

Economic Prosperity

Cultural Vitality

Community Well-being

Social Equity

Environmental Sustainability



Outdoor Dining Policy

2018 - 2021



City of
Norwood
Payneham
& St Peters

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NAME OF POLICY:	Outdoor Dining Policy
POLICY MANUAL:	Urban Planning & Environment

BACKGROUND

Our Mediterranean climate combined with our rich cultural diversity, access to high quality local produce and wine, is leading to increased demand for outdoor dining across metropolitan Adelaide.

Outdoor dining is a popular pass-time within our Council area and adds to the appeal of the area as a cultural and leisurely tourism destination. Outdoor dining contributes positively to the area by creating vibrant and dynamic street frontages. Well-planned and maintained outdoor dining areas add to the vitality of the Council's area, precincts and urban life generally. Outdoor dining provides a link between businesses and pedestrians and encourages active street life beyond normal trading hours, adding to the safety of the area.

In order to ensure that outdoor dining occurs in a manner that maximises the benefits to traders, residents and visitors and ensures maximum safety and convenience for patrons, pedestrians and vehicle occupants, the Council has to ensure that outdoor dining is established, operated and maintained in an appropriate manner.

This Policy sets out the obligations of traders who operate outdoor dining areas throughout the City and provides a framework and guide, against which applications for new permits for outdoor dining are to be assessed.

DISCUSSION

This policy applies to outdoor seating areas that are located on footpaths (ie. road reserves) which the Council owns by virtue of Section 208 of the *Local Government Act 1999* and where food and beverages (non-alcoholic or alcoholic) are served.

For the purpose of this policy, "footpaths" has the same meaning as "public road" under the Act and includes road reserve, thoroughfares and alley ways.

Legislative Requirements

There are four (4) separate Acts of Parliament which directly apply to outdoor dining:

1. Local Government Act 1999;
2. Development Act 1993;
3. Food Act 2001; and
4. Liquor Licensing Act 1997.

Before operating an outdoor dining area, traders must ensure that they are fulfilling their obligations with respect to each of these pieces of legislation. A summary of the key obligations is provided below:

Local Government Act, 1999

In many instances, outdoor dining occurs on footpaths. This area, by virtue of Section 208 of the *Local Government Act*, is owned by the Council. Accordingly, as the land owner, the Council's consent to the land being used in this manner is required.

In instances where the outdoor dining area is to be operated on a footpath, the proposed use is likely to constitute a "business purpose" and will therefore require authorisation pursuant to Section 222 of the Act. Furthermore, if the road is to be 'altered' (as defined by the Act) an authorisation pursuant to Section 221 of the Act will be required. In some instances both Section 221 and 222 authorisations will be required.

To obtain an authorisation pursuant to the Local Government Act, traders are required to complete an Outdoor Dining Application form for all new outdoor dining areas. The Council will assess the Application against the Outdoor Dining Policy and if approved, an outdoor dining permit is issued for a period of twelve (12) months.

Traders must re-apply annually for an outdoor dining permit, using an Outdoor Dining Permit Agreement Form, which is sent out annually by the Council. All outdoor dining areas must display a valid outdoor dining permit decal at all times, to demonstrate that they have the required authorisations in place, pursuant to the *Local Government Act 1999*.

Development Act, 1993

In addition to requiring consent under the *Local Government Act*, the establishment of an outdoor dining area on a footpath, where outdoor dining has not occurred within the past two years, is likely to require Development Approval under the *Development Act 1993*. This is because the use of the footpath for outdoor dining constitutes a change in land use, which is a type of 'development' as defined by that legislation.

The construction of some fixtures such as screens and awnings may also constitute building work for the purposes of the Development Act, which is another type of 'development' requiring Development Approval.

Any application for a change in land use and/or building work will be considered in accordance with the Development Plan policy of the Council and will address such matters as the provision of car parking, pedestrian access, safety for patrons, pedestrians and motorists. For further information on the assessment of new outdoor dining areas, Applicants should contact one of the Council's Urban Planners.

Food Act, 2001

The Council has been declared to be the "enforcement agency" pursuant to the *Food Act 2001* ("the Food Act") and as such is responsible for the powers, functions and duties conferred or imposed on it under the Food Act.

The Council, amongst other obligations under the *Food Act*, must ensure that the provisions of the Food Standards Policy are complied with. Standard 3.2.3 sets out the requirements for food premises and equipment that, if complied with, will facilitate compliance by food businesses with the food safety requirement of Standard 3.2.2 – Food Safety Practices and General Requirements.

The objective of Standard 3.2.3 is to ensure that the layout of the premises (including outdoor areas) minimises opportunities for food contamination. Traders are therefore required to ensure that their premises comply with the Food Standards Policy at all times. Further information on these requirements can be obtained by contacting the Eastern Health Authority on 8132 3600.

If alcohol is to be consumed within the outdoor dining area, traders will be required to obtain approval from the Office of the Liquor and Gambling Commissioner. This is usually in the form of a Restaurant Licence or a Hotel Licence, depending on the nature of the premises, and must reflect the area of the footpath to be licensed and the hours to be licensed.

For any enquiries on the status of the liquor licence for any premises or to apply for an amendment or a new licence, the Office of the Liquor and Gambling Commissioner should be contacted. However, prior to making such an application, consent should be sought from the Council as land owner, for the proposed licence arrangements.

KEY PRINCIPLES

POLICY

1. POLICY

It is a condition of all outdoor dining permits that the details of this Policy are adhered to at all times, other than where an exemption from a particular aspect of the Policy has been granted by the Council and that exemption is noted as a Special Condition in the outdoor dining permit for the relevant premises.

1.1 Location of Outdoor Dining Areas

Outdoor dining is location specific and may not necessarily be appropriate everywhere. In determining whether a location is appropriate for outdoor dining, access, circulation, safety and the relationship between the outdoor dining area and associated food preparation area have been determined by the Council to be important considerations.

Outdoor dining has traditionally occurred on the footpath areas, adjacent to or to the front or side of an existing restaurant or cafe. Notwithstanding this, outdoor dining may be contemplated by traders in other locations, such as garden areas.

With respect to outdoor dining on footpaths, the Council considers that outdoor dining is appropriate, provided that the footpath is of sufficient width to accommodate tables and chairs and such other fixtures and fittings (as may be appropriate) without compromising pedestrian access or the safety and convenience of patrons. The assessment of whether a location is appropriate is at the total discretion of the Council.

Outdoor dining areas on footpaths must not impact on traffic safety, such as by impacting on driver sightlines. The location of outdoor dining areas therefore must be cognisant of the adjacent road conditions.

Where outdoor dining areas are located near an intersection or are in a position perpendicular to the line of the kerb, they should be set back from the corner as a minimum to the existing building alignments, to maintain motorists' sightlines. Motorists' sightlines should be maintained in accord with *Aust Roads Part V, Guide to Traffic Engineering Practice - Intersections at Grade*.

Outdoor dining may not be appropriate at vulnerable locations on arterial roads, where the type of barriers that would be necessary to protect diners from the likely speed and size of vehicles, would pose a risk to other road users.

Outdoor dining on the footpath should be associated with an approved restaurant, cafe or other premises providing meals and may be proposed beyond the boundaries of that facility only with the express consent of any adjoining property owner that may be affected.

Outdoor dining should not occur in areas where the relocation of existing or proposed facilities or infrastructure is required, eg. telephone boxes, public seating, taxi stands, bus stops, litter bins, fire hydrants and loading and unloading zones.

1.2 Physical Layout of Outdoor Dining Areas

The physical layout of the outdoor dining area is as important as the location itself.

All outdoor dining areas with a frontage to The Parade, Norwood are required to be located adjacent to the kerb, rather than adjacent to the associated building. This includes outdoor dining on secondary road frontages of corner sites with a frontage to The Parade. The Parade, Norwood carries the highest volume of pedestrian traffic in the Council area and for this reason, it is important to maintain a clear, continuous footpath adjacent to the building alignment, for convenient pedestrian movement and access to shops, especially for persons who are vision or mobility impaired.

For all areas other than The Parade, Norwood, outdoor dining should generally be located adjacent to the kerb, however may be located adjacent to the associated building line in circumstances where it is impractical for it to be located adjacent to the kerb, subject to design solutions recommended by a Disability Access Consultant being implemented.

An outdoor dining area should comprise of three functional zones comprising:

- a Kerbside Buffer Zone;
- a Dining Zone; and
- a Pedestrian Zone.

Each of these areas and the associated requirements is discussed further below and illustrated in **Attachment A**.

1.2.1 Functional Zones

(a) Kerbside Buffer Zone

The purpose of the Kerbside Buffer Zone is to provide a separation between road users and diners within the outdoor dining area. The extent of the Kerbside Buffer Zone is dependent on a number of circumstances, as outlined in the table below:

Circumstance	Distance (where bollards are not required)	Distance (where bollards are required)
adjacent travel lane	600mm	300mm from kerb to bollards; plus 900mm from bollards to Dining Zone (except on roads with a 60km/h or higher speed limit, where the required distance is 1200mm)
adjacent parallel parking	600mm	600mm from kerb to bollards; plus 900mm from bollards to Dining Zone
adjacent angle parking	900mm	900mm from kerb to bollards; plus 900mm from bollards to Dining Zone
adjacent loading zone, bus stop or taxi rank	1500mm	1500mm from kerb to bollards; plus 900mm from bollards to Dining Zone

No tables or chairs are permitted to be located within the Kerbside Buffer Zone. To minimise the prospect of diners encroaching while seated, all tables must be located at least 500mm away from the Kerbside Buffer Zone, unless seats are not to be located on the side of the table adjacent to the kerb, in which case a screen shall be provided along the boundary between the Kerbside Buffer Zone and Dining Zone .

Planter boxes, screens and blinds are not permitted within the Kerbside Buffer Zone.

Bollards are required within the Kerbside Buffer Zone in locations where the risk to diner safety justifies their installation. The following are examples of situations where bollards may be required:

- Travel lane adjacent to the kerb
- History of crashes/vehicles leaving the roadway;
- High traffic volume and/or speed;
- Sites opposite roundabouts; or
- Sites at intersections with four-way traffic flows.

The Council will determine whether or not bollards are required having regard to the above factors and where appropriate, advice from a qualified traffic safety risk assessor. To assist in the assessment of the level of risk associated with an outdoor dining area, the following Site Risk Rating System will be used.

Table 1: Site Risk Rating System

Characteristic	Rating
Travel Lane Adjacent Kerb	A site is either adjacent a travel lane or it isn't. Therefore, if a site is, it shall be given a score of 5 if it isn't a site will be given a score of 0
History of crashes / vehicles leaving the roadway	<ul style="list-style-type: none"> 0- No history of crashes 1- Less than 0.3 crashes per year 2- Between 0.31 and 0.5 crashes per year 3- Between 0.51 and 0.7 crashes per year 4- Between 0.71 and 1.0 crashes per year 5- Greater than 1.0 crashes per year
High Speed	<p>The rating of the high speeds would be based upon the 85th percentile recorded vehicle speeds of the carriageway adjacent to the site, if this data is unavailable the posted speed should be considered. The rating system would be as follows:</p> <ul style="list-style-type: none"> 6- Less than 20km/h 7- Between 21km/h and 30km/h 8- Between 31km/h and 40km/h 9- Between 41km/h and 50km/h 10- Between 51km/h and 60km/h 11- Greater than 60km/h
High Volumes	<p>The rating of the high volumes would be based on the average vehicle flow in the peak hour of the carriageway adjacent to the site. The rating system would be as follows:</p> <ul style="list-style-type: none"> 0- Less than 200 vehicles / hour 1- Between 201 vehicles / hour and 400 vehicles / hour 2- Between 401 vehicles / hour and 600 vehicles / hour 3- Between 601 vehicles / hour and 800 vehicles / hour 4- Between 801 vehicles / hour and 1,000vehicles / hour 5- Greater than 1,000 vehicles / hour

Site opposite roundabout	A site will either be at a roundabout or not, and given the size of a roundabout can vary the rating system would be as follows: 0- Site not opposite a roundabout 1- N/A 2- Local road roundabout 3- N/A 4- Arterial road roundabout 5- Multilane roundabout
Site at intersection	A site will either be at an intersection or not, and given the traffic control can vary the rating system would be as follows: 0- Site not at intersection 1- N/A 2- Give way controlled intersection 3- N/A 4- Stop sign controlled intersection 5- Traffic signal controlled intersection
TOTAL	If the aggregate score of the above characteristics is 20 or greater, a site would be deemed high risk.

In order to minimise risk to motorists, all bollards are required to be energy absorbing bollards (EAB's), designed to have a maximum crumpling force of 30G at 60km/hr on decelerating vehicles (and their occupants). The spacing of bollards should provide adequate protection of outdoor dining areas from out-of control cars. Spacing of 1.2m is considered to provide adequate protection.

From 1 July 2013, if it is determined that bollards are required for new outdoor dining areas, the bollards shall be installed at the cost of the relevant Outdoor Dining Permit holder, prior to the use of the outdoor dining area.

(b) Pedestrian Zone

The location of furniture along the footpath, must ensure adequate access for pedestrians, including mobility impaired persons and persons with prams. The recognised minimum width of a footpath is 1.2 metres, however, to ensure both diner and pedestrian comfort, this minimum is considered too narrow when considering the volume of pedestrian traffic that typically exists in the vicinity of businesses with outdoor dining.

For the purposes of outdoor dining in areas of high pedestrian traffic (eg. The Parade, Norwood between Osmond Terrace and Queen Street), a pedestrian access width of no less than 2 metres is required. For areas where pedestrian traffic is lower, a minimum clear width of 1.5 metres is desirable.

A minimum 450mm should be provided at each end of each outdoor dining area to enable pedestrian access to the kerb alignment, to ensure the crossing of streets is not unduly disrupted.

The Pedestrian Zone must be kept clear of obstructions to pedestrian movement, such as items of furniture, signs, bicycles, plants and the like.

(c) Dining Zone

The area of the footpath between the Kerbside Buffer Zone and the Pedestrian Zone, where chairs and tables are located, is referred to as the Dining Zone. **Attachment A** shows examples of the various configuration options for tables and chairs within the Dining Zone.

The Dining Zone width equals the diameter of the table (or combined diameter of tables where there is more than one row of tables) plus 500mm for every seat exceeding two, provided per table. It is important that this space is provided around each table, to ensure that dining areas are not congested and to reduce the potential for diners to encroach upon the safety zone and pedestrian zone.

For example, where a standard 1.0 metre diameter table is provided, the following dimensions are required for the dining zone:

- 2 chairs - 1 m x 2m;
- 3 chairs - 1.5m x 2m; and
- 4 chairs-2m x 2m.

The Dining Zone of all outdoor dining areas should be made accessible to persons with a disability, consistent with the relevant Australian Standard.

1.3 Use of Outdoor Dining Areas

1.3.1 Hours of Operation

Outdoor dining areas should operate only during the normal hours of operation of the parent business, unless the conditions of a liquor licence or Development Approval specify otherwise. In any event, no outdoor dining area shall operate beyond 12:30am. Sufficient advance notice to diners of closing time, shall occur so as to ensure that the outdoor dining area is vacated by that time.

1.3.2 Hotels

Outdoor dining areas associated with a hotel are generally appropriate, however if not managed appropriately, have the potential to result in anti-social behaviour and safety risks in the public realm. This typically occurs where the areas are used as a pseudo 'beer garden' or the like. In order to prevent such situations, the following are requirements for all outdoor dining areas associated with a Hotel:

- (a) the number of persons occupying an outdoor dining area shall not exceed the number of seats provided, pursuant to the outdoor dining licence by more than ten (10) percent (rounded up); and to the extent that there is any inconsistency with the conditions of the liquor licence, the conditions of the outdoor dining licence shall prevail;

- (b) sufficient Outdoor Dining Furniture (ie. tables and seats) to cater for the approved patron capacity shall be provided and maintained within the Outdoor Dining Area at all times when the area is occupied;
- (c) meals shall be available to patrons at all times that the outdoor dining area is occupied;
- (d) table service shall be provided to outdoor dining areas at all times, so as to minimise the number of persons carrying food and beverages across the adjacent footpath and provide a degree of monitoring of the outdoor dining area; and
- (e) wherever possible, a dedicated smoking court shall be provided on the site of the hotel.

1.4 Car Parking

For new outdoor dining areas that require development approval pursuant to the *Development Act 1993*, car parking requirements as set out in the Development Plan will be required to be complied with. The standard applied in most instances is that for a restaurant, one car parking space is to be provided per three chairs, however, this is subject to the relevant provisions and requirements at the time.

1.5 Urban Design

Outdoor dining areas can effectively complement and enhance the existing streetscape character of a precinct. It is important however that the design, layout, furniture and accessories are therefore in keeping with the key character elements of the precinct.

The following matters form part of Council's consideration when consenting to a permit issued in respect of an outdoor dining application.

1.5.1 Protuberances

The construction of new footpath protuberances to facilitate outdoor dining areas will be at the total discretion of the Council, taking into account traffic management and safety considerations.

1.5.2 Podiums

In general, the construction of new raised podiums to facilitate outdoor dining areas will not be permitted. This is a decision at the total discretion of the Council, taking into account any inconvenience to pedestrians and streetscape amenity considerations.

1.5.3 Partial Enclosure

Whilst outdoor dining is generally a pleasant experience during the warmer months of spring, summer and autumn, rain and cold wind can hamper this experience in the winter months. Accordingly outdoor dining areas are often partially enclosed, so as to minimise the impact of the elements.

Partial enclosure is also an attractive option for traders, as it physically defines the outdoor dining area and assists with managing patrons.

Partial enclosure may take a number of forms, however, commonly it is in the form of drop or roll down blinds made of clear plastic, screens both fixed glass screens and temporary modular sign screens, bollards, and planter boxes.

Partial enclosure of outdoor dining areas in public spaces, eg on the footpath, must not interfere with the footpath (as a public space) and should not alienate pedestrians, promote a sense of exclusiveness or obstruct access for vision or mobility impaired persons.

Furthermore, the partial enclosure should not interfere with drivers' sightlines, or general road and traffic safety.

Any one or all of the following requirements may be applicable to a proposed enclosure of an outdoor dining area on a footpath:

- Outdoor dining areas cannot be enclosed on more than two sides. Accessibility and openness must be maintained.
- The enclosure must not obscure visibility for motorists or pedestrians.
- The enclosure structures, fixtures and diners must be positioned in accordance with Section 4.2 of this Policy.
- The enclosure structures must be structurally sound and fixed close to ground level, to avoid injury and property damage.
- The enclosure structures should be cleaned regularly and maintained in a good condition at all times.
- The maximum horizontal length of a screen or blind structure should not exceed 10 metres. A gap of 1.5 metres is required between each blind structure and a maximum of three such structures are permitted per operator, per street frontage. (Adjacent structures should be positioned to maximise pedestrian safety.)
- At intersections, structures must be positioned to avoid creating traffic hazards. For structures greater than 500 mm in height, a setback from any corner of intersecting streets is required to maintain motorists' sightlines. Motorists' sightlines should be maintained in accord with the approximate standards eg *Aust Roads Part v, Guide to Traffic Engineering Practice, Intersections at Grade*.
- The enclosure should not result in the need to relocate any street furniture or trees.
- The cost and installation, erection of the enclosure will be solely at the applicant's cost.

- Notwithstanding the guidelines which may apply in heritage areas, transparent screens and blinds should have a solid edging in a primary colour and a horizontal 100mm solid line at the midway point to maximise visibility for sight impaired persons.
- Materials used should not generate an unreasonable level of glare for motorists.

The following guidelines apply to enclosure structures:

(a) Screens

- Screens are to be a maximum of 1.5 metres in height and should have a clearance of 200mm from the ground to facilitate water run off.
- Screens must not obscure visibility. Screens greater than 900mm in height should be constructed of a durable transparent material.

(b) Blinds

- Blinds should be constructed out of a transparent and durable material. Canvas is not acceptable.
- Blinds must be affixed to the underside of the canopy and must be rolled up when not in use. Blinds are not appropriate for use with canopies or verandahs above 4m in height.
- Blinds should generally not be used outside the months of April to October inclusive.

1.5.4 Furniture

Furniture should be carefully selected for its durability and style to ensure that it complements the streetscape area and can be easily maintained in good condition. The applicant is responsible for the provision and maintenance of the furniture.

The furniture style, materials and placement will be approved by the Council in the issuing of a Permit. Tables should be fixed to the footpath in a manner agreed upon by the Council to minimise the possibility for encroachment along the footpath, except in the case of businesses where two or less tables are provided.

Fixed tables should generally be of standard dimensions of approximately 1.0 metre in diameter. Fixtures should not cause trip or create other hazards and at such time as the tables are removed, the footpath must be reinstated to a condition equivalent to that prior to installation.

1.5.5 Accessories

In addition to routine furniture such as tables and chairs, outdoor dining areas can be enhanced via the provision of accessories such as planter boxes, heaters, and umbrellas.

Any additional features should be complimentary to the streetscape of the area and should be constructed and maintained to a high standard.

The use, erection and/or installation of accessories is at the expense of the trader and must not result in the need to relocate any street furniture, fixtures/services or trees.

The following should be considered in relation to the provision of accessories.

(a) Planter Boxes

Planter boxes help to delineate dining areas from the street and can make a positive contribution to the streetscape if well maintained. Planter boxes are not a safety barrier and are not to be used as a substitute for bollards.

Where planter boxes form part of the outdoor dining area, they are to be placed parallel to the kerb and in instances where outdoor dining is located adjacent to parallel parking, angle parking, a loading zone, taxi rank or bus stop, bollards are not to be located within the Kerbside Buffer Zone.

Planter boxes must be constructed of durable materials and must compliment the streetscape character of the area. Planter boxes must contain plants maintained in good health at all times and be cleared of rubbish, such as cigarette butts on a daily basis. Watering of plants in planter boxes shall be measured so as to not cause excessive discharge, which in turn could stain the pavement, pollute the stormwater system or create a hazard for pedestrians.

(b) Umbrellas

- Umbrellas are permitted in areas where there is no verandah or other canopy structure or where such structure is above 4 metres in height.
- Umbrellas must have a clearance of a minimum of 2m above the footpath.
- Umbrellas must be secured against the effects of the wind, and must be closed or removed during extremely windy conditions.
- Side curtains to umbrellas are not permitted.
- Umbrellas must be maintained in good condition at all times.
- Umbrellas must be removed from the outdoor dining area when not in use, with the exception of large fixed umbrella structures.

(c) Heater and cooling units

- Heating and cooling units may be installed with the permission of the Council. As a guide, units should be specifically designed for outdoor operation and heating units should be fixed to ensure that they do not create a fire hazard.

- All heating and cooling units must be operated by the operator or his/her staff and must not be able to be accessed by patrons.
- Freestanding heaters are not appropriate.
- Heaters and cooling units must be serviced and maintained regularly and must be equipped with emergency shut off valves or switches.

1.5.6 Lighting (Dining Zone)

- Where outdoor dining occurs outside of daylight hours, adequate lighting must be provided by the operator in order to ensure that safety of pedestrians and the amenity of the outdoor dining area is maintained.
- Chasing/flashing and freestanding lights are not permitted in outdoor dining areas.
- Lighting should be maintained in working order and should not create unreasonable spill into neighbouring properties.

1.5.7 Advertising

Details of all signage and advertising, including attached menu boards, must be submitted to the Council for approval.

All advertising should ensure a high standard of graphic design that is complementary to the restaurant / café, be a minor and integral element of the design of the furniture on which it is located and should not have an excessive impact on the area of the café or the streetscape

All advertising / signage should comprises the name of the restaurant / café / hotel and/or products which are a core part of the business and are supplied by the restaurant / café / hotel to its patrons.

Advertising / signage on outdoor umbrellas is permitted, provided that it is only displayed on every alternate panel and covers no more than 30% of the surface of those panels.

Advertising / signage is permitted on low barriers, covering up to 30% of the total surface.

Advertising / signage is not permitted on blinds or screens.

1.5.8 Use of Servery Windows

Food and beverages may be ordered and collected through servery windows that face directly onto a footpath, provided that:

- the trader is able to provide an alternative location for patrons to order food and beverages within the associated shop and that the use of a

servery window is not the exclusive way in which food and beverages can be ordered and provided to patrons;

- the serving of food and beverages to patrons standing on the footpath is restricted to take away sales only; and
- no formal queuing barriers such as retractable ropes etc. or delineation of a queuing areas are used for patrons ordering and/or waiting to collect food and/or beverages from a servery window.

1.6 Management of Area

The operator of the outdoor dining area is required to manage the area in accordance with the conditions of the Permit to the Council's satisfaction. In addition, the following requirements shall apply:

1.6.1 Identification of Outdoor Dining Areas

The operator is required to display in a prominent location an identification sticker provided by the Council to identify the premises as being an approved outdoor dining area, showing approved seat numbers.

1.6.2 Cleanliness

The operator of the outdoor dining area is to maintain the area, including the footpath, in a clean, hygienic and tidy state at all times.

Operators are required to sweep and spot mop the area frequently during trading hours to ensure that spillage of food and beverages does not cause staining to the footpath and litter does not escape within or outside the designated outdoor dining area.

Waste and sweepings are not to be allowed to enter into the gutter or any garden areas and are to be disposed of by the operator. Hosing the area is not permitted. The disposal of waste and wastewater into the gutter constitutes an offence.

Operators will also be responsible for steam cleaning the area as required and in no less frequently than once every six (6) months.

1.6.3 Table service

Table service shall be provided for outdoor dining areas and staff associated with the business, are responsible for clearing tables.

Meal remnants and other litter and waste are to be disposed of appropriately by the operator and are not to be deposited in public litter bins or allowed to enter the stormwater system.

Food is not to be prepared within the outdoor dining area.

Tables are not to be pre-set with cutlery, glasses or unprotected foods. This is to prevent them from being exposed to contamination, prior to use by the public.

1.6.4 Animals

Animals traditionally have not been allowed in restaurants and other eating places within the public realm in Australia. Animals and dogs in particular are however, allowed in restaurants in Europe, provided that they are well behaved, under the table and are not fed within the restaurant. Enabling animals to sit quietly underneath or beside tables in outdoor dining areas provides pet owners with additional freedom.

It is considered that a person who chooses to eat in an outdoor dining area is aware of the risk of potential contamination from fumes, cigarette smoke, exhaust, animals etc. Therefore if he/she has a concern with the animal, they will take appropriate steps to eat elsewhere or take their concern to the management.

Accordingly so long as animals are under the control of the owner and are not making a nuisance or being fed within the outdoor dining area, they should be allowed at the discretion of the outdoor dining permit holder.

1.6.5 Smoking

The designation of outdoor dining areas as smoke-free environments is designed to protect the community from exposure to potentially harmful tobacco smoke. It also increases the comfort and enjoyment of outdoor dining areas for all patrons.

From 1 July 2016, all outdoor dining areas in South Australia are designated as smoke-free environments at any time that food is being offered for purchase, or otherwise provided, by or on behalf of the occupier of the outdoor dining area for the purpose of consumption in the area (whether or not a person is, in fact, dining in the area). The ban on smoking in outdoor dining areas applies to all smoking products.

This includes:

- cigarettes;
- cigars; and
- pipes, including shisha, hookah and water-pipes.

If an unenclosed public area is separated from the part in which dining occurs, by a wall or other solid barrier of not less than two (2) metres in height, then this is not included as part of the outdoor dining area and smoking may be permitted in the separated area, provided that only beverages and snack foods are served in that area. No meals are permitted to be served in an area where patrons can smoke under any circumstances.

For the purposes of the Tobacco Products (*Smoking Bans in Public Areas – Longer Term*) Variation Regulations 2015, snack food means pre-packaged food of a kind generally intended to be consumed between meals. For example this would include foods such as potato crisps, nuts, chocolate bars and pre-packaged biscuits.

Foods such as, but not limited to, sandwiches, pizza, hot chips, cakes and muffins are not considered to be snack foods and therefore cannot be served to patrons in an area where smoking is permitted.

It may also be possible under the regulations to separate dining from smoking areas by having two completely separate areas, separated by a continuous footpath, in which outdoor dining is provided in one area and smoking is permitted in the other completely separate area, providing that only beverages and snack foods are consumed in the area where smoking is permitted. However, confirmation of the suitability of such arrangements, should be obtained from the Health Protection Operations Branch of SA Health.

Both the occupier of the premises and the person smoking can be fined. Maximum fines are:

- individuals - \$200
- occupier - \$1250

Authorised officers under the *Tobacco Products Regulation Act 1997* are responsible for enforcing this law.

For more information on smoke-free outdoor dining, please contact Health Protection Operations, SA Health on (08) 82267100, or visit the SA Health website www.sahealth.sa.gov.au/tobaccolaws.

1.6.6 Damage to Property

The Permit holder is responsible for ensuring that patron behaviour does not lead to damage of property. In the event that property damage does occur, the Permit holder is responsible for notifying the owner of the property to which damage has occurred and fixing the damage at the Permit holder's expense.

1.6.7 Entertainment

Live entertainment in or adjacent to outdoor dining areas is generally appropriate, allowed, provided that the entertainment does not obstruct the required Pedestrian Zone and that such live entertainment is in accordance with the principles contained in the Council's Busking Permit.

Amplified music within outdoor dining areas will be at the discretion and prior approval of the Council. Factors taken into consideration by the Council will include whether that the volume is at a suitably low level at all times so as to not cause nuisance to the occupiers of nearby land.

Televisions will not be permitted in outdoor dining areas.

1.6.8 Toilets

Generally once a premises caters for more than 20 patrons, toilet facilities are to be provided.

The capacity of the toilets within the premises must be adequate to cater for all patrons, including those within the outdoor dining area and must accord with the standards prescribed in the Building Code of Australia.

1.6.9 Liquor Licences

Liquor may only be served to patrons seated in the outdoor dining area pursuant to a valid liquor licence.

1.7 Civic Administration

1.7.1 Fees

The Council may impose fees on operations for outdoor dining areas established on footpaths or above footpaths (eg. balconies overhanging footpaths).

Fees are generally calculated per chair included within the Dining Zone, per annum, based on the precinct, licensing and the level of enclosure. As a guideline, each chair will generally equate to one square metre, if laid out in accordance with Section 4.2.1(c).

Current fees for outdoor dining permits are contained within the Schedule of Fees and Charges, which can be accessed via the City of Norwood Payneham & St Peters web-site at www.npsp.sa.gov.au.

1.7.2 Permits, Monitoring and Enforcement

(a) Renewal of an existing Permit

A Permit in respect of an outdoor dining area is generally issued for a period of one (1) year. An application to renew a Permit should be made no less than 3 months prior to the expiration of the current Permit, by way of completing an Outdoor Dining Permit Agreement form, which is sent out to all Permit holders annually by the Council, together with an invoice for the payment of fees. Any proposed changes to the terms of the Permit should be noted on the Permit Agreement form, for the consideration of the Council.

Upon receipt of the completed Permit Agreement form, payment of fees and evidence of public liability insurance cover to the amount of \$20,000,000, a delegate of the Council will sign the Permit Agreement Form and return a copy to the Applicant, together with a Permit sticker to be displayed on the front window of the premises.

(b) Applications for New Outdoor Dining Areas

Applicants of a new Permit, where outdoor dining does not currently exist, will need to complete an Outdoor Dining Application Form and include a site plan drawn to an appropriate scale showing the actual area proposed for use and the situation of the furniture and other structures. In addition, a Development Application will need to be lodged, seeking approval to change the use of the footpath area to an outdoor dining area.

Where a proposal for an outdoor dining area does not accord with the terms of this Policy, the Applicant should provide justification as to why a variation should be accepted in the circumstances.

At the total discretion of the Council, the variation to the Policy will either be accepted and noted on the Permit as a Special Condition, or refused.

When agreement has been reached on the terms of the Permit, the Council will provide the Applicant with an Outdoor Dining Permit Agreement form, reflecting the agreed terms, together with an invoice for the required fee.

Upon receipt of the completed Permit Agreement form, payment of fees and evidence of public liability insurance cover to the amount of \$20,000,000, a delegate of the Council will sign the Permit Agreement Form and return a copy to the Applicant, together with a Permit sticker to be displayed on the front window of the premises.

(c) Modifications to Existing Outdoor Dining Areas

Any changes proposed to an existing outdoor dining area, such as through the addition of blinds, heaters, planter boxes or a change to seat numbers or configuration, is required to be the subject of an application to the Council for a change to the terms of the Permit.

In practice, this is done by completing an Outdoor Dining Application form and documenting the proposed changes. In some instances, where the proposed changes constitute 'development' as defined in the *Development Act 1993*, a Development Application must also be lodged.

(d) Monitoring and Enforcement

Permit holders are required to ensure that all conditions of the Permit, including this Policy, are adhered to at all times. Authorised Officers of the Council will monitor outdoor dining areas for compliance with this Policy and any other conditions specific to the relevant Permit.

Any breaches will be brought to the attention of and discussed with the operator of the business with a view to reaching an agreement over the breach. Where a breach is agreed to by the Council, an amended Outdoor Dining Permit Agreement form will be issued and signed by both parties, reflecting the agreed amendment.

On the other hand, where the Council does not agree to allow an inconsistency to continue, the operator of the business will be ordered, pursuant to Section 262 of the *Local Government Act 1999*, to remedy the breach.

In the event that such an order is not complied with within the specified timeframe, the Council may, by notice in writing to the holder of the Permit, cancel the Permit, in accordance with the process outlined in Section 225 of the *Local Government Act 1999*.

Where an outdoor dining area is established without a valid Permit being in place, an expiation fee of \$210 applies and the operator of the business will be ordered, pursuant to Section 262 of the *Local Government Act 1999*, to cease the use of the footpath for outdoor dining immediately. The operator will have the opportunity to apply for an Outdoor Dining Permit and if approved, can recommence the outdoor dining at that time.

In the event that an outdoor dining area continues to operate, despite a Permit being cancelled by the Council or an order from the Council to cease the use, the Council will take the appropriate action to ensure that the use ceases, which may include the removal of furniture from the footpath and/or prosecution for a breach of the *Local Government Act 1999*.

1.7.3 Public Liability

Operators are required to hold public liability insurance that specifically notes the Council as a specified person to the minimum value of \$20,000,000 or as determined from time to time. This amount will be reviewed annually in consultation with the Local Government Association Mutual Liability Scheme.

1.7.4 Display of Permits

All Permit holders are required to display a Permit sticker in a prominent location within the front window of the relevant business. The Permit sticker includes information that will enable Authorised Officers of the Council to readily determine whether the outdoor dining area is operating pursuant to a valid Permit and the terms and conditions of that Permit.

REVIEW PROCESS

The Council will review this Policy within three years of the adoption date of the Policy.

INFORMATION

The contact officer for further information at the City of Norwood Payneham & St Peters is Council's Manager, Development Assessment, telephone 8366 4567.

ADOPTION OF THE POLICY

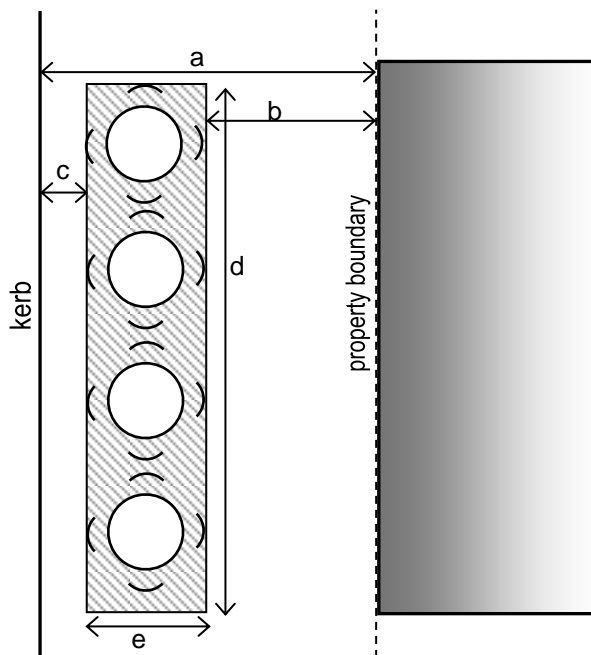
This Policy was adopted by Council on 2 July 2018.

TO BE REVIEWED

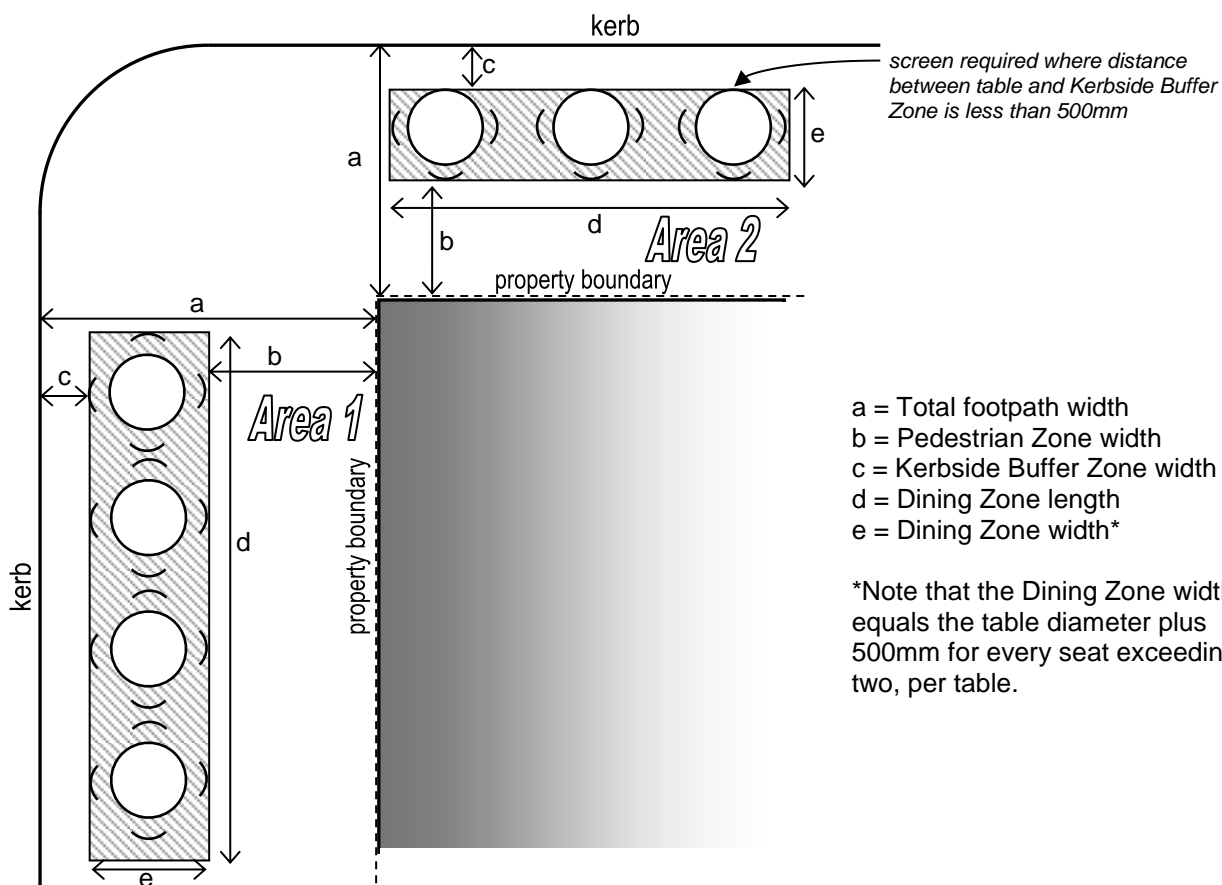
July 2021.

ATTACHMENT A - EXAMPLE OUTDOOR DINING AREA LAYOUTS

Example 1. Typical kerbside outdoor dining layout



Example 2. Corner site outdoor dining layout, with 4 seats per table on primary frontage and 3 seats per table on secondary frontage.



- a = Total footpath width
- b = Pedestrian Zone width
- c = Kerbside Buffer Zone width
- d = Dining Zone length
- e = Dining Zone width*

*Note that the Dining Zone width equals the table diameter plus 500mm for every seat exceeding two, per table.

ATTACHMENT A - EXAMPLE OUTDOOR DINING AREA LAYOUTS

Example 3. Typical kerbside outdoor dining layout – including tables located adjacent the kerbside edge of the Dining Zone with screening provided

