations**

6.2.1 Hours of operation and noise impacts

The hours of operation will generally be the same as the hours approved under the development consent for the premises unless a lesser period is determined due to environmental considerations.

An application for an outdoor dining area or footpath trading activity will not be approved under this Policy if the proposal is of such a scale that the noise generated will have a significantly adverse effect upon nearby residential properties.



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6.2.2 Insurance

Proprietors of the premises must maintain no less than \$20m public liability insurance cover for use of the footpath area throughout the permit period.

Proprietors must provide the Council with an indemnity covering activities related to their use of the footpath area.

6.2.3 Conduct of patrons

The appropriate conduct of patrons is the responsibility of the permit holder.

6.2.4 Work on Council footpaths and public areas

Permit holders cannot claim for any loss of income or refund of permit fees as a result of works carried out by Council or other Service Providers on Council owned footpaths and public areas.

6.2.5 Rental fees

Application and Rental Fees to conduct business or place items on Council Owned or managed land will be charged in accordance with Council's current Fees and Charges Register, which is reviewed by Council on an annual basis.

6.2.6 Modification or early termination

Council may terminate or cancel a permit to use a footpath, plaza or public area or have the agreed conditions of the permit modified at any time in order to maintain optimal pedestrian movement patterns or preserve the amenity of the area. Council may also terminate a permit at any time if all or part of the permit area is required for road construction.

Reasonable notice shall be given in the event this clause needs to be applied.

The Council can only advise permit holders of any proposed work under its control. Other service providers have authority to undertake work on footpaths and the like without seeking approval from permit holders or the Council

6.2.7 Breaches

Council may terminate a permit for breaches of the agreed conditions of the permit or the requirements of this policy. Repeated breaches will result in termination of the permit agreement. Breaches of the permit include but are not limited to:

1. non-payment of rental fee, if any



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2. encroachment beyond permitted outdoor dining area and footpath activity area;
3. non-compliance with the approved permit and the controls set out in this Policy;
4. not cleaning dining areas on a daily basis.

6.2.8 Other requirements

Nothing in this policy is designed to modify or lessen any requirements of business owners or the Council under any State or Federal legislation or other Council policy

6.3 Outdoor dining areas

6.3.1 Suitable locations

Outdoor Dining Areas should be located on a suitably constructed surface that is sufficiently level to allow for the safe use of the furniture and can support a layout that adequately meets the other requirements of this policy;

1. Location should be consistent with any other outdoor dining area at an adjoining premises;
2. A minimum straight unobstructed footpath width of 2.0 metres located between the premises and the kerb and gutter is to be maintained;
3. Outdoor Dining Areas must be located so as not to interfere with car parking and vehicular movement;
4. Outdoor Dining Areas must be located as to protect the safety of diners and pedestrians
5. Furniture must not be placed within 0.8 metres of any accessible parking space;
6. Outdoor Dining Areas must be located directly in front of the premise to which it relates;
7. Either non-disposable eating utensils are provided in the outdoor dining area of the premises, or appropriate receptacles for the collection of disposable eating utensils need to be provided; and
8. No furniture shall be located within 3.0 metres of any road corner, bus stop or taxi stand.

6.3.2 Furniture



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Outdoor furniture to be used by an establishment must be approved by Council and should adhere to the following guidelines:

1. Outdoor furniture must be commercial grade and of adequate strength and durability to withstand most external weather conditions and outdoor commercial use. Powder-coated, polished aluminium, brushed or stainless steel, natural or painted timber are preferred. Domestic style furniture is not permitted as it is not generally considered to be high quality, aesthetically pleasing or durable.
2. All furniture must be of a high aesthetic quality that enhances the existing streetscape. The Council shall be the assessor of the aesthetic suitability of furnishings.
3. Furniture for all establishments and surrounds are to be kept in a clean, hygienic and safe condition at all times.
4. Umbrellas are to be securely stabilised. Penetrations into the footpath are prohibited. Umbrellas should not protrude into the roadway or pedestrian thoroughfare.
5. All furnishings are the responsibility of the proprietor,

All furnishings are to be removed from the public domain and stored elsewhere outside of trading hours.

6.3.3 Heating structures

Any proposal to use heating structures within outdoor dining areas will be assessed on merit with consideration given to footpath width, type, number and location of heating structures proposed. Particular attention will be given to the safety of the diners and the public.

Note: All gas heating structures must adhere to *Australian Standard 4565 – Radiant Gas Heaters for Outdoor and Non-residential Indoor Use*

6.3.4 Lighting

Any outdoor dining area licensed to operate outside daylight hours must be adequately lit to ensure the safety and amenity of patrons and the general public. Lighting of any outdoor dining area must be in the form of down lights or the like which need to be:

1. directed away from the roadway;



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2. contained to the outdoor dining area only; and
3. turned off outside the operating hours of the premises.
4. Existing under awning lighting may suffice

6.3.5 Advertising and signage

Advertising on outdoor dining furniture or footpath trading activities that is associated with the café/restaurant or retail premises is permitted by Council in accordance with the following guidelines:

1. The third party advertising of one advertiser only may appear on the furnishings of the area. It should dominate the appearance of every piece of furniture that it appears on. (e.g. coffee advertising on barrier walls). Specifically barriers, signs, banners etc. should be used as billboards for third party advertisements or notices.
2. Details of third party advertising on outdoor dining furnishings must be submitted to Council with the application for a permit.

6.3.6 Planter boxes

Planter Box styles proposed for use within outdoor dining areas will be assessed by Council on merit with consideration given to footpath width, type and location of the planter boxes proposed. Planter boxes:

1. must be located within the permit area;
2. must be located so as not to obstruct pedestrian flow;
3. must be kept maintained and cleaned of litter;
4. cannot carry advertising; and
5. Council reserves the right to order the removal of planter boxes that are not properly maintained.

6.3.7 Permanent structures

In some cases, the applicant may wish to undertake streetscape works to accommodate an outdoor dining area. Such works may include street tree planting, landscaping, pedestrian lighting etc. Any such work requires a specific approval by the Council and lodgement of a development application.



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These structures are outside the provisions of this policy and require separate development consent and rental agreements with the Council

6.3.8 Amenity, public health and safety

Each permit holder is responsible for the cleanliness and tidiness of the area in front of the premises and the immediate surrounds used for outdoor dining.

1. Tables must be cleaned of food scraps immediately after customers leave. All litter must be swept up and disposed of appropriately.
2. Furniture items must be maintained in a neat, tidy and clean appearance when in use.
3. All furniture must be removed from the footpath/plaza/public area and the area should be swept and stains removed from the footpath on a daily basis at least.
4. Permit holders must comply with any relevant legislation, including the *Food Act 2003* and the *Smoke-free Environment Act 2000*

Note: Debris must not be swept into the gutter. This action constitutes a pollution offence for which penalties may be incurred.



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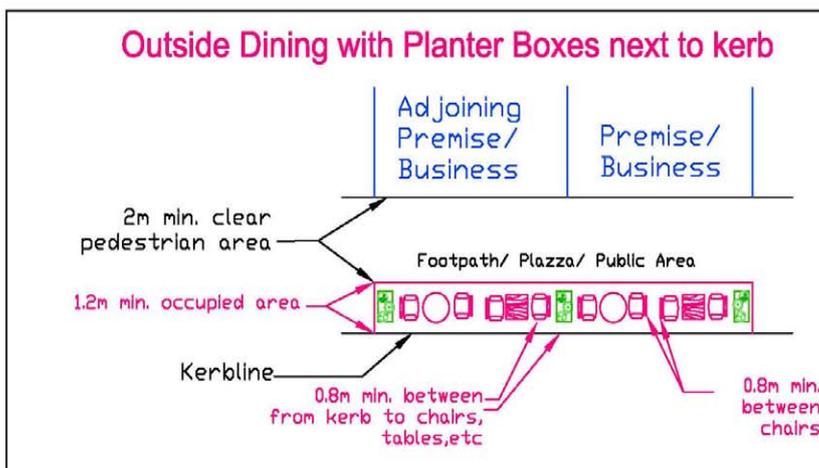
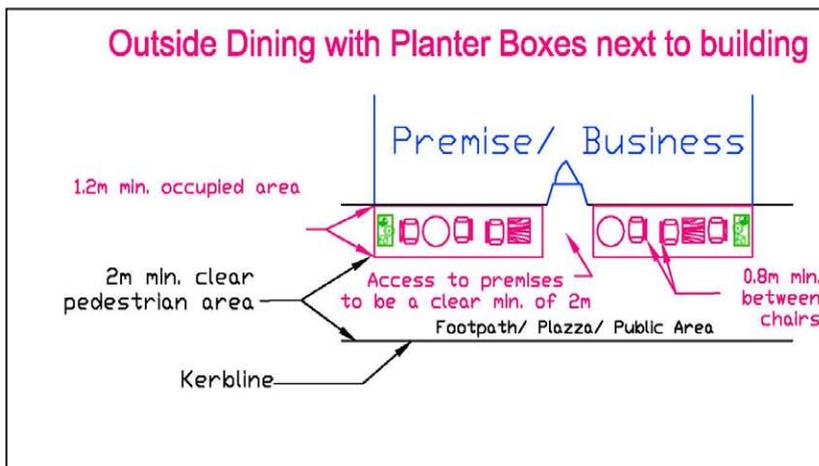
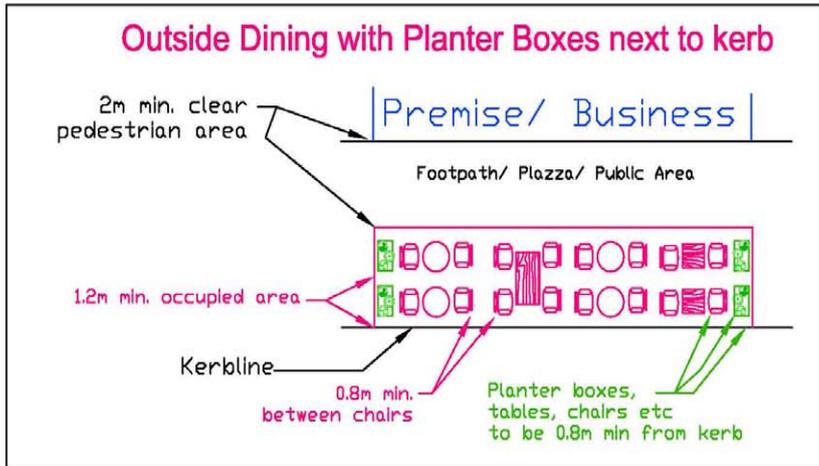
6.3.9 Approved furniture

Guide for Outdoor furniture components			
Permissible	Reason	Prohibited	Reason
	<p>Attractive commercial grade timber. and aluminium Easily removed for storage. Easily maintainable</p>		<p>Low grade plastic Intended for domestic purposes. Not easily maintained. Has a poor aesthetic quality</p>
	<p>Commercial grade plastic chair</p>		<p>Low-grade plastic Intended for domestic purposes only. Poor aesthetic quality.</p>
	<p>Attractive stainless steel timber combination commercial grade suitable for outdoor use.</p>		
	<p>Commercial grade stainless steel table. Stackable for easy storage.</p>		



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6.3.10 Typical layouts and plans





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6.4 Footpath trading

6.4.1 Activity location

The space directly in front of the retail premises is allocated to that shop. Footpath trading activities must be established in accordance with the following guidelines:

1. Footpath trading activities must be located on a safe, stable, hard surface that is sufficiently level to provide adequate stability to display stands.
2. Supervision of trading activities / goods must be possible from the shop.
3. A minimum straight unobstructed footpath width of 2.0 metres located between the premises and the kerb and gutter is required.
4. The location of the footpath trading activity shall be consistent with any footpath trading activity or outdoor dining area at adjoining premises.
5. No footpath trading activity shall be located within 3.0 metres of any road corner, bus stop or taxi stand.
6. The footpath trading activity shall have a depth not greater than 1.2 metres.
7. The footpath trading activity is not to extend beyond the side property boundary of the premises.
8. The footpath trading activity is not to impede access to or egress from the premises.
9. The footpath trading activity is not to create litter, rubbish or other form of degradation of the footpath.
10. Footpath trading activities (including display stands) are to be stabilised to avoid collapse.
11. The lodged application must show the intended location of display stands and structures.
12. All furnishings are to be removed from the public domain and stored elsewhere outside of trading hours

Note: This list is not exhaustive. Council reserves the right to order the removal of



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any merchandise considered to be a risk to the health and safety of the public and environment at any time

6.4.2 Display of merchandise

When displaying goods on a footpath:

1. Fresh food must be kept at least 750mm above the footpath.
2. All goods must be displayed on stands, racks or in containers above the level of the footpath, unless goods to be displayed are designed in a manner intended to allow for placement on the ground.
3. No advertising using amplification or persons calling to the public may be undertaken in association with the display of goods.

6.4.3 Display stands

When using display stands on footpath areas to present goods, the following conditions apply:

1. All goods are to be presented on display stands approved by Council.
2. Display stands are to be aesthetically pleasing, durable, well finished, secure and solid-to-ground at the base.
3. Materials and finish of display stands must be weather-resistant. Edges and corners must be finished so as not to cause any injury to a passer-by.
4. All display stands are to be custom made and/or designed for the goods being displayed.

6.4.4 Prohibited merchandise

The following types of merchandise may **not** be displayed on footpaths or public areas:

1. liquor
2. drugs
3. tobacco
4. gases (e.g. Liquid Petroleum Gas [LPG] canisters)



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5. corrosives (e.g. car batteries)
6. oxidising materials (e.g. paint stripper)
7. explosives (e.g. boat flares)
8. flammable liquids
9. spray paints
10. freezers containing party/block ice

6.4.5 Free-standing signage, flags and the like

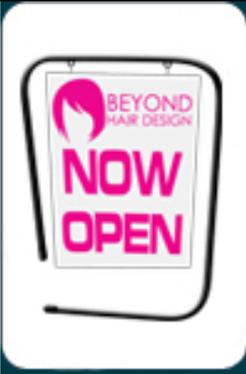
When using free standing signage, flags and like items to promote business activities on footpath areas, the following conditions apply:

1. Items are to be aesthetically pleasing, durable, well finished, secure and solid-to-ground at the base
2. Each item may occupy up 0.8m² of surface area on the footpath.
3. The maximum number of items per premises is directly related to shop frontage facing the street. Two items are permitted for every 10m of shop frontage.
4. The maximum number of items per premises is six.
5. A minimum straight unobstructed footpath width of 2.0 metres located between the premises and the kerb and gutter is to be maintained.
6. No item shall be located within 3.0 metres of any road corner, bus stop or taxi stand.
7. All temporary furnishings are to be removed from the public domain and stored elsewhere outside of trading hours.



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6.4.6 Examples of approved display

Trading activity items on footpath			
Permissible	Reason	Prohibited	Reason
	<p>Stands are solid to-ground and designed to display the products for which they are being used.</p>		<p>The stand is not designed to suit the product and present a risk to public safety.</p>
	<p>A-frame advertising. With the ability to insert different promotional advertising</p>		<p>Example of inappropriate Light weight structure</p>
			<p>Inappropriate use of adverting signage</p>



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7. RELATED POLICIES OR STRATEGIES

7.1. Legislation

- *Local Government Act 1993*
- *Environmental Planning & Assessment Act 1979*
- *Roads Act 1993*
- *Food Act 2003*
- *Smoke-free Environment Act 2000*

7.2. Council policies and guidelines

- Berrigan Shire 2023 – Community Strategic Plan
- Berrigan Shire Council Local Environmental Plan
- Berrigan Shire Council Economic Development Plan
- Berrigan Shire Council Risk Management Policy and Framework