
“PERMIT FOR BUSINESS USE”

OUTDOOR DINING APPLICATION

(Section 222 of the Local Government Act 1999)

on

Public Road Reserve located at

.....
.....

CITY OF MITCHAM

(“the Council”.)

&

.....
(ABN)
Trading as “.....”
Address.....

(“Permit Holder”.)

PERMIT OF AUTHORISATION AGREEMENT

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**FOR BUSINESS PURPOSES AUTHORISED UNDER SECTION 222 OF THE
LOCAL GOVERNMENT ACT 1999**

THIS AUTHORISATION is made on the

BETWEEN: CITY OF MITCHAM

131 Belair Road, Torrens Park in the State of South Australia.
("the Council")

AND:

.....
ABN
Trading as "....."
Address.....
("Permit Holder")

WHEREAS:

- A. The Council is a council constituted under the Local Government Act, 1999 ("the Act") and is entitled to exercise the powers conferred on councils under the Act.
- B. Under Section 222 of the Act the Council has power to grant a Permit of Occupation to any person to use, occupy or undertake works for business purposes on, across, under or over any public street or road within the Council's area.
- C. Reason for granting a Permit for business use - Footpath:
The footpath in front of is located on Council land within the suburb of The purpose of Granting a Permit of Authorisation under Section 222 of the Local Government Act 1999 is to document the continued use of footpath space through a formal agreement.
- D. The Permit Holder requires the "Permit" from the Council to use, occupy or undertake Council approved works for business purposes on or within a public road reserve in the Council area pursuant to Section 222 of the Local Government Act 1999.
- E. The Council has agreed to grant a "Permit" to the Permit Holder pursuant to Section 222 of the Act upon the terms and conditions set out in this Agreement.

The issuing of this Permit is subject to the following general conditions and special conditions.

1. General Conditions of the Permit of Authorisation

1.1 The Council grants to the Permit Holder a Permit as follows:

- 1.1.1 to use, occupy or undertake approved works on or within a public road/footpath (of which a brief description is set out in Item 1 in the Schedule to this Permit of Authorisation) on that portion of the footpath identified in Item 2 of the Schedule to this Permit of Authorisation.

2. Maintenance and Repair

- 2.1 The Permit Holder shall during the continuance of this Permit of Authorisation properly maintain the surface and landscaping, if any, and keep the same in good, safe and proper repair and condition.
- 2.2 The Council may at any time inspect the footpath and every part thereof and the Permit Holder shall at all times comply with all requirements of the Council which may be given by written notice with respect to the maintenance and repair of the Structure.
- 2.3 In the event of any emergency the Council may affect such repairs as may be necessary to eliminate any danger to the public and the amount expended by the Council in effecting such repairs shall be reimbursed by the Permit Holder by request in the form of a written notice from the Council.
- 2.4 The Permit Holder must take all reasonable precautions to avoid damage to the Area and any improvements and structures located in the Area. The Permit Holder must immediately notify the Council of damage to the Area or any Council owned property located within or adjacent to the Area;
- 2.5 The Permit Holder will be responsible to reimburse the Council for all its reasonable costs to repair or rectify any damage caused as a result of the Permit Holder's use or misuse of the Area.

3. Alterations

The Permit Holder may not alter or remove any of the existing fixtures and fittings within the Area nor install any alternative structures or items within or adjacent to the pedestrian area without the Council's prior approval.

4. Pedestrian Safety

4.1 The Permit Holder will be responsible for the safety of traffic and pedestrians during any works or maintenance or removal of material and shall take all proper precautions for the protection of traffic and pedestrians.

4.2 Areas to be maintained on footpath access.

- The recognised minimum width of a footpath is 1.2m.
- Where a footpath is shared with other users a minimum width of 1.5m is required.
- In areas of high pedestrian traffic, a width of at least 2m may be deemed necessary.

4.3 Location of tables and chairs recommended:

- All tables and chairs should be located at least 900mm from the kerb and allow the minimum footpath width (1.2m) for pedestrian access.
- Protection barriers such as bollards and screens should be placed within this 900mm area, provided they are set at least 300mm from the kerb.
- Protection barriers should be installed in accordance with 'Roadside Dining Protection - A Guideline for Local Government Authorities in South Australia' (Transport SA, November 2000).
- Protection barriers are to be installed with a gap not exceeding 1200mm to ensure small vehicles cannot fit through the gap.
- At least 1m² per person (i.e. per chair) should be allowed when allocating space for chairs and tables in the outdoor dining area.

4.4 Adherence to motorist protection areas as follows:

- Outdoor dining should not impact adversely on road users.
- In particular, sight requirements at intersections should not be impeded. Motorists' sightlines should be maintained in accordance with AustRoads Part V, 'Guide to Traffic Engineering Practice, Intersections at Grade'.

4.5 Location of Planter Boxes

- Planter boxes should not be installed unless an approved protection barrier is already in place. The protection barrier should be positioned at least 300mm from the kerb and the planter box at least 900mm from the kerb.
- Planter boxes should have a minimum width of 500mm and a maximum length of 1200mm, with no sharp edges.
- There should be a minimum gap of 900mm between each planter box to allow for pedestrian movement.

4.6 Advertising material.

- Advertising will only be permitted in accordance with the requirements of the Development Act 1993.
- Any advertising on umbrellas is to be a minor element to its appearance and restricted to one company / product / dining name.

5. Term of Permit of Authorisation

In accordance with the Local government Act 1999, this Permit of Authorisation is for a period that can be no longer than five years

This Authorisation commences on / /2022, and will conclude on / /2023 and will be subject to the conditions of Indemnity and Insurance being complied with by the Permit Holder for the duration of the Authorisation.

This Authorisation concludes on / /2023 and during the interim periods will be subject to the conditions of Indemnity and Insurance being evidenced annually to confirm continuity of cover for the duration of this agreement.

6. Permit of Authorisation Use and Fee

The Permit Holder must not use or allow the footpath to be used to undertake any works other than those authorised by this Permit of Authorisation.

An initial establishment fee of \$302 is applicable with an Outdoor Dining Permit application.

Permit Holder is required to pay the annual prescribed fee \$78.30 or \$60.50 per table in advance.

The fee may be reviewed from time to time under Council regulation on the anniversary of the permit commencement date.

7. Indemnity

The Permit Holder indemnifies the Council its servants and /or agents against all actions, proceedings, claims and demands which may at any time hereafter be taken or made in consequence of any approved construction, maintenance, and management against all injury, damage, costs, losses and expenses whatsoever incidental to or consequential upon any such action, proceeding, claim or demand arising out of any negligent act or omission of the Permit Holder and the granting of this Permit and all conditions contained herein and such indemnity shall be in addition to any statutory immunity in favour of the Council.

8. Insurance

- 8.1 The Permit Holder will for the term of the Permit take out and keep current a public risk insurance policy in the name of the Permit Holder insuring for the minimum sum of TWENTY MILLION DOLLARS (\$20,000,000.00) per claim, the Council and the Permit Holder against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against the Council or Permit Holder or both, in relation to any activity arising out of or from the granting of this Permit by the Council.
- 8.2 The Permit Holder shall not commence to use the area until evidence of such public risk insurance policy is provided to the Council. Such policy shall bear the endorsement of the insurer indicating that the insurer accepts the indemnity given by the Permit Holder. The Permit Holder shall provide evidence of the policy within thirty (30) days of 1 July in every financial year, or in any other case, on demand by the Council.

9. Restriction on Assignment, Etc

This Permit is personal to the Permit Holder who must not assign or transfer this Permit or create any sub-authorisation for the whole or any part of the term of this Permit for business use.

10. Default

Permit Holders are required to comply with all conditions of approval and Authorised Officers who will monitor outdoor eating areas.

- 10.1 First Breach. If the Permit Holder breaches a provision of this Permit, the Council may give the Permit Holder verbal warning (with note on permit file), with compliance required within 28 days.
- 10.2 Second Breach. Written notice, with compliance required in 28 days to remedy the breach and the notice will identify that failure to remedy the breach will result in cancellation of the Permit, in accordance with the requirements of the Local Government Act, 1999.
- 10.2 Third Breach. If the Permit Holder fails to remedy the breach within times specified in the Council's notices both written and verbal then, the Council may cancel this Permit.

11. Termination

- 11.1 This Permit may be brought to an end:
- 11.1.1 as provided in Clause 10; Default or

11.1.2 by the mutual agreement of the parties expressed in writing.

12. Costs

The Permit Holder will pay on demand all costs and expenses incurred by the Permit Holder in connection with the negotiation, preparation and execution of this Permit and costs incurred by the Council through any actual or threatened breach by the Permit Holder of the terms of this Permit.

13. Compliance with Statutory Requirements

13.1 The Permit Holder must comply with any Act of Parliament, regulation or by-law relating to the use of the Footpath.

13.2 Wherever there is any cost involved in complying with the preceding requirement, the Permit Holder will be responsible for the payment of these costs.

13.3 During the period in which this Permit is current the Permit Holder must comply with any applicable industry or health and safety standards in relation to the use of the Area. The Permit Holder must ensure that the Activity permitted to be carried out by this Permit is conducted in a safe and responsible manner.

13.4 The Permit Holder to comply with statutory obligations under the following acts.

- *Disability Discrimination Act 1992* - in matters relating to access to premises, goods services and facilities, and advertisements.
- *Food Act 2001* - regarding compliance with the provisions of the Food Safety Standards by businesses involved in the sale of food.
- *Public and Environmental Health Act 1987* - regarding the responsibility of Council to promote proper standards of public and environmental health and to have appropriate measures in place.

13.5 Liquor Licence. An Outdoor Dining Permit is to be issued prior to submitting an application to the Liquor Licence Commission for the outdoor dining area. The maximum number of diners must not exceed the number of those approved under this permit.

- If the Permit lapses, is suspended or becomes cancelled the Commission will be notified accordingly.
- On the sale of the business the details of the new owner must be advised to Council. The new owners are to make application for a new Outdoor Dining Permit to use the road reserve / footpath. The application is irrespective of the Liquor Licence application.

14. Compliance with Direction of government Department or Authority

- 14.1 Upgrade works shall not interfere with or cause damage to affect in any way any existing infrastructure which is the property of AGL, Telstra, SA Water, United Water, Origin or any other Federal, State or Local Government Department or authority or infrastructure owner.
- 14.2 If any damage does occur the Permit Holder accepts total responsibility to the Council to make good the damage.

15. Execution of Permit

This Permit will not be effective until the Permit Holder has received a copy of the Permit signed by the Council.

The Permit is required to be displayed in a prominent location, indicating the approved outdoor dining area and showing approved seat numbers.

16. Contractual Rights Only

This permit does not confer on the Permit Holder any exclusive proprietary right, entitlement or interest in the land.

17. Interpretation

- 17.1 In this Permit reference to:

17.1.1 **“the Council”** includes its members, employees and agents;

17.1.2 **“the Permit Holder”** includes its employees and agents.

- 17.2 Policy

The City of Mitcham Policy Manual, Infrastructure 14.08 refers to important considerations for access, circulation, safety and the relationship between outdoor dining area and associated food preparation area.

PERMIT OF AUTHORISATION LICENCE SCHEDULE

<p><u>ITEM 1</u></p> <p>Description of "Public Road Reserve"</p>	<p>The land comprises a constructed, sealed footpath in accordance with relevant Australian Standards directly in front of the business at</p>
<p><u>ITEM 2</u></p> <p>Outdoor dining parameter.</p>	<p>Planter Boxes as shown on the attached plan.</p> <p>The condition for the use of the footpath under the liquor licence are:</p>
<p><u>ITEM 3</u></p> <p>Liquor Licence.</p>	<ul style="list-style-type: none"> • Maximum overall patron capacity is 18, including no more than 4 outside; • Maximum trading hours 8am - 5pm on any day; • Liquor may only be consumed by patrons while seated at a table.

SPECIAL CONDITIONS:

1. The Period: One (1) year commencing / /2022.
2. The Fee: \$78.30 per table and 4 chairs for licensed premises and \$60.50 per table and 4 chairs for unlicensed premises being \$ in total per annum, payment is due within 30 days of the commencement date in advance plus GST. An initial establishment fee of \$302 is applicable with an Outdoor Dining Permit application.
3. The Area: The Area which is the subject of this Permit is defined in the attached Plan and Items 1 & 2 of the Schedule.
4. The Permit Holder agrees:
 - a. To use the Area for Outdoor Dining.
 - b. To leave the Area and its surrounds in a clean and tidy condition at the end of each day and at the end of the period of this Permit.
 - c. To be responsible for and to ensure the orderly conduct of the Permit Holder, the Permit Holder's staff, customers and members of the public within the Area;
 - d. Not to cause any disturbances or nuisances to users of land adjacent to the Area or to vehicles or pedestrians travelling along The Footpath.
5. The maintenance of the dining area in accordance with ITEM 3 to Council's satisfaction.
6. That the occupiers provide a Certificate of Currency for insurance purposes during the term of the permit in relation to public liability for \$20,000,000 and to indemnify Council from any cause of action stemming from this Permit of Authorisation.
7. That the existing footpath including any landscaping features be maintained by "the Permit Holder" on a regular and as needs basis.
8. That the negotiation and issue of the Permit of Authorisation does not imply approval of any current or future development applications.

CONTACT DETAILS:

Contact Person:

Mob:

Email:



CITY OF
MITCHAM

AUTHORISATION OF AGREEMENT

CITY OF MITCHAM

AGREEMENT made day of 2022

BETWEEN: (Permit Holder)

NAME.....

SIGNATURE..... DATE...../...../ ...

ON BEHALF OF PERMIT HOLDER

BUSINESS ADDRESS.....

PHONE.....

WITNESS NAME

WITNESS SIGNATURE DATE...../...../ ...

and

CITY of MITCHAM

NAME.....

SIGNATURE DATE...../...../ ...

ON BEHALF OF CITY OF MITCHAM

NAME:.....

POSITION.....

PROPOSED PLAN

ATTACH A PLAN OF THE PREMISES SHOWING THE PROPOSED LOCATION OF EACH OF THE
TABLE AND CHAIRS REQUIRED FOR OUTDOOR DINING