

Outdoor Dining Policy

Date Adopted:

Version: 1.0

Policy Objectives

This Outdoor Dining Policy sets out the circumstances and conditions under which Council will issue approvals by way of a permit to allow outdoor dining in public places that are adjacent to existing food and drink-based business premises. Such public places may include the footpath, part of a road, part of a park, and other similar areas.

The aim is to establish a framework that makes it easy for food and drink-based businesses to expand their existing dining activities to the outdoors and onto public land that is adjacent to their existing premises.

This Outdoor Dining Policy is designed to:

1. provide a framework for establishing and operating an Outdoor Dining Area, including:
 - a. determining the suitability of a site,
 - b. managing public safety including footpath and road safety,
 - c. ensuring operations do not detract from the visual appeal of an area,
 - d. meeting ongoing operational requirements, and
 - e. meeting all necessary state and federal legislative requirements.
2. reduce the time and complexity of the approval process.
3. encourage the use of public places for outdoor dining as a means of stimulating business growth and development.
4. ensure Outdoor Dining Activities cause minimal disruption to neighbours, pedestrians, and other street users.
5. promote vibrancy, culture, vitality, amenity, and ambience in the street environment of commercial areas while also protecting the existing local character of an area.

Policy Scope

This Outdoor Dining Policy applies to existing, approved, food or drink-based businesses located within the Maitland Local Government Area that wish to use public places for outdoor dining.

The Outdoor Dining Policy applies to public places that are under the care and control of Maitland City Council and are suitable for outdoor dining.

Policy Statement

At Maitland City Council, we recognise that outdoor dining strengthens local economies, enlivens streets, and establishes dining precincts as destinations.

Maitland City Council is committed to providing well-managed outdoor dining spaces that will promote equitable access and ensure a safe and comfortable experience for diners and other users of public spaces, whilst supporting and encouraging local businesses to expand their operations and enhance their service offerings.

Outdoor Dining Permit Requirements

The criteria for the granting of an Outdoor Dining Permit are set out below.

The Business

The applicant must:

1. be the owner of an existing food or drink-based business located within the Maitland Local Government Area,
2. have a current approval from Maitland City Council to operate the food or drink-based business (i.e. development approval),
3. make sure the current approval will allow for the number of chairs and tables proposed for the Outdoor Dining Area*,
4. be in compliance with all the requirements of the current approval,
5. maintain for the entire period of the Outdoor Dining Permit, Public Liability Insurance in the amount of \$20 million (or more) for each and every claim, and the policy must note the interest of Council.

*If the current approval does not allow for number of chairs and tables proposed for the Outdoor Dining Area, the applicant will need to apply to Council for an amendment to the development approval before there can be an increase in tables and chairs. In other words, some indoor tables and chairs would need to be placed outdoors until there is approval for extra tables and chairs.

The Site

The location of the proposed Outdoor Dining Area must:

1. be adjacent to the applicant's business,
2. enhance the local character, street vitality and economic viability of the area,
3. facilitate the appropriate use of footpaths and public places,
4. maintain an equitable and safe thoroughfare for all users (public safety including road safety, accessibility, line of sight, managing animals responsibly, and engaging with the public to support inclusive and secure movement for all).
5. not cause any negative impacts to road safety or traffic network efficiency,
6. not be on Crown land, in a conservation zone, or the E5 Heavy Industrial zone,
7. comply with any applicable plan of management if it is located on Maitland City Council land that is classified as community land,

8. not be situated under an awning, unless the awning complies with the requirements set out in the *Building Code of Australia*, Volume 1, B1P1 and B1P2,
9. not restrict any vehicular or pedestrian access to or from, or entry to, a building,
10. not reduce the existing access or car parking spaces for people with a disability,
11. not be in an enclosed courtyard and must provide a direct exit from the Outdoor Dining Area to an open space or a road,
12. not be in a place of Aboriginal heritage significance identified in the current Maitland Local Environmental Plan,
13. not be on a roof top,
14. not require the approval of a permanent structure, and
15. otherwise, be in compliance with the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

State Classified Roads

Where the Outdoor Dining Area is next to traffic control signals or a state classified road, such as along sections of the New England Highway, Council must have agreement from Transport for NSW and there may be additional requirements (see section 125(2) of the *Roads Act 1993*).

Permission from Adjoining Premises or Business

If a proposed Outdoor Dining Area extends in front of adjoining business premises, the applicant must obtain written permission from the owner of those premises and the owner of any business operating there. If this permission is revoked at any time in writing by either the adjoining business owner or the owner of the adjoining premises, the approval to use that section of the Outdoor Dining Area will be void, and outdoor dining in that area must cease by the next working day. The approval to use that section of Outdoor Dining Area will also be void if either the ownership of the adjoining premises or the ownership of the adjoining business changes. In either case, a fresh application for outdoor dining must be submitted.

The Design

The design of the Outdoor Dining Area must:

1. follow the Outdoor Dining Guidelines (refer to section 4. Function of the Outdoor Dining Guidelines),
2. ensure the layout and the choice of Outdoor Dining Furniture reflects the character of the local area,
3. ensure that any Outdoor Dining Furniture or other temporary structures do not cover or impede access to public utility, drainage and other service pits for Maitland City Council or other utility providers, with access to these to be made available at any time and at no cost, and
4. ensure that any Outdoor Furniture or other temporary structure is not permanently fixed*.

*If your proposal includes Outdoor Dining Furniture or other structures intended to be permanently fixed, you must consult with Council prior to submitting your application. Approval will be granted on a

case-by-case basis, subject to the requirements outlined in the Guidelines. This will be noted as a special condition on the Outdoor Dining Permit.

Outdoor Dining Activities

The Outdoor Dining Activities must:

1. avoid nuisance, endangerment or inconvenience to neighbours and the public,
2. not cause offensive noise, within the meaning of the *Protection of the Environment Operations Act 1997*,
3. address public liability, manage risks, and ensure compliance with state legislation (including liquor laws – see below),
4. not contravene an existing condition of the most recent development consent for the business for the premises' hours of operation, maximum capacity of patrons, waste management, food safety and pollution control,
5. meet Council's waste management requirements and the sanitary facilities requirements under the *Building Code of Australia*, Volume 1 F4F1, and
6. comply with 'Australia's Strategy for Protecting Crowded Places from Terrorism' (as updated from time to time) which, together with its supporting guidelines, addresses a number of specific security risks for crowded places, including in relation to hostile vehicles. These documents are available at www.nationalsecurity.gov.au

Further information about the Outdoor Dining Permit Requirements is found in the Outdoor Dining Guidelines.

Special Requirements for Outdoor Dining with a Liquor Licence

If an applicant has an existing liquor licence and they wish to serve alcohol in an Outdoor Dining Area either on a temporary or permanent basis, they are required to extend their boundary to include the Outdoor Dining Area in compliance with the *Liquor Act 2007*. NSW Liquor & Gaming's website contains information about this: [Outdoor alfresco - liquor licence boundaries | NSW Government](http://www.lga.nsw.gov.au/alfresco-liquor-licence-boundaries).

The application for an Outdoor Dining Permit must be made first. The current liquor licence must be attached to the Outdoor Dining Application and/or the intention to serve alcohol must be disclosed.

If an Outdoor Dining Permit is granted, Council will provide the applicant with a form to complete (the temporary or permanent form, as applicable) which must be completed and returned to Council. We will then review it and forward it to the licensing team at NSW Liquor & Gaming for processing.

Whilst an applicant waits for NSW Liquor and Gaming to change the liquor license to extend the boundary, the service of liquor in the Outdoor Dining Area will not be permitted. In other words, only food and non-alcoholic drinks can be consumed in the Outdoor Dining Area until Council receives evidence that the liquor licence has been changed to extend the boundary.

Council has the following additional requirements:

1. A restaurant or café must have standard trading hours and be only authorised to serve liquor with meals, i.e. no extended trading authorisation (ETA) or primary service authorisation (PSA).

2. A relevant person for the licensed premises, or the licensed premises, must not have received an improvement notice, had a complaint upheld or had regulatory action taken under the *Liquor Act 2007* within the previous 12 months.
3. Any Outdoor Dining Area that is located within a designated alcohol-free zone must be cordoned off in an appropriate manner.

Application Process

Applicant Self-Assessment

Prior to submitting an Outdoor Dining Application, the applicant is required to undertake a self-assessment of their proposed Outdoor Dining Activities in accordance with the Outdoor Dining Permit Requirements outlined in this policy. If the applicant determines that they can meet all the Outdoor Dining Permit Requirements, they must provide a signed declaration to this effect with their Outdoor Dining Application.

Our compliance officers may audit the self-assessment as part of the application process.

How to Apply

An application for an Outdoor Dining Permit is made via the online form available on our website maitland.nsw.gov.au

Outdoor Dining Application Fee

A one-off and non-refundable application fee will be charged at the time the Outdoor Dining Application is submitted. There will be no additional cost associated with the number of chairs and tables on the Outdoor Dining Permit. Different fees apply if there is an application for a permanent change of boundaries with respect to a liquor licence.

The current fees and charges are found in the Maitland City Council Fees and Charges document for the applicable year which is found on our website. All fees are reviewed on an annual basis.

Outdoor Dining Permits

Conditions of Approval

An Outdoor Dining Permit may be issued with conditions. The Outdoor Dining Permit will detail the conditions of approval that apply to the particular business owner and the particular site.

All Outdoor Dining Permits will include a requirement that the Outdoor Dining Permit is to be displayed at all times at the business related to the Outdoor Dining Area or be produced to us when requested.

The Outdoor Dining Operator must also ensure the Outdoor Dining Area is operated in compliance with the Outdoor Dining Permit Requirements outlined in this policy and all applicable legislation and corresponds with the details submitted in the Outdoor Dining Application.

Term of Outdoor Dining Permits

All Outdoor Dining Permits are granted for a term of 5 years commencing from the date of issue.

At the expiration of the 5-year term, the Outdoor Dining Permit may be renewed upon application and subject to the relevant fees and charges.

An Outdoor Dining Permit may be terminated or suspended at any time. It may be suspended:

- immediately if Council forms the opinion, it is necessary for safety reasons; or
- with at least 7 days' written notice to the Outdoor Dining Operator if work needs to be undertaken in the approved footpath area; or
- with at least 7 days' written notice for any other reason.

An Outdoor Dining Permit will be granted to the owner of a business, not to a business name or to a location.

The Outdoor Dining Permit is not transferable and upon the sale of the business a new Outdoor Dining Application must be made if the new owner wishes to hold an Outdoor Dining Permit.

At the expiration or termination of the Outdoor Dining Permit, the Outdoor Dining Operator must:

- a. remove all Outdoor Furniture and other property from the Outdoor Dining Area; and
- b. restore the Outdoor Dining Area to its original condition.

If the business owner fails to remove all Outdoor Furniture or other property from the Outdoor Dining Area at the expiration or termination of the Outdoor Dining Permit, we will issue a notice requiring its removal. If any Outdoor Furniture or other property is not claimed within 28 days of the date of the notice, we may remove and dispose of it at our discretion.

If the business owner fails to reinstate and restore the Outdoor Dining Area (including the footpath) to its original condition within 14 days from the date of expiration or termination of the Outdoor Dining Permit, we may reinstate and restore the footpath to its original condition at our discretion.

The Outdoor Dining Operator agrees to pay our reasonable costs for any removal, reinstatement and restoration action taken as described above and any such costs will become a debt due to Maitland City Council.

Compliance

As part of the food premise's annual inspection, our compliance officers will check that an Outdoor Dining Area complies with the conditions of the Outdoor Dining Permit including the Outdoor Dining Permit Requirements, this policy, and all applicable legislation.

Compliance officers may also conduct spot checks in relation to any Outdoor Dining Permit.

Non-compliance

Using an Outdoor Dining Area without an Outdoor Dining Permit or not in accordance with an Outdoor Dining Permit is an offence and may result in an infringement notice being issued or the suspension or cancellation of the Outdoor Dining Permit.

Dispute Resolution

Any dispute or complaint about an application for an Outdoor Dining Area or about the operation of an Outdoor Dining Area will be handled in accordance with our policies and processes.

Disputes or complaints about liquor licences will be handled by Liquor & Gaming NSW through its policies and procedures.

Policy Definitions

TERM	MEANING
Liquor Act 2007	Legislation seeking to regulate and control the sale, supply and consumption of liquor in a way consistent with community expectations, needs and aspirations; to facilitate balanced development of the liquor industry; and to contribute to the responsible development of related industries such as hospitality.
Outdoor Dining Activities	The provision of permitted seating and tables and the performance of other activities directed at the consumption of food and beverages in an Outdoor Dining Area.
Outdoor Dining Application	The Outdoor Dining Application form, whether online or otherwise, or other application method applicable from time to time, as described on our website: www.maitland.nsw.gov.au .
Outdoor Dining Area	The use of a public place, including the footpath, part of the road, and other similar areas for the purpose of an outdoor dining area associated with lawful food and drink premises.
Outdoor Dining Operator	The holder of the Outdoor Dining Permit who has management and control over an Outdoor Dining Area.
Outdoor Dining Permit	A permit issued under this Outdoor Dining Policy authorising Outdoor Dining Activities in a particular area.
Outdoor Dining Permit Requirements	The requirements for an Outdoor Dining Permit set out in this Outdoor Dining Policy.
Outdoor Furniture	Removable tables and chairs or other approved furniture such as umbrellas or outdoor heaters owned by restaurants, cafes or similar for use in the Outdoor Dining Area.
Permanent Structure	Any outdoor structure not intended to be moved around frequently and that would be difficult to move without mechanical or other assistance within a 24-hour period.

Policy Administration

Business group	City planning
Responsible officer	Coordinator City and Visitor Economy
Council reference	Ordinary Council Meeting ***** 2025 – Item ***
Review date	*****
File number	****
Relevant legislation	Roads Act 1993 Local Government Act 1993 Disability Inclusion Act 2014 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Environmental Planning and Assessment Act 1979 (EP&A) Protection of the Environment Operations Act 1997 Food Act 2003 Liquor Act 2007
Related policies / procedures / protocols	Outdoor Dining Guidelines Outdoor Dining Application Form Maitland LEP 2011

Policy History

VERSION	DATE APPROVED	DESCRIPTION OF CHANGES
1.0		New Outdoor Dining Policy adopted