Outdoor Dining and Footpath Merchandise Guide

northern beaches council

We acknowledge the Traditional Custodians of these lands and show respect to Elders, past, present and emerging.

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Introduction

The Outdoor Dining and Footpath Merchandise Guide supports and provides information for applicants seeking outdoor dining and merchandising approvals under the Outdoor Dining and Footpath Merchandise Policy. The guide aims to support a vibrant streetscape that is safe and welcoming, attracting tourists and locals to visit, enjoy and return. The appropriate placement and regulation of outdoor dining furniture and footpath merchandise displays ensures safe and equitable access to the footpath can be achieved whilst supporting local businesses.

This document applies to all land within the Northern Beaches Council Local Government Area with the definition of 'public road' under the Roads Act 1993. It also applies to designated pedestrian streets.

Principles

- Contributing to a vibrant and welcoming street environment while supporting local economic development.
- Maintaining the pedestrian thoroughfare as the primary purpose of the footpath and promoting accessibility by maintaining a consistent and predictable clear path of travel for all users.
- Ensuring furniture, display stands, racks or containers are of a suitable standard and visually pleasing, contributing to the creation of an appealing streetscape.
- Fostering neighbourhood amenity by minimising additional noise, visual and other adverse impacts.
- Encouraging the use of sustainable materials and eco-friendly management practices.
- Minimising public liability risk through the issue of approvals considered against the Outdoor Dining and Footpath Merchandise Guide.
- Monitoring compliance with approvals and undertaking enforcement action when appropriate
- Charging a fee for the use of the footpath as set out in Council's Fee and Charges.

Approvals

In order for a premises to have outdoor dining or merchandise displays on the footpath, NSW Government legislation sets out that the following approvals are required:

- All outdoor dining on the footpath requires approval under the *Roads Act 1993*.
- All footpath merchandise displays on the footpath requires approval under the *Local Government Act 1993*.
- Outdoor dining on community land such as a park or reserve, or Crown Land under Council management, requires approval under the *Local Government Act 1993*.
- Outdoor dining that is not exempt development under the provisions of SEPP (Exempt & Complying Development) 2008 or Warringah LEP 2011 (Schedule 2) will require development consent under the *EPA Act 1979* (as amended).

Any new operator will be required to apply for a transfer of the Approval.

If you are not sure which approvals you need, please talk to Council at one of our customer service centres, or call customer services on 1300 434 434.

Section 2 – Outdoor Dining

2.1 Application requirements

Eligibility criteria

In order for a restaurant or café to have outdoor dining on the footpath, the following criteria must be met:

- Must be a lawfully existing food and drink premises (café or restaurant).
- Must be an extension of 'indoor' seating, a business cannot solely rely on outdoor seating on a public footpath.
- Must be temporary and only used during the approved operating hours.
- Must be mindful of other users of the shared space and public infrastructure.
- Must have food preparation, storage and garbage disposal areas that comply with the Food Act 2003, Australian New Zealand Food Standards Code and Australian Standard AS4674.
- Must have notified Council of their food business through prior submission of a Food Business Owner Details form.
- Must provide evidence that the food business has sufficient toilets/sanitary facilities that can be accessed by food handlers and patrons.
- Must provide table service or provision for cleaning and servicing.
- Should serve food and drinks in non-disposable crockery and glassware.

Preparing the application

The applicant should provide supporting information with the application form to allow Council officers to assess the outdoor dining application efficiently and effectively. The required information is as follows:

- A scaled (1:50 or 1:100) detailed plan containing the width of the pavement, the location and layout of the proposed outdoor dining area, including dimensions, the number and location of items such as chairs, tables, umbrellas heaters and the like and the location of any fixed items on the footpath, i.e. electricity meters, bus stops, garbage bins, post office boxes or similar. See example of a detailed plan in Appendix 1.
- Details of all proposed furniture such as colour photographs, brochures and dimension specifications.
- Public Liability Insurance (Certificate of Currency) for a minimum of $20 million.
- Ensure that the application form (available from Council's website) is fully completed and includes contact details and signatures where required. An initial application fee (non-refundable) is also required.

Outdoor dining area location and size

Outdoor dining areas are to provide a safe and enjoyable dining experience for customers, while keeping footpaths safe and accessible for all pedestrians.

Some areas in the Northern Beaches are classed as Special Precincts and have requirements that may vary from, or be in addition to, general requirements. Please see Special Precincts Section 3 for more information.

Outdoor dining is generally considered suitable in the following locations:

- Streets that meet minimum width requirements – see below.
- Pedestrianised streets and laneways closed to vehicular traffic.
- Public squares and plazas.

Before outdoor dining is approved, Council will assess the location and position of the proposed area according to the following:

- Maintaining safety and circulation on public footpaths by allowing a minimum width of at least 2 metres of unobstructed footpath. And a minimum of 2.5 metres on a Roads and Maritime Services (RMS) classified road or clearway, subject to RMS approval.
- Allowing enough room for furniture and customers by keeping a minimum area width of 0.6m.
- Whether the location of the proposed outdoor dining maintains a consistent, clear and predictable path of travel for all pedestrians. A predictable path of travel is one that can be easily identified based on local knowledge or environmental cues.
- Whether unobstructed access to adjoining businesses is maintained.
- Provision of clear circulation space across the footpath for people accessing parked cars, loading zones, public transport and road crossing points.
- The need to provide clear views and sightlines near driveways and intersections (as shown in the example plan in Appendix 1).
- The need to provide a clear visual pathway in areas where this is of designated importance.
- The proximity of the proposed outdoor dining to bus stops and taxi stands. All outdoor furniture must be a minimum of three (3) metres from bus stops and taxi stands to allow for pedestrian circulation and queueing.
- Whether there is a clear view to the outdoor dining area from inside the restaurant or café to ensure effective monitoring of the space.
- Maintaining a two (2) metre clearance from trees, bus stops and service items such as fire hydrants, drains and the like.
- Consent will generally not be given to kerbside dining due to the potential for conflict between cars and pedestrians. However, where it can be shown that conflict is unlikely due to low traffic speeds or the presence of permanent bollards or similar, assessment on merit may be considered. Consent will not be given for kerbside dining on arterial roads or roads where there is a clearway in force or in areas with nose/tail to kerb or angle parking, unless there are bollards or wheel stops immediately in front of each car space.

See Appendix 2 for an example of a site location.

Outdoor dining in adjoining areas
Outdoor dining areas for a restaurant or café will generally be located immediately outside the premises.

If outdoor dining in front of adjoining premises is requested, Council may require consent from the proprietor of the adjoining premises. This consent can be withdrawn by the adjoining proprietor if they wish to use that area for their own business at a later stage. Any fees charged for additional outdoor dining where the proprietor has withdrawn their consent may be eligible for a refund.

Furniture and equipment
Outdoor dining areas are to make a positive contribution to the character of the streetscapes. They are to appear as temporary uses of the public domain, not permanent fixtures.

The essential elements of an outdoor dining area are temporary chairs, tables, small barricades (where supported) and umbrellas. Care needs to be taken to ensure streets do not become cluttered and obstructed by the placement of furniture and other items.

Streets that are physically and visually cluttered can hinder business identification and general way finding and can detract from the street aesthetic. Signage, branding and advertising can all add to visual clutter and detract from the positive characteristics of the street.

Outdoor dining areas should relate to, be sympathetic towards and enhance the existing urban character, cultural significance, heritage and street quality. See Appendix 3 for furniture examples.

Barriers or structures around outdoor dining areas give the appearance that the public space has been privatised and become an obstacle to access and movement - as such, these will generally not be supported. Privatisation of the public space results in reduced accessibility, visibility and safety to the public.

Each restaurant/café is responsible for ensuring customers keep furniture within the boundaries of the approved area. The proprietor must ensure that staff are aware of the conditions and responsibilities of the approval and are not to trade outside their approved area.

All outdoor dining furniture is the responsibility of the restaurant/café owner and must be removed from the footpath outside approved hours of operation.

To ensure best use of the public space Council will stipulate the maximum number of tables and chairs and other furniture during the assessment stage, allowing for access by all users, including wheelchair users and users of mobility frames.

Tables and chairs

- Should be of a high structural and aesthetic quality, uniform design and be weatherproof and designed for outdoor use.
- Outdoor dining furniture shall be safe for users, with no sharp edges or hinges that could cause a hazard to users.
- The use of synthetic wicker look, polished aluminium, brushed or stainless steel or sustainable timber from eco-friendly management practices are preferred.
- Should not damage the footpath or Council property.

Umbrellas

Will not be supported in an area which has shelter from an awning. Where umbrellas are permitted they should:

- Be a single style (i.e. 1 per table).
- Be square, to take up the least amount of space and not extend outside of the approved area.
- Have a height of at least two (2) metres above ground for pedestrian movement and safety.
- Be of a single solid colour and not white or other light shades , as this discolours too easily.
- Be fabric or matte-finish.
- Be securely anchored.

Plastic blinds, transparent or rolled down screens from umbrellas are not supported.

Gas heaters

May be temporarily located within the outdoor dining area and must:

- Be industry approved high- quality gas heaters that meet Australian standards and occupational health and safety requirements.
- Must not be table- top heaters.
- Be self-contained and free standing.
- Be securely fixed and stable.
- Not be placed where they may pose a safety of fire hazard.
- Have an integrated compliant gas bottle with a safety shut off valve (in case of tipping over) and checked daily.
- Be serviced annually with service records kept to be produced on demand.
- Must not exceed the maximum of one (1) per table.

Blinds

Blinds are not supported as they encourage privatisation of the public space by enclosing the area and obstruct the view of the building façade or view pathway.

Barriers
Which enclose the outdoor dining area will only be supported where there is a licence under the *Liquor Act 2007* to serve alcohol in the outdoor dining area and the café/ restaurant is in a designated Alcohol Free Zone.

Temporary barriers between adjoining areas may be approved on a case-by-case basis and should:

- be free standing and removable.
- have a maximum gap of 150mm between the pavement and the underside of the barrier.
- not exceed 0.9 metres in height.
- be a single colour.
- be compatible with the design of adjacent building frontages and streetscapes.
- not include any rope or chain barriers.

The use of weather protection screens is not supported by Council.

Outdoor dining areas located within the Activity Zone along The Corso, please refer to Section 3.1.3.

Waiter stations
Waiter stations are permitted only where it can be demonstrated they are essential to the safe operation of outdoor dining areas

Waiter stations should be:

- mobile and stored indoors outside of approved service hours.
- designed to be unobtrusive and of minimalist appearance, free of any signage, advertising, logo or branding.
- contained wholly within the approved outdoor dining area.

Plants and planter boxes
Are generally not supported but may be considered on a case-by-case basis.

Menu boards
Must be kept to a minimum, must be transportable, and must be kept within the occupied areas at all times during use.

Advertising
Outdoor furniture, including umbrellas, screens and similar should not display advertisements for third parties. All signage on furniture should be restricted to the business name only and not exceed 30 percent of the total surface area. The Exempt Development provisions of Manly LEP 2013 relating to third party signage are not applicable to movable signage but only signage affixed to the building.

Dogs
Proprietors should adhere to the NSW Government Office of Local Government guidelines for dogs in outdoor dining areas which state:

- the outdoor dining area must not be enclosed and must be accessible without the requirement to pass through an enclosed area.
- the dog must be on a leash at all times.
- the dog may be provided with drink, but not food.
- the dog must be on the ground at all times.

2.2 Operation and Management

Health and safety

The outdoor dining area, furniture and other items are to be kept clean, in good order and free from litter and rubbish during the hours of operation.

The proprietor is responsible for the orderly conduct of the business and must ensure that the requirements of the *Food Act 2003* and any other applicable legislation are maintained in the serving or display of food at outdoor tables.

The proprietor must ensure that the requirements of the *Occupational Health and Safety Act 2000* and subordinate regulations, codes of practice and the like are fully met.

Storage and handling of flammable and combustible liquids will not be permitted within the approved Outdoor Dining Area.

Food vending machines, mobile coffee carts and food vans, food preparation or cooking equipment, and other equipment such as refrigerators, coffee machines and utensils are not permitted in the outdoor dining area

Environmental impact

The proprietor will be held responsible for the good conduct of customers and for ensuring that the premises do not give rise to offensive noise as defined in the *Protection of the Environment Operations Act 1997*. Entertainment and amplified music are not permitted in the outdoor dining area.

Development Consent will be required for the installation of any external lighting. Lighting must be designed and located so that it does not cause a nuisance to neighbouring premises and should comply with the requirements of AS 4282-1997: Control of the obtrusive effects of outdoor lighting.

The proprietor of the restaurant is responsible for maintaining outdoor furniture and ensuring that the furniture is kept neat and tidy whilst in use. All furniture must be removed from the footpath outside the approved hours of operation.

To minimise waste, crockery and glassware should be provided. Disposable items such as plastic, paper or polystyrene cups, containers and straws are not supported as these create litter and have an adverse environmental effect.

The proprietor and staff must keep the outdoor dining area clean and ensure litter is removed promptly from in and around the area and disposed of properly.

Table service

Proprietors must supply table service to the outdoor dining area to promote cleanliness and prevent littering.

Smoking

Smoking is not permitted in outdoor dining areas.

Alcohol

Approval for outdoor dining areas only authorises the consumption of food and non-alcoholic beverages.

No alcohol can be consumed in the outdoor dining area without a prior liquor licence from Liquor and Gaming NSW.

The consumption of alcohol in outdoor dining areas will only be supported if licensed and is in accordance with the licence conditions.

2.3 General Conditions

Hours of operation

The hours of operation of the Outdoor Dining Area shall generally be restricted to the hours of 7am to 10pm Monday to Sunday. If hours of operation have been granted to the premises under a Development Application, they should not exceed the hours of operation stated in the Development Consent for the restaurant.

If no hours are stipulated in the Development Consent the operation of the outdoor dining area shall be in accordance with those set out in *SEPP (Exempt & Complying Development Codes) 2008*, Schedule 8, part 4, Clause 21 ('the procedure hours').

Where the hours of operation of the restaurant exceed the procedure hours then the hours defined in the SEPP apply to the Outdoor Dining Area.

In specific areas where residents are impacted by the operations of late night activities, Council will determine the hours of operation for the area, taking into account environmental and amenity considerations as well as the merits of each particular application for approval.

Patron numbers

As the approval may increase the total patronage of a premises, the total internal and external patron numbers must not exceed that stated in the Development Consent for the restaurant.

Sanitary provisions must also comply with The Building Code of Australia (BCA) Table F2.3 and Table F2.4.

Limitations

Approvals in respect of premises situated in Sydney Road Plaza and Market Lane may have a restricted use clause which does not allow the use or operation of any otherwise approved Outdoor Dining Area on weekends and public holidays, when the Manly Arts & Craft Market is operating.

Insurances

The proprietor of the restaurant is to maintain a minimum cover of $20 million (or such higher amount as the Council/RMS may require from time to time) in respect of any one claim for public and product liability insurance which is extended to cover utilisation of the footpath area, and are required to provide evidence of that cover with their application, and whenever requested by Council. The policy of insurance is to list Council as an interested party.

The proprietor must keep current throughout the term of any approval granted in respect of an Outdoor Dining Area, a Workers' Compensation Policy in the name of the Proprietor in compliance with the requirements of the *New South Wales Workers Compensation Act 1987*. The proprietor must provide evidence of that cover whenever requested by Council.

Term of approval

In general, the maximum term of an approval in respect of an Outdoor Dining Area shall be 3 years. Council may approve a shorter period of time where the use of the footpath may have negative impacts on the amenity of the area. Council may consider a longer term in exceptional circumstances. The term of any approval period will be specified by a Condition of Approval.

Any initial approval granted in respect of an Outdoor Dining Area shall be subject to a 6 month trial period. The proprietor might report to Council if any complaints are received during the trial period. A set start and finish date will apply to all approvals.

Change of ownership

The approval issued is separate to the ownership of a business conducted on the private property and has no legal attachment to the sale or transfer of ownership of a business. The approval will not automatically be transferred to the new owner. The new owner must submit an application form noting the change of ownership. It is the responsibility of the existing proprietor to include the balance of the remaining approval fee in the sale of the business.

2.4 Fees and bonds

Application fee

The Application Fee payable shall be in accordance with the Council's Schedule of Fees and Charges.

Rental fees

There is a fee for the use of the public road as an outdoor dining area charged per square metre per annum and is incorporated within the Council's Schedule of Fees and Charges

Security bond

The applicant shall pay a Security Bond prior to the commencement of use of the Outdoor Dining Area. This will be equal to 3 months rent or a minimum amount as set out in Council's Schedule of Fees and Charges, whichever is the greater amount. The Security Bond is intended to provide insurance for Council where damage to Council property has occurred, rent for outdoor dining area has not been paid and similar issues.

The Security Bond will be refunded to the proprietor when the Outdoor Dining Approval expires or the proprietor has stated that they wish to cancel it.

Compliance

Proprietors must supply table service to the outdoor dining area to promote cleanliness and prevent littering.

Pavement markers

Pavement markers are stainless steel circular markers that delineate the extent of the permitted outdoor dining area for individual premises.

Pavement markers will be installed when there has been a proven need and shall be purchased from, and installed by Northern Beaches Council at each outer corner of the approved outdoor dining area.

Section 3 – Special Precincts

Some locations within the Northern Beaches are nominated as Special Precincts and have additional considerations when applying for outdoor dining. Applications for outdoor dining in a nominated Special Precinct must **additionally** comply with this section of these guidelines.

3.1 Manly Corso – Pedestrianised Area
The Manly Place Plan, adopted by Northern Beaches Council in 2024, identified Activity Zones on the pedestrianised area of The Corso where outdoor dining areas should be located.

1.1 These activity zones are shown in figure 1 below . Businesses on the pedestrianised area of The Corso that are not located adjacent to an activity zone will have their area location assessed on a case-by-case basis. In addition to the general requirements of tables and chairs on page 9, tables and chairs on the pedestrianised area of The Corso should be white, neutral or muted tones.

3.1.2 – Umbrellas
In addition to the general requirements of umbrellas on page 9, umbrellas on the pedestrianised area of The Corso should:

- not be larger than 2500mm x 2500mm for the canopy, with an overall height not higher than 3000mm
- be neutral or muted in tone
- not include logos, branding or advertising.

3.1.3 – Barriers

- In addition to the requirements for barriers in Section 2.1, barriers are required in the Activity Zones in the pedestrianised area of The Corso.
- They should be picket fencing type, white in colour, must not include any logos, advertising or other graphics and be properly secured in place to prevent blowing over in strong winds.

3.1.4 – Merchandise

- In addition to the requirements for Barriers in Section 2.1, footpath merchandise remains not permitted on the pedestrianised area of The Corso.

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Section 4 – Footpath Merchandise

4.1 Application Requirements

Eligibility and guiding principles

The display of goods on the footpath is supported in most areas zoned for business usage in order to encourage customers to enter the premises, but not to carry out business or financial transactions. Exclusions may apply, see Appendix 4.

Footpath merchandise displays should enhance local amenity. Display stands must be high- quality, well-maintained and designed to improve street vitality.
The granting of footpath trading approvals, and applications for those approvals, is controlled by the approvals provisions of the Local Government Act 1993 and should adhere to the following:

- The application for approval is to be accompanied by a location plan. The application must clearly explain the proposed use, how any structures or stands are to be built, the type of materials, accurate dimensions and means of securing fixtures.
- Goods shall only project a maximum width of one metre from the front property alignment subject to a minimum footpath width of 2 metres being maintained for public access.
- Goods shall not extend beyond the side of property alignment.
- Goods shall not obstruct access to the shop or any other premises. Goods shall not create litter or any form of staining or rubbish on the footpath. A security deposit is to be lodged with Council upon application.
- Goods such as liquor, drugs, pharmaceuticals or tobacco shall not be displayed.
- Goods shall be displayed in such a manner that supervision from the shop premises is available.
- Display stands shall be constructed in a workman-like manner, well finished and secure. Materials and finish will be such that it does not deteriorate with sunlight or rain. All edges and corners shall be finished so as not to cause any injury to a passer-by or catch clothing.
- All display stands be custom made for the goods being displayed, (i.e. no packing materials, cardboard boxes, crates or improvised stands permitted).
- All goods shall be displayed on stands, racks or in containers above the level of the footpath. The only goods to be displayed on the ground shall be specifically designed for that purpose. For example large plant containers, outdoor furniture such as table and chairs.
- An essential condition of the approval that goods are to be displayed within in the approved area. If this does not occur then the approval will be cancelled administratively.
- Display stands, racks or containers will be removed from the footpath when the business is closed.
- The façade of a building is not to be altered without approval of a Development Application.

- Proposed display stands should not detract from the amenity of the immediate area, having regard to the stand itself, the nature of the goods displayed or the number of stands in the immediate area.
- That the proprietors of news agencies be permitted to place tables on the footpath outside their premises to allow for the completion of forms subject to no financial transactions taking place.
- The applicant must provide a certificate of currency (minimum level of indemnity for $10 million) from their respective public liability insurer with Council's interest noted on the policy and indemnifying Northern Beaches Council, not in respect of the granting of the approval (which would be impermissible), but in respect of any damage, injury, or loss occurring on or in relation to the use pursuant to the approval (should one issue) of the approved area of Council's footpath before an approval is issued. Proof of ongoing insurance must also be made available on demand.
- The approval or a true copy of the approval must be produced on demand to Council Officers when requested.

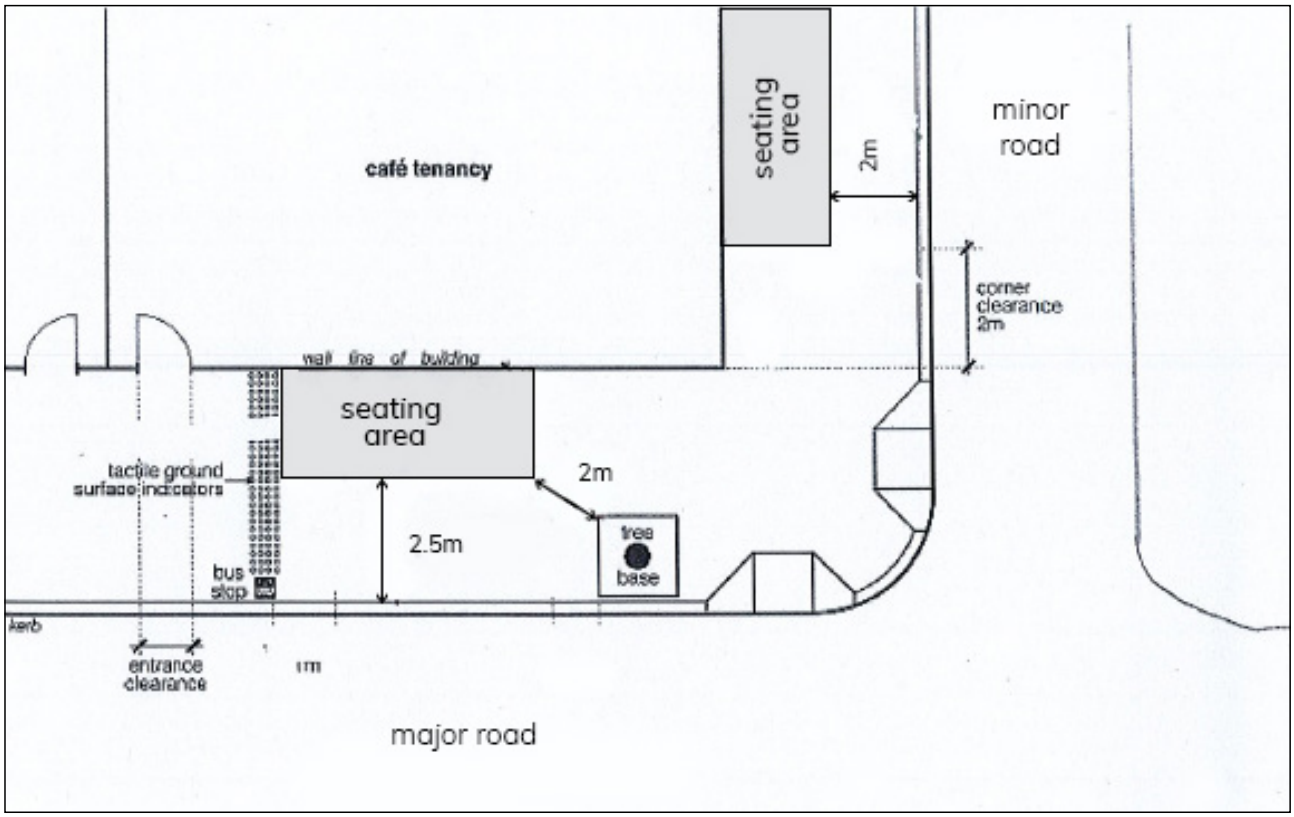
4.2 Fees

Application Fee

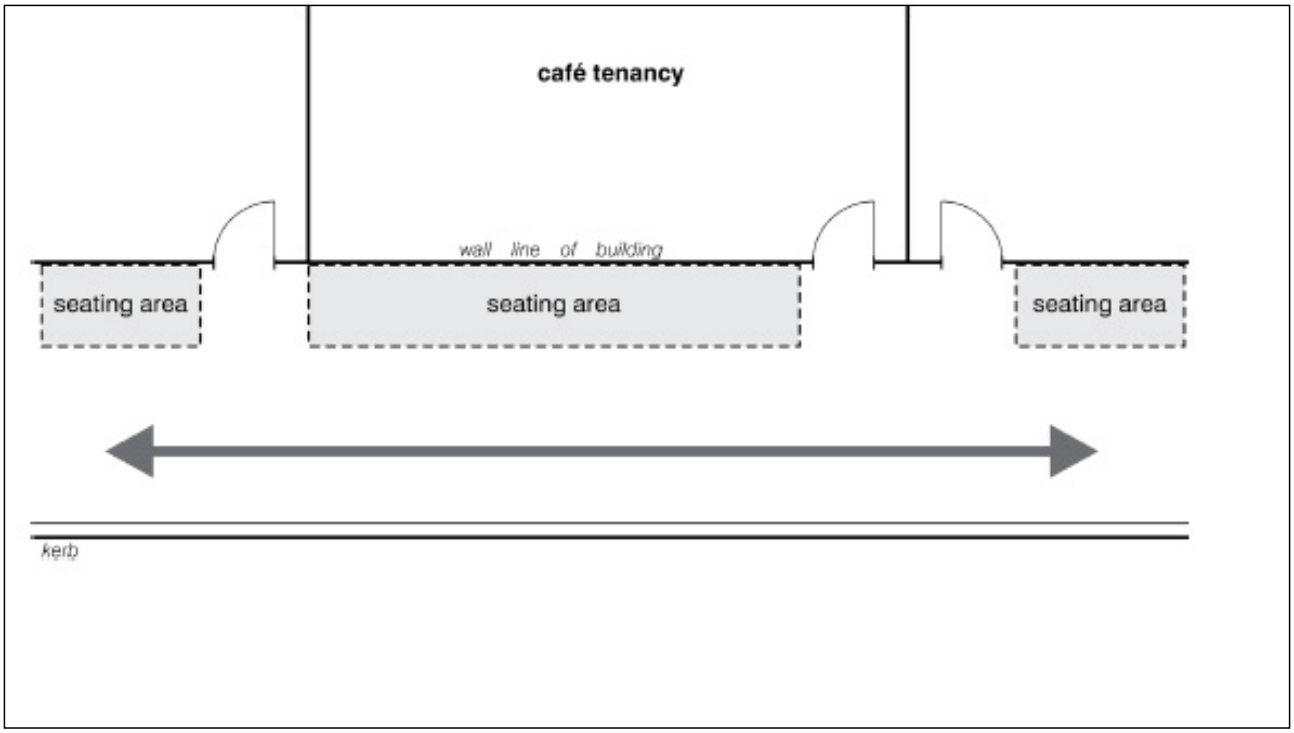
The Application Fee payable shall be in accordance with the Council's Schedule of Fees and Charges.

Appendix

1.


café tenancy
seating area
2m
minor road
corner clearance 2m
wall line of building
seating area
tactile ground surface indicators
2m
2.5m
tree base
bus stop
kerb
entrance clearance
1m
major road

2.


café tenancy
wall line of building
seating area
seating area
seating area
kerb

Appendix

3.

Appendix

4.

Current Footpath Merchandise Exclusion Zones
The Corso (pedestrianised area) Manly

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northernbeaches.nsw.gov.au