



USE OF COMMUNITY LAND FOR BUSINESS PURPOSES PERMIT
Pursuant to Section 200 Local Government Act 1999

OUTDOOR DINING PERMIT APPLICATION FORM 2018/19
An Application Form must be completed every year.

This Application Form may be lodged, posted, faxed or emailed to:

City of Holdfast Bay
24 Jetty Road
PO Box 19
Brighton SA 5048
Fax: 8298 4561
Email: mail@holdfast.sa.gov.au

Glenelg Library & Customer Service Centre
2 Colley Terrace
Glenelg SA 5045

Please read the attached General Conditions prior to completing this Application. It is particularly important that the Applicant reads the Permit Condition No. 21 relating to advertising on any outdoor dining items.

Outdoor Dining Permits are issued on an annual basis from 1 July to the following 30 June. Council will forward an application form to all existing permit holders in June each year.

The following Outdoor Dining Permit fee rates apply for 2018/19 (GST is not applicable & Permit fees are non-refundable):

Moseley Square enclosed:	\$318 per m ²	South Esplanade:	\$318 per m ²
Moseley Square exposed:	\$115 per m ²		

This Application must be completed and signed by the person or company operating the business associated with the outdoor area. The Applicant cannot be a Trading Name or consultant.

Is this your first application? Yes / No (please circle the correct answers)

Is this a renewal of an existing permit? Yes / No

If this is your first application, after reading this Application Form and General Conditions attached, arrange for an onsite meeting with the Council's Outdoor Dining Permit Officer **PRIOR** to completing the Application Form. The area must be first inspected by Council to assess the suitability of the location, whether safety bollards are required (at your cost), what portion of the footpath or area (define boundaries) is available for outdoor dining, determine the maximum number of table settings and diners permitted, and answer enquiries. The Permit Officer can then provide guidance on the completion of this application form and a site plan that you must provide with the completed application form. There is no application fee. Be mindful, that using the footpath for outdoor dining without a Permit incurs a on the spot fine of \$210 per day under state legislation. The granting of a permit or its continuance cannot be assumed as it is not a lease and the Permit is issued on an annual basis subject to compliance with Permit Conditions and Council's willingness to allow outdoor dining at the location.

The Applicant

The Applicant is the person or company operating the business, (eg. If the business is a franchise, the Applicant must be the franchisee unless the franchisee has not been appointed. The company must notify the Council when a franchisee has been appointed who then becomes the Applicant. The Applicant cannot be a Trading Name or consultant.

Trading Name of Business.....

AddressPhone.....

Postal address:.....

ABN (will be returned if not supplied).....

Business Operating Hours.....

Contact Person.....Position.....

Are you applying for any changes or alterations to your existing Permit? Yes / No

Contact the permit officer as soon as possible to discuss the changes. Be mindful all “approved” outdoor dining infrastructure will be listed on your Permit.

Name and number the proposed changes

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Name of Applicants Public Liability Insurance Company.....

Note: The applicant MUST provide a Certificate of Currency from his/her insurance company showing that the public liability is at least twenty million dollars and the policy is endorsed to show the City of Holdfast Bay as an Interested Party. A Certificate of Currency must be submitted each year with your Application or the Permit will not be issued. You may choose to ask your insurance agent to fax the Certificate direct to the Outdoor Dining Permit Officer on 8298 4561.

Do you currently have a Licence to supply alcohol in your outdoor dining area? Yes / No

Are you applying for a Licence to supply alcohol in the outdoor dining area? Yes / No

An Outdoor Dining Permit must be issued prior to submitting your application to the Liquor Licence Commission for the outdoor area. The maximum number of diners for your Liquor Licence application must not exceed the number of diners approved under Council’s Outdoor Dining Permit. If the Outdoor Dining Permit lapses, suspended or cancelled the Liquor Licence Commission will be notified. If you sell your business you must advise the new owner he/she must make an application to Council for an Outdoor Dining Permit irrespective if the business is licensed to supply alcohol because the sale of the business bears no relationship to the outdoor dining permit. You cannot sell a footpath or council land.

Will your business be allowing your customers takeaway food and or disposable eating and drinking utensils within its outdoor dining area? Yes / No

If Yes- and you propose 5 tables or more you must provide and service your own labelled litter bins and you are responsible to discard all litter generated. Should your business or its staff deposit wastes generated within your outdoor dining into Council litter bins it is a breach of your Permit Conditions and the continuance of your Permit is in jeopardy. The litter bins must be in location prior to trading in the outdoor dining area.

Layout

The location of table settings must be in line with nearby (same street) existing outdoor dining permits (kerbside preferred) allowing a clear 2 metre wide footpath in Jetty Roads Glenelg and Brighton for pedestrians passing the outdoor dining area at all times. There may be consideration to 1.5 metre for pedestrian passage in other locations. Further, unless approved otherwise, there must be at least a clear 600mm set back from the gutter in order for people to access parked vehicles unless the area is opposite a disabled parking space, taxi zone or loading zones that require a minimum set back of 1metre from the kerb. Neighboring businesses with outdoor dining must allow an adequate gap (approx 500mm long) for the public to access the footpath from the road. Moseley Square applicants must provide a minimum of a clear 3 metres for pedestrians passing between the outdoor dining and the building line. **Movable signs or objects are not permitted in the pedestrian passing zone in any location.**

Number of Tables and chairs

Council will not issue a business a Permit that may result in overcrowding, undue obstruction to pedestrians or reduce the net safety of the area and there must be adequate space between table settings to service and clean the area. The Council has determined that the following formula be used to determine the maximum number of diners: **1 diner per square metre.**

Consequently if there is 6 square metres of available space (after the required pedestrian passing zone(2m or 1.5m) and 600mm set back from the kerb has been established) then the applicant can apply for table and chair configurations that will not exceed 6 diners (refer table below).

For guidance:

1 table X 2 chairs = occupies 2m length x 1m depth = 2 square metres

1 table x 3 chairs = occupies 2m length x 1.5m depth = 3 square metres

1 table x 4 chairs = occupies 2m length x 2m depth = 4 square metres

Irrespective of the shape of the available outdoor area, using the formula 1 diner per square metre is a guide to determine the maximum number of diners that can be seated within the available area. Example: 15 square metres will accommodate 3 x 4 seat tables and 1 x 3 seat table. It is a breach to exceed the maximum number of diners permitted and it is the responsibility of the business to contain the diners within the defined boundaries. Council will install metal discs on outdoor boundaries approximately 1200mm apart.

Where the footpath width can only allow for one single row of tables with 2 chairs per table the diameter of the tables may have to be restricted to 600mm to accommodate the required pedestrian passing area (2 metre or 1.5metre) and the required 600mm set back from the gutter where tables are located near the gutter side of the footpath. In this instance one table with 2 chairs may be restricted to an area of 600mm wide and 2 metres long.

Construction of tables and chairs

The tables and chairs must complement the area and the use of **cheap, moulded plastic chairs and tables is not permitted. Stools are not permitted.**

COMPLETE THIS TABLE - ON EACH AND EVERY APPLICATION

Total Square metre area of Outdoor Dining AreaM ² as determined by Council
Number of Tables.....Construction*Table Diameter*
Number of Chairs.....Construction.....
Total number of Diners.....
Name and number all <u>other</u> objects, items or structures associated with your outdoor dining area <u>Note:</u> this will be shown on your Permit if approved. If not shown on your Permit approval has not been granted. (Movable canvas café screens are prohibited and planter boxes will only be approved if plastic, rubber construction or situated behind safety bollards.)

Are you applying to fix any items /objects / structures to the pavement? Yes / No

If Yes - list those objects/items or structures.....

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A site plan is required for First Applications or Proposed Changes - (Discuss with Permit officer)

Note: If your business is on a corner or within 10 metres of an intersection or junction, you must indicate it on your plan. If you are required to provide safety bollards (at your expense) the outdoor dining area cannot be less than 1100mm from the face of the kerb (unless approved variation) because tables must be at least 500mm from the bollards and the bollards must be 600mm from the kerb unless approved otherwise. Approval for planter boxes cannot be assumed as they can create a hazard if impacted on by an out of control vehicle and are an obstruction to accessing the footpath. Planter boxes may be approved if protected by approved safety bollards. Outdoor dining will not be approved if it obstructs motorists sightlines (e.g. corner locations) or the required pedestrian zones (2m or 1.5m depending on location) and required set back from kerb are satisfied. Some footpaths are simply too narrow.

New applicants MUST provide a plan. A scaled plan is preferred but a hand drawn plan showing exact measurements will be accepted. If a business has an existing outdoor dining area a new incoming owner is not required to submit a plan. Unless proposing change.

- Show the location and boundaries of the outdoor dining area in relation to the café/restaurant frontage, neighbouring properties and the road (gutter).
- The footpath width from the gutter to the building frontage. If the shop front is set back from footpath you must show how far the set back is from the public footpath or land.
- The length of the café frontage associated with the application.
- Show the measured boundaries of the proposed outdoor dining area (assessed in consultation with Council's permit officer or Council engineer. Example 3500mm x 1550mm- if rectangular.
- The footpath width between the border of the proposed outdoor dining area and the gutter or the footpath width between the border of the outdoor dining area and the property frontage depending on what side of the footpath the outdoor dining is located (to show the 2 m or 1.5m pedestrian passing zone unless in Moseley Square where 3m is required).
- If the outdoor dining is on the gutter-side of the footpath a 600mm set back must be maintained to allow the public to access parked vehicles unless the parking area is a disabled zone, taxi zone or loading zone where a minimum set back of 1 metre is required.
- Jetty Road Glenelg and Jetty Road, Brighton must show a minimum of 2 metres for pedestrian passing zone. There will be consideration to a 1.5 m pedestrian passing zone in other streets of low pedestrian traffic.
- Show location of public seats, trees and litter bins on the footpath opposite the applicant's building frontage. The Council is unlikely to remove public seats or council property to accommodate outdoor dining.
- Note: Under the Federal disability and equal opportunity legislation, persons of all abilities have a right to a reliable continuous path of travel along a footpath at all times. You are not permitted to trade outside your approved area irrespective of weather conditions. The footpath priority use is for pedestrians of all abilities, not commercial use.

I certify that the above information is true and correct and furthermore in making this Application I acknowledge that I have read, understand and agree to be bound by the Permit Conditions attached and information on this application form

Signed by Applicant.....

PositionDate...../...../.....

OFFICE USE ONLY Date Application received.....Date application assessed.....

Certificate of Currency received.....Fee: Paid /or invoice forwarded.....



GENERAL CONDITIONS FOR OUTDOOR DINING PERMIT
Pursuant to sections 221 & 222 Local Government Act 1999
Please retain this document.

- 1) An Outdoor Dining Permit (“Permit”) may be issued by Council to an Applicant for the purpose of providing an area (“Permit Area”) for patrons to consume food and/or beverages. An Outdoor Dining Permit is issued for a maximum period of one calendar year which runs concurrently with each financial year. Outdoor Dining Permits expire on the 30 June in each year.
- 2) An Outdoor Dining Permit bears **no** relationship to the sale of the business, is not transferable between parties and lapses once the Permit Holder is no longer the business owner. Should the Permit Holder sell the business, the vendor **must** inform the incoming business operator that he/she is required to submit a subsequent application for an Outdoor Dining Permit.
- 3) Applicant/Permit Holder refers to any/all persons named in the Permit’s application form, whom are bound by these Conditions both jointly and individually.
- 4) Except when conveying food, drink, tableware and furniture between the premises and adjoining Permit Area, the Permit Holder shall ensure that the area is utilised only for the activities authorised pursuant to s 222 of the *Local Government Act 1999*.
- 5) The permit holder shall not:
 - a. Supply food and/or beverage in the Permit Area between the hours of 2.00am and 8.00am of any day;
 - b. Supply liquor (approved under section 69 of the *Liquor Licensing Act 1997*) in the Permit Area between the hours of 12.00am and 8.00am of any day (in accordance with the Council’s Liquor Licensing Policy);
 - c. Use any part of a permit area solely for the purpose of providing a ‘designated smoking area’ (or similar); and
 - d. Allow any person to smoke (or similar) within a Permit Area when any food and/or beverage is consumed within that area.
- 6) The Permit Holder shall at all times ensure that no more than the number of persons specified on the Permit shall consume food and/or drink within the Permit Area.
- 7) The Permit Holder shall at all times ensure that a clear unobstructed footpath is maintained between the business frontage and the approved Permit Area to ensure a safe pedestrian thoroughfare. For this purpose and unless otherwise approved, in accordance with section 2.2.1 of the *City of Holdfast Bay’s City Wide Outdoor Dining Urban Design Guidelines* a distance should exist between the business frontage and Permit Area of:
 - a) three (3) metres for Moseley Square;
 - b) two (2) metres for Jetty Road(s) Glenelg and Brighton; and
 - c) 1.5 metres for other locations.

- 8) Council **may** consider approving an extension of a Permit Area to an adjacent property frontage if the adjacent business operator does not choose to pursue an Outdoor Dining Permit or Goods on Council Footpath Permit.
- 9) Prior to lodging an application with Consumer and Business Services the Applicant/Permit Holder shall inform Council of their intent to apply for a s 69 authorisation under the *Liquor Licensing Act 1997* to supply liquor in the Permit Area.
- 10) Council **may** consent to an authorisation under s 69 of the *Liquor Licensing Act 1997* only if the provision of liquor is to be ancillary to the provision of food provided by the Applicant/Permit Holder. Should a s 69 approval be endorsed, Council reserves the right to impose a twelve (12) month trial period '(in the first instance) to monitor the area and ensure no issues of public safety or concern emerge as a result of liquor consumption occurring in the Permit Area.
- 11) The Permit Holder that allows its customers to have takeaway food and/or disposable eating and drinking utensils within its Permit Area and has five (5) or more tables must provide its own rubbish bin(s) signed with the business name or logo, positioned within the boundaries of the approved Permit Area, being of a finish and construction that complements the nearby public litter bins and the bins must be removed at the end of each day of trading and the contents disposed of at the Permit Holder's cost.
- 12) The Permit Holder must not deposit rubbish collected from within its designated Permit Area in Council owned rubbish bins.
- 13) The Permit Holder shall at all times keep the Permit Area and all approved furniture and equipment clean and free from litter and waste materials and shall ensure that no waste enters the storm water system.
- 14) The Permit Holder must ensure that all food waste is promptly removed from the Permit Area to discourage pest activity.
- 15) At the time of application or any time thereafter the Council reserves the right to require the applicant that has five (5) or more tables within the Permit Area or allows customers to have take away food and/or disposable eating and drinking utensils within the Permit Area, to screen the Permit Area or part thereof.
- 16) The Permit Holder shall not secure any tables, chairs or other objects associated with the outdoor dining activities (pursuit s 221 of the *Local Government Act 1999*) to the pavement without approval from Council or its delegate. The tables and chairs must complement the area and the use of cheap, moulded plastic chairs and tables is not permitted.
- 17) The Permit Holder shall not enclose the Permit Area, with cafe screens, blinds, awnings, banners, planter boxes or similar structures without approval from Council. Movable canvas café screens are prohibited
- 18) The Permit Holder is responsible for the cleanliness of the pavement in the Permit Area and the footpath between the business frontage and the Permit Area during normal trading hours. If the paving is not maintained in a clean and stain free state, then the paving will be replaced or cleaned at the Permit Holders cost.
- 19) That in each outdoor dining application and any time thereafter, Council may assess the obstruction to the free flow of pedestrians in the vicinity of the shop front service counter or access point that communicates directly with the footpath and adjacent to the associated outdoor dining area. Council reserves the right to refuse such application, cancel any current Permit or amend the extent of the adjacent outdoor dining area.

- 20) Advertising on Outdoor dining infrastructure:
- a) Advertising on approved umbrellas located outside of Moseley Square, Glenelg may include the trading/business name and or logo of the business, or commercial advertising limited to products which are a core part of the business and are normally supplied by the business to the public, provided the advertisement does not exceed an area of 20% of the total available space on each umbrella side panel or otherwise approved by Council.
 - b) Advertising on approved outdoor tables, chairs, café screens, canopies, blinds and shelters is restricted to the trading/business name and or logo of the businesses that are located outside of Moseley Square, Glenelg provided the advertisement does not exceed a portion that covers 10% of the total available space on each item or otherwise approved by Council.
 - c) Advertising on outdoor dining infrastructure associated with businesses that fronts Moseley Square Glenelg is restricted to the trading/business name and or logo of those businesses in accordance with the Moseley Square, Glenelg Outdoor Dining Urban Design Guidelines.
 - d) Umbrellas should only be used where existing shelter is inadequate, they must be secured against the effects of wind, the canopy edges are set back at 300mm minimum from the kerb so as not to conflict with moving traffic and maintained in a clean and good state of repair to the Council's satisfaction.
- 21) The Permit Holder shall remove all obstructions from the Permit Area upon twenty four (24) hours notice (or less in times of emergency) by the Council (or its delegate) that the Permit Area is required for pavement maintenance or repair work or special events. The Council may vary the time to comply depending upon the circumstances.
- 22) The Permit Holder shall bear the cost of cleaning the Permit Area and of all pavement repairs (inclusive) of replacement of jointing material removed from brickwork paving in sweeping and washing down of the pavement) carried out by the Council within the Permit Area which in the opinion of the Council (or its delegate) are necessary by reason of activities authorised under the Permit.
- 23) The Permit Holder shall indemnify and keep indemnified and hold harmless the Council, its members, employees and agents and each of them from and against all actions, costs, claims, charges, expenses and damages whatsoever which may be brought or made or claimed against them or any of them arising out of or in relation to the Permit or out of or in relation to the activities authorised thereby.
- 24) The Applicant shall effect and keep current during the period of this Agreement a policy in the name of the Applicant of a type and upon conditions approved by the Council insuring against public risk and liability to the public of the Council and the Applicant in the sum of TWENTY MILLION DOLLARS (\$20,000,000.00) or such other amount as the Council may in writing reasonably request the Applicant from time to time and included among the conditions for such policy there shall be the following:
- a) That the Applicant shall notify the insurer of the terms of the indemnity given by the Applicant pursuant to the Condition (25) hereof;
 - b) That the Applicant shall produce such policy to the Council for inspection as and when demanded and at the same time shall supply true copies thereof and evidence satisfactory to the Council of the currency thereof; and
 - c) That the name of the Council be endorsed on the Policy as an Interested Party.

- 25) If justified by reasonable grounds, the Council reserves the rights to cancel, suspend or revoke an Outdoor Dining Permit if the Permit Holder fails to clear its tables and keep the area pavement clean at a maximum of thirty (30) minute intervals to maintain the community expectation of the level of public place and food premise cleanliness.
- 26) If justified by reasonable grounds, at the time of application or any time thereafter the Council reserves the right to cancel, suspend or revoke an Outdoor Dining Permit, amend its operating hours, and/or further restrict its conditions if nuisances, health or public safety issues/concerns emerge as a consequence of persons utilising the Permit Area.
- 27) The Permit Holder or the Council may at any time (whether in the event of default of any of the Conditions or otherwise) terminate the Permit by serving upon the other twenty four (24) hours notice in writing PROVIDED nevertheless that such termination shall be without prejudice to any rights of the Council against the Applicant for any antecedent breach of any of the Conditions.
- 28) Upon expiration of the Permit or termination of the Permit for any reason the Permit Holder shall at its expense in all things remove the Authorised Furniture from the Permit Area or the Council may without further notice remove any remaining Authorised Furniture to the Applicant and may recover from the Applicant as a debt all expenses incurred.
- 29) If, after the date of Permit expiry, the business operator continues to supply food and/or liquor in and/or fails to remove the Authorised Furniture from the Permit Area, the Applicant shall be bound to pay the notified annual fee or be issued with an expiation for operating on Council land without authorisation.
- 30) The Permit is to be construed as continuing for the purpose of the conditions for indemnity and insurance herein contained whilst the Applicant's furniture and equipment remain on the public streets roads and places (whether or not hereby authorised) for the period commencing from the time that such furniture and equipment were first placed on such public streets roads and places until the same are removed or a further permit is granted by the Council in substitution for this Permit.
- 31) The Applicant further agrees:
 - a) To ensure that any alteration to the road does not interfere with or cause damage to or in any way affect the property of any other person.
 - b) To comply with any direction given by any Authority, statutory or Council to remove, maintain or otherwise modify the alteration to the road subject to this authorisation.
 - c) That fixtures and equipment erected or installed in, on, under or over the road remain the property of the Applicant pursuant to section 209 of the *Local Government Act 1999* (examples include safety bollards, café screens)
 - d) This Authorisation does not confer on the Applicant any exclusive right, entitlement or interest in the road and does not derogate from Council's powers arising under the *Local Government Act, 1999*.

Disclaimer (Please Note):

- A road means a public or private street, road or thoroughfare to which public access is available on a continuous basis to vehicles or pedestrians or both and includes a walkway.
- Outdoor dining areas of a significantly large (not typical) scale may be considered 'change of use' of the footpath and are also subject to Development Approval.