



City of Ryde

# **Outdoor Dining Policy**

Effective: 6 January 2010

**Policy adopted** by the Council of the City of Ryde on 7 November 2006.

Policy revised as follows:

<b>Amendment No.</b>	<b>Date Approved</b>	<b>Effective Date</b>	<b>Subject of Amendment</b>
<b>1</b>	17 November 2009	6 January 2010	Various amendments throughout following a comprehensive review of the policy and associated processes

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## 1 INTRODUCTION

Outdoor cafes make a significant contribution to the quality of public places and urban life. They contribute to active vibrant streets with opportunities for social interaction and leisure.

Proposals for outdoor dining activity can range from placement of a few chairs and tables on the footpath to larger scale outdoor dining areas that include fixed awnings and barriers and many tables and chairs.



**Figure 1 Examples of smaller scale and larger scale outdoor dining areas**



### 1.1 Policy Statement

This policy applies to outdoor dining on any public land in the City of Ryde Local Government Area that is owned or under the care, control and management of Council. In particular it applies to footpath areas adjacent to public roads situated within the town and neighbourhood centres in the City.

The purpose of this policy is to provide simple procedures and design guidelines for outdoor dining activities in plazas, closed roads, footpaths, parks and public places.

This policy may also be used as a guide for the design of outdoor dining areas on private land.

### 1.2 Objectives of this Policy

The objectives of this policy are:

- to encourage outdoor dining in areas that are suitable for that purpose;
- to add to the vitality to the streetscape character of centres within the city;
- to provide clear guidelines for applicants, staff, Council and the community with respect to Council's expectations in relation to outdoor dining;

- to ensure that pedestrian and traffic safety and accessibility is not compromised by outdoor dining activities;
- to ensure that adequate, sheltered and safe space is maintained for pedestrian access and circulation;
- to ensure equitable access for all including people with disabilities;
- to ensure that outdoor dining areas are maintained in a clean, healthy and tidy manner, and remain attractive elements of the civic space.

### 1.3 Legislative Context

Outdoor dining proposals require some form of approval from Council. The most common location for outdoor dining is on part of the public footpath outside restaurants, cafes, and other food premises.

There are a number of safety, accessibility and amenity considerations with respect to outdoor dining proposals that aim to ensure the comfort of outdoor diners as well as the comfort of the general public accessing areas in and around outdoor dining areas.

Council has various responsibilities to meet under the following legislation:

- Environmental Planning and Assessment Act 1979
- Local Government Act 1993
- Roads Act 1993

Part 5 of this policy outlines the requirements for applications to Council for approvals under the above three Acts.

The Roads Act 1993 and the Local Government Act 1993 generally require that a person shall not carry out any activity on a public road or place without the approval of Council. The Roads Act 1993 enables Council as a road authority to grant approval for limited use of the Council's footpaths, roadways and car park areas.

Sections 125, 126 and 127 and in some cases Sections 137-139 of the Roads Act 1993 allow Council to grant approval for use of a footpath in association with an adjacent restaurant (being premises in which food is regularly supplied on sale to the public for consumption on the premises), as long as this use is not taken to constitute a public nuisance and does not give rise to an offence against the Roads Act or any other legislation.

The Roads and Traffic Authority (RTA) must also give approval for outdoor dining activities on classified roads such as Victoria Road, Lane Cove Road and parts of Blaxland Road. The applicant should contact Council to determine whether or not a road is classified. Additional safety requirements may be needed for outdoor dining areas on classified roads, e.g. use of bollards and increased setbacks to road kerbs.

The Food Act 2003 also applies in relation to the operation of outdoor dining areas

as food premises. The Liquor Act 2007 applies if there is a proposal to serve alcohol. Provisions of other legislation, including the Companion Animals Act 1998, and the Occupational Health and Safety Act 2000 are also relevant.

## 1.4 How to use this Policy

This policy is to be read in conjunction with:

- Ryde Planning Scheme Ordinance
- City of Ryde Draft Local Environmental Plan 2008 (Draft LEP 2008)
- City of Ryde Development Control Plan 2006 (DCP 2006)
- City of Ryde No Smoking Policy
- City of Ryde Footpath Activity Policy
- City of Ryde Enforcement Policy

This policy is divided into 5 main sections:

### **1. Introduction**

### **2. Location and Site Criteria**

This section assists applicants with the appropriate choice for the location of outdoor dining areas.

### **3. Furniture Guidelines**

This section provides information and guidelines regarding proposed tables, chairs and other elements of furniture and structures, both removable and fixed, associated with outdoor dining.

### **4. Management Issues**

This section outlines the ongoing management requirements necessary to ensure outdoor dining meets relevant approvals and controls.

### **5. Application Requirements**

This section explains what applicants need to do to apply for approval for outdoor dining.

## 2 LOCATION AND SITE CRITERIA

This section provides the details on location and site criteria for outdoor dining.

The most important local conditions to be considered in locating outdoor dining areas are:

- proximity to associated approved food and drink premises;
- available area for outdoor dining – footpath width and width of public space;
- existing context including topography and footpath gradient, existing street furniture, the access points to nearby business;
- siting and design of any existing outdoor dining in the locality; and
- proximity to residential areas.

### 2.1 Site Conditions and Associated Works

The ground surface must be suitably constructed and sufficiently level to support a proper layout and safe use of furniture.

Minor structures and changes to the footpath may be approved to achieve a suitable gradient. In elevated locations, e.g. a change of level, and at the edge of deep water, outdoor dining is only appropriate in conjunction with a suitable safety rail, the design of which shall be to Council's satisfaction and approval.



**Figure 2 Example of minor works to the footpath area ensuring a level platform for the outdoor dining area. Diners are protected from the change in level by trellis balustrading and planter boxes.**

In some cases, the applicant may wish to undertake other streetscape works to accommodate an outdoor dining area. Such works may include footpath widening, paving, street tree planting, lighting, safety fencing, etc. Any such works require approval by Council.

Council's Public Domain Plans and Management Plan include provisions for Town Centre Public Domain improvements. For information about particular locations of proposed and constructed improvements contact Council's Public Works Group.



**Figure 3 Examples of public domain upgrade works in various centres in City of Ryde**

## 2.2 Minimum Areas and Clearances

### 2.2.1 Minimum Areas

The minimum area for any outdoor dining is 4 m<sup>2</sup> consistent with the minimum area for which charges apply under Council's Fees and Charges schedule (refer Council's website [www.ryde.nsw.gov.au](http://www.ryde.nsw.gov.au)). This minimum area is based on a layout for 1 table with 4 chairs (or 2 small tables with 2 chairs each).

Applicants may apply for smaller outdoor dining areas, but should be aware that rental charges for public areas are based on the minimum of 4 m<sup>2</sup>. The maximum number of seats allowed for outdoor dining will be calculated on the basis of one seat per 1m<sup>2</sup> (rounded up to the nearest whole number).

### 2.2.2 Minimum Clearances (Setbacks)

For circulation, safety, accessibility and convenience clearances are required around outdoor dining areas.

#### Locations on footways in business centres

An outdoor dining area may be located:

- adjacent to the respective indoor premises, or
- adjacent to the kerb/roadway.

The location will be determined considering local conditions, including the retention of a continuous accessible pedestrian corridor; the volume of pedestrian traffic; the location of existing outdoor dining areas, existing shop fronts and awnings; the location of streetscape elements including poles, signs, refuse bins; and the location of the bus stops and taxi stands, etc (refer also 2.4 Unsuitable Locations).

A clear unobstructed pedestrian corridor of 2 metres minimum must be maintained adjacent to the seating area or shop frontage (whichever is relevant) for clear passage of pedestrian traffic to allow for continuous accessible paths of travel at all times.

As illustrated in Figure 3, footpath widths and configurations can vary in centres. The diagrams in Figure 5 illustrate pedestrian clearances required for different alignments of outdoor dining areas in typical urban shopping strips on footpaths of minimum 3.6m in width.

#### Adjacent to shopfront

Outdoor dining areas are not to cause obstruction to any existing access points to shops, arcades and pedestrian access ways.

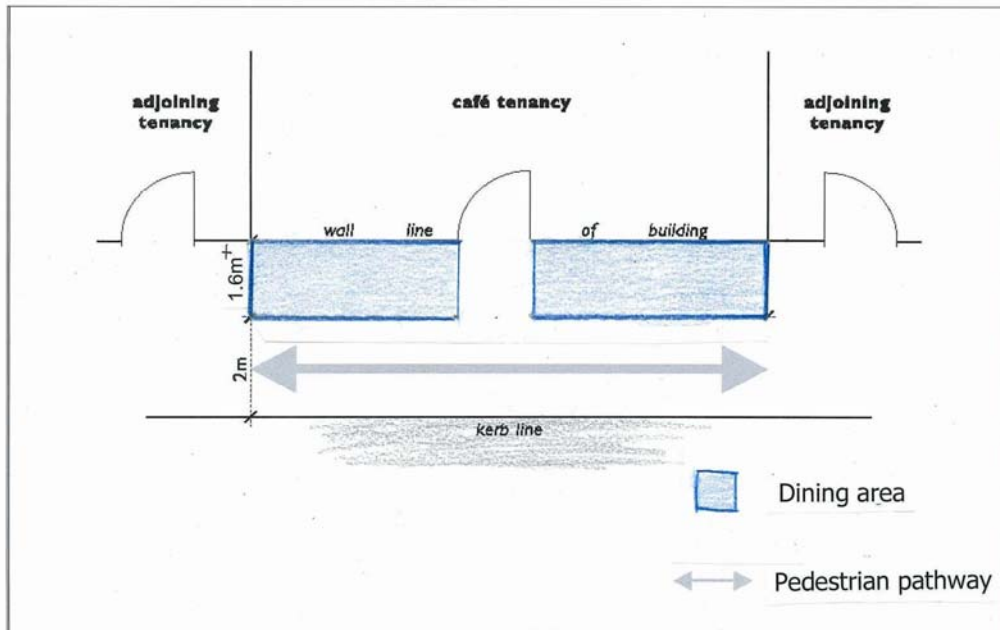
Adjacent to kerb/roadway

Where outdoor dining is proposed adjacent to kerbside parking, a 600mm wide clear area must be provided adjacent to the kerb to allow motor vehicle doors to open unimpeded and to permit passage of pedestrians to and from vehicles (refer Figure 5 opposite). For safety reasons, allowances for clear pedestrian passage may be increased in areas of higher pedestrian activity, and traffic speed and volumes, and where required by the RTA on classified roads. Energy-absorbing safety bollards/barriers may also be required to be installed at the expense of the applicant/approval holder and to the satisfaction of Council.

Where there is no kerbside parking, a suitable barrier must be erected to the satisfaction of Council for safety considerations including to prevent diners from walking directly onto the roadway. Installation will be at the expense of the applicant/approval holder. No minimum setback is required, however the barrier must be approved by Council. Landscape barriers (e.g. trellis with planting and energy-absorbing bollards, and open structures – refer Figure 4) are preferred to barriers which are solid and bulky in appearance (e.g brick walls).

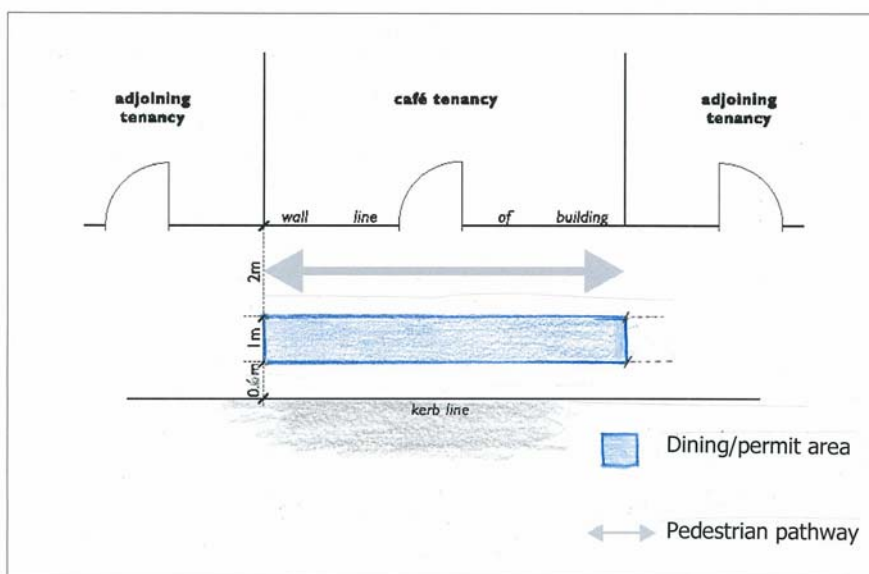


**Figure 4 Examples of suitable kerbside barriers**



**Figure 5** The above diagram shows location for a 2m wide pedestrian corridor where outdoor dining is proposed against the shopfront of the premises. The diagram below shows the location of the 2m wide pedestrian corridor where outdoor dining is proposed along the kerb line. Note the 600mm wide clearance from the kerb where there is a parking lane in the adjacent road.

**Note:** Equitable access is to be considered and clearances must have regard to current Access Standards including AS1428.



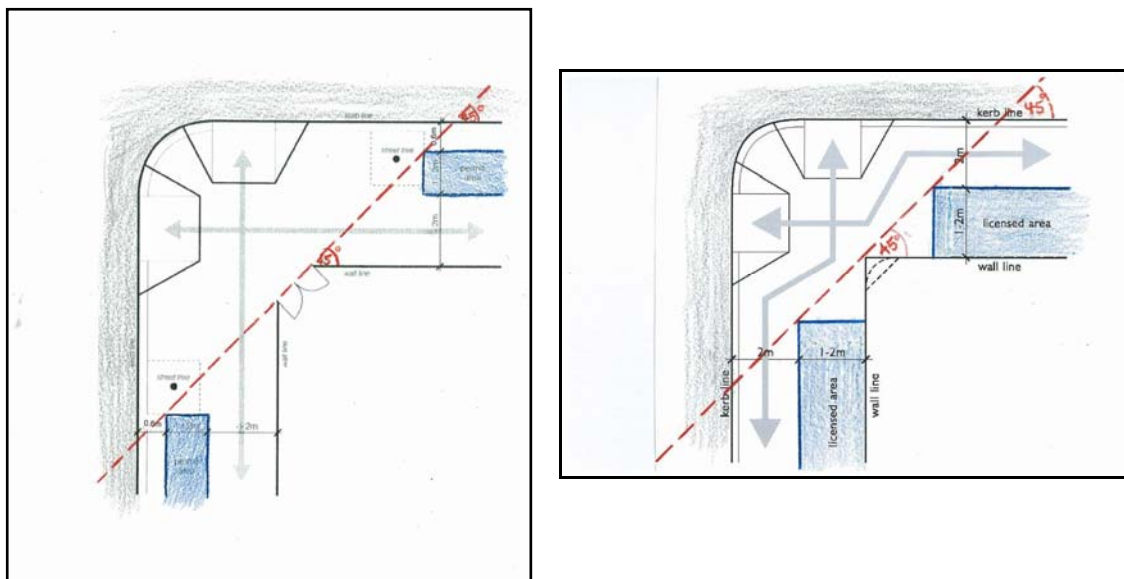
### Plaza locations

Where proposed in plaza locations, the outdoor dining area may be considered in locations not directly in front of the associated business. In these circumstances it may be considered in close proximity to the respective café, restaurant or hotel, depending on:

- the design of the plaza area;
- the location of street furniture and services;
- topography of the site and surrounds;
- location of pedestrian corridors, service vehicle access, existing or planned for goods for display, street stalls; and
- other matters with respect to the design of pedestrian and shared plaza areas, including the needs of adjacent businesses.

### Corner locations

At street corners, a setback of at least 2 metres measured from the building corner applies exclusive of any obstruction or street fixture e.g. bench, tree, rubbish bin, pole etc. This is required to maintain safe sight distances for both vehicles and pedestrians, as well as clear paths of travel and equitable access (refer Figure 6).



**Figure 6 Outdoor dining areas are not permitted on corner locations at street intersections. The diagram identifies the clearances required for safety and access considerations.**

### Other Locations

In otherwise favourable locations minor modifications of the nominated clearances may be approved provided that the objectives of this policy are met.

## **2.3 Unsuitable Locations**

Outdoor dining areas will not be considered at bus stops, taxi ranks, near pedestrian crossings, or other areas where there is concentrated pedestrian traffic or vehicular traffic safety concerns. In some locations it may also be necessary to limit outdoor dining activity to particular times of the day depending on local circumstances.

Not all footpaths are suitable for use as outdoor dining areas, or may not have sufficient width to meet pedestrian access/ vehicular access, sightlines etc.

Where a suitable pedestrian access corridor is unable to be provided, outdoor dining will not be permitted.

## **2.4 Limitations on the Use of Footpath Areas**

The use of a footpath will, generally, be limited to the area situated directly in front of the food premises/ restaurant, which provides the base for the outdoor dining activity.

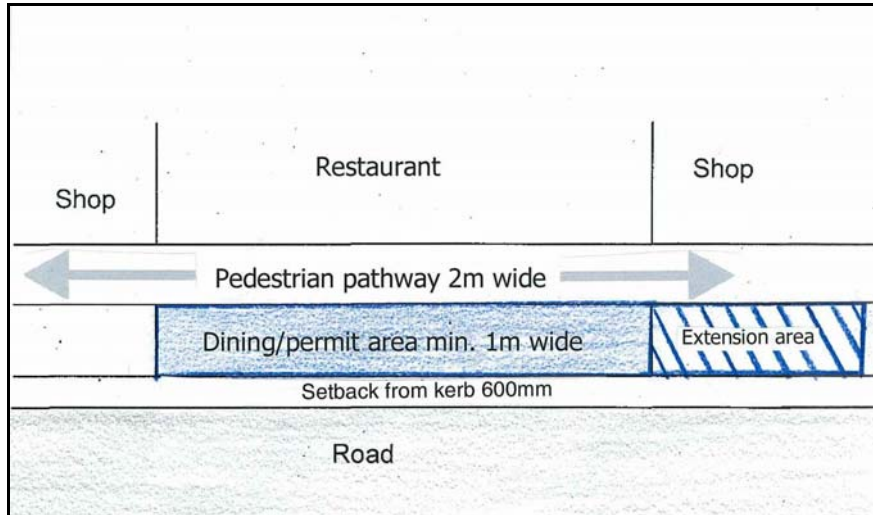
The Liquor Act 2007 may also be applicable to location of outdoor dining areas.

### Extension Areas

In some circumstances, for example where an outdoor dining area is proposed outside a row of shops, consideration may be given to extending the outdoor dining into the area in front of the adjoining shop. This consideration will require the written consent of the owner and the occupier of the adjoining premises to be submitted with the application.

Any changes to the ownership or occupancy of the adjoining premises will require the approval holder to seek a new consent from the owner and occupier. If this approval is not obtained, the area approved for use of the activity will be reduced to the footpath area immediately in front of the principle dining premises.

Outdoor dining approvals will also cease upon change of use or change of ownership of the principle dining premises.



**Figure 7** The diagram illustrates an example of an opportunity for extension of an outdoor dining area.

### 3 FURNITURE GUIDELINES

Outdoor furniture for the purpose of this policy includes shade structures, tables, chairs, heaters, perimeter barricades. This section provides guidance on the design requirements for both removable and fixed furniture associated with outdoor dining.

#### 3.1 Furniture Layout

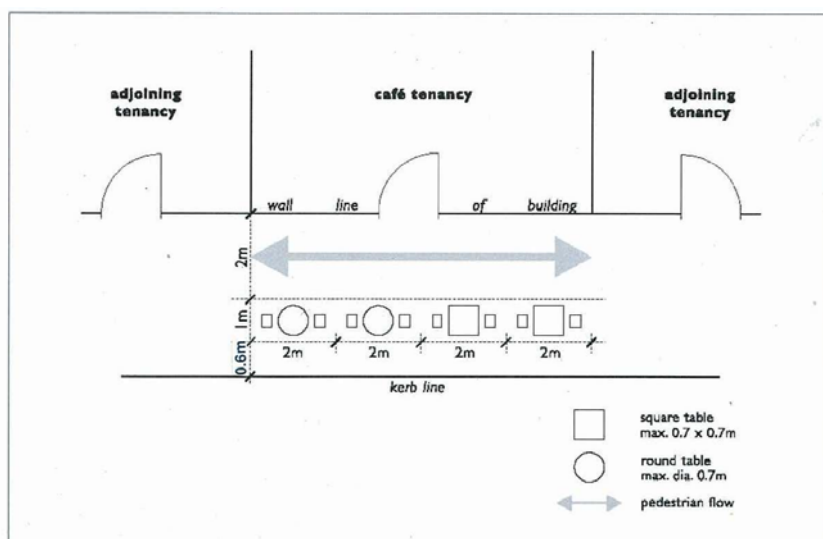
The layout and orientation of furniture should be chosen according to the size and shape of the available space. The available depth of an outdoor dining area depends on the width of the footpath, however the minimum practical width for outdoor dining is 1 m.

The location of all furniture, barriers and the like, removable and fixed, must not extend beyond the boundaries of the approved outdoor dining area

The approval holder is responsible to ensure patrons maintain furniture within the boundaries of the approved seating area.

In kerbside locations, for safety reasons, the layout must be organized so that chairs must not be placed with their backs to the kerb.

Whenever possible, an outdoor dining area should visually relate to and be physically aligned with streetscape features.



**Figure 8 Example of a seating layout for a standard 3.6 m wide footpath. Chairs are sited so as not to intrude on the 2m wide pedestrian corridor.**

### 3.2 Delineation of Boundaries - Barriers and Markers

Council requires all boundaries of the approved outdoor dining area to be marked out on site. The methods of identifying the boundaries which may be considered acceptable include:

- markers;
- barriers/bollards – fixed or removable;
- planter boxes, seating walls and other landscape elements.

The choice of barrier will depend on the nature of the location of the outdoor dining area and will be determined by Council. The following requirements apply to barriers, bollards, markers and other suitable elements.

#### Markers

In most cases, corner markers will suffice. In some locations, it may be necessary to use additional markers along the boundary alignment. Where markers are to be used, Council will install on land in its ownership, at the cost of the approval holder. In paved areas, metal discs are installed flush with the paved surface. In areas with a grass, gravel, or similar surface pavement markers are not feasible and existing or new landscape elements such as trees, light poles, bollards, etc. are used instead (refer next sections on “Barriers and Bollards” and “Other”).



**Figure 9 Metal discs installed by Council in pavements to mark the boundaries of outdoor dining areas.**

#### Barriers and Bollards

The use of framed fabric barriers, may be appropriate, provided they do not become a physical or visual obstruction within the public domain and do not have a detrimental impact on pedestrians.

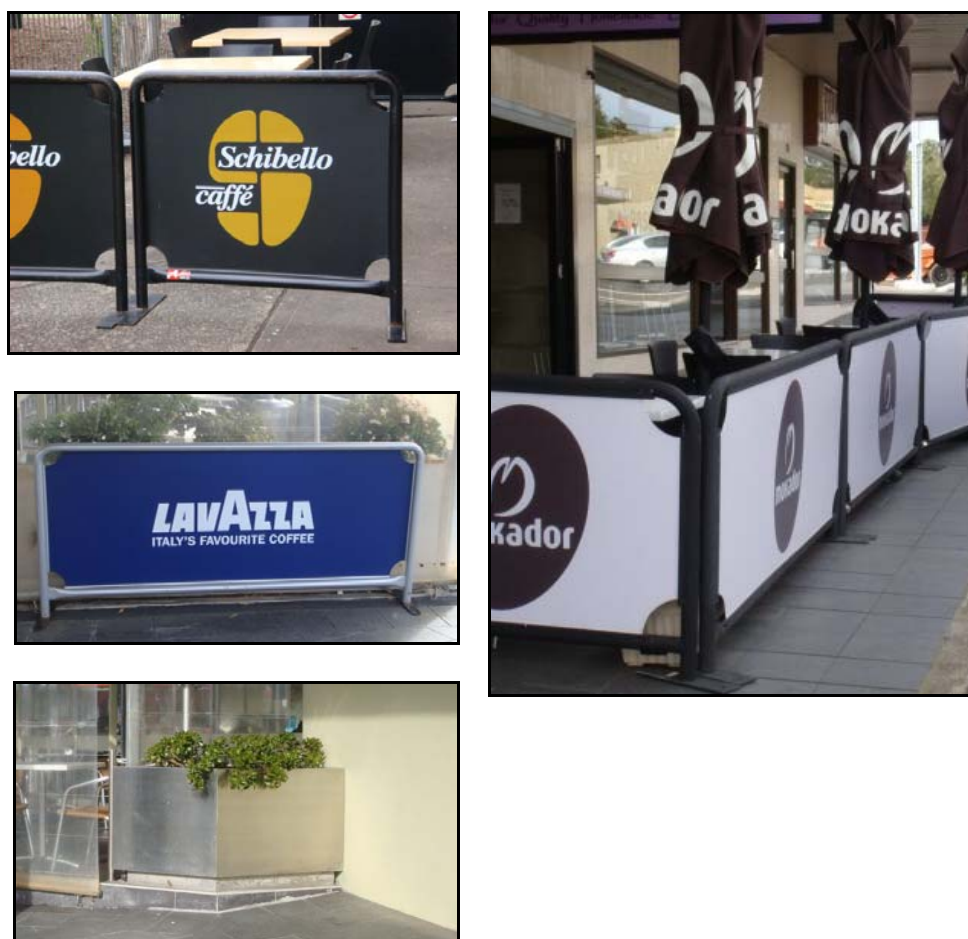
Barriers may be considered between adjoining outdoor dining activities to separate the dining areas. Barriers should be provided where the outdoor dining area is located 600mm from the kerb line to prevent chairs and tables creeping closer to

the kerb. The barriers prevent car drivers/passengers walking through the maze of tables and chairs to access the footpath. For safety purposes, barriers/bollards may be required to be designed to be energy-absorbing (refer also Section 2.2 Minimum Clearances (Setbacks)).

Barriers, must be of a colour and type that complements other furniture, such as umbrellas.

Removable barriers, placed on public land, must be free standing and of a weight that is safe, durable and supports the design. The establishment of holes, located fasteners and penetration into a pavement surface is not permitted without Council approval.

All fixed barriers/bollards require the approval of Council.



**Figure 10 Examples of different barriers, including fixed and removable styles**

### Other

Other barriers that may be appropriate between the outdoor dining area and kerb area are planter boxes and landscape features. The design of such elements should be discussed with Council.

All fixed elements require the approval of Council.

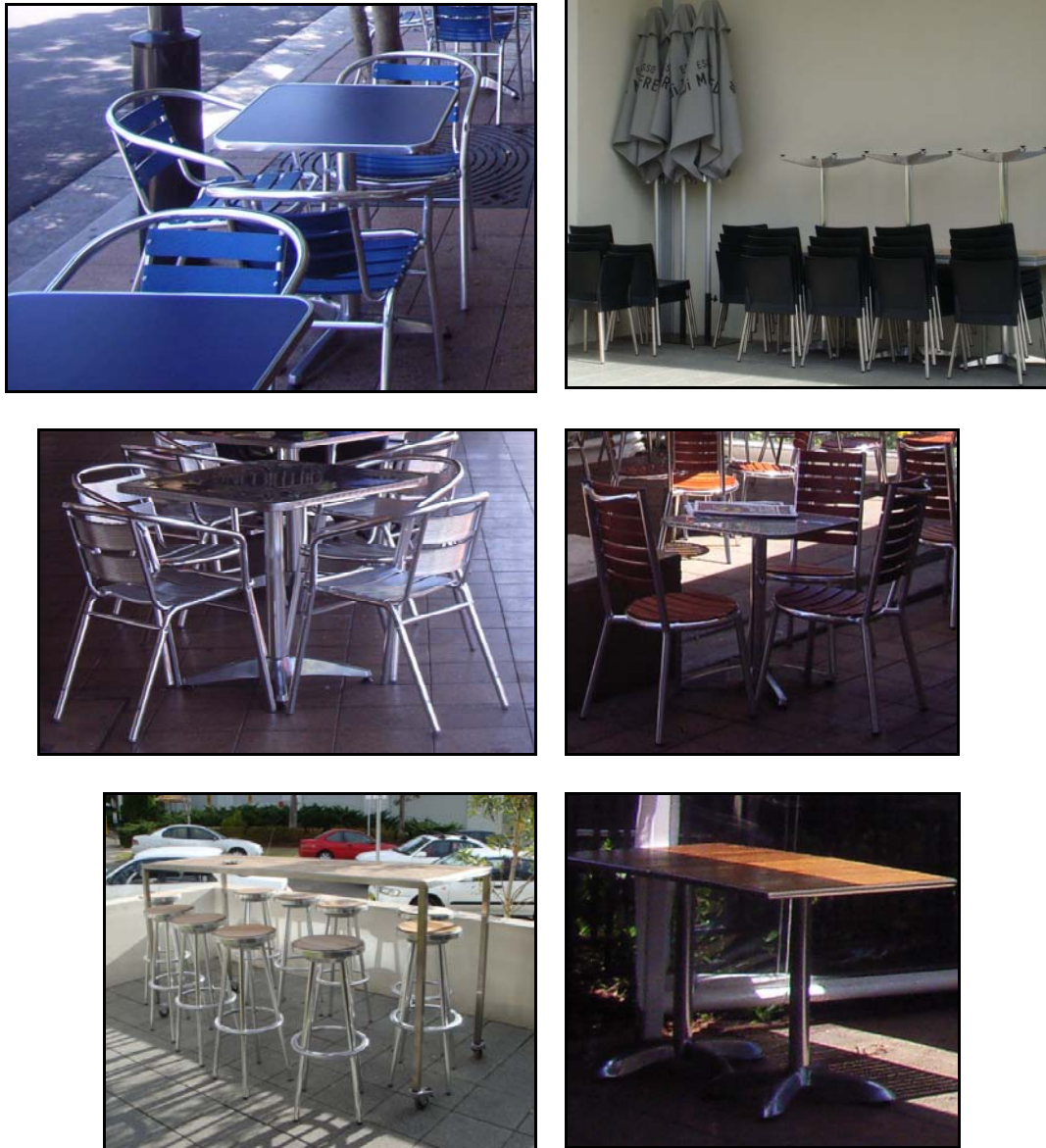
## **3.3 Furniture style**

Outdoor furniture should make a positive contribution to the street environment. A furniture style that is practical, robust and attractive and complements the surrounding cityscape is encouraged. All furniture items, including umbrellas and barriers are to be approved by Council, details of which must form part of any application.

Manufacturers' details and related information are to be provided with any application to demonstrate compliance with the following criteria:

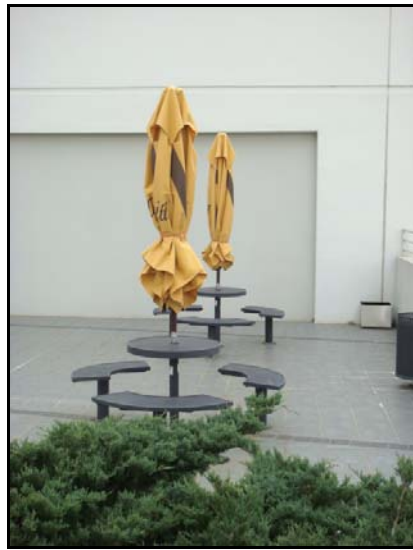
- the furniture should be strong, sturdy, durable, waterproof and weather resistant, designed for commercial outdoor use;
- the design must not contain parts that are likely to cause damage to the pavement;
- the furniture must be suitable for public safety, comfort and hygiene considerations;
  - particular care should be taken with any sharp edges, and hinges or other moving parts to ensure that they do not present a potential hazard to their users;
  - furniture in particular tables must be able to be cleaned and not be of a design that allows particles of food to collect;
- all removable furniture must fold or stack for storage, and be readily removed and stored within the associated indoor premises;
- furniture colour schemes must form part of any application. The design and colour should give consideration to the furniture in existing approved outdoor dining areas in the street, and access for the vision impaired (refer AS1428);
- surfaces such as table tops must be non-reflective;
- any proposed items of furniture that are to carry advertising materials (logos, brand names etc) must be detailed as part of the application.

Examples of removable and fixed furniture styles are included in Figures 11 and 12 over.



**Figure 11 Examples of REMOVABLE Furniture Styles**

**Note:** These styles are illustrative only. Requirements may vary depending on proposed location of outdoor dining area. Favourable consideration may also be given to well designed, creative, and individual alternatives. More examples may be available in Council’s Public Domain Manual.



**Figure 12 Examples of FIXED Furniture Styles**

**Note:** These styles are illustrative only. Requirements may vary depending on proposed location of outdoor dining area. Favourable consideration may also be given to well designed, creative, and individual alternatives. More examples may be available in Council's Public Domain Manual.

### 3.4 Enclosure

Outdoor dining areas should enrich the pedestrian experience and public life. It is therefore important that they present an open, inviting image and are easily accessible.

Full height solid screens are **not** preferred. Direct physical contact with the outdoor environment is an integral part of the experience of outdoor dining, and an amenable microclimate can be created through proper sitting and furniture layout in relation to existing buildings and streetscape elements.

#### Roll-up blinds and the Like

Where applicants propose the use of any form of enclosure for outdoor dining areas, such as roll-up blinds and the like, the enclosures are:

- not to be permanently rolled down (in the case of blinds) i.e. can be rolled up and down for use only in inclement conditions;
- to be used around no more than 2 sides of the outdoor dining area. In the case of a row of outdoor dining areas, should only be used on the perimeter of the entire row of outdoor dining areas so as not to work against the amenity of outdoor dining;
- not to cause any obstruction to the minimum path clearance required for public access (including access for the disabled);
- not to encroach the roadway or the approved seating area or be able to be blown into kerb edge/roadway area or pedestrian area;
- not to be located near any heating devices so as not to cause a potential fire hazard;
- to be securely fitted and installed to ensure that they withstand the effects of wind. Fixtures that penetrate or damage the pavement on Council's footpaths will not be permitted "and further that they be removed or closed in extremely windy conditions and must be removed when the outdoor seating area is not in use.");
- not undermine the strength of the structure on which they are to be fitted.
- not to be used for the display of advertising.

### 3.5 Umbrellas

Umbrellas are appropriate for providing shade and shelter, however considerations with respect to safety are critical.

Umbrellas must:

- be *installed* to ensure that they are at all times securely fixed to withstand the effects of wind. Fixtures that penetrate or damage the pavement on Council footpaths will not be permitted;
- be removed or closed in extremely windy conditions and must be removed when the outdoor seating area is not in use;
- not encroach on, or interfere with pedestrian movement, and must be at least 2.2 metres above the ground level at the lowest point;
- be manufactured from fire retardant material if adjacent to a heating device;
- be maintained in sound and aesthetically acceptable condition to the Council's satisfaction;
- not have general advertising, but may include business premises identification and advertising associated with the associated food premises (e.g. coffee brand).

For other shade structures, contact Council for advice on whether such structures will require the consent of Council.

### 3.6 Heating Devices

Where the use of a heating device is proposed, details of the type, location and design must be included in the application. The design of the device and the safety of persons and property will be the main consideration. Heating devices should turn off automatically if overturned to prevent injury to patrons and property.

### 3.7 Storage facilities

Adequate storage facilities will be required to be provided in the associated premises or in the building containing the associated premises for tables, chairs, umbrellas, heating devices, etc, when not in use (i.e outside the hours of operation of the outdoor dining area).

### 3.8 Toilet facilities

Toilet facilities are to be made available to patrons in accordance with the requirements of the Building Code of Australia.

Toilet facilities are required to be available in the building occupied by the food and drink premises where alcohol is served or if the total seating provided, (indoors and out doors) exceeds 19 seats.

Inclusion of outdoor seating will increase the number of seats to a food and drink premises, and such an increase may require the provision of toilet facilities. Contact Council for information on these issues.

### **3.9 Advertising and signage**

The name of the outdoor dining premises, its business name or logo may be placed on outdoor umbrellas, and other items of furniture, only if it:

- identifies the outdoor dining premises;
- is in the nature of a corporate logo or identification;
- is of a minor and integral element of the furniture design and does not have an excessive impact on the area of the café or the streetscape.

Details of all signage and advertising must be submitted for approval as part of the application.

### **3.10 Lighting**

Any outdoor cafe approved to operate outside daylight hours must provide adequate lighting, to Council's satisfaction, to ensure the safety and amenity of patrons and the general public.

## **4 MANAGEMENT ISSUES**

This section provides an understanding of the ongoing management and operational matters required of outdoor dining areas.

### **4.1 Conditions of approval**

The approval holder will be responsible for making sure the outdoor dining area is operated in accordance with the conditions attached to the approval, and where it applies, any conditions attached to the development consent.

Non-compliance will be enforced by way of a written warning for a first offence and a fine in all other circumstances. Continual non compliance may result in the approval being revoked or enforcement action taken.

### **4.2 Fees**

Council will charge a fee for the use of the footpath or Council owned land as an outdoor dining area. The initial fee for new outdoor dining approvals will be based on the Schedule of Fees and Charges forming part of that year's Management Plan. The fee will be established from a valuation to be undertaken by a licensed valuer appointed by Council. For existing approvals, the fee is to be reviewed annually in accordance with the approval conditions.

### **4.3 Display of Permit**

A copy of the Outdoor Dining approval that includes a plan of the approved area must be kept on the premises and displayed in a clear and visible position inside the front window of the associated premises and is to be produced on request by any authorised person. Permits will be issued as part of the Council approval process.

### **4.4 Maintenance and Cleaning**

All furniture must at all times be maintained in a physically sound and aesthetically acceptable condition to the Council's satisfaction. The approval holder is responsible for cleaning the approved outdoor dining area. It must present a clean, well-maintained image as specified in the conditions of the approval and development consent (if development consent has been issued).

### **4.5 Waste Disposal**

Street rubbish bins are not to be used for the disposal of waste and the approval holder must have suitable arrangement for commercial waste collection service. For information, refer Council's Waste and Fleet Unit.

## 4.6 Furniture Storage

Outdoor furniture must be removed and stored away from all public areas outside the hours of business operation or when not in use due to bad weather etc.

## 4.7 Table Service

The Liquor Act 2007 may include requirements with respect to table service in the outdoor dining area where alcohol is served. Table service in outdoor dining areas is encouraged in all other circumstances. The use of disposable tableware in outdoor dining areas is not permitted.

## 4.8 No Smoking Policy

Smoking is prohibited in all outdoor dining areas on the footpath or on Council owned or managed land in the City of Ryde.

Non-smoking signs are required to be displayed at the entrance to or within the outdoor dining areas, with such signs to be of minimum dimensions of 300mm x 200mm and contain the words “No Smoking” along with the “No Smoking” international symbol.

Approval holders are to take all practical measures to ensure that customers do not smoke within smoke-free dining areas.



**Figure 13** Examples of No Smoking signs suitable for use in outdoor dining areas.

## **4.9 Heating Devices**

Heating devices must be removed from public land and appropriately stored when not in use.

## **4.10 Markers**

Council requires all boundaries of the approved seating area to be marked (refer Section 3.2 Delineation of Boundaries - Barriers and Markers). This may also be required in any event if alcohol is served (refer Liquor Act 2007).

The markers must remain in place throughout the duration of the approval, and all furniture, including umbrellas and pot plants, must be kept strictly within the boundaries of the approved seating area.

## **4.11 Animals**

Animals, excluding assistance animals, are not permitted in outdoor dining areas under the provisions of the Food Act 2003 and in some circumstances the Companion Animals Act 1993. This requirement relates to the responsibilities attached to food handling and it is the responsibility of the approval holder to comply with the requirements of relevant legislation. (Note: Assistance animals are defined under the Disability Discrimination Act 1992.)

## **4.12 Lighting**

Lighting provided for outdoor dining is to be maintained to ensure the safety and amenity of patrons and the general public.

## **4.13 Insurance**

All approval holders will be required to carry and maintain public risk liability insurance to the minimum value of \$20million.

## **4.14 Change of Ownership or Use**

Outdoor Dining approvals will cease upon change of ownership or change of use of the principle dining premises. A new application is required for any change of ownership.

## 5 APPLICATION

In all cases of outdoor dining, some form of approval is required from Council to meet various legislated requirements. The nature of the approval required might relate to one, two or three Acts (or more). To assist applicants, Council has worked to make the application process as streamlined as possible. This section assists in explaining the requirements for approval in the majority of cases.

### 5.1 Environmental Planning and Assessment Act 1979

#### Outdoor Dining as Exempt Development

Outdoor Dining is considered Exempt Development as identified under Council's planning instrument. Exempt Development is development for which a development consent for the use is not required. To satisfy exempt development, the outdoor dining proposal needs to satisfy the criteria applied to exempt development including complying with the provisions of this policy.

Where outdoor dining does not satisfy the provisions of exempt development, or comply with this policy, a development application will be required to be submitted.

**Note:** Exempt Development provisions will apply only upon gazettal of Draft Local Environmental Plan 2008 (LEP 2008) which, at the time of preparing this revised policy, is imminent and certain.

Application forms and advice on whether a development application is required can be obtained from the Council's Customer Service Centre, 1 Devlin Street, Ryde, telephone (02) 9952 8222. Application forms can also be obtained via Council's website: [www.ryde.nsw.gov.au](http://www.ryde.nsw.gov.au)

Details on what is required to be submitted with a development application are outlined in Appendix 1.

### 5.2 Local Government Act 1993 and Roads Act 1993

Outdoor dining proposals, whether exempt from development consent or not, also need approval under the Local Government Act (where located on public land) and the Roads Act (where the activity is on a public road/footway).

Standard conditions applied to Roads Act or Local Government Act approvals for outdoor dining areas in City of Ryde are shown in Appendix 2.

Application forms for an approval under the Local Government Act or Roads Act are available from Council's Customer Service Centre, 1 Devlin Street Ryde, telephone (02) 9952 8222 or on Council's website at [www.ryde.nsw.gov.au](http://www.ryde.nsw.gov.au).

### 5.3 Other Requirements

Any outdoor dining areas where it is intended to serve alcohol require a separate licence under the Liquor Act 2007. Further information can be obtained from Council's Customer Service Centre or the NSW Office of Liquor, Gaming and Racing.

If the application for outdoor dining is in a residential area or adjacent to a residential area and is likely to involve the consumption of alcohol, Council must consider the following matters in determining the application:

- whether the proposed use is likely to detrimentally affect the amenity of the surrounding residential area; and
- whether any objections to the proposed liquor licence are well founded.

### 5.4 Period of development consent

Where development consent is issued, unless otherwise specified, the period for consent will be for a maximum of 5 years and will be concurrent with the associated approval under the Roads Act or Local Government Act.

**Note:** Applications to extend/renew development consent should be lodged at least 6 months before expiration of the consent if continuity of use is required. Otherwise any use of the outdoor dining area must cease at the end of the 5 years and all tables, chairs, umbrellas, barriers and the like removed.

### 5.5 Period of approval and variation of approval

Approvals issued under the Roads Act or Local Government Act will apply for a maximum of 5 years. An approval to use a footway or public space may be varied or revoked at any time and this applies notwithstanding any associated development consent that applies.

It should be noted that pedestrian movement patterns are continuously monitored and may lead to variation or revocation of an approval at any time, should Council consider it to be in the public interest to do so. In these circumstances reasonable notice shall be given and a reasonable period of time, as set out in the approval, will be provided before the notice becomes effective. Notice periods will be abridged where there is any risk to public safety and amenity.

Roads Act and Local Government Act approvals will automatically cease upon any change of ownership or occupancy of the associated premises.

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# APPENDICES

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## Appendix 1: Development Application Requirements

If a **development application** is required, the applicant needs to provide:

1. completed development application forms with owner's consent (if the area is proposed on Council owned land or footpath, such consent needs to be given by Council);
2. colour photographs of the site and its context;
3. a set of drawings including plans, elevations and sections to scale, with levels and clear dimensions of the proposed outdoor dining area detailing :
  - the location of the outdoor dining area, in relation to the associated restaurant/ cafe and adjoining tenancies;
  - location of all existing features and permanent elements of the streetscape such as bus stops, taxi stands, traffic signs, poles, refuse bins, pedestrian lights, pavilions, bollards, planter boxes, terraces, trees, retaining walls etc in and around the proposed outdoor dining area;
  - the location of all doorways and service openings and of any other outdoor dining areas in the vicinity;
  - the identification of continuous access path/s of travel and clear opening/s to doorways to provide adequate circulation to assist accessibility (refer AS 1428);
  - the number of tables and chairs (Note: the maximum number of chairs and tables is to be calculated for the proposed area based on figures identified under 2.2.1 Minimum Areas);
  - a separate “indicative only” furniture layout.

**Note:** Whilst all approval holders must comply with the consent for the defined area and total (maximum) number of chairs and tables for the purpose of outdoor dining, Council recognises that the actual placement and configuration of the tables and chairs **within** the area may vary according to business needs. This is accepted as long as access paths and accessibility is maintained, and that the boundary of the “area” itself and the 2 metre corridor is strictly observed.

4. Information, including manufacturer’s brochures and specifications, on the following elements demonstrating compliance with this policy (Section 3):
  - the proposed chairs and tables, other furniture, including proposed numbers to demonstrate that seating can be accommodated in the proposed area. The final number of chairs and tables, and any variations on the approved maximum, are matters for consideration in the calculation of fees for the Roads Act/Local Government Act approvals);
  - proposed temporary or permanent structures (umbrellas, awnings, heating devices, etc);
5. A Management Plan for the outdoor area addressing the following (including

matters covered in Section 4 of the policy):

- hours of operation,
  - the time when last orders will be taken (to allow for orders before the use of the outdoor seating is meant to cease),
  - cleaning of the furniture and footpath,
  - storage of furniture,
  - other matters affecting local amenity including any proposed music.
6. Any other details specified in the application forms or referred to in this policy.
  7. Fees in accordance with Council's Schedule of Fees and Charges.

## Appendix 2: Draft Standard Conditions

### Example of standard conditions attached to outdoor dining approvals under the Roads Act

#### CONDITIONS OF APPROVAL:

That pursuant to section 125 of the Roads Act 1993 Approval be granted to (INSERT NAME), proprietor of (INSERT NAME OF RESTAURANT) to use (INSERT AREA) m<sup>2</sup> in front of (INSERT STREET NAME, SUBURB) for outdoor dining for a period of 5 years, commencing on (INSERT DATE), subject to the following conditions of approval.

#### TERM

- 1.1 The approval is granted to (INSERT NAME) trading as (INSERT BUSINESS NAME) “the Approval Holder” for a term of five (5) years commencing on the (INSERT DATE), and ceasing on the (INSERT DATE).
- 1.2 On commencement of the term in clause 1.1, the approved area is to be physically delineated by Council approved discs. These discs will be installed by Council in the footpath at the applicant’s expense.
  - 1.2.1 Should any fixed item such as tables, chairs, bollards, planter boxes, etc. be required they are to be supplied and installed by the Approval Holder at the Approval Holder’s cost, following the Council’s determination that their installation is appropriate.
  - 1.2.2 If any existing ‘street furniture’ requires relocation, from the approved area, that Council undertake the necessary work with the actual costs being borne by the Approval Holder.

#### PAYMENTS

- 2.1 During the term of the Approval the Approval Holder shall make payments in the nature of rent (“the Rental”) to the Council.
- 2.2 The Rental payable for the period from (INSERT DATE) shall be \$(INSERT PER ANNUM AMOUNT) (GST Inclusive) per annum payable by monthly installments of \$(INSERT INSTALLMENT AMOUNT) in advance to the Council or as it may direct.
- 2.3 The Rental payable for the second and fourth and fifth years of the approval shall be an amount (rounded up to a full dollar amount) calculated by increasing the Rental for the year immediately preceding by a percentage equal to the total percentage increase, if any, in the Consumer Price Index figure for Sydney All groups for the then most current year in respect of which such Consumer Price Index Figure has been released. If there is no increase in such Consumer Price Index Figure, the Rental will remain the same.

The rental payable for the third year shall be an amount in accordance with the outdoor dining fees specified in the Fees and Charges of the Management Plan for the financial year that the rental review becomes due.

### **GOODS AND SERVICES TAX**

- 3.1 The Rental and all other moneys payable by the Approval Holder pursuant to the approval are exclusive of Goods and Services Tax or like impost (GST).
- 3.2 Liability for GST (payable in respect of any taxable supply) is additional. It is payable by the Approval Holder to the Council at the same time as Rental and other moneys are payable.

### **SECURITY DEPOSIT**

- 4.1 The Approval Holder shall provide on the commencing date to the Council either a cash deposit (“Security Deposit”) or an unconditional bank guarantee (“Bank Guarantee”) for an amount equivalent to six (6) months’ Rental.
- 4.2 The Bank Guarantee or the Security Deposit, (which shall be held in an account bearing interest), shall be held by the Council on behalf of the Approval Holder during the term of the approval as security for the performance of the conditions herein provided and the Council may from time to time apply the Security Deposit or call in any amount from the Bank Guarantee in or towards satisfaction of any amount of Rental, damages or other monies payable by the Approval Holder to Council pursuant to the Approval or which may become due and payable as a result of any breach by the Approval Holder of any of these conditions. The interest earned on the money will be used by Council in the management and administration of those funds.
- 4.3 In the event that the Security Deposit is applied by the Council or the Council requires the Approval Holder’s bank to make payment pursuant to the Bank Guarantee then the Approval Holder shall within fourteen (14) days after written notification from the Council provide the Council with an additional cash deposit or an additional bank guarantee equivalent to the amount of the Security Deposit so applied or the Bank Guarantee called upon.
- 4.4 At the cessation of the Approval and upon full compliance with these conditions the Council will account to the Approval Holder for any remaining balance of the Security Deposit or will return the Bank Guarantee.

### **ADDITIONAL CONDITIONS OF THE APPROVAL:**

- 5.1 The Land or any part thereof shall not be used for any other purpose than as a footpath restaurant / café in accordance with these conditions.
- 5.2 No more than (INSERT NUMBER) tables and (INSERT NUMBER) chairs.

- 5.3 Installation of any further or replacement outdoor furniture must be approved by Council and is to be of a design and construction approved by Council.
- 5.4 The Approval Holder shall remove all non-fixtures from the Land at the end of each day and store them within the restaurant / café.
- 5.5 The Approval Holder shall ensure that at no time do the tables or chairs encroach upon any part of the footpath that does not form part of the Land. A pedestrian access way of at least 2 metres wide shall be maintained at all times to assist in the provision of a continuous path of travel for those using the footpath.
- 5.6 The Council through its agents or officers may enter and view the state of repair of the Land and such fixtures as may be installed thereon at any reasonable time.
- 5.7 The Approval Holder shall indemnify the Council against all or any claims in respect of the occupation or use of the Land pursuant to the grant of approval.
- 5.8 The Approval Holder shall effect and keep effected a public risk policy of insurance with an insurance company approved by the Council against any demand claim or action in respect of injury, loss or damage to any person or property howsoever sustained arising out of the occupation or use of the Land (by the Approval Holder and / or persons claiming under it) at any time during the term of the approval in such amount as the Council may from time to time require which amount shall not be less than twenty million dollars (\$20,000,000.00). The Approval Holder shall produce such policy to the Council upon demand.
- 5.9 The Approval Holder shall maintain and renew from time to time all licences, permits and registrations required for the carrying on of the business of a footpath restaurant / café on the Land and shall observe perform and fulfill all the requirements of any statutes regulations or by - laws in so far as they may apply to the Land or to the business conducted thereon.
- 5.10 The Approval Holder will comply with provisions of the Food Act 2003, the Companion Animals Act 1998, the Occupational Health and Safety Act 2000, or any regulations made there under and the Approval Holder shall indemnify and keep indemnified the Council against the failure on the part of the Approval Holder and / or persons under its control to comply with this condition.
- 5.11 The Approval Holder will comply with any notices or orders which may be given by any competent authority in respect of the Approval Holders use of the Land.
- 5.12 This approval does not confer on the Approval Holder an exclusive right to possession of the Land and the Land may be used as a pedestrian access way by members of the public.

- 5.13 The Approval Holder will at all times display in a clear and visible position inside the shop front window an Outdoor Dining Permit issued by Council and have the permit available for inspection by Council at any time.
- 5.14 The Approval Holder will comply at all times with the current Outdoor Dining Policy which was effective as of the (INSERT DATE OF POLICY).
- 5.15 The Approval holder must:
- Prohibit smoking on Council owned land or on footways that are being used for outdoor dining activities;
  - Display No Smoking signs at the entrance to or within outdoor dining areas with such signs to be of minimum dimensions of 300mm x 200mm and contain the words 'No Smoking' along with the 'No Smoking' international symbol,
  - Prohibit the supply and use of ashtrays within outdoor dining areas; and
  - Take all practicable measures to ensure that customers do not smoke within outdoor dining areas.

#### **CESSATION OF APPROVAL**

- 6.1 This approval shall cease upon Council giving notice thereof to the Approval Holder in the event that Rental is in arrears for a period of 7 days or more or in the event that the Approval Holder does not comply with any conditions of the Approval.
- 6.2 The Approval shall automatically cease in the event that the Approval Holder is no longer the owner, lessee or occupant of the adjoining restaurant / café or if the adjoining premises cease to be used as a restaurant / café.
- 6.3 Notwithstanding any other condition of the Approval, the Approval shall cease upon Council giving seven (7) days notice thereof to the Approval Holder and in that event the Approval Holder shall not be entitled to compensation other than reimbursement of any Rental paid in advance.
- 6.4 Upon the cessation of the Approval the Approval Holder will, at its own expense and if so requested by Council, demolish and / or remove from the Land any improvements erected or placed thereon by the Approval Holder to the satisfaction of the Council within one (1) month after receiving notice from the Council to do so. If the Approval Holder fails to demolish and / or remove the improvements, the Council may without prejudice to any of the powers vested in it by its agents or employees or contractors enter upon the Land and demolish and/or remove such improvements and do all things necessary and incidental thereto. All costs and expenses incurred by the Council in connection with the same shall be payable to the Council by the Approval Holder on demand and shall be recoverable by the Council as a liquidated debt owing to it. The Council may, if it thinks fit, sell materials resulting from the demolition and / or removal upon such terms as it thinks fit and may apply the proceeds of any sale thereof towards payment of the costs and expenses incurred by it in connection with

any such demolition and / or removal and the certificate of the General Manager of the Council as to such amount shall be conclusive and binding on the Approval Holder.

- 6.5 This Approval is personal to the Approval Holder. Should the Approval Holder sell or assign its interest in the adjoining restaurant / café any prospective purchaser / assignee shall have no claim nor guarantee that the part of the footway the subject of the Approval may be used for the purpose of the restaurant / café. Any prospective purchaser/assignee will be required to make separate application to Council for approval to use the part of the footway the subject of the Approval.
- 6.6 Upon cessation of this approval, the Approval Holder agrees that Council may remove any furniture, such removal to be at the Approval Holder's own expense.
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