



SECTION 8 OUTDOOR DINING AND DISPLAY OF GOODS ON THE FOOTPATH

8.1 INTRODUCTION

Outdoor dining and display of goods can add to the diversity and vibrancy of our urban environment. In the right circumstances, outdoor dining and goods display areas can contribute to street life and draw people to an area. It also improves the amenity of public spaces, provides causal surveillance and assists in business prosperity.

However, careful attention to the location, layout, design and management of outdoor dining and goods display areas is required to ensure that these function effectively and do not interfere with the safety and primary function of the footpath or nearby road.

8.1.1 General Objectives

The general objectives of this Section of the DCP are to:

- O1 To enable the appropriate use of footpaths such that they contribute to the diversity and attractiveness of shopping areas;
- O2 To ensure that the use of footpaths contribute to the expression of local character and identity;
- O3 To ensure that any ancillary use of the footpath does not interfere with the safety and functioning of the footpath or any nearby road;
- O4 To create comfortable settings for outdoor dining; and
- O5 To prevent the ad-hoc proliferation of advertising on footpaths.

8.1.2 When does this section of the DCP apply?

This section of the DCP applies to use of the footpath for outdoor dining or for the display of goods whether it requires development consent under the provisions of NSLEP 2013 or permitted without development consent (See Part 2 – *Exempt Development Code* of the [Codes SEPP](#) and Schedule 2 – *Exempt Development* of NSLEP 2013). Despite whether consent is or is not required, a permit will be required from Council for any use of the footpath.

With respect to the term “footpath”, this term extends to include all parts of a road reserve which are dedicated to the primary movement of pedestrians, whether permanently constructed as a footpath or on a temporary basis. These controls have been formed with regard to the **North Sydney Outdoor Dining & Goods Display Policy**.

With respect to the term “outdoor dining”, this term relates to activities associated with a lawfully approved food and drink premises (which includes a restaurant or cafe, takeaway food and drink premise, pub or small bar). Furthermore, “outdoor dining area” incorporates the serving of food and or drink in the public domain and any associated furniture such as seating, tables, barriers, planters, umbrellas, heaters and the like.

This Section should be referred to by anyone intending to make a development application to Council for consent to use part of the footpath for outdoor dining or for the display of goods, specifically in the design stage. Council will also use this Section when issuing a permit for outdoor dining or goods display on the footpath where the proposal is deemed to be exempt development to ensure a consistent approach is applied to the use of the public domain.



8.1.3 Relationships to other sections

Where relevant, this section of the DCP should be read in conjunction with the following Sections of the DCP:

- (a) Part A: Section 3 – Submitting an Application;
- (b) Part B: Section 2 – Commercial and Mixed Use Development;
- (c) Part B: Section 12 – Access.

8.1.4 Relationship to other documents or planning policies

Where relevant, this section of the DCP should be read in conjunction with the following planning policies and documents:

- (a) *North Sydney Outdoor Dining and Display of Goods Policy*;
- (b) The Office of Liquor Gaming and Racing's *Footpath Strategy*.

8.1.5 Additional permits

Where an applicant seeks to provide outdoor dining or goods display area on the footpath, they may also be required to obtain one or more of the following:

- (a) an approval under s.68 of the [Local Government Act 1993](#);
- (b) an approval under s.125 of the [Roads Act 1993](#); and
- (c) a consent under s.138 of the [Roads Act 1993](#).

Inquire with Council to ascertain if the permits are required.

8.2 USE OF LANEWAYS FOR OUTDOOR DINING

Pursuant to s.125 of the [Roads Act 1993](#) Council may grant approval to the operator of a "restaurant or café" or adjacent to a footway of a public road to use part of that footway for the purposes of a restaurant. A footway is defined under the [Roads Act 1993](#) as:

footway means that part of a road as is set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic).

Council has a long standing policy for the activation of its laneways in the Business zones under its LEP. To encourage the achievement of this policy position, Council will from time to time investigate the potential for the temporary closure of some laneways to vehicular traffic during specified times to enable the carriageway portions of a laneway to be used for pedestrian access, outdoor dining or the display of goods.

Before Council has the power to grant a development consent under s.4.16 of the [EP&A Act, 1979](#) or an approval under s.125 of the [Roads Act 1993](#), to permit use of the carriageway portions of a laneway for outdoor dining or the display of goods, it needs to be satisfied that the laneway has been appropriately closed to vehicular traffic pursuant to s.116 of the [Roads Act 1993](#). Figure B-8.1 outlines the process to be undertaken in the temporary closing of a laneway to enable Council to approve outdoor dining or the display of goods within a laneway.

The creation of pedestrian access in the road reserve on a temporary basis or otherwise may facilitate the lodgement of a development application for outdoor dining on the display of goods. Development applications will be assessed on their individual merits. The facilitation of a pedestrian area through temporary road closures or restriction of vehicle access must not be construed in any way as to the limiting or fettering the exercise of any statutory discretion or duty.

Outdoor Dining and Display of Goods on the Footpath

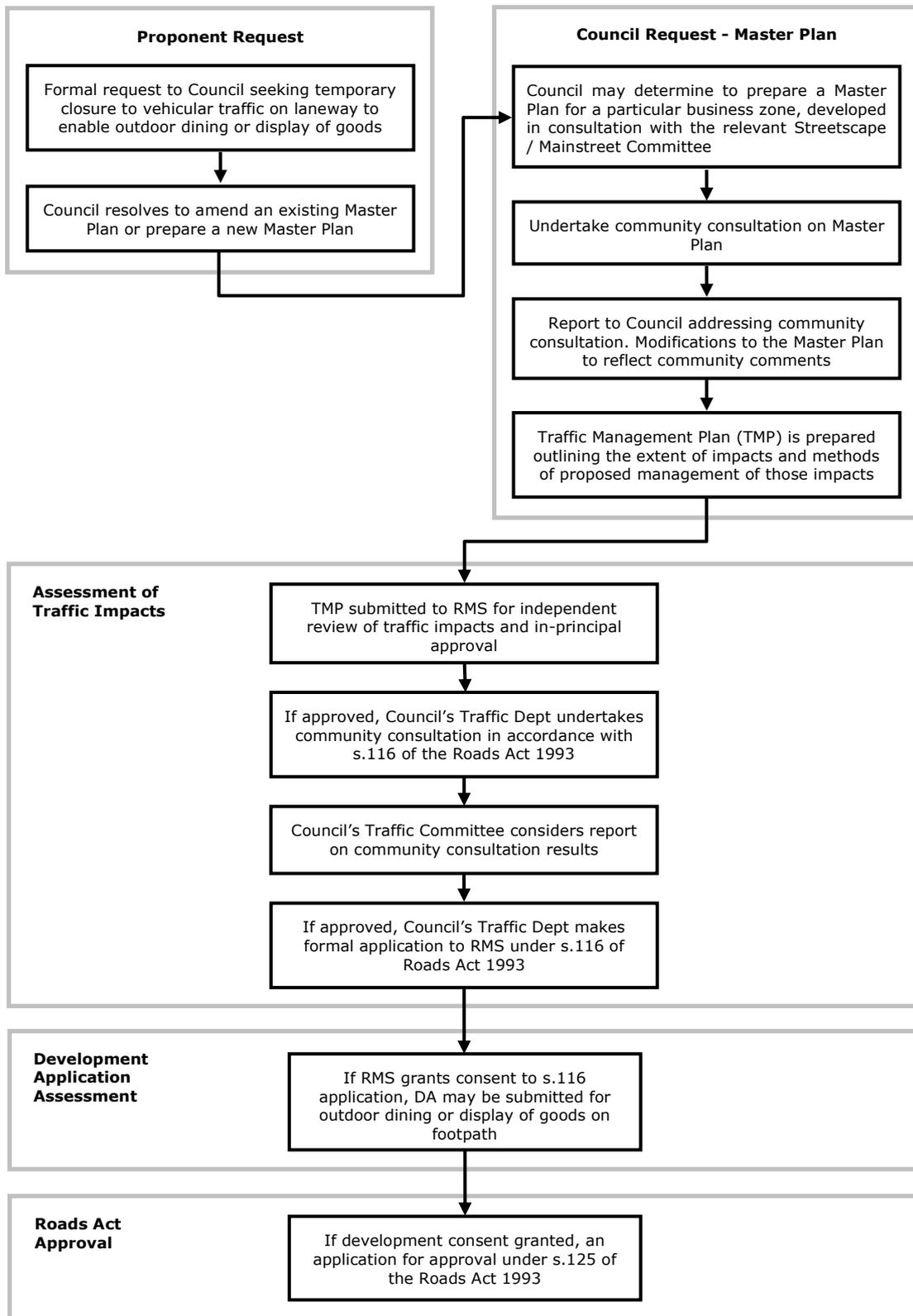


Figure B-8.1: Process for the temporary closure of roads to vehicular traffic to enable pedestrian access, outdoor dining and the display of goods.



8.3 FUNCTION

8.3.1 Location

Objectives

- O1 To create opportunity for the enlivening of existing commercial streets, whilst minimising impacts on residential and pedestrian amenity.

Provisions

- P1 Outdoor dining or goods display areas will only be permitted on a "footway" as defined under the [Roads Act 1993](#), where it is provided in conjunction with a new or an existing food and drink premises or retail premises (i.e. within or adjacent to the *B1 Neighbourhood Centre*, *B3 Commercial Core* or *B4 Mixed Use* zones) for which development consent has been granted.
- P2 Avoid locating outdoor dining or goods display areas on footpaths adjacent to arterial roads or too close to fast moving vehicles, where the safety and comfort of patrons may be compromised by vehicle conflict, noise or air pollution.
- P3 Where possible, cluster outdoor dining or goods display areas to minimise impacts on the pedestrian environment.
- P4 Avoid locating outdoor dining or goods display areas near housing where noise and odours may reduce residential amenity.
- P5 Outdoor dining and goods display areas and any associated structures or equipment must not obscure a driver's or pedestrian's view of advisory and regulatory traffic signs or controls.
- P6 Outdoor dining or goods display areas and any associated structures or equipment must not impede access to any public/private utility or stormwater drainage pit.
- P7 Must be consistent with the objectives of the relevant *Locality Character Statement* contained within the ***North Sydney Outdoor Dining and Display of Goods Policy***.

8.3.2 Public transport

Objectives

- O1 To ensure that access to and operation of public transport is not compromised.

Provisions

- P1 Outdoor dining and goods display areas and any associated structures and equipment must not be located in a manner that interferes with the use of public transport or with pedestrian or vehicular access thereto.

8.3.3 Emergency access

Objectives

- O1 To ensure that emergency access to business premises is not compromised.

Provisions

- P1 Outdoor dining and goods display areas must be capable of being cleared of all temporary structures within 1 hour to enable emergency access to repair buildings or critical infrastructure. When access is required, 2 working days notice will be given for routine works and 1 hour notice for emergency works.
- P2 Outdoor dining and display areas and any associated structures and equipment must not be located such that they hinder access by emergency personnel.

8.4 SOCIAL AMENITY

8.4.1 Noise

Objectives

O1 To minimise acoustic impacts on nearby residents.

Provisions

P1 Live or recorded entertainment such as music, broadcast programs or the like is not permitted within outdoor dining or display areas.

8.4.2 Lighting

Objectives

O1 To provide a safe and comfortable environment for pedestrians and patrons, whilst minimising impacts on nearby residents.

Provisions

P1 Provide adequate lighting to ensure the safety and comfort of both patrons and pedestrians alike.

P2 Lighting must be designed such that it does not disturb neighbouring shops or nearby residences.

8.4.3 Solar access

Objectives

O1 To provide a comfortable environment within which to enjoy outdoor dining or shopping.

Provisions

P1 Solar access to nearby open spaces, outdoor dining areas or residential areas, is not to be obstructed, particularly between the hours of 12 noon and 2.00pm.

P2 Locate outdoor dining areas that have good solar access and daylight.

8.4.4 Weather protection

Objectives

O1 To provide a comfortable environment within which to enjoy outdoor dining or shopping.

Provisions

P1 Outdoor dining and goods display areas should rely on the use of existing awnings for weather protection. Where awnings are not available, Council may consider, where appropriate, the use of removable umbrellas or retractable blinds.

P2 The use of clear plastic roll down weather screens off umbrellas may be permitted, but only where necessary and only in periods of heavy rain.

P3 Use of weather protection screens which are not attached to an umbrella or an awning are not supported by Council. However, such screens may be permitted by Council, but only where Council is satisfied that the following instances can be met:

- (a) The outdoor dining area to be protected is to be isolated from any other food or drink premises which has an outdoor dining area and is not to be erected in any significant streetscape.
- (b) It can be demonstrated by an appropriately qualified wind consultant that the subject site is subject to adverse wind conditions (i.e. wind tunnel).



- P4 Such structures will be removed from the public domain outside of business hours of the associated premises.
- P5 The structures must be sympathetically designed to integrate with the streetscape.
- P6 Structures should be transparent where possible to maintain pedestrian sightlines.
- P7 Umbrella overhang of the licensed area may be required to achieve the desired streetscape appearance. In such instances the Permit holder shall indemnify the Council.
- P8 Where heaters are proposed, they are to be safely positioned where they do not obstruct the passage of pedestrians or vehicles - ensure that heaters are stable and will not fall or be knocked over.

8.4.5 Cleaning

Objectives

- O1 To ensure that the public domain is maintained to a high standard.

Provisions

- P1 Approved outdoor dining and goods display areas are to be cleaned on a daily basis, including the removal of all litter, food scraps and the like.
- P2 Applicants must take precautions to ensure the prevention of any potential damage to the footpath (such as staining or cracking of surfaces) and other Council property (such as street signage). A management plan is to be submitted to Council outlining the proposed procedures should such an event occur.

8.4.6 Views

Objectives

- O1 To ensure the safety of pedestrians and drivers by not obscuring important sightlines.

Provisions

- P1 Structures and equipment associated with an outdoor dining or display area must maintain a clear view to shop entrances and shop windows so that the business can be clearly identified by pedestrians.
- P2 Structures and equipment associated with an outdoor dining or display area must maintain clear sight lines for drivers and pedestrians.

8.5 BUILT FORM

8.5.1 Structures and designated areas

Objectives

- O1 To ensure that pedestrian movements are not adversely affected after the ceasing of business operations associated with outdoor dining or the display of goods.

Provisions

- P1 Permanent structures to delineate the outdoor dining or display area are not permitted.
- P2 Removable screens/barriers or removable planter boxes, may be used to delineate the designated area to prevent pedestrians stumbling into the area.
- P3 All structures, equipment and materials associated with the outdoor dining or goods display must be removed from the footpath at the end of each day's trading (includes tables, chairs, display stands and the like, but excludes fixed umbrellas or required markers/planter boxes which has prior approval).

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P4 Markers may be placed on the footpath to define the designated area to the satisfaction of Council.

8.5.2 Layout and dimensions

Objectives

O1 To ensure that sufficient space is made available for safe movement of pedestrians during the use of the footpath for outdoor dining or the display of goods.

Provisions

P1 Minimum setback to the kerb is to be provided in accordance with Table B-8.1:

TABLE B-8.1 – Minimum setbacks to street kerbs			
Location	High Traffic Risk*	Medium Traffic Risk#	Low Traffic Risk⁺
High pedestrian traffic [^]	3.0m	2.5m	2.5m
Medium pedestrian traffic [^]	2.5m	2.0m	2.0m
Low pedestrian traffic [^]	2.0m	1.5m	1.2m

* **High traffic risk**

- high volume
- high speed
- travel lane adjacent to kerb
- requires vehicle protection to separate outdoor dining from traffic lane if outdoor dining is adjacent to kerb

Medium traffic risk

- medium volume
- medium speed
- parking adjacent to kerb
- requires fence to separate outdoor dining from traffic if outdoor dining is adjacent to kerb

+ **Low traffic risk**

- low volume
- low speed
- parking adjacent to kerb
- requires minor planters to separate outdoor dining from traffic

[^] **Pedestrian traffic rates** are identified in the on the *Area Management System Permit Areas for Outdoor Dining & Goods Display Areas on the Footpath Map* contained within the *North Sydney Outdoor Dining and Goods Display Policy*

P2 Despite the above requirements, each situation shall be assessed on its merits. An increased setback may be required to achieve appropriate levels of safety for pedestrians, patrons and/or drivers. Alternatively a decreased setback may be permitted, but only where a barrier to Council’s satisfaction is installed that ensures the safety of pedestrians and patrons alike.

P3 Minimum setback to specific street infrastructure and furniture is to be provided in accordance with Tables B-8.2 and B-8.3.

TABLE B-8.2: Minimum setback to street infrastructure and furniture	
Object	Setback
General Items <i>Trees and tree plots; front of public seating; rubbish bins; bicycle hoops, parking signs; parking meters; phone boxes; bus stop shelters</i>	900mm
Essential Services <i>Fire hydrants; hose reel cupboards; fire exit doors; fire equipment stores; substations; communication poles</i>	
Other items <i>Bollards; way finding signs, back of public seating</i>	500mm
Items not listed above	See Table B-8.3

TABLE B-8.3: Minimum setback to street infrastructure and furniture (other)

Location	high traffic risk*	medium traffic risk#	low traffic risk+
High pedestrian traffic	2.5m	2.0m	2.0m
Medium pedestrian traffic	2.0m	1.5m	1.5m
Low pedestrian traffic	1.5m	1.0m	1.0m

P4 Minimum setback to intersections, public spaces and other outdoor dining or display areas is to be provided in accordance with Table B-8.4:

TABLE B-8.4: Minimum setback requirements to street intersections / public spaces / dining areas

Object	Setback
Street intersections, from the building corner	45° sightline angle in accordance with Figure B-8.2 below.
Dining and display areas shared with road (i.e. no kerb or street closure)	4m
Water's edge (i.e. MHWM)	2m
Clearance between adjoining dining or display areas with no separation screen	250mm

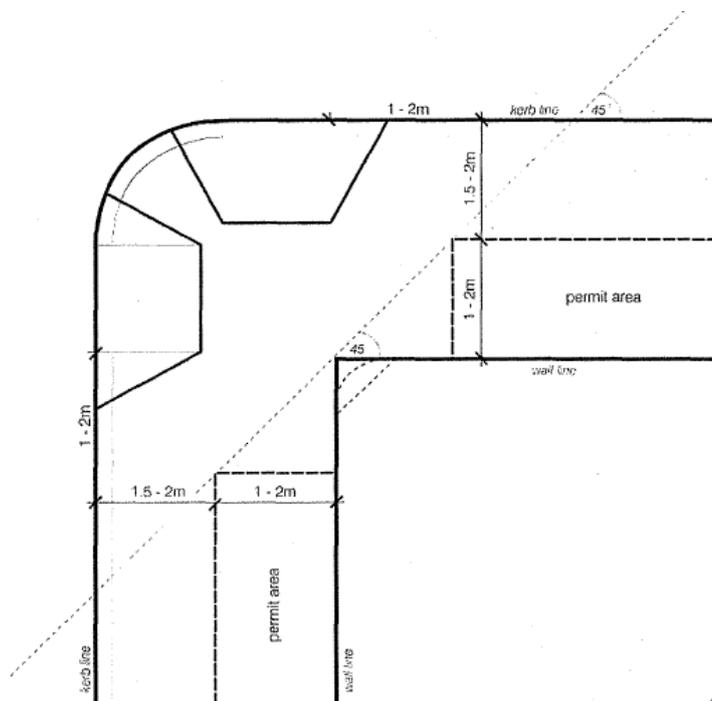


Figure B-8.2:
Setbacks from street intersections.

- P5 The designated area must not obstruct any pedestrian entry or exit to any building.
- P6 Minimum setback of 3m from any construction zones occurring on adjacent land. This is a temporary requirement to ensure the safety of patrons during the course of construction works on adjoining properties.
- P7 Where possible, locate the area directly adjacent to the host premises.

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P8 Toilet facilities for patrons are to be provided in accordance with the provisions of the Building Code of Australia (Part F) within the associated premises/business for the total number of seats/patrons accommodated both internally and externally. The total number of patrons to be accommodated is calculated based on 1m²/person or available seating floor area.

8.5.3 Furniture and equipment

Objectives

- O1 To provide a consistent approach to the provision of furniture and equipment within the public domain.
- O2 To ensure the safety and amenity of both patrons using outdoor dining and goods display areas, and pedestrians and drivers passing by.
- O3 To minimise the visual impact upon the character of an area.

Provisions

General Requirements

- P1 Outdoor furniture / equipment is to be provided in accordance with that identified in Schedule 5 of the **North Sydney Outdoor Dining & Goods Display Policy**.
- P2 Outdoor furniture / equipment is to be of a commercial grade, to ensure that the safety of patrons and pedestrians.
- P3 All temporary furniture and equipment must be removed from the footpath and stored within the premises, at all times outside of the approved operating hours of the premises.
- P4 Where temporary screens or barriers are used in conjunction with planter boxes, they must uniform in appearance for the premises that they serve, but only where there is more than one screen or planter proposed.
- P5 Temporary furniture and equipment must be stable and not prone to falling over when knocked over by pedestrians or blown over in high winds.
- P6 All furniture and equipment must be strong, durable, waterproof and weather resistant.
- P7 Furniture and equipment should not contain sharp edges, hinges or other moving parts which could be hazardous to the safety of users.
- P8 Furniture and equipment must be capable of being easily moved and folded or stacked for storage.
- P9 Only purpose made structures will be permitted for the display of goods (i.e. do not use make-shift display stands such as milk crates or packing boxes).
- P10 Payment points or garbage bins must not be located in the outdoor area.
- P11 All furniture and equipment is to be constructed of materials and comprise colours appropriate to outdoor use such as powder coated or polished aluminium, brushed or stainless steel, neutral or painted timber, canvas, non-reflective materials and darker colours (white is not suitable as it deteriorates rapidly in the urban environment).
- P12 Ensure that the display of goods is neat and tidy at all times.

Screens or Barriers

- P13 Must not be a permanent structure. However, Council may consider approving a permanent screen or barrier, but only where the applicant can demonstrate that the structure/s:
 - (a) will not reduce the safety of pedestrians using the footpath, and
 - (b) will not adversely obstruct emergency access; and



- (c) will not adversely reduce pedestrian flows; and
- (d) are required to provide added safety protection when located along busy roads, and
- (e) will not detract from the urban streetscape.

P14 Maximum height of 900mm. Screens on sloping sites may be "levelled off" by use of an adjustable telescopic foot or the like.

P15 Maximum individual length of 1.2m. Where more than one screen or barrier is proposed, they must be joined with a common lift-off pedestal. Screens must not be chained or roped together.

P16 The screen or barrier must comprise a stainless steel, aluminium or painted metal frame, with a fabric or vinyl insert which is either bonded or laced to the frame. Glass or perspex inserts and plastic frames are not permitted. However, Council may consider approving glass or perspex insert screens, but only where the applicant can demonstrate that these types of screens will positively contribute to the streetscape and are consistent with other similar screens in the locality.

P17 The screens or barriers must not contain any advertising other than a logo of the type permitted under Schedule 6 of the **North Sydney Outdoor Dining & Goods Display Policy**.

Planter boxes

P18 Must not be a permanent structure. However, Council may consider approving a permanent planter box, but only where the applicant can demonstrate that the structure/s:

- (a) will not jeopardise the safety of pedestrians, and
- (b) will not adversely obstruct emergency access; and
- (c) will not adversely reduce pedestrian flows; and
- (d) will not detract from the urban streetscape.

P19 Non-permanent planter boxes must be capable of being moved from the footpath to overnight storage by a single person.

P20 Maximum individual length 1.2m.

P21 Maximum height 900mm (excluding plants).

P22 Plants are to be of a hardy pot species or in season flowering species (which are changed when not in season).

Heaters

P23 Heaters must not be a permanent structure. However, Council may consider approving a permanent heater/s, but only where the applicant can demonstrate that the heater:

- (a) is attached to the host building in accordance with the manufacturer's specifications; and
- (b) is located a minimum height of 2.7m above the footpath; and
- (c) is located a minimum of 500mm or the manufacturer's specified distance, whichever is the greater, above and to the side of any combustible materials; and
- (d) is capable of being removed without detrimentally affecting the structure or appearance of the building; and
- (e) must not be attached to a heritage item.

P24 Must be located a minimum of 800mm from any kerb (Measured from the edge of the heater canopy reflector).

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- P25 Tabletop heaters are not permitted.
- P26 Heaters must comply with the relevant gas association or electricity authority requirements.
- P27 Electric heaters must comply with the relevant Australian Standards and must be connected to a circuit fitted with an earth leakage cut off device.
- P28 Gas heaters must incorporate an integrated gas bottle and must be fitted with a compliant (in service date) gas bottle with a safety shut off valve (in case of tipping over).

Tables and Chairs

- P29 Chairs and tables must not comprise permanent structures.
- P30 Council may consider approving integrated bench tables and seats remaining in place overnight but they are to be fitted with an anchoring device to the building or to the ground.
- P31 Chairs must not be positioned such that a patron's back is facing the kerb, unless there is a minimum free space of 1.2m between the chair and the kerb or any safety screen/barrier located between the chair and the kerb.
- P32 Chairs and tables are to be maintained in a serviceable condition.

Umbrellas

- P33 Must not be a permanent structure. However, Council may consider approving a permanent umbrella, but only where the applicant can demonstrate that the structure/s:
 - (a) will not jeopardise the safety of pedestrians using the footpath, and
 - (b) are required to provide added protection along busy roads, and
 - (c) will not detract from the urban streetscape.
- P34 Minimum setback of 600mm from the kerb and the umbrellas' edges.
- P35 Must not extend beyond the extent of the designated outdoor dining area, unless it can be demonstrated that an overhang is required to provide adequate weather protection.
- P36 Removable umbrellas must be secured by a stabiliser foot or other restraining device to avoid wind instability, and be capable of being removed in thirty minutes.
- P37 Minimum UV rating of 50 and must be waterproof.
- P38 All umbrellas used by a single premise or a building are to be the same colour and type. Where a locality is predominantly characterised by umbrellas with a single colour or type, then any new umbrellas must be consistent with that characteristic colour or type.
- P39 Gutters may be installed between adjacent umbrellas to provide continuous cover.
- P40 Clear plastic roll down screens may be permitted on umbrellas, but only where they are provided in accordance with the manufacturer's specifications/instructions and are only used during inclement weather.
- P41 Umbrellas must not contain any advertising other than a logo of the type permitted under Schedule 6 of the **North Sydney Outdoor Dining & Goods Display Policy**.

Retractable canopies

- P42 Roll out or retractable canopies are to be fitted and operated in accordance with the manufacturer's specification and must be of commercial grade.
- P43 Any motorised canopy must be capable of being manually retracted.
- P44 Any retractable canopy must be capable of being retracted in a minimum of 10 minutes.



- P45 Council may require a wind assessment to be carried out by a suitably qualified consult if it considers that a site is unsuitable for such a structure.
- P46 Canopies are to be fully retracted at all times outside of the approved operating hours of the premises.
- P47 Canopies must not be anchored to the pavement or other structures on the footpath. However, Council may consider the anchoring of a canopy to the footpath, but only where it can be demonstrated in writing by a qualified wind consultant that such a system is required.
- P48 Minimum setback of 600mm from the kerb. Where there is no kerb, a maximum projection of 2.5m applies.
- P49 Minimum clearance of 3.2m above the pavement, or consistent with prevailing retractable blinds in the vicinity of the proposal.
- P50 Minimum UV rating of 50 and must be waterproof.
- P51 All canopies used by a single premises or building are to be the same colour and type. Where a locality is predominantly characterised by canopies with a single colour or type, then any new canopies must be consistent with that characteristic colour or type.
- P52 Clear plastic roll down screens may be permitted off the sides of a canopy (i.e. not fronting the street), but only where they are provided in accordance with the manufacturer's specifications/instructions and are only used during inclement weather.
- P53 Canopies must not contain any advertising other than a logo of the type permitted under Schedule 6 of the **North Sydney Outdoor Dining & Goods Display Policy**.

Display stands

- P54 Must not be a permanent structure.
- P55 Display stands are to be fitted with a stabiliser foot or locking wheels/rollers. On sloping sites a tether may be required.
- P56 Mobile trolley tables are to have at least 2 wheels which are capable of being locked to prevent movement.
- P57 Display tables must incorporate weatherproof fitted covers for protection during short periods of inclement weather. If goods are to be stored beneath the table, they are to be stored on storage shelves or drawers integrated into the table and not located on the ground. If materials are to be stored under the table on shelves, the table is to be fitted with a skirt or doors to screen the storage areas from public view.

8.5.4 Advertising

Objectives

- O1 To minimise visual clutter on an area.

Provisions

- P1 Limited advertising may be displayed on furniture and equipment, with a maximum of one advertisement per item, limited in size so that it is a minor element only.
- P2 Where logos are proposed, these are to comply with Schedule 6 of the **North Sydney Outdoor Dining & Goods Display Policy**.
- P3 Do not display any general advertising.
- P4 Do not place sandwich boards on the footpath.

8.5.5 Shared table areas

Objectives

- O1 To provide flexibility in the provision of outdoor dining.



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Provisions

- P1 Council will accept applications for shared dining table areas from cooperative community groups and/or businesses. Careful attention must be given to location, layout, design and management of the proposed areas to be assessed by Council. Should approval be granted, a formal management agreement would be necessary to ensure the area is suitably maintained and operated.



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