

# Outdoor Activation

This document has been compiled by the MAV to help councils deliver outdoor activation options for local businesses following the Premier's [announcement](#) on 14 September 2020 that the outdoors will be used to stimulate social and economic recovery as COVID-19 restrictions ease. It is intended to provide sign-posts to issues and regulations councils will need to consider to assist the hospitality sector rebuild and thrive.

Councils will also have their own systems and processes in place which will guide their facilitation of outdoor activities.

## Content summary

- [Overview](#)
- [Funding](#)
- [Key messages](#)
- [Key considerations](#)
- [COVID-19 requirements for hospitality businesses](#)
- [Definition of 'outdoors'](#)
- [Options to activate outdoor areas](#)
- [Key regulatory issues](#)
- [Outdoor dining and storms](#)
- [Insurance](#)
- [Risk management](#)
- [Approvals approach for councils](#)
- [Compliance and enforcement](#)
- [Outdoor activation policies and examples](#)
- [Creative arts and culture opportunities](#)
- [Further information and useful website links](#)

This document will be continually reviewed and updated – please forward your comments, case-studies and examples to Rosemary Hancock, MAV Manager Health and Local Economies - email [rhancock@mav.asn.au](mailto:rhancock@mav.asn.au)

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*PLEASE NOTE - every effort will be made to keep the information in this document up to date. The expectation is that it will change over time. The information contained in this document does not constitute advice. Please use this information as a guide only. Councils are encouraged to monitor current requirements relevant to their particular circumstances and seek their own advice where required*

## Overview

- A variety of approaches to outdoor dining activation are being considered by businesses and councils. These include expanding existing footpath trading, trading in parking spaces, parklets, temporary closure of roads and laneways, utilization of council carparks and other council land
- Any expanded or new activation activities must meet design and operational requirements including obligations related to health and safety, accessibility, equipment (i.e. fencing, barriers, umbrellas, planters), risk management, and insurance and indemnification. Pedestrian mobility, physical distancing and road safety requirements must be met for this program to be successful for all members of the public
- Most importantly, complying with the Chief Health Officer's COVID-safe requirements is vital to limiting the spread of COVID-19 so that economic and social activities can continue to be undertaken
- Crown land, including public parks and foreshores, is a more complex setting. There may be competing community needs. It is anticipated these situations will take longer for councils to work the issues alongside state agencies (including Parks Victoria, DELWP, DoT, VicPol, EPA).

## Funding

- The Victorian Government is providing \$87.5m for outdoor dining, including \$29.5m for councils to rapidly implement permit and enforcement processes. The Business Victoria website has details of the \$58m for business grants
- Metropolitan and regional city councils will be eligible for up to \$500,000, and rural councils will be eligible for up to \$250,000 as part of the broader hospitality package. Local Government Victoria (LGV) is administering the council grants program – email [LGV.Emergencies@delwp.vic.gov.au](mailto:LGV.Emergencies@delwp.vic.gov.au).

## Key messages

- As COVID-19 restrictions ease, we will be able to enjoy going out to restaurants and cafes again, but it will be different as it will be in a COVID-safe way
- The risk of transmission is much less outdoors compared to indoors, so many cafes and restaurants will operate predominantly outdoors over summer and into 2021
- Council is supporting local businesses by helping them safely expand outdoor trading
- Council is encouraging local communities to also support local businesses and the changes in how they operate
- This will mean changes to local streets, including changes to parking
- We will be doing this quickly so it may require adjustment as we go, so please share your ideas on how we can do this better
- With increased dining and reduced parking, consider walking and riding to your local shopping centre and reduce your speed if driving within the precinct.

## Key considerations

Businesses and councils should discuss a range of issues about how outdoor dining in open spaces is going to work well for the business and members of the public. Items include:

- How the outdoor space is safe and patrons are protected from vehicles (adjacent parking, passing traffic and considering vehicle as a weapon)
- Ensuring the outdoor space is safe from trip hazards, noting that some areas proposed to be used are not traditionally used for pedestrians
- Providing physical distancing and other COVID-19 health requirements
- Maintaining pedestrian access and ensuring accessibility for all
- Considering amenity impacts on surrounding properties including noise and lighting
- Ensuring appropriate maintenance of facilities and security outside of trading hours – where will equipment be stored, what are the cleaning arrangements and who will be responsible?
- Providing fairness of access to opportunity to trade
- Considering the broader context of the place including adjacent businesses and residents - a whole or part street closure may be the best approach in some circumstances.

## COVID-19 requirements for hospitality businesses

- The parameters for the hospitality industry to services are set out in the [Restricted Activity Directions \(Melbourne\)](#) for metropolitan Melbourne, and [Restricted Activity Directions \(Non-Melbourne\) \(No 11\)](#) for regional Victoria:

Requirements	Metropolitan Melbourne	Regional Victoria
Seated dining only	✓	✓
Maximum number of people, subject of density limit of 1 person per 4m <sup>2</sup>	Groups up to 10 people with a total venue cap of 20 people indoors or 50 people outdoors	Groups of up to 10 people with a total venue cap of 40 people indoors or 70 people outdoors
1.5 metre separation between groups	✓	✓

Other COVIDSafe requirements also need to met, such as having a COVIDSafe Plan in place, keeping a record of each person who attends the premise for more than 15 minutes and operating with COVIDsafe business principles, such as ensuring physical distancing, wearing a face mask or face-covering, practising good hygiene and avoiding interactions in close spaces.

### Definition of “outdoors”

Food and drink facilities can operate a seated outdoors service if certain criteria are met. The definition of what constitutes ‘outdoors’ for this service are outlined in Clause 12 in the [Restricted Activity Directions \(Melbourne\)](#) for metropolitan Melbourne, and [Restricted Activity Directions \(Non-Melbourne\) \(No 11\)](#) for regional Victoria. These clauses state:

- (a) **outdoor** means:
- (i) a space with no **roof**; or
  - (ii) an open-air space designated for the consumption of food and/or beverage, which may have a roof so long as at least 2 sides of the space do not have **walls**;

*Examples: outdoor spaces may include a balcony, a veranda, a courtyard, a rooftop, a marquee, a street or footpath, or any similar outdoor space.*

- (b) **roof** means any structure or device (whether temporary, fixed or movable) that prevents or significantly impedes upward airflow, including a ceiling or awning;
- (c) **wall** means any structure (whether fixed or movable) that prevents or significantly impedes lateral airflow, notwithstanding if it has a window or door.

### Options to activate outdoor areas

There are a range of options that can suit different locations. In order of increasing complexity, these include:

- Expanding existing footpath trading outside premises
- New businesses seeking to trade on footpath outside premises
- Expanding footpath trading adjacent to other businesses
- Temporary occupation of parking space protected by kerb out-stands
- Temporary occupation of parking space without built protection
- Longer term occupation of parking space
- New private spaces for outdoor dining, such as roof-tops and outdoor areas on private property which could be made available to the public
- Part or full road closure as part of a whole street approach
- Parts of public car-parks being cordoned off for dining
- Other land adjacent or nearby that may be under different ownership or control.

## Key regulatory issues

- **Access for people with disabilities** – the Federal Disability Discrimination Act 1992 [mandates](#) that people with disabilities are able to access footpaths. Councils have Footpath Trading Policies on the permitted use of footpaths, and rules about how businesses can use footpaths. The new outdoor hospitality settings should be accessible to people with a disability, while maintaining safe access to footpaths by all pedestrians including those using mobility aids. Existing accessible parking spaces should be retained for people with Disability Parking permits

As COVID19 restrictions continue to be lifted it is likely that retail businesses will also expect to use footpaths to display goods and keep customer numbers low inside shops. Any review of Footpath Trading Policies and Permits for cafes and restaurants need to consider the implications for other retail businesses

- **Liquor licensing** – If there is an existing liquor licence, consideration of a temporary limited licence will be fast tracked. VCGLR will require a letter of approval from the council, including the boundaries of the outdoor area, permitted hours of operation and expiry date of approval. It has been suggested that temporary permits extend to 20 June 2021
- **Planning approvals:**  
The temporary liquor licence issued by the VCGLR does not require a planning approval. [Victoria Planning Provisions Amendment VC193](#) allows for temporary planning scheme and permit condition exemptions that will enable outdoor dining and facilitate the re-opening and safe operation of restaurants and other food and drink businesses. These could apply for use of outdoor spaces on the business' own land, adjoining land, or nearby parks and public land to serve patrons if certain conditions are met. These conditions include not unreasonably affecting the amenity of the surrounding area. (NB: liquor licence, public health matters, requirements of the public land manager, and council local laws will also still need to be met)

In most circumstances a planning permit is not expected to be required for the outdoor activation if it is within the road reserve – see next section about roads and transport issues for more detailed information

There is a general permit exemption under the Victoria Planning Provisions (VPPs) for “The use of land in a road if the use is associated with the use of adjoining land and is authorised by the Council under a local law.”

- **Road permits and safety requirements**

Road Authorities, including councils for local roads, have a duty of care to inspect, maintain and repair public roads where they are the responsible road authority under s40 of the Road Management Act

- The Department of Transport (DoT) is recommending that s99B of the Road Safety Act 1986 be used to enable approvals for activities on roads, rather than Schedule 11 of the Local Government Act 1989. This is due to the temporary nature of the proposed changes

- Applicants and councils should be encouraged to consider the whole street perspective. Councils will need to consider the network and movement and place perspective. Victoria Police have advised it does not support the use of parking spaces next to through-roads (even with reduced speed limits)

- **Department of Transport considerations**

Approvals from the Department of Transport (DoT) will be required for the following situations:

- use of part of an arterial road normally used for car parking or traffic lanes
- traffic control devices to be placed on an arterial road to facilitate local road or off-road temporary outdoor dining
- major traffic control devices on local roads that require DoT approval
- a temporary reduction of speed limits to below 40km/h on local roads
- the use of an arterial road or a local road with a clearway
- any potential impact to public transport (causes may include road closures, detours, service cancellations, stop relocation or closure, delays due to closed lanes or lowered speed limits)
- any impact on the function of traffic signals (causes may include road closures, closed turn lanes, signal changes for detour routes)

DoT's website outlines when councils need to apply for on-road dining approvals, the criteria for assessing applications and how to apply. For further information see DoT's [Department of Transport's "Temporary On Road Dining Approval Guidelines"](#). For further information contact: [vicroadsmetroevents@roads.vic.gov.au](mailto:vicroadsmetroevents@roads.vic.gov.au)

- **Places of Public Entertainment occupancy** permits are generally not required for purposes such as retail, dining, office space etc.

- **Temporary structure safety** is important to ensure these structures won't collapse, catch fire or blow away causing harm and/or injury to people and will be a particular consideration for the food business. [Erection of temporary structures](#) is exempt from requirements of Building Act and Regulations, unless they are for the purposes of public entertainment and fall within the definition of 'prescribed temporary structures' under the Act and Regulations
- **Aboriginal Heritage Act and Traditional Owner *Settlement Agreement*** arrangements need to be considered
- **Food safety regulation**, including requirement for food premises to register with councils. Fixed premises are registered annually. Temporary and mobile food premises need to register through the Streatrader registration system if food is being sold from a stall, van or facility which does not have an existing registration. Businesses will need to have regard for food safety requirements salad bars, cooking or plating occurs in an outdoor area. Outdoor dining infrastructure (eg, tables and chairs) are not expressly covered by the Food Act. As with indoor tables and chairs, there is just the general provision in section 19 of the Food Act 1984 that a food premises must be in a good state of repair. Restrictions to the number of diners may apply to licenced premises mostly because of toilet facilities
- **Outdoor dining smoking laws** require barriers to be erected between premises if smoking is allowed where drinking only is being undertaken and no food is being served
- **Noise limit requirements** are regulated in the [Environment Protection Act 1970](#) (s48A for residential noise, s46 and 48AB for entertainment venue noise), and in a number of State Environment Protection Policies (SEPPs), including the Control of Music Noise from Public Premises and Residential Noise. The [EPA website](#) has further information. Councils also may require conditions on local law permits which specify whether amplified music is allowed, the hours it can be played, etc, to maintain and provide for the amenity for neighbouring residents
- **Protecting crowded places** – having regard for public safety
- **Emergency vehicle access.** Council must notify emergency services of any road closures. Traffic management plans should maintain emergency vehicle access
- **Duty of care.** Councils must take reasonable measures to prevent the risk of injury to those using the area

- **Public sanitation** - Councils are required to investigate nuisances which pose risks to public health under the Public Health and Wellbeing Act, including obligations to issue improvement notices where public health risks might be caused, such as from vermin, poor waste management and unsanitary situations
- **Business obligations** - All businesses have to have a [COVIDSafe plan](#) in place to ensure they meet their obligations to comply with the CHO Directions and provide a safe working environment for their staff. Issues they will need to consider include:
  - [Four and two square metre rules for services accessible to the public](#),
  - [Face-covering requirements](#)
  - [Record keeping for COVID-19 contact tracing](#)

These obligations rest with the business proprietor.

### Outdoor dining and storms

Loose items such as outdoor furniture, umbrellas and movable barriers that are commonplace with outdoor dining venues can quickly become dangerous in the event of thunderstorms or strong winds. Victoria's State Emergency Service [website](#) provides guidance for businesses on how to safely prepare for outdoor dining.

What's the risk?

- Strong and sudden wind gusts are commonly associated with heavy showers or thunderstorms. These can develop suddenly and catch you off guard
- Spring is generally a windier season as the climate transitions from cooler to warmer weather
- Winds speeds can be increased in laneways by funnelling between two buildings
- Loose items such as outdoor furniture, umbrellas and movable barriers can quickly become dangerous projectiles in strong winds

How can businesses be better prepared?

- Ensure that outdoor items such as tables, chairs, umbrellas and mobile barriers are tied down or safely secured
- Regularly clean gutters, downpipes and drains to ensure they are not blocked

Forecasts and Warnings

- Severe Weather Warnings are issued by the Bureau of Meteorology for: Sustained winds of gale force (63 km/h) or more, Wind gusts of 90 km/h or more or very heavy rain that may lead to flash flooding
- Stay informed – monitor severe weather warnings and forecasts via the Bureau of Meteorology App or website and warnings via VicEmergency.

## Insurance

- Businesses will need public liability insurance to cover expansion in trading areas. This insurance will be required for a permit to be issued by councils allowing dining on footpaths, roads or other areas. Those who already utilise footpaths for dining should have this, but the extent of coverage or additional costs of extending business insurance to include an expanded or new outdoor dining area (remembering business insurance tends to specify a property address) needs to be investigated. Some initial research suggests some business insurers will cover any designated outdoor dining area, others must have a specified area.

## Risk management

- Outdoor activation is a new or expanded activity for many operators and will be on a different scale to usual activity for many councils. Being outdoors and in the street is a less controlled environment than inside a building. A comprehensive risk assessment and management plan is recommended.

## Approvals approach for councils

- Councils will be assisted in expediting permit approvals if they establish a process for approving applications from businesses. This process may include forming a multi-disciplinary team led by a senior officer accountable for coordination and governance, in order to consider the application from all aspects. Some key areas of expertise in this multi-disciplinary team to consider are local laws, risk management, traffic management, economic development or business engagement, urban design, planning, building and engineering.

## Compliance and enforcement

- Enforcement of existing local government regulatory responsibilities should continue as normal, with the level and scale determined on an as-needs basis by individual councils.
- Council officers should enforce conditions of permits issued under local laws to businesses, as they would with other permits issued under local laws.
- Council officers are not authorised to enforce the CHO Directions. Victoria Police, DHHS Authorised Officers and VCLGR inspectors (limited to licensed venues) are authorised officers under the Emergency Powers of the Public Health and Wellbeing Act 2008 and can undertake enforcement action. Council environmental health officers are encouraged to provide education and high-level advice to businesses.
- If Council Environmental Health Officers (EHOs) witness a breach that appears inadvertent or non-flagrant they could encourage a remedial approach through education for the proprietor. For flagrant or continual breaches, an EHO could warn the relevant person that the matter could be escalated to Victoria Police via the Police Assistance Line 131 444.

### Outdoor activation policies and examples

- Many councils already have footpath dining or similar guidelines and these should form the basis of council consideration. Given the scale and duration of the likely outdoor activation through summer and well into 2021, Councils should consider updating or adding supplementary guidance to their standard guidelines
- There are also various international guidelines available including from New York [State Guidance](#), New York [Open restaurants](#) and [Open streets](#), [NYC DoT outdoor dining guidelines](#)

### Creative arts and culture opportunities

- A range of other funding programs of support have been announced for the music and creative arts industries:
  - [Various live music funding programs for artists](#)
- Approach Traditional Owners and local Aboriginal and Torres Strait Islander communities for their suggestions to activate public lands for outdoor dining

### Further information and website links

- [Roadmaps](#) for metropolitan and regional areas and industry restrictions by region
- [CHO Directions](#)
- [Premier's media announcement to activate outdoor dining](#)
- [Business Victoria's Outdoor Eating and Entertainment Package](#)
- [Hospitality Business Grant Program](#)
- [Victorian Commission for Gaming, Liquor and Racing](#)
- [COVIDSafe Plan](#) requirements, including:
  - [Four and two square metre rules for services accessible to the public](#)
  - [Face-covering requirements](#)
  - [Record keeping for COVID-19 contact tracing](#)