

Policy Document

Private and Business Use of Road Reserves

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Approved by: Council	Approved on: 20 July 2017	Minute Book No or Approval Ref: 198/17
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Classification: DCSB-Property Management		
Strategic Plan link: 1.3.2 Establish a schedule to review all current policies and delegations and update as required based on the outcome of good governance assessment and other relevant information.		
References and related Policies & Procedures: LGA Mutual Liability Scheme templates Public Consultation Guidelines Local Government Act 1999 Local Government (General) Regulations 1999		

1. INTRODUCTION

The District Council of Streaky Bay permits the use of footpaths for business use for either outdoor café dining or the use of displaying goods for sale where safety of pedestrians and others are not compromised. Council has a process for issuing permits/licences to businesses for the use of part of the footpath space in front of their premises which takes into account other competing uses of footpaths. There is a need to establish a practical balance between the various user groups.

2. POLICY OBJECTIVE

To implement administrative procedures and authority for issuing of licenses and permits on public footpaths and other local government land within the Council area.

3. POLICY STATEMENT

To ensure the safe movement of pedestrians and the convenience to surrounding businesses.

To maintain safe and equitable access for persons with access disabilities.

To encourage an outdoor lifestyle by promoting the benefits of footpath dining which include, increasing street vitality, social interaction and contributing to urban regeneration.

To ensure compliance with this policy in acknowledgement of the use of public land for commercial purposes and associated risks.

4. DEFINITIONS

'**Outdoor dining**' is defined as tables and chairs situated on local government land for the purpose of increasing the capacity of a fixed facility which provides food or alcohol.

'Local Government Land' Land which is under the care and control of Council, including public footpaths and road reserves.

'Road' has the same meaning as in the Local Government Act 1999, and extends from property boundary to property boundary including the carriageway, footpaths and verges.

'Applicant' Person who applies for an outdoor café licence or footpath permit.

'Licence / Permit Holder' Owner of a facility where the Owner's application for an outdoor dining permit has been approved by Council.

'Street Furniture' Furniture to be used for outdoor dining including but not limited to tables, chairs and umbrellas approved by Council.

'Council Street Furniture' fixed furniture placed by Council including street bins, and seats.

'Council' District Council of Streaky Bay

5. SCOPE

Outdoor dining or footpath use for business purposes may be allowed where footpath space is not required or is not in conflict with public street furniture such as seats and bins which will be given priority to ensure an equitable provision of facilities and not interfere with pedestrians thoroughfare.

Applications must be made for footpath use for business purposes and outdoor dining and these will be assessed on their individual merits against the guidelines for using footpaths for business purposes.

Proposed outdoor dining locations will also be assessed in terms of safety.

In accordance with Section 222 of the Local Government Act the Council will permit the use of road reserves for the use of private or business purposes.

This policy specifically deals with all Local Government land including roads, road reserves and unmade roads, owned by the Council or under Council's care and which is licensed/covered by permit to third parties.

The principles of this policy will be applied initially to those licences/permits which have expired and where renewal is pending. The remaining licences/permits will follow as and when their current agreement requires renewal, or as new licences/permits are taken up on Council owned or managed land.

The policy applies to all areas of the District Council of Streaky Bay.

6. TYPES OF LICENCES/PERMITS

Outdoor Café Dining

This policy relates specifically for the use of a café licence where proprietors are able to set up outdoor café dining areas on Council footpaths.

Permit to use a Public Road for Business Purposes

This permit is required to carry out a business activity on a public road.

Footpath use for Business Purposes

This policy relates specifically for the use of a footpath permit where proprietors are able to use Council footpaths for business purposes. For example clothing stands or flower arrangements.

Stall holder / Exhibitors Permit

This policy also relates to stall holders/ exhibitors who may sell food and/or drink and which don't include facilities hire.

Council supports community groups which raise funds by conducting stalls and badge days in public space, including on footpaths and public land. These groups include sporting clubs, recreational clubs, craft groups or associations and community based health or social welfare agencies. In the event that a stall includes the sale of food, the owner of the stall must comply with the appropriate requirements of the Food Act.

Community Groups and not for profit organisations may be granted a permit to operate from local government land without fee for the purposes of raising funds for charity, subject to the group providing proof of an adequate public liability insurance policy and meeting other statutory requirements if applicable.

Authorisation to Alter a Public Road

A 221 Permit will also be required when permanently altering a public road.

7. CATAGORIES OF USER

Outdoor Café Dining Licence

Footpath Use for Business Purposes Permit

Footpath Use Day Permit (Only for Community Groups and Not for Profit Organisations)

8. APPROVAL

Applications will be assessed by Council in accordance with the Guidelines for using footpaths for business purposes and best practice.

9. LICENCE

Duration and Renewal

An Outdoor Café Licence remains valid for the period defined on the licence. The Council will forward a renewal notice but the onus rests with the licensee to ensure licence renewal.

Liquor Licence

A valid liquor licence must be supplied if the area is to be used for the consumption of alcohol.

Suspension and Varying Conditions

The Council reserves the right to suspend or terminate a licence where a licence is in breach of conditions, by giving the licensee 24 hours' notice in writing to this effect.

Cancellation

A failure to pay the amount(s) and at lodgement or by the due date or failure to provide a valid insurance policy within 30 days of the expiry date will result in the permit being

revoked. You will incur a penalty fee listed in the current fees and charges schedule should you continue to trade past the expiry date.

10. REPAIR COSTS

Where damage has occurred to the pavement, which in the opinion of Council has been caused by the activities of the outdoor café, then the licensee shall bear the costs of repairs carried out by the Council.

11. INSURANCE/INDEMNITY AND PUBLIC USE

Public Liability Insurance

Licensees are required to hold suitable public liability insurance with the Council noted as a specified person for the purposes of Section 48(1) of the Insurance Contracts Act 1984.

Licensees are required for the term of the Permit, to take out and keep current a public liability policy of insurance to an appropriate level of cover per claim in respect of any negligent act or omission of the Applicant in relation to any alteration to the road or any activity arising out of or from any business use granted under this Permit. The minimum policy cover is \$10,000,000.

Licensee's Indemnity

Licensees are required to indemnify the Council, its servants and/or agents against all actions, costs, claims and demands for injury, loss or damage arising out of any negligent act or omission of the Applicant in relation to the alteration to the road, the granting of this Permit and the General Conditions and Special Conditions contained herein and such indemnity shall be in addition to any statutory immunity in favour of the Council.

Continued Indemnity

For the purposes of indemnification and insurance and outdoor café licence is considered as continuing and valid while any café furniture remains on the footpath (whether authorised by the licence or not).

Public Use of Outdoor Cafes

Outdoor café area remains a public space and therefore the exclusive use of furniture for patrons does not apply.

12. FEES

The fees are reviewed annually and set out in the current *Fees and Charges Schedule*.

13. PENALTIES

A renewal fee paid later than one month from licence expiry attracts an additional fee of 50% of the renewal fee.

Where renewal fees have not been paid within 30 days of expiry the Council will proceed to cancel the permit and proceed with a notice for the removal of furniture.

Where a licensee has been served a notice to remove furniture, and fails to do so within 28 days, the Council may remove and take possession of the furniture and any work associated with this removal shall be borne by the permit holder.

14. CANCELLATION

A failure to pay the licence or permit fee at lodgement or by the due date or failure to provide a valid insurance policy within 30 days of the expiry date will result in the cancellation of any permit pursuant to the application. A penalty fee listed in the current fees and charges schedule may be incurred should trading continue past the expiry date.

15. FURTHER INFORMATION

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: www.streakybay.sa.gov.au or at Council's Principal Office at:
29 Alfred Terrace, Streaky Bay SA 5680

On payment of a fee, a copy of this policy may be obtained.

Email dcstreaky@streakybay.sa.gov.au

Any queries in relation to this Private and Business Use of Road Reserves Policy must be in writing and directed to the Chief Executive Officer.

Copies will be provided to interested parties upon request.