Footpath Dining and Trading

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1 Introduction

This section provides objectives and controls for outdoor dining and trading activities on and over public footpaths, malls and associated public spaces. Footpath dining and trading, in the right locations, contributes to an active street frontage and adds vitality to the public place.

This section of the DCP should be read in conjunction with:

- Part A - Introduction and Part B - General Controls of the DCP; and
- Other sections of the DCP for specific development types, locations or sites, if relevant to the application.

The following documents should also be considered:

- NSW Food Act and food safety standards incorporated therein, and
- Other relevant statutory plans, Council and Technical Reports, guidelines and, other policies.

1.1 Objectives

- To provide controls for footpath dining and trading used in conjunction with associated, approved, indoor premises only;
- To ensure access, safety and amenity of public footpaths is maintained, while facilitating active and lively street frontages;
- To ensure footpath dining is compatible with other community use of the footpath and does not adversely impact upon the amenity of adjacent residences.

1.2 Consent Authority, Owner's Consents and Statutory Processes

Proposals for outdoor dining on public footpaths require the following processes:

- Development consent and approval under the Roads Act and the Local Government Act, and current public indemnity insurance; and
- If adjacent to a classified road, the concurrence of the Roads and Maritime Services (RMS)

Proposals for the use of footpath airspace for outdoor dining require the above as well as the following processes:

- Lease agreement with Council for use of the airspace; and

- The approval of the Director-General of Department of Planning and Infrastructure (if Council is also the roads authority).

Proposals for goods displays on footpaths require the following processes:

- Local Approval under the Local Government Act 1993 or development consent and Local Approval if not exempt development; and

- Current public indemnity insurance.

Applicants are required to maintain current public liability insurance, indemnifying Council against damage to third parties and against the issue of licences. Applicants should consult with Council's Property Officer for information regarding insurance.

Note:

Council retains management and ownership of its footpaths at all times. Council has the right to access and remove all trading items at any time for any purpose deemed suitable by it.

No compensation is payable in the event of Council or any statutory authority carrying out works which require the removal, cessation and/or alteration to any approved footpath trading activity.

2 Development and design controls

2.1 Location and layout of footpath trading activities

Explanation

Proposed footpath trading activities will be considered only in conjunction with an approved or proposed associated indoor business in contiguous premises (food premises in the case of outdoor dining and any other type of business in the case of goods displays).

Objectives

- To maintain the primary function of footpaths as public pedestrian corridors and domains, while encouraging opportunities for outdoor dining and other footpath trading activities.
- To allow for the use of airspace over public roads and public land for dining, only where appropriate.
- To ensure access for people with disabilities is provided within dining areas and associated facilities.
- To maintain public safety including unobstructed access to footpaths and adjacent buildings.
- To require high quality furniture and fittings that enhances the streetscape.
- To have regard to the heritage significance of an item or area, where applicable.

Controls

i) Provide a clear zone on the footpath with a minimum width 2.0m or 2.5m for locations adjacent to classified roads, busy footpaths, footpaths in excess of 4m width and land within Randwick Junction Town Centre.

ii) Provide a minimum kerb setback 0.6m. Note the following kerb setbacks apply regardless of footpath width:

(a) 0.9m adjacent to loading zones

(b) 1.0m adjacent to “No Standing” zones

(c) 1.5m adjacent to pedestrian crossings (applies both from kerb and the crossing)

(d) 1.2m adjacent to angle parking

(e) is not appropriate adjacent to a disabled parking space or a bus stop.

iii) If the minimum criteria in (i) – (ii) cannot be achieved, applicants must demonstrate the following:

(a) Existing levels of public access and safety will be maintained for the footpath and the adjacent road, and

(b) No unreasonable impacts on amenity or streetscape.

iv) Where no footpath trading occurs in a locality, a proposed footpath trading activity is to be provided adjacent to the kerb.

v) Locating footpath trading adjacent to the building line must demonstrate consistency with existing footpath trading activities, exceptional circumstances and/or a public benefit.

vi) For trading areas longer than 10m, provide a 1.5m break in the centre of the trading area (excluding doorways and other essential openings).

vii) Provide a minimum break of 1.0m from public utilities including fire hydrants, rubbish bins, seats, telephones, bicycle stands, bus shelters, taxi ranks and parking meters.

viii) Provide a minimum break of 0.5m from all other street furniture including bollards, tree pits, street lights and traffic and electricity poles.

ix) Only that part of the footpath or public place directly in front of a restaurant/cafe may be used for footpath trading. The area may not extend to the area in front of neighbouring properties.

x) Seating may not be located next to the building line and the kerb side at the same time.

xi) Provide a minimum depth of 1.1m within the footpath trading area for the comfort of patrons.

xii) Comply with a footpath gradient (crossfall) range of 1:100 to 1:40 (maximum) or demonstrate to Council that suitable access can be provided if a proposal is located on grades outside this range.

Note:

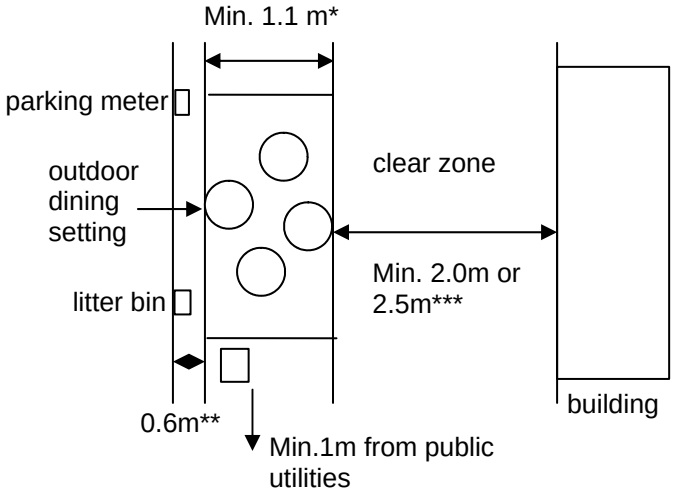
References to footpaths in this Plan relate to existing grades. Structures or works to change footpath levels (for example, platforms) will generally not be supported, unless it can be demonstrated that pedestrian access on the footpath and to premises will not be impaired.

xiii) Locate the footpath trading area consistent with adjacent footpath trading activities, existing public utilities, landscaped areas and open spaces to provide consistent pedestrian access subject to the minimum setbacks above.

xiv) Provide clear sight lines from the indoor premises to the outdoor trading area.

Diagram 1:

Suitable locations for outdoor dining areas adjacent to the kerb, generally where no outdoor dining exists in the locality



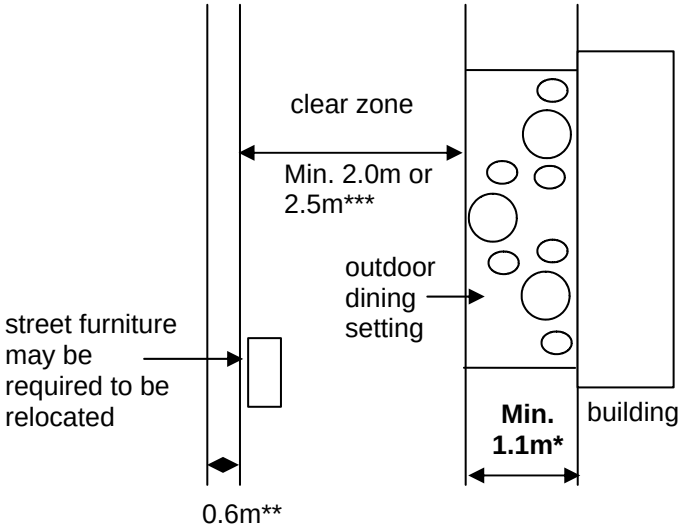
* A minimum depth of 1.1m is recommended for the comfort of patrons

** Kerb setbacks may be required to be increased when adjacent to no standing zones, loading zones, pedestrian crossings, angled parking

*** A clear zone minimum width of 2.5m for locations adjacent to classified roads, busy footpaths, footpaths in excess of 4m and land within Randwick Junction town centre

Diagram 2:

Suitable locations for outdoor dining areas adjacent to the building line



* A minimum depth of 1.1m is recommended for the comfort of patrons

** Kerb setbacks may be required to be increased when adjacent to no standing zones, loading zones, pedestrian crossings, angled parking

*** A clear zone minimum width of 2.5m for locations adjacent to classified roads, busy footpaths, footpaths in excess of 4m and land within Randwick Junction town centre

2.2 Use of footpath airspace for outdoor dining

Explanation

The use of airspace above footpaths (roads) and public spaces by the conversion of awnings to balconies (trafficable awnings) to provide first floor dining is generally not favoured by Council. It can result in additional noise, amenity and safety issues.

General matters for consideration

i) The Council may consider proposals for the conversion of an existing awning only on sites with the following features:

(a) current approval for first floor dining in the contiguous indoor premises,

(b) a Business zoning,

(c) Not located adjacent to residential premises or residential zones, and

(d) located in a continuous retail strip where awnings are an integral feature of the architectural elements of the streetscape.

ii) The Council may consider proposals for the construction of new first floor balcony awnings and their use for outdoor dining in Business zones only, where an applicant can demonstrate compliance with the following criteria:

(a) approval for first floor indoor dining in the contiguous premises;

(b) location in a continuous retail/commercial strip;

(c) awnings on adjacent buildings;

(d) design complements existing awnings;

(e) alignment consistent with existing awnings (minimum kerb setback 600mm);

(f) height related to building height and height of adjacent awnings;

(g) cantilevered over footpath; and

(h) additional awnings may not be attached to existing fixed awnings.

Controls

i) Design of any balcony for outdoor dining must be compatible with the streetscape and with the architectural integrity of the building.

Demonstrate that the proposal:

ii) Will not adversely affect the heritage significance of a heritage item or a heritage conservation area.

iii) Will not adversely affect the amenity and safety of the footpath below or the adjacent road.

iv) Will not obstruct the visibility of traffic signs and signals or pedestrian crossings.

v) Will not hinder the use by pedestrians and vehicles of the footpath and adjacent road.

vi) Will not adversely affect the amenity and safety of adjoining properties in terms of noise, overlooking or security.

vii) Will not adversely affect views.

viii) Is not located on a corner site unless visibility, traffic, safety and aesthetic issues are not adversely affected.

ix) Is consistent with the use of other adjacent awning balconies.

x) Is not enclosed.

Note:

A lease from the roads authority is required for use of the airspace above a road owned by it. Where the roads authority is other than the RMS, the approval of the Director-General of DP&I is required.

Council is the roads authority for local and public roads except for classified roads where the authority is the RMS.

2.3 Operating hours

Controls

The following standard hours of operation apply for all applications:

i) Comply with the approved hours of operation of the related indoor premises subject to the criteria below.

ii) Outdoor dining areas in Business zones:

(a) Local Centre Business zone B2: up to 11:00 p.m. Mondays to Saturdays and to 10:00 p.m. Sundays;

(b) Neighbourhood Centre Business zone B1: up to 10:00 p.m. Mondays to Saturdays and up to 9:30 p.m. Sundays.

iii) Outdoor dining areas in potentially sensitive areas (for example, in proximity to residential zones or premises):

(a) Generally up to 9:30 p.m;

(b) Further limitations may also be appropriate in areas within proximity to any residential premises.

iv) Premises may be permitted a 30 minute period after the above-mentioned hours in which to vacate the outdoor dining area, provided this is within the approved hours of operation of the indoor premises.

v) Variations to the above hours may be permissible only based on:

(a) The merits of the proposal;

(b) Existing hours of operation of the indoor premises, and/or

(c) Proximity of residences.

2.4 Furniture and fittings

Controls

General requirements

Demonstrate that furniture and fittings:

i) Dimensions fit into the footpath trading area including consideration for the comfort of patrons.

ii) Are safe, sturdy, (but not bulky), waterproof and weather resistant, can be easily removed at the close of business each day, will not damage the footpath or other public infrastructure or pose a trip/fall hazard or inconvenience to the public.

iii) Are weighted down or otherwise secured so as to prevent accidental dislodgement (e.g. umbrellas, A-frames).

iv) Visually complement and be physically aligned with other street furniture (including adjacent footpath trading areas) and adjacent public utilities.

v) Define a footpath trading activity by landscape planter boxes and flowerpots, bollards or screens (all to a maximum 1.2m height and maximum 1.8m length) provided they are located within the boundaries of footpath trading area and are removable at the close of business or otherwise designed as an integral part of a public open space area. Fittings are supplied and maintained at the expense of the applicant.

vi) Do not define the footpath trading area by full height solid or plastic screens or any other type of enclosure.

vii) Comply with Outdoor Advertising provisions in Part F, section F3.

Note:

Design details of the proposed furniture shall be submitted to the Council for approval as part of the development application.

Fully enclosed café structures are not encouraged. This can privatise the public place which results in reduced accessibility, visibility, amenity and safety to the public.

Council reserves the right to require the replacement of inappropriate tables and chairs as a condition of the licence.

Umbrellas

Provide:

i) Heights consistent with adjacent umbrellas or shade structures (if applicable) with a minimum height clearance from the footpath of 2.6 metres when open.

ii) Unimpeded views (if existing) of traffic signals, signs, pedestrian crossings

iii) Unimpeded views (if existing) of historic facades or vistas of valued or historic streetscapes.

iv) A safe and secure anchor point, (permanently fixed and which does not pose a trip hazard when the umbrella is in storage).

v) No overhang of any roadway.

vi) Fire-retardant materials if located near a heating device.

vii) Market style, not beach umbrellas.

Do not:

viii) Provide umbrellas where building awnings exist unless it can be demonstrated that both can be appropriately accommodated within the space.

2.5 Amenity

Controls

i) Demonstrate that the proposal will not have unreasonable impacts on the amenity of adjacent residences.

ii) Provide adequate toilet and sanitary facilities to cater for patrons.

iii) Provide lighting and/or heating adequate for safety and amenity for all patrons.

iv) Demonstrate that lighting and/or heating will not cause a potential nuisance.

v) Demonstrate suitable management measures to control noise, litter and cleanliness of the outdoor trading area.

2.6 Goods displays

Controls

i) Goods display structures (racks, shelves or similar) must be portable, and must be removed out of trading hours.

ii) Goods displays may be provided on footpaths with a minimum footpath width of 3.0m.

iii) Goods display may abut the shopfront only and, only where other footpath trading activities exist adjacent to other adjoining shopfronts.

iv) Do not affix advertising or signage.

v) Use for the orderly display of goods which are sold in the contiguous business premises.

vi) Maximum of one stand per commercial business or multiple occupancy commercial tenancy.

vii) Maximum display width of 1.0m measured at right angles from the front of the premises.

viii) Maximum length of 50% of the total length of the shopfront.

ix) Do not affix, or restrict access to, any public utility.

x) Do not pose a hazard or inconvenience to pedestrian movement or access to premises.

xi) Do not display food.

2.7 A-frame advertising structures

Controls

i) Minimum footpath widths of 3.0m.

ii) Maintain a minimum clear zone of 2m.

iii) Locate adjacent to the kerb line with a minimum setback of 0.6m.

iv) Minimum 2m setback from a building corner at intersections or at arcade entries.

v) Maximum height 1200mm and width 600mm.

vi) Maximum of one sign per commercial business or multiple occupancy commercial tenancy.

vii) Do not affix, or restrict access to, any public utility.

viii) Locate away from official traffic signs, so as not to distract drivers' attention or be confused with instructions given by traffic signals.

ix) Be safely anchored, secured and positioned so as not to pose a hazard or inconvenience to pedestrians especially those with a disability or, to traffic safety.

x) Use durable, fade proof materials of a high aesthetic and professional quality.

xi) Have a design theme compatible with adjacent elements within the footpath.

xii) Content must relate directly to an activity carried out on or, associated with the related business premises.

xiii) Content must not substantially duplicate advertising or signage elsewhere within the footpath trading area or on the frontage of the associated indoor premises.