



# Public Footway & Open Space Outdoor Dining Guidelines

September 2007



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## Introduction

These guidelines set out the design and safety requirements for dining areas in public spaces and lists procedures to guide business owners through the application process to ensure standard compliance requirements are met.

Dining on public footways and areas of open space should complement the existing activity of the surrounds and provide a comfortable, attractive and safe environment for restaurant patrons and staff, pedestrians, and the general public.

This document covers two types of Outdoor Dining - Public Footway & Open Space.

- Public Footway Dining is on either a footpath, lane, pathway, roadway or closed portion of road, that has the status of a public road. These areas generally adjoin roads which allow the access and egress of pedestrians and all vehicles and area covered under the Roads Act 1993 (section 125).
- Open Space Dining is in areas of public reserve or areas used for a public purpose which have a status other than road and are covered under the Local Government Act 1993 (section 68, part D, condition I).

All information in this document relates to both types of Outdoor Dining unless otherwise specified.

## Location Guidelines

It is essential that the suitability of local conditions for a proposed Outdoor Dining site be considered.

- Suitable - Locations are considered to be widened footpaths and other pedestrian areas, closed streets, lanes, squares, parks reserves, and other Council owned or managed spaces.
- Unsuitable - Locations are areas considered to be unprotected, elevated, and steep or with uneven surfaces unsuitable for the placement of furniture. Corner intersections of high traffic flow may also be considered unsuitable subject to consideration by Council.

## Assessment Criteria

### Location of Proposed Area

- The Outdoor Dining area must be adjacent to the applicant's approved café/restaurant premises.
- A proposal to extend the Outdoor Dining beyond the associated premises is subject to individual assessment and requires the written consent of the adjacent business owner of the neighbouring property.
- Proposed locations must consider access and usability for people with a disability. This includes a continuous, accessible path of travel to or within the area, to provide access to all services and facilities. There should not be any hazard or impediment which would prevent it being safely negotiated by people with disabilities.

## Pedestrian & Vehicular Access & Movement

Outdoor Dining must be in a suitable location and provide safe and unobstructed access for:

- pedestrian traffic within and around the dining site (wheel chairs, electric powered scooters, prams etc).
- pedestrian access to the premises and premises facilities (eg toilets)
- vehicles within the designated lanes of public roads and for authorised vehicles for access across land or pedestrian thoroughfares eg delivery corridor.

## Minimum Pedestrian Area for Public Footway Outdoor Dining

There must be a minimum 1.5 metre setback from the kerb (on RTA Classified Roads there must be a minimum 2.5 metre setback - Contact Council on 9562 1666 to see if your proposed dining area is on an RTA Classified Road)

Please note - for high pedestrian traffic footways Council may require pedestrian access width of 3 metres. This will be determined when the proposed site is inspected. If you think this may apply to your site and want to check prior to submitting an application, please phone Council's Property Section on 9562 1654 for details.

See Appendix I - Location / Site Plans - for recommended layouts.

## Safety & Convenience

- Visual clearance must be maintained at all times, and the location of seating for the proposed Outdoor Dining area must not impede the vision of traffic for pedestrians or drivers.
- Pedestrian aisles within the Outdoor Dining site must coincide with those aisles in front of the adjacent premises.
- The layout of seating and other items such as umbrellas, planter boxes and screens must be fully within the approved area. When determining the area to be occupied, remember to consider the movement of chairs when patrons sit at and leave the tables.
- If proposed area overhangs or is in front of a neighbouring property, written consent from the adjoining property owners and tenants (where applicable) is needed approving the proposal and the layout.

## Existing Streetscape Elements

- The ground surface must be suitable for furniture stability to ensure it is not hazardous to patrons and staff.
- The proposed Outdoor Dining area must be sympathetic to the existing streetscape and take into consideration the residential amenity where applicable.

## Furniture, Furnishing & Accessories

The Permit Holder is responsible for provision of all outdoor furniture and furnishings. The proposed furniture and furnishings should enhance the streetscape and be a practical, safe design that integrates well with the existing surrounds.

All furniture, furnishings and accessories must be removed from the Outdoor Dining area and stored safely within the associated premises:

- outside the approved business hours
- when conditions do not permit Outdoor Dining.

All furniture, furnishing & accessories will be subject to Council approval.

### **Tables & Chairs should ...**

- make a positive contribution to the existing streetscape
- be designed for commercial outdoor use
- be strong, durable, waterproof and weather resistant
- be appropriate for placement within the approved area - size and shape
- be easily cleaned and maintained
- be of safe design (eg no hinges or sharp edges)
- not contain aspects that will damage pavement or the ground surface.

The use of white plastic furniture is not encouraged due to its high maintenance for ongoing clean appearance.

### **Planter Boxes & Barriers should ...**

- make a positive contribution to the existing streetscape
- be appropriate for placement within the approved area - size and shape
- be maintained to Council's satisfaction and kept clear of rubbish (including cigarette butts) at all times.

They can be used to define the boundaries of the area.

### **Umbrellas must ...**

- be maintained to Council's satisfaction
- be securely anchored
- be relocated within the premises when conditions do not permit Outdoor Dining or during periods of extreme wind conditions.
- have a minimum height of 2.2 metres to ensure a safe headway clearance
- be placed within dining area and must not overhang the boundaries.

No part of the umbrella is to encroach upon either pedestrian thoroughfares or adjacent carriageways.

### **Heaters**

All applications must detail

- manufacturers' criteria
- layout
- number proposed
- location of fire safety equipment (it must be easily accessible and close to the heater/s location)

### **Proposed heaters ...**

- must turn off automatically if overturned
- must be stored within the premises when not in use
- must not be placed where it can be considered to be a fire hazard (eg next to umbrella or tree/shrub)
- must be installed in accordance with AS4565-2004 Radiant Gas Heaters.

### **Accessories**

- Ashtrays must be windproof.

## **Advertising**

The placement of advertising within the Outdoor Dining area must comply with Development Control Plan No. 52 - Goods & Signs on Public Places.

## Management Issues

### Hours of Operation

The hours of use for the Outdoor Dining area cannot exceed the hours permitted under the current Development Application for the operation of the business premises but may be reduced where applicable.

### Staffing of Outdoor Dining Area

- Is encouraged to ensure the Outdoor Dining area is safe and tidy.
- Is mandatory in café/restaurants where alcohol is served to ensure that consumption is contained within the Outdoor Dining area.

### Alcohol

- No alcohol is to be served in the Outdoor Dining area without an appropriate liquor licence issued by the Liquor Licensing Board extended to cover the Outdoor Dining area.
- A copy of the liquor licence must be submitted with application and kept updated at all times during the term of the Outdoor Dining permit.

### Music & Entertainment

Music and/or entertainment in a café or restaurant requires an application for Place of Public Entertainment form to be lodged with Council. No entertainment is allowed in the Outdoor Dining area without prior permission from Council.

### Noise & Conduct

The Permit Holder is responsible for the good conduct of patrons, staff and volunteers at all times and to ensure that noise levels do not become offensive and unreasonably interfere with people outside the business.

### Animals

The Permit Holder is responsible to ensure compliance with Companion Animals Act 1998 which allows only animals of genuine assistance (such as Guide Dogs) in food consumption areas.

### Safety

- Any Outdoor Dining area approved to operate outside daylight hours must provide adequate lighting to ensure safety and amenity.
- Location of the Outdoor Dining area must be within clear line of vision from associated business premises.
- The operation of business within the approved area must comply with Food Safety Standards under NSW legislation.

## Toilets

The Permit Holder's business must provide access to toilet facilities that comply with Part F2 of the Building Code of Australia (BCA) requirements, which includes facilities for people with a disability.

## Cleaning & Maintenance

All furniture and furnishings must be cleaned and maintained.

The Permit Holder is responsible for all debris, waste and litter (including cigarette butts) generated from the Outdoor Dining area and must ensure that:

- litter is not disposed of in, or left to migrate to, stormwater drains, gutters or garden beds
- the Outdoor Dining area, including the pavement, adjacent guttering and neighbouring surrounds, are to be kept clear of rubbish from the area at all times
- rubbish is disposed of in bins located within the business premises and not in public rubbish bins
- breakages and spills are cleaned up as soon as is practical so they do not stain the pavement or prove hazardous to patrons, staff and the general public. All method of cleaning must comply with Sydney Water Act 1994.

Take away food containers and utensils are discouraged as they generate excess waste.

## Marking of the Outdoor Dining Area

The Permit Holder is:

- responsible to mark the Outdoor Dining area in accordance with the approved plan. The method of marking must also be approved by Council.
- to ensure that all fixtures and furnishings remain within marked area at all times and do not overhang or impede the pedestrian or vehicular thoroughfares.
- to ensure that the area remains clearly marked at all times and can be easily identified by Council staff to ensure compliance.

## Associated Works

Associated works, including permanent fixtures, to enhance an Outdoor Dining area in a public space require a separate Development Application to be submitted to Council. Any associated works are paid for by applicant.

## Council & Other Authority Works

Council or any Authority reserves the right to carry out any type of maintenance work, in or around the approved area, at any time and will not accept responsibility or liability for interruption to business caused.

## Application

All applications for a Public Footway or Outdoor Dining Permit are to be submitted to Council on the appropriate form with all application requirements completed and the application fee paid in full.

### Conditions of Approval

Applications are assessed on their merits. Council reserves the right to apply additional conditions when issuing a permit.

### Notification

If an applicant wishes to operate in front of adjacent property, written consent from the adjacent business operator must be submitted to Council with your application and on an annual basis.

### Insurance

- The Permit Holder must provide and maintain current public liability insurance.
- A Certificate of Currency must be submitted to Council with the application and on an annual basis.
- See Appendix 3 for Certificate of Currency requirements.

### Application Fee

The Application Fee is in Council's Schedule of Fees and Charges - see Appendix 2 of this document. The Schedule of Fees and Charges is reviewed annually. The Application Fee is non-refundable.

## Post Approval

### Outdoor Dining Rental Fee

- The Outdoor Dining Rental Fee for the use of the public footway or open space will be identified in Council's Schedule of Fees and Charges. The Schedule of Fees and Charges is reviewed annually.
- The Outdoor Dining Rental Fee is payable annually in advance and the first invoice will be sent when your application is approved. You will have 30 days to pay the invoice.
- Non payment of the Outdoor Dining Rental Fee will be in breach of your approval. Please see Protocols on Non Compliance Actions for the actions that will result.
- A Outdoor Dining Rental Fee is payable in all circumstances. There will be not refunds or reductions or inclement weather or interruption to business caused by Council or any Authority carrying out any type of maintenance work.

### Compliance Inspections

- Council Officers will randomly inspect approved premises for compliance with their Permit Conditions.
- Termination of a permit can result from ongoing non compliance of the Permit Conditions. (See Termination of Permit/Withdrawal of approval)

### Display of Permit

A copy of the permit is to be on display at all times in the business premises and be easily accessed by Council officers.

### Period of Approval

- A maximum term of seven years is available for Outdoor Dining permits and at the end of this term a new application must be submitted to Council.
- Council reserves the right to withdraw approval for a permit, should safety and amenity be deemed to suffer due to the operation of the approved area.

### Variation to Permit Conditions

Any variation to the Permit Conditions will require a new application to be lodged with Council.

### Change of Business Ownership

Any change in business ownership will result in the termination of an existing permit and require a new application to be lodged with Council. The new permit must be approved before the new owner can operate business in the previously approved Outdoor Dining area.

## Notification Process for Non Compliance of Permit Conditions

Council Officers will assess breaches of conditions of a permit agreement on a case by case basis and may issue verbal and/or written notices or an on the spot fine under the Local Government Act 1993.

Numerous or continuous breaches (as assessed by Council Officers) of the Permit Conditions may result in an immediate termination of the permit agreement.

## Protocols on Non Compliance Actions

The following are general guidelines for non compliance.

- Council has discretion to vary these protocols depending on the individual circumstances, the nature or extent of non compliance or prior infringements.
- The non compliance protocols aim to achieve responsible and amicable solutions to footpath dining breaches.
- Infringement notices will include penalty fines under the Local Government Act 1993, section 627(3).

### **Breach of Conditions**

- Step 1 - Written and/or verbal Notice to Comply to operator and Permit Holder requesting compliance.
- Step 2 - Infringement Notice served if no action taken to remedy breach after Notice to Comply.
- Step 3 - Following Infringement Notice, permit may be terminated and/or further action taken.

### **Operating with an Expired Permit**

- Step 1 - Notice to Comply and an application form is issued to the operator and Permit Holder.
- Step 2 - Infringement Notice served if failure to act after Notice to Comply.
- Step 3 - Continued non compliance may then result in further action being taken.

### **Operating without a Permit**

- Step 1 - Notice to Comply and an application form is issued to the operator. Written and/or verbal notice issued.
- Step 2 - Infringement Notice served if failure to act after Notice to Comply.
- Step 3 - Continued non compliance may then result in further action being taken.

## Termination of Permit / Withdrawal of approval

Business operators may terminate their public footway or Outdoor Dining permit at any time by giving Council one month's written notice.

Council reserves the right to terminate a public footway or Outdoor Dining permit. Upon termination of a permit all materials of the business must be removed from the public area immediately. Reasons for termination of a permit or withdrawal of approval may include:

- Rent is in arrears for a period of greater than one month
- Non compliance of the conditions of the permit agreement
- Change of business ownership
- Expired public liability insurance
- Where the public footway or Outdoor Dining area is found to cause undue inconvenience to pedestrian safety and/or amenity.
- Where Council has received repeated complaints about an approved area which cannot be resolved.
- Changes to Legislation.

## Related Legislation & Policies

- Section 125 of the Roads Act 1993 - Footway Outdoor Dining
- Local Government Act 1993 - Open Space Outdoor Dining

Other Legislation and policies may apply to your Outdoor Dining proposal and these include:

- Rockdale Local Environmental Plan 2000
- Development Control Plan (DCP) No. 52 – Goods and Signs on Public Places
- Development Control Plan (DCP) No. 57 – Exempt and Complying Development
- NSW Food Act 2003
- Companion Animals Act 1998

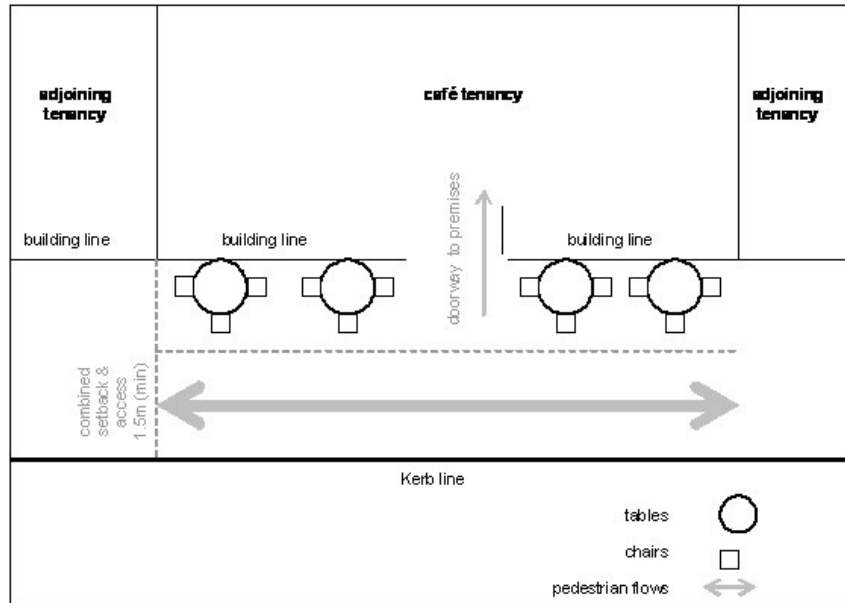
Please contact Council's Property Section on 9562 1654 for details on the specific Related Legislation & Policies that will apply to your proposal.

## For More Information

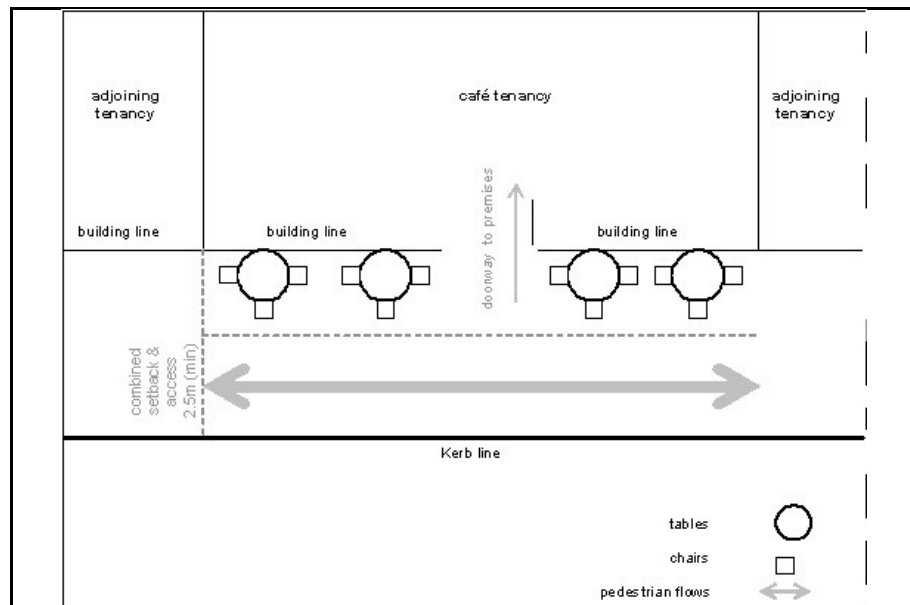
If you would like more information about Public Footway & Open Space Outdoor Dining please phone Council's Property Section on 9562 1654.

## Appendix I - Location / Site Plans

Examples only please contact Council staff for assistance when creating your Site Plans.



**Diagram 1 - Non RTA Classified Road with seating adjacent to building.**



**Diagram 2 - RTA Classified Road with seating adjacent to building.**

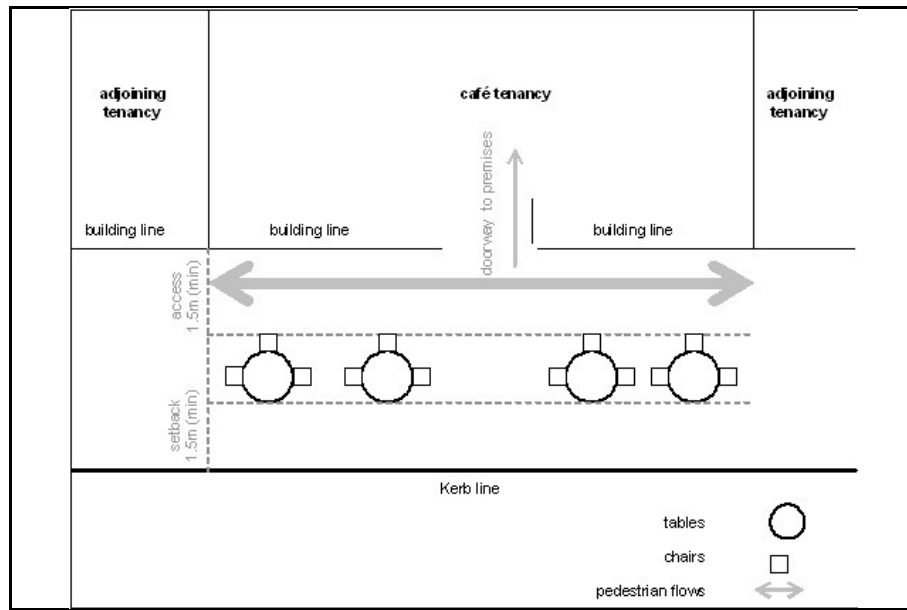


Diagram 3 - Non RTA Classified Road with seating kerbside.

## Appendix 2 - Fees & Charges

### Application Fees, effective 1 July 2007, non-refundable

Public Footway Dining - \$132 (GST inclusive)

Open Space Dining - \$132 (GST inclusive)

### Outdoor Dining Rental Fee

All figures are expressed on a per square metre basis at an annual rate

	Adopted 2007/08	GST Status	GST Amount	Adopted 2007/08 (GST Inc)
<b>Rockdale Retail Centre</b>				
Sub Precinct 1(A) Prime Retail Area	\$160.91	10%	\$16.09	\$177.00
Sub Precinct 1(B) Secondary Retail Area	\$107.27	10%	\$10.73	\$118.00
Sub Precinct 1(C) Fringe Retail Area	\$80.00	10%	\$8.00	\$88.00
<b>Brighton Le Sands Retail Centre</b>				
Sub Precinct 2(A) Prime Retail Area	\$246.82	10%	\$24.68	\$271.50
Sub Precinct 2(b) Secondary Retail Area	\$214.55	10%	\$21.45	\$236.00
<b>Kingsgrove Retail Centre</b>				
Sub Precinct 3(A) Prime Retail Area	\$180.00	10%	\$18.00	\$198.00
Sub Precinct 3(B) Secondary Retail Area	\$91.36	10%	\$9.14	\$100.50
Ramsgate Beach Retail Centre - Precinct 4	\$145.00	10%	\$14.50	\$159.50
<b>Sans Souci/ Ramsgate Retail Area</b>				
Sub Precinct 5(A) Prime Retail Area	\$107.27	10%	\$10.73	\$118.00
Sub Precinct 5(B) Secondary Retail Area	\$91.36	10%	\$9.14	\$100.50
Sub Precinct 5(C) Fringe Retail Area	\$80.00	10%	\$8.00	\$88.00
Arncliffe Retail Centre - Precinct 6	\$107.27	10%	\$10.73	\$118.00
<b>Bexley Retail Centre</b>				
Sub Precinct 7(A) Prime Retail Area	\$80.00	10%	\$8.00	\$88.00
Sub Precinct 7(B) Secondary Retail Area	\$80.00	10%	\$8.00	\$88.00
Bexley North Retail Centre - Precinct 8	\$80.00	10%	\$8.00	\$88.00
Bardwell Park Retail Centre - Precinct 9	\$80.00	10%	\$8.00	\$88.00

Kogarah Retail Centre - Precinct 10	\$107.27	10%	\$10.73	\$118.00
All remaining Areas - Precinct 11	\$80.00	10%	\$8.00	\$88.00
Unique Value Locations (Assessment on an individual basis with Licensee to pay for initial valuation) - Precinct 12	TBDm <sup>2</sup>	10%		TBDm <sup>2</sup>
Wolli Creek Retail Centre - Precinct 13	\$85.45	10%	\$8.55	\$94.00

## Appendix 3 - Outdoor Dining Insurance Requirements

**ALL APPLICANTS - Please forward this page to your insurance broker**

### **INFORMATION FOR INSURANCE BROKERS**

**Please send the following, on behalf of your client, to Rockdale City Council**

**A copy of a Certificate of Currency for Public Liability Insurance showing:**

- A Current Certificate Date
- Policy Expiry Date
- Policy Number
- Policy in the same name as on the Outdoor Dining Application
- Policy covers the business address on the Outdoor Dining Application
- Policy to state it covers Outdoor Dining purposes
- Policy is in the amount (required only for footpath area)
  - \$20 million (if on Roads & Traffic Authority (RTA) controlled road)
  - \$10 million for all other roads
- The Interested Parties on the policy include:
  - Rockdale City Council
  - Roads & Traffic Authority (if on an RTA controlled road)

If you have any questions please call Tracy Older on 02 9562 1654

Please forward the Certificate of Currency to:

Tracy Older

Property Administration Officer

Rockdale City Council

Fax: 02 9562 1777

Post: PO Box 21, Rockdale NSW 2216

Email: [tolder@rockdale.nsw.gov.au](mailto:tolder@rockdale.nsw.gov.au)