

# **ATTACHMENT 3**

# Controls and Guidelines for Outdoor Dining Areas within Strathfield Council

Adopted by Council on XXX

DRAFT



## TABLE OF CONTENTS

---

<b>1.0</b>	<b>INTRODUCTION</b> .....	<b>2</b>
1.1	Objectives .....	2
1.2	Definitions .....	2
1.3	Limitations.....	2
<b>2.0</b>	<b>APPLICATION REQUIREMENTS</b> .....	<b>2</b>
2.2	Making an application.....	3
2.3	Approval relating to RTA classified roads .....	4
<b>3.0</b>	<b>CONTROLS AND GUIDELINES</b> .....	<b>4</b>
3.1	Site requirements .....	4
3.2	Placement Guidelines.....	5
3.3	Furniture .....	5
3.4	Umbrellas.....	6
3.5	Heating Devices .....	6
3.6	Neighbourhood amenity .....	6
3.7	Liquor.....	6
3.8	Signage.....	6
3.9	Cleanliness .....	7
3.10	Smoking.....	7
3.11	Neighbouring property .....	7
<b>4.</b>	<b>APPROVAL CONDITIONS</b> .....	<b>8</b>
4.1	Duration of approval .....	8
4.2	Public Indemnity Insurance .....	8
4.3	Fees and Charges .....	9
4.4	Non-compliance.....	9
4.5	Termination of Agreement .....	9
	<b>APPENDIX A – RTA CLASSIFIED ROADS</b> .....	<b>10</b>

## 1.0 INTRODUCTION

Strathfield Council's *Controls and Guidelines for Outdoor Dining Areas* sets out guidelines for the approved use of footpaths as outdoor dining areas. This policy controls the following activities:

- Outdoor seating associated with an existing or approved restaurant (or a development application lodged concurrently for a restaurant, where such are permissible with development consent) located on land owned by the Council or being a road to which the Roads Act 1993 applies or other land under the care control and management of the Council where an existing Plan of Management allows the proposed use.
- Items and temporary structures, including tables and chairs, umbrellas, heating devices associated with the above.

### 1.1 Objectives

The objectives of this guideline and control are to:

- promote the creation of a vibrant social and dining atmosphere in commercial centres of Strathfield Municipality
- regulate the use of outdoor dining areas to avoid nuisance or inconvenience to the public and residential neighbourhoods
- regulate the use of outdoor dining areas to ensure that equitable access and safety for pedestrians is maintained

### 1.2 Definitions

In this guideline, the term 'restaurant' is defined as restaurant, refreshment house, café or take-away or the like.

### 1.3 Limitations

Use of footpaths for display of materials is not covered under this control and guidelines document.

### 1.4 Legislative and policy framework

Where Council is the owner of footpaths, an application for a permit under the Roads Act 1993 must be submitted to Council. No outdoor dining can take place without a Council permit. This policy is subject to provisions of:

- Roads Act 1993
- Liquor Act 1982
- Local Government Act 1993

## 2.0 APPLICATION REQUIREMENTS

Council approval must be obtained in order to use footpaths as an outdoor dining area. Applications are made on Council's *Application for Outdoor Dining Permit form*. If approved, Council will issue a permit enabling an outdoor dining area to operate.

Applications for outdoor dining areas do not require a development consent as approval is by permit. However, applications for an outdoor dining area will only be considered by Council where it is adjacent to a restaurant with approved development consent.

As existing restaurant operations have development consent, an application for outdoor dining area can be made.

Applications for an outdoor dining area may be assessed concurrently with a development application. This requires lodgement of an *Application for Outdoor Dining Permit* with the development application. A separate Outdoor Dining Application fee is payable in addition to the development application fees.

Agreements involve payment of fees and charges. Fees and charges are set out in Council's annual fees and charges schedule.

In assessing applications, Council will take into account:

- Provision of an continuous path of travel for pedestrians within the footpath to ensure equitable access
- Approved or pending development consents eg trading hours
- Traffic considerations including pedestrian and safety of patrons
- Site suitability including sufficient width of footpath to permit pedestrian access
- Previous history of applicant eg payment record, history of non-compliances etc. Council will not enter into new agreements where debts or fines are not resolved.

Applicants seeking to provide an outdoor dining area are required to consult with Council on 9748 9999.

If the application is approved, the applicant will be requested to sign an agreement with Strathfield Council.

## **2.2 Making an application**

Applications for an outdoor dining must complete an 'Application for Outdoor Dining Permit'. This form is available from Council's Customer Service Centre or website at [www.strathfield.nsw.gov.au](http://www.strathfield.nsw.gov.au).

Prior to lodging an application, it is recommended that applicants contact Council's Customer Service Centre to ensure they have correct information about the process and policy as well as details of applicable development consents.

All applications for outdoor dining areas must include the following:

- (a) A completed and signed application form
- (b) A site plan of the footpath area drawn to scale (1:100) indicating:
  - Dimensions and boundaries of the dining area to be used
  - Any awnings or coverings
  - Area (m<sup>2</sup>) of the outdoor dining area
  - Number and location of tables and chairs in the outdoor dining area
  - The kerb line of the street
  - The extent of the overhead awning / verandah
  - The width of the shop front and entrances

- The width of the existing footpath adjacent to the subject premises and its residual width as a result of the encroachment by the outdoor dining area
- The proximity of pedestrian or vehicular entrances serving the adjoining buildings
- Distance to the kerb
- Side and front boundaries of the applicants property
- The location of all public utility structures, power poles, bus stops, trees, street furniture, street litter bins, post office boxes parking sign posts and other similar structures, adjacent to the site
- Any equipment, fittings and portable embellishments proposed within the outdoor dining area
- Existing and proposed lighting.

(c) A signed statement, which includes:

- The hours of operation
- Whether the premises are currently licensed to serve alcohol
- Whether alcohol is proposed to be served within the outdoor dining area
- Details of the colour, type and material of proposed furniture

The written consent of the neighbouring tenant(s) must be attached if the outdoor dining area is to be partly sited in front of adjoining premises.

### **2.3 Approval relating to RTA classified roads**

Application for an outdoor dining area on a 'classified' State road or adjacent to traffic controls will require separate approval from the Roads and Traffic Authority (RTA).

A list of RTA Classified roads are listed in Appendix A.

In the event that agreement of the RTA is required, Council will seek agreement on the applicant's behalf upon lodgement of the application for approval with Council. The applicant may wish to have preliminary discussions with the RTA to ascertain whether their application will receive agreement when it is lodged with Council.

## **3.0 CONTROLS AND GUIDELINES**

In determining to grant an approval for an outdoor dining area, Council will consider the following controls and guidelines.

### **3.1 Site requirements**

Approval for an outdoor dining area will only be given where the footpath adjacent to the premises concerned is of adequate width to allow for the continuous unobstructed pedestrian path of travel and reasonable access to shop entrances and window displays.

In general:

- Council will not consider applications where footpaths are less than 3.6 metres in width.
- Where a clear minimum width of 1.8 metres cannot be maintained for the clear passage of pedestrian traffic

The positioning of outdoor dining areas will vary dependant on its location within the municipality, the width of the footpath and other factors including awning widths, location of pedestrian crossing etc. Any non-compliance with the guidelines will be considered on its merits; however, non-compliance may result in the application not being approved.

Trees, signs, seats, light poles, street litter bins, post office boxes and any other structures (including previously approved structures), which limit the footpath width, will be deducted from the overall width of the footpath.

Where appropriate, Council may consider the relocation of certain structures, with the consent of the relevant authority and at the expense of the applicant.

Existing street trees shall be retained and protected. No Council street tree is to be removed or trimmed (except with specific council consent) to accommodate any proposal for an outdoor dining area. No materials are to be stored around the base of, or attached in any way to any existing street trees.

Council may consider outdoor dining on footpaths with a minimum width of 2.5 metres, where a minimum width of 1.5 metres is provided in areas of low pedestrian flow. Details supporting low pedestrian flow, such as pedestrian counts, must be submitted with the application.

The proposed outdoor dining area shall not obstruct the view of advisory and regulatory signs, traffic controls, taxi stands, service pits, fire escapes, bus stops, pedestrian crossings and vehicle access points.

The applicant shall be responsible to ensure that the public and others have free access to the remaining area of the footpath. In this regard the applicant is also required to ensure the use of the outdoor dining area complies with AS1428.1 - Design for Access and Mobility, in terms of disabled access at all times.

Public and private utility access and drainage pits shall not be covered in any way and access must always be available.

The footpath area subject of the application must be of a hard sealed surface to the kerb to ensure pedestrian safety.

### **3.2 Placement Guidelines**

An outdoor dining area is to be clearly marked and may only operate within the approved area.

Boundary markers of the outdoor dining area will be installed and maintained by Council after approval is granted.

Operating outdoor dining areas outside of the approved areas will be considered a breach of an agreement.

### **3.3 Furniture**

Outdoor furniture should be practical and make a contribution to streetscape. It shall be of a design, colour and specification approved by Council in the outdoor dining area application and will be assessed on the basis of the following guidelines:

- Outdoor furniture must be strong, durable and robust to withstand outdoor commercial wear and tear
- Outdoor furniture must be of a sufficient weight to withstand strong winds
- Darker colours are preferred and recommended for tables and chairs as the effect of dirt, build-up and wear and tear is less visible. Acceptable furniture colours include natural earth tones, “Brunswick” green and brushed stainless steel
- Each establishment should maintain consistency in the type, style and colour of furniture eg seats, tables and umbrellas in order to maintain a cohesive pattern
- To enable Council to undertake maintenance and cleaning of pavement areas, outdoor furniture and equipment shall not be permanently fixed in place
- The furniture shall not interfere with the footpath structure
- All furniture and equipment must be maintained and in a physically sound, and visually good condition and to the makers specifications.

Any damage caused directly or indirectly by the placement of outdoor furniture on the footpath is the responsibility of the applicant. Applicants should be mindful of weather and/or other prevailing conditions and exercise their judgement to ensure that no persons or property are endangered or injured by the use of the chosen street furniture.

### **3.4 Umbrellas**

All outdoor umbrellas shall be counterweighted to resist overturning withstanding wind velocities of up to 80 km per hour

All outdoor umbrellas shall not extend beyond the outdoor dining area and must be positioned to ensure that they will not cause an injury to patrons or pedestrians.

### **3.5 Heating Devices**

Free standing heating devices located within outdoor dining areas must comply with the Australian Standard AS 1596 (Storage and Handling) and must be certified by the Australian Gas Association.

Heating devices must be contained wholly within the outdoor dining area and must be positioned and secured to ensure that they will not cause any injury to patrons or passing pedestrians.

### **3.6 Neighbourhood amenity**

To maintain the amenity of the immediate neighbouring area, all reasonable action should be taken to ensure the conduct of employees and patrons associated with the outdoor dining area does not give rise to any nuisance or offensive noise

Amplified music or entertainment will not be permitted in outdoor dining areas unless with council consent.

### **3.7 Liquor**

No liquor is to be sold or served from the outdoor dining area except where Council has granted specific approval and an appropriate liquor licence is obtained from licensing authorities.

### **3.8 Signage**

Advertising controls apply to outdoor dining areas to ensure that the streetscape is not adversely affected by a proliferation of advertising.

Any proposed signage should be included with the initial outdoor dining area application.

Advertising will be assessed on the basis of the following basis:

- Any signage proposed for the outdoor dining area should be coordinated with the associated premises
- Product advertising may be displayed on umbrellas and barriers only.

### **3.9 Cleanliness**

The Outdoor Dining Area and its immediate surrounds is to be maintained and cleaned on a regular basis throughout the trading day keeping it free of litter. The area is to be left in a tidy condition at the end of the trading day

All utensils, furniture and food goods within the area must be maintained in a clean and sanitary condition.

To help maintain a tidy and rubbish free environment, where possible food and drink should be served to the patrons at the table on non-disposable crockery and cutlery

Food and drink must not be prepared in the outdoor dining area

All chairs, tables and other equipment shall be removed from the area when it is not open to the public for service and are to be stored on the premises.

Dry processes, such as sweeping or vacuuming, are to be used for cleaning the area.

All paving within outdoor dining areas is to be kept free of grease and grime. Occasional cleaning with hot water and soap may be necessary to remove excessive grease and grime on paving surfaces.

Upon inspection Council may place a clean up notice on an outdoor dining area. Such a notice must be complied with. Failure to comply will result in council undertaking the clean up at the expense of the owner.

Non-compliance with a clean up notice or repeated offences may cause the approval to be withdrawn.

### **3.10 Smoking**

Smoking in or adjacent to an outdoor dining area is prohibited.

### **3.11 Neighbouring property**

In the event that both the owner/occupier of any neighbouring property consents to the placing of tables and chairs in front of their property, the Council will not object to such tables being placed in front of that property subject to the following:

- If the neighbouring owner or occupier withdraws their consent at any time, then the applicant shall cease using the front of the neighbouring property for an outdoor dining area from the date of such withdrawal of consent
- The applicant agrees that they place such chairs in front of the neighbouring owners/occupiers, at their own cost and expense and at their own risk
- Public risk insurance includes the adjacent footpath area/s.

## **4. APPROVAL CONDITIONS**

### **4.1 Duration of approval**

Approved permits are issued for maximum of one (1) year. Council will call for applications in August/September each year. Applications made at other times will be approved on a pro-rata basis. Provided no additional approvals are required, applications will be finalised within ten (10) working days after receipt of application.

Expiration of a permit will require lodgement of a new application.

Approvals may be revoked by Council at any time for failure to comply with conditions of approval including failure to pay fees. In particular, if fees are unpaid or fall into arrears, the approval to operate the outdoor dining area may be revoked.

Approval will automatically lapse if the adjacent restaurant ceases to trade.

Approvals are transferable, provided Council is notified and proof of a current Public Liability Risk Insurance Certificate in the name of the new proprietor is submitted to Council.

Either party can withdraw from the approval with written notification and one month's notice.

### **4.2 Public Indemnity Insurance**

A current and valid public indemnity insurance policy must be in force at all times that the outdoor dining area is in operation. The following conditions apply:

- Public risk insurance to the minimum value of \$10 million must be taken out by the applicant noting the interests of Strathfield Municipal Council.
- The applicant must indemnify Council in writing against any action taken against it by persons suffering any loss of injury as a result of the existence or operation of the outdoor dining area.
- Proof of currency must be maintained on the premises and produced on demand by any authorised council officer or ranger.
- A certificate of currency must be sent to Council at the annual renewal of the agreement.

Failure to comply with these conditions will automatically terminate an agreement with Council for outdoor dining consent.

### **4.3 Fees and Charges**

Fees and charges for outdoor dining areas are set out in Council's Fees and Charges schedule. Fees and charges are reviewed and determined on an annual basis and apply from 1 July each year.

Fees and charges for outdoor dining area approvals can include:

- Application fee. Fee is payable at time of application and non-refundable.
- Annual fee (rental charge). Fee for use of the footpath for outdoor dining is set out in the schedule and payable in advance.
- Bond. The bond is payable at time of approval of agreement. The bond is refundable at the end of agreement period, less any costs incurred by Council to:
  - Repair damage to council property
  - Restore the outdoor dining area to its original condition
- Line marking fee – payable at the time of approval of agreement.

### **4.4 Non-compliance**

The use of an outdoor dining area without approval or not in accordance with this guideline and conditions of Council approval is an offence and may result in the issue of an infringement notice or other enforcement notice.

In the event that a non-compliance has been reported or observed, Council will issue a written notice requesting representations or compliance within seven (7) days of receipt.

Should the review of representations or the matter of non-compliance continue to be unresolved, Council may terminate the agreement with one month's notice in writing.

### **4.5 Termination of Agreement**

In the event that an approval lapses, terminates or is withdrawn, the applicant shall immediately remove all goods and services and reinstate and remedy all affected areas.

## APPENDIX A – RTA CLASSIFIED ROADS

The following roads are RTA classified Roads, within the Strathfield Municipal Council area.

### C1 STATE ROADS

Parramatta Road  
Raw Square  
Redmyre Road  
The Boulevard  
Liverpool Road  
Centenary Drive  
Roberts Road  
Juno Parade  
Punchbowl Road  
M4  
Homebush Bay Drive

From Raw Square  
From Redmyre Rd

To The Boulevard  
To Liverpool Road

### C2 REGIONAL ROADS

Water Road  
Homebush Road  
Cosgrove Road  
Underwood Road  
Pomeroy Street  
Albert Road  
Elva Street  
Beresford Road  
Arthur Street

From Water Street

To Beresford Road

From Underwood Road  
From Raw Square  
From Albert Road  
From Elva Street  
From Broughton Road

To Bridge Road  
To Elva Street  
To Beresford Road  
To Broughton Road  
To Auburn Council Boundary