

# **Controls and Guidelines for Outdoor Dining Areas**

As at 7 June 2016



## POLICY

<b>TITLE</b>	<b>CONTROLS AND GUIDELINES FOR OUTDOOR DINING AREAS</b>		
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<b>ASSOCIATED LEGISLATION/DOCUMENTS</b>	<ul style="list-style-type: none"><li>• <i>Roads Act 1993;</i></li><li>• <i>Food Act 2003</i></li><li>• <i>Liquor Act 2007;</i></li><li>• <i>Local Government Act 1993;</i></li><li>• <i>Work Health and Safety Act 2011;</i></li><li>• <i>The Building Code of Australia (BCA);</i></li><li>• <i>Companion Animals Act 1998;</i></li><li>• <i>Disability (Access to Premises — Buildings) Standards 2010 pursuant to the Disability Discrimination Act (Comm) 1992;</i></li><li>• <i>Disability Inclusion Act 2014;</i></li><li>• <i>Smoke Free Environment Act 2000;</i></li><li>• <i>Strathfield Council Community Access Plan;</i></li><li>• <i>Strathfield Development Control Plan (DCP) 2005;</i> <i>and</i></li><li>• <i>Strathfield Local Environment Plan (LEP) 2012.</i></li></ul>		
<b>RESPONSIBLE OFFICER</b>	Director Infrastructure & Development		

**TABLE OF CONTENTS**

<b>1.0</b>	<b>INTRODUCTION .....</b>	<b>3</b>
1.1	Definitions.....	3
1.2	Purpose .....	3
1.3	Aims .....	3
1.4	Legislative and Policy Framework.....	4
<b>2.0</b>	<b>APPLICATION REQUIREMENTS.....</b>	<b>4</b>
2.1	Making an Application.....	5
2.2	Approval Relating to Roads and Maritime Services Classified Roads.....	6
<b>3.0</b>	<b>CONTROLS AND GUIDELINES .....</b>	<b>7</b>
3.1	Site Requirements .....	7
3.2	Placement Guidelines.....	8
3.3	End Barriers .....	8
3.4	Furniture .....	8
3.5	Umbrellas, Blinds and Canopies .....	9
3.6	Heating Devices and Cooling Units.....	10
3.7	Neighbourhood Amenity .....	10
3.8	Liquor .....	10
3.9	Signage .....	10
3.10	Cleanliness.....	11
3.11	Companion Animals.....	11
3.12	Smoking .....	11
<b>4.</b>	<b>APPROVAL CONDITIONS .....</b>	<b>12</b>
4.1	Duration of Approval.....	12
4.2	Public Liability Insurance .....	12
4.3	Fees and Charges .....	12
4.4	Non-compliance.....	13
4.5	Termination of Agreement .....	13
	<b>APPENDIX A – RMS CLASSIFIED ROADS.....</b>	<b>14</b>

## 1.0 INTRODUCTION

Strathfield Council promotes and encourages outdoor dining for the development of the urban environment within the Town Centres, while maintaining accessibility, safety and appearance of footpaths.

Outdoor dining contributes significantly to the livelihood of businesses whilst providing an active and social street frontage and encouraging economic growth of the local government area.

These guidelines cover the Strathfield local government area. It applies to all outdoor seating areas where food and beverages are served and a development application and/or licence is required.

### 1.1 Definitions

*Restaurant* means a building or place the principal purpose of which is the preparation and serving on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

It is defined as a restaurant, refreshment room, café, take-away foods and drink premises, tavern or a small bar.

*Outdoor dining* refers to restaurant-style seating in an outdoor area, usually on the footpath or an open space adjacent to the business, and affiliated with an approved restaurant.

**Note:** The use of footpaths for display materials (A-frames, display shelves and cabinets) is not covered under this document. Refer to '*Controls and Guidelines for Display Material on Council Footpaths*' available on Council's website at [www.strathfield.nsw.gov.au](http://www.strathfield.nsw.gov.au).

### 1.2 Purpose

The purpose of these guidelines are to:

- Advise business owners of the requirements when applying for outdoor dining by providing applicants with the necessary information to streamline the application process;
- Regulate the use of outdoor dining areas and minimise disruption or inconvenience to the public and residential neighbourhoods, and ensure safe access is provided and maintained; and
- Encourage the development of a vibrant, social and active environment in the Strathfield local government area (LGA).

### 1.3 Aims

The aims of these guidelines are to:

- Improve the visual appearance and amenity of the streetscape;
- Contribute to the Precinct's unique identity;
- Incorporate unique architectural and landscaping elements, adding visual interest and creativity to the streetscape;
- Ensure views into the shop are maintained;

- Provide an opportunity for businesses to interact with street traffic and encourage personal connections; and
- Support local economic development and commercial vitality.

## 1.4 Legislative and Policy Framework

An application for a permit under the *Roads Act 1993* must be submitted to Council. No outdoor dining on Council footpath can take place without a Council permit. This policy is subject to the provisions of the following:

- *Roads Act 1993*;
- *Food Act 2003*
- *Liquor Act 2007*;
- *Local Government Act 1993*;
- *Work Health and Safety Act 2011*;
- *The Building Code of Australia (BCA)*;
- *Companion Animals Act 1998*;
- *Disability (Access to Premises — Buildings) Standards 2010 pursuant to the Disability Discrimination Act (Comm) 1992*;
- *Disability Inclusion Act 2014*;
- *Smoke Free Environment Act 2000*;
- *Strathfield Council Community Access Plan*;
- *Strathfield Development Control Plan (DCP) 2005*; and
- *Strathfield Local Environment Plan (LEP) 2012*.

## 2.0 APPLICATION REQUIREMENTS

Applications are made by completing Council's '*Application for Outdoor Dining Permit*' available on Council's website at [www.strathfield.nsw.gov.au](http://www.strathfield.nsw.gov.au). In the event of an approval being granted, Council will issue a permit enabling an outdoor dining area to operate.

Applications for outdoor dining areas do not require development consent unless the proposed total number of patrons requires a variation to the number of compulsory toilet facilities. Applications for an outdoor dining area will only be considered by Council where it is adjacent to a lot which has development consent to operate as a food and beverage premises (as defined by the *Strathfield Local Environmental Plan 2012*).

The addition of tables and chairs to the number already approved by development consent may require the provision of toilets, or additional toilets, including unisex accessible toilets and disabled toilets compliant with the Building Code of Australia (BCA).

Where an existing food and beverage premise has development consent, an application for outdoor dining area can be made. In undertaking an assessment of the application, Council will consider any conditions imposed on the relevant consent.

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.

The permit holder is responsible for maintaining a current public liability insurance policy to the minimum value of \$20,000,000 (\$20 million dollars) noting Strathfield Council as an interested party. The insurance policy must cover injury, loss or damage to persons or property caused as a result of activity carried out under the outdoor dining permit.

All fees and charges must be paid prior to the commencement of the use of the footpath for the purpose of outdoor dining. The relevant fees and charges are set out in Council's Annual Fees and Charges.

In assessing applications, Council will consider the following:

- Provision of a continuous path of pedestrian travel along the footpath to ensure safe access;
- Approved or pending development consents;
- Traffic considerations including the safety of pedestrian and patrons;
- Site suitability, including ensuring that the width of footpath is sufficient to permit safe pedestrian access; and
- Previous history of the applicant, including payment record and any previous history of non-compliances.

**Note:** Council will not issue new permits where outstanding debts or fines are not resolved.

## 2.1 Making an Application

Prior to lodging an application, it is recommended that Council's Customer Service Centre be contacted to discuss the application and its suitability for the site.

All applications for outdoor dining areas must include the following:

- (a) A completed and signed '*Application for Outdoor Dining Permit*' form (available from Council's Customer Service Centre on 9748 9999 or online at [www.strathfield.nsw.gov.au](http://www.strathfield.nsw.gov.au)).
- (b) A development consent number showing approval of the restaurant.
- (c) A site plan of the footpath area drawn to a scale of (1:100) indicating:
  - Total area, dimensions and boundaries, including side and front boundaries, the width of the shopfront and entrances of the proposed dining area to be used;
  - The location of all pedestrian crossings, public utility structures and surface covers, power poles, bus stops, trees, street furniture, litter bins, post office boxes parking sign posts and other similar structures that are adjacent to the premise;

- The kerb line of the street, distance to the kerb, and the width of the footpath, including the residual width as a result of the encroachment by the outdoor dining area;
  - Distance to a street corner to ensure there is no restriction to existing sight lines for pedestrians and drivers.;
  - The proximity of pedestrian or vehicular entrances serving the adjoining buildings;
  - Any awnings or coverings including the extent of the overhead awning/verandah;
  - Number and location of tables and chairs in the outdoor dining area, and a sample of tables, chairs and furniture proposed.
  - The cross falls of the footpath. The *Disability Access to Premises Buildings Standards 2010* (DAPBS) requires a maximum cross fall of 1:40;
  - Description of any equipment, fittings and/or portable embellishments proposed within the outdoor dining area, including barriers and umbrellas; and
  - Existing and proposed lighting. Flashing lights are not permitted.
- (d) A signed statement which includes:
- Hours of operation of the proposed outdoor area;
  - Whether the premises is currently licenced to serve alcohol;
  - Whether alcohol is proposed to be served within the outdoor dining area; and
  - Details of the colour, type and material of the proposed outdoor dining furniture items.
- (e) Current public liability insurance to the minimum value of \$20,000,000 (\$20 million) with Strathfield Council noted as an interested party.

**Note:** In the event that an application is approved, the applicant will be requested to sign a leasing agreement with Strathfield Council.

## 2.2 Approval Relating to Roads and Maritime Services Classified Roads

- An application for an outdoor dining area on a classified State road or adjacent to traffic controls will require additional approval from Roads and Maritime Services (RMS).
- A list of RMS Classified roads are listed in Appendix A.
- If RMS agreement is required, Council will consult with RMS on the applicant's behalf upon lodgement of the application. The applicant may wish to have preliminary discussions with RMS to ascertain whether concerns are likely to be raised.

### 3.0 CONTROLS AND GUIDELINES

In determining an application for an outdoor dining eating area, Council will consider the following controls and guidelines.

#### 3.1 Site Requirements

Outdoor dining areas must meet the following requirements:

- The total footpath area must be greater than 3.6 metres in width;
- A minimum width of 1.8 metres must be maintained for the clear passage of pedestrian traffic. An adequate width allows for the continuous unobstructed pedestrian path of travel and reasonable access to shop entrances and window displays. The applicant is also required to ensure the use of the outdoor dining area complies with AS1428.1 (2009) - Design for Access and Mobility, to allow for universal access at all times. The proposed footpath area must be of hard sealed surface to the kerb to ensure pedestrian safety;
- 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;
- A proposed lease area must not reduce the sight lines for pedestrians and drivers at corners. The proposed outdoor dining area shall not obstruct the sight of advisory and regulatory guide signs, traffic controls, taxi stands, service pits, fire escapes, bus stops, pedestrian crossings, kerb ramps and landings and vehicle access points;
- No attachment to any light pole, street sign or other utility structure will be permitted. 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; and
- Public and private infrastructure access shall not be covered in any way and access must be available at all times.

**Note:** Trees, signs, seats, light poles, 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.



### 3.2 Placement Guidelines

- The boundary of the outdoor dining area will be defined by markers installed by Council if approval is granted.
- The markers that identify the perimeter of the approved outdoor dining area must not be removed, altered or obscured without written approval from Council;
- An outdoor dining area may only operate within the approved area. Operating outdoor dining areas outside of the approved areas will be considered a breach of an agreement and may result in on-the-spot fines and/or the withdrawal of the permit; and
- A copy of the permit is to be displayed in a prominent location within the premises so as to be viewed from the footpath by Council staff and produced as requested.

### 3.3 End Barriers

- Rigid barriers are to be placed at the ends of the lease area, for the protection of vision-impaired persons;
- Barriers may take the form of a sign, planter box, or fencing. Barriers must be of a sufficient weight to withstand strong winds;
- The barriers are to have a colour that provides a luminance contrast with their surroundings;
- The top of the barrier is to be at a height of 900mm –1100mm above the footpath level;
- The underside of the barrier is to be no more than 65mm above the level of the footpath;
- Furniture or other approved inclusions, such as planter boxes or barriers, are not to protrude beyond the boundaries of the leased area;
- Vegetation in planter boxes is to be non-bee attractive, non-allergenic and must not encroach on an accessible path of travel or have hard or needle-shaped leaves that may cause injury to persons or clothing; and
- Care and maintenance of plants/flowers is the responsibility of the permit holders. Any diseased or dead plants should be promptly replaced.

### 3.4 Furniture

Outdoor furniture should be practical and stylish making a positive contribution to the streetscape;

Outdoor furniture will be assessed on the basis of the following guidelines:

- Outdoor furniture must be strong and robust to withstand commercial wear and tear and of sufficient weight to withstand strong winds. Outdoor dining items must be maintained and of high standard in materials and durability;

- Some seating is to provide arm rests and back rests for the benefit of patrons with disability/mobility challenges and the elderly;
- Tables are to be wheelchair accessible;
- Outdoor furniture and fittings should be of a type, design and colour compatible with the surrounding streetscape. Furniture within a streetscape does not need be of a single design, materials or colour, however, it must compliment the local character, whilst providing diversity;
- Darker colours are preferred for tables and chairs due to the reduced signs of wear and tear over time. The use of very bright or florescent colours will only be supported where these are consistent with the character and identity of the precinct, or provide a unique contribution to the streetscape;
- To enable Council to undertake maintenance and cleaning of pavement areas, outdoor furniture and all equipment should not be permanently fixed in place;
- The furniture should not interfere with the footpath structure;
- Where the leased area is adjacent to a kerb, all furniture and other approved inclusions are to be placed no closer than 800mm from the kerb; and
- Council reserves the right to request removal, repair or replacement of any furniture which is not adequately maintained in a neat, safe and tidy condition.

**Note:** Any damage to the footpath caused directly or indirectly by the placement of outdoor furniture to the footpath is the responsibility of the applicant. Repair or replacement of the footpath shall be at the proprietor's expense. 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.

### 3.5 Umbrellas, Blinds and Canopies

#### Umbrellas

- All outdoor umbrellas should be counterweighted to resist overturning and capable of withstanding wind velocities of up to 80km per hour;
- Umbrellas, including its canopy must be contained wholly within the approved outdoor dining area. They must be positioned and at a height to ensure that they will not cause an injury to patrons or pedestrians;
- An umbrella and any part of its canopy must provide a vertical clearance of at least 2m above the footpath;
- Umbrellas in the vicinity of outdoor heaters must be made of fire-resistant material. They must also be waterproof, and have a UV rating of 50+;

- Clear plastic drop down screens are permitted, provided they are held into position and approved by Council;

### **Blinds and Canopies**

- Canopies and blinds should be introduced in a simple manner and follow the general alignment of the awnings in the street; and
- Canopies and blinds must not be introduced as a form of advertising space and can only be introduced where this is consistent with existing shopfront treatments, or where it is considered to contribute positively to the commercial precinct's character.

### **3.6 Heating Devices and Cooling Units**

- 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 and/or cooling units must be contained wholly within the outdoor dining area and must be positioned and secured to ensure that they will not cause any injury or damage to patrons, passing pedestrians, any fixed awning or nearby vehicle; and
- Table heaters are not permitted.

### **3.7 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, offensive noise or behaviour; and
- Amplified music or entertainment is not permitted in outdoor dining areas without Council consent.

### **3.8 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 (NSW Office of Liquor Gambling and Racing).

### **3.9 Signage**

- Advertising controls apply to outdoor dining areas to ensure that the streetscape is not adversely affected;
- Excessive signage that creates clutter or dominates the street will not be supported;
- Any proposed signage should be included with the initial outdoor dining area application;
- Advertising will be assessed on 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; and
- Products advertised should be available on the premises.

### 3.10 Cleanliness

- The outdoor dining area and its immediate surrounds are 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 in accordance with the Food Standards Code;
- 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;
- Outdoor dining areas will only be approved for the serving of food and drink. Food preparation or cooking is not permitted within the leased footpath area for safety and health reasons;
- All chairs, tables and other equipment should be removed from the area when it is not open to the public for service and is to be stored within the premises;
- Only dry processes, such as sweeping or vacuuming, are to be used for cleaning the area. Rubbish is not to be swept into the gutter; and
- 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.

**Note:** Upon inspection Council may issue a clean-up notice for 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.

### 3.11 Companion Animals

- Companion animals are permitted within the leased area provided they remain on the ground. They are permitted to consume liquids, but not food.

### 3.12 Smoking

- Smoking within the designated outdoor dining area is prohibited in accordance with Smoke Free Environment Act 2000.

## 4. APPROVAL CONDITIONS

### 4.1 Duration of Approval

- Approved permit options include one (1) year, three (3) year and five (5) year renewals at the applicant's discretion. Approvals will automatically lapse if the approved period has expired and has not been renewed by the applicant.
- If the restaurant ceases to trade or the proprietor's public liability insurance is cancelled or expires, Council approval will automatically be terminated. It is the responsibility of the proprietor to maintain public liability insurance and provide these details to Council on a yearly basis or at the time of lodging 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 and charges. If fees are unpaid or fall into arrears, the approval to operate the outdoor dining area may be revoked;
- Either party can terminate the approval with written notification of one month's notice; and

**Note:** An outdoor dining permit is not transferable between business owners. A new application is required to be lodged with Council.

### 4.2 Public Liability Insurance

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

- Public liability insurance to the minimum value of \$20,000,000 (\$20 million dollars) must be taken out by the applicant noting Strathfield Council as an interested party;
- The applicant must indemnify Council in writing against any action taken by persons suffering any loss or 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 request by any authorised Council officer or ranger. Annually renewed public liability insurance policies must be provided to Council.

**Note:** Failure to comply with these conditions will automatically terminate the agreement with Council.

### 4.3 Fees and Charges

- Fees and charges for outdoor dining areas are set out in Council's Annual Fees and Charges. Fees and charges are reviewed and determined on an annual basis and apply from 1 July each year. These can be found on Council's website under 'Fees and Charges'.

- Fees and charges for the use of outdoor dining areas include:
- Application Fee: Fee is payable at time of each application and is non-refundable;
- Annual Rental Fee per m<sup>2</sup>: Fees and charges for use of footpaths for outdoor dining are set out in Council's Annual Fees and Charges and payable in advance;
- Outdoor Dining 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; and
  - 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, on-the-spot fines or other enforcement notices;
- In the event that non-compliance has been reported or observed, Council will issue a written notice requesting representations or compliance within seven (7) days of receipt issue.

**Note:** 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 or public liability insurance expires, the applicant shall immediately remove all goods and services and reinstate and remedy all affected areas.

**APPENDIX A – RMS CLASSIFIED ROADS**

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

**C1 STATE ROADS**

Parramatta Road	From Columbia Lane to Telopea Avenue
Raw Square	From Redmyre Road to Everton Road
Redmyre Road	From The Boulevarde to Raw Square
The Boulevarde	From Liverpool Rd to Redmyre Road
Liverpool Road	From The Boulevarde to Davidson Street
Centenary Drive	From Homebush Bay Drive to Liverpool Road
Homebush Bay Drive	From Centenary Drive to Powells Creek
Roberts Road	From Liverpool Road to Juno Parade
Juno Parade	From Norfolk Road to Punchbowl Road
Punchbowl Road	From Juno Parade to Coronation Parade

**C2 REGIONAL ROADS**

Water Street	From Punchbowl Road to Dean Street
Homebush Road	From Water Street to Beresford Road
Cosgrove Road	From Punchbowl Road to Hume Highway
Underwood Road	From Parramatta Road to Homebush Bay Drive
Pomeroy Street	From Underwood Road to Powells Creek
Albert Road	From Raw Square to Elva Street
Elva Street	From Albert Road to Beresford Road
Broughton Road	From McKenzie Street to Beresford Road
Beresford Road	From Elva Street to Broughton Road
Arthur Street	From Broughton Road to Auburn Council boundary
Redmyre Road	From Homebush Road to Raw Square