



Bayside Council

Serving Our Community

Part 7B

Outdoor Dining

Botany Bay Development Control Plan 2013





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7B.1 Introduction

This Part aims to create a high standard of amenity and encourage good urban design within Bayside.

Outdoor dining areas must comply with all other applicable Parts of the DCP, if there is a discrepancy between this Part and other Parts, the Objectives and Controls of **Part 7B – Outdoor Dining** will always prevail.

Council approval must be obtained for an outdoor dining area.

As part of Council's procedure for assessing development applications, all outdoor dining area applications are required to meet the requirements outlined in the following:

- Environmental Planning and Assessment Act 1979;
- Local Government Act 1993;
- Road Act 1993; and
- Liquor Act 2007.

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.



7B.1.1 Development Application Requirements

A development consent is required for the use of Council footpaths under this policy. The NSW Roads and Maritime Services (RMS) must also give their approval for the establishment of an outdoor dining area on a road under the control of the NSW Roads and Maritime Services.

The following requirements detail the specific information to be provided as part of a development application for an outdoor dining area:

- **Commercial use of footpath permit** must be obtained before the establishment of an outdoor dining area. It should be noted that this permit is a separate application to the Development Application.
- **Landowner consent** is required for an outdoor dining area that is located within a private property or a written request for owners consent for Council owned land.
- **Evidence of development consent** for the primary use of the shop as a food and drink premise must be submitted as part of the development application.
- **Plans, sections and elevations to scale** that clearly show the following:
 - the existing conditions where the outdoor dining area is proposed;
 - the proposed location of the outdoor dining area and its relationship with the adjoining properties;
 - property boundaries;
 - adjoining uses;
 - the location of other outdoor dining areas within 20 metres of the site;
 - furniture layout cross referenced with model types and materials;
 - exit doors and stairways, including any emergency exits;
 - parking spaces adjacent to the proposed outdoor dining area, including on-street parking;
 - street intersections and traffic lights;
 - all street infrastructure within close proximity of the site (i.e. 10 metres) such as street trees, including tree canopy; public street furniture; bus stops and shelter; fire hydrants; light/telegraph poles; telecommunication switch boxes; Australia Post boxes; and signage; and
 - dimensions of the outdoor dining area, pedestrian and street infrastructure clearance, and other clearances (including sightlines, distance from street kerb, street intersection, loading areas and critical manoeuvring areas).
- **Photographs** showing the existing condition of the site and neighbouring properties (i.e. façade of building; the location of the proposed outdoor dining area; and street character).
- **Plan of Management** must be submitted as part of the development application and address the following issues:
 - Proposed trading hours for the outdoor dining area;
 - Furniture storage;
 - Number of staff;
 - Toilet facilities;
 - Noise and Odour Management;
 - Cleaning program;
 - Waste Disposal; and
 - Pest Management.
- **Justification** in the form of a Statement of Environmental Effects showing compliance or non-compliance with outdoor dining provisions in the DCP.



7B.2 Design Requirements

Objectives

- O1** To provide guidance to applicants, residents and communities in relation to outdoor dining;
- O2** To facilitate the creation of a cosmopolitan café atmosphere in suitable locations;
- O3** To enable the effective use of footpaths such that they enhance the expression of local character and identity;
- O4** To ensure access, safety and amenity of public footpaths is maintained, while facilitating active and lively street frontages;
- O5** To ensure outdoor dining areas do not compromise the safety and accessibility of other users within the public areas;
- O6** To ensure outdoor dining areas are compatible with the neighbouring properties and predominant land uses of the locality; and
- O7** To maintain the amenity of the neighbouring properties.



7B.2.1 General

Controls

General

- C1** Applicants must demonstrate that a proposed outdoor dining area:
 - a. Will maintain existing levels of public access and safety for the footpath and the adjacent road; and
 - b. Will not adversely impact upon amenity or streetscape.
- C2** Outdoor dining areas will only be permitted in conjunction with a new or an existing food and drink premises or shop for which consent has been granted.
- C3** Outdoor dining areas must be located directly adjacent to the associated food and drink premise. The area may not extend in front of neighbouring properties.
- C4** A proposed outdoor dining area must be consistent with the objectives of the zone, and if relevant the Locality Character Statement contained within **Part 5 – Business Centres** of this DCP.
- C5** Outdoor dining areas may not be suitable to all premises of the Bayside Local Government Area. All outdoor dining areas must consider the likely impact on the existing streetscape, conservation areas and nearby heritage items.

Accessibility

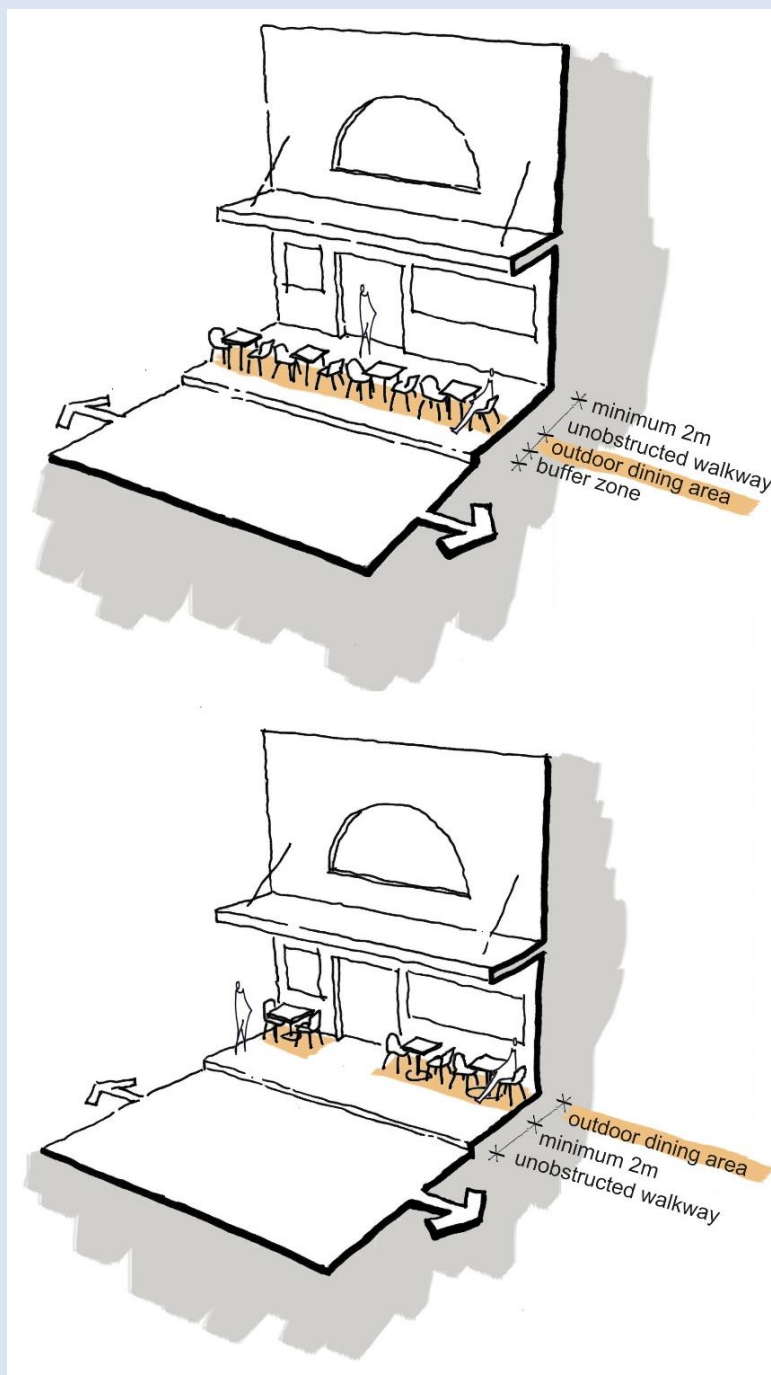
- C6** Encourage outdoor dining in areas that are located within walkable distance from a centre or public transport node.
- C7** Outdoor dining areas must not compromise the safety and accessibility of other users within the public areas, or compromise emergency personnel access to the adjoining areas and buildings.
- C8** The pavement must be capable of supporting outdoor dining in terms of not being damaged and able to provide an even surface for tables and chairs.

Location

- C9** Locate any outdoor dining area in keeping with adjacent footpath trading activities, existing public utilities, landscaped areas and open spaces to provide an unencumbered pedestrian walkway of 2.0m width. This walkway may be provided adjacent to the building, or to the kerb (see **Figure 1**). If located near the kerb, the appropriate buffer zones must be provided in accordance with **Table 2**.
- C10** Outdoor dining areas must be located away from arterial roads or fast moving traffic where the safety and comfort of the patrons may be compromised.



Figure 1. A minimum 2m unobstructed walkway must be provided





Clearance

- C11** An outdoor dining area and any associated structures must not interfere with the use and access of public transport.
- C12** Outdoor dining areas will not impede access to infrastructure and must comply with the minimum clearance requirement set out in **Table 1**.

Table 1 – Minimum clearance from infrastructure structures.

Object	Minimum Clearance from Objects
<i>General and Essential Items</i> Bicycle hoops, Bus shelter, Parking metre, Payphones, Public Bins, Tree and tree plots, Communication poles, Fire equipment Stores, Fire exit doors, Fire hydrants, Hose reel cupboards and Substations	1200mm
<i>Other Items</i> Bollards, Poles and Other similar objects	500mm

- C13** Outdoor dining areas must comply with the minimum distance requirement (as measured from the face of the kerb) set out in **Table 2**.
Note: Council reserves the right to vary clearances depending on pedestrian and vehicular movement, the width of existing footpath and concerns from other users.

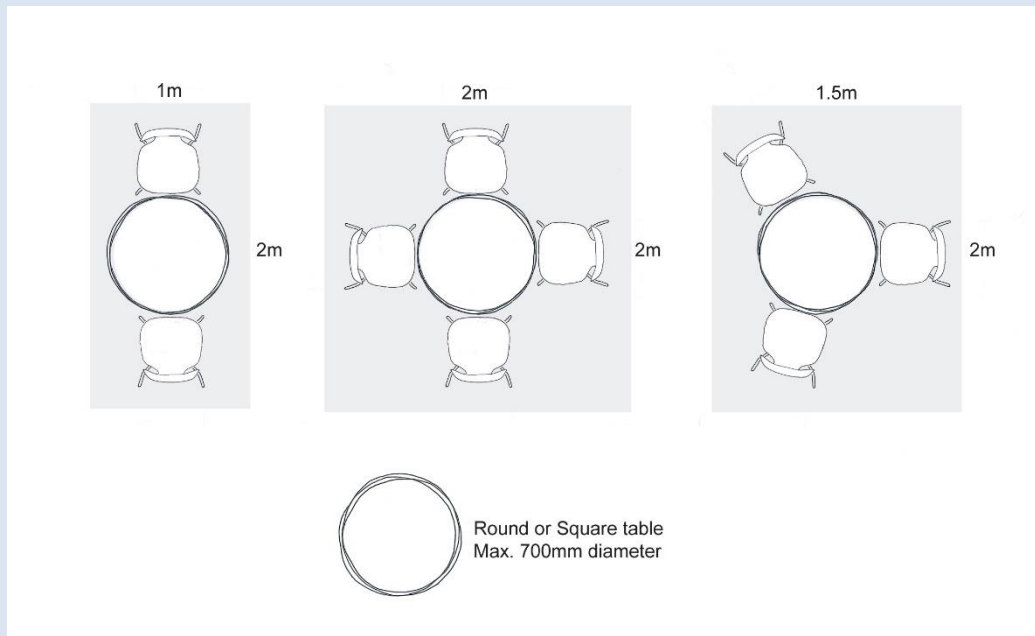
Table 2 – Minimum clearance from kerb.

Parking Restrictions	Minimum setback from kerb
Normal parking conditions	800mm
Loading zones	900mm
No stopping	1,000mm
Disable parking	1,500mm
Bus stops	1,500mm

Layout

- C14** The number of tables and chairs which can be placed on a footpath for outdoor dining will be strictly limited and based upon the area and dimensions of the leased space. No freestanding A-frame style advertisements or 'menu boards' will be allowed in leased areas or other public spaces. The guidelines in **Figure 2** will apply.
- C15** Layout and orientation of the outdoor dining area must be appropriate to the available space, allowing patrons and staff room to move between furniture comfortably.
- C16** All furniture and equipment must be located within the approved area at all times, as shown on the furniture layout plan submitted with the Development Application.
- C17** The installation of fixed or temporary planter boxes must be in accordance with the public domain plans for a local centre. Contact Council's landscape department for more information.

Figure 2. Dimensions and layout for Outdoor Dining Areas.



Sightlines

- C18** Provide clear sight lines from within the premises to the outdoor dining area.
- C19** Outdoor dining area layout and equipment must not obstruct the sight line of pedestrians and drivers and will comply with relevant policies and guidelines.

Hours of Operation

- C20** The hours of operation for the outdoor dining area must not exceed the approved hours of the associated food and drink premises.
- C21** Trading hours for outdoor dining area may be restricted if it is located within a predominantly residential context.

Facilities

- C22** Outdoor dining area may result in an increase in the overall seating capacity of the premise. Hence, additional toilet facilities and car parking for the use of customers and staff may be required.

Cleaning and Maintenance

- C23** Outdoor dining area permit holders are to clean the area daily and repair any damage to the footpath caused by the outdoor dining area.



C24 Outdoor dining areas must be presented in a tidy condition at all times, and are to be maintained on a daily basis, including removal of litter and food scraps.

C25 The Plan of Management is to outline the precautionary measures that will be undertaken by the permit holder to minimise damage on Council's property or public footpath.

Consumption of Alcohol

C26 Alcohol may be supplied and consumed in the proposed outdoor dining area subject to permit issued by the NSW Office of Liquor, Gaming and Racing and any approval imposed by Council.

Signage

C27 The provision of signage is to be included in the Development Application for any outdoor signage area. Any signage, fixed or temporary, is to be located outside of the unencumbered 2m pedestrian zone.



7B.2.1 Environmental Requirements

Noise

- C1** Applicants are to demonstrate appropriate measures taken to minimise noise to adjacent premises.
- C2** Speakers (located within a food and drink premises) must not be positioned toward the street frontage to direct the playing of music towards the outdoor dining areas.

Lighting

- C3** Sufficient lighting is to be provided to ensure the safety and comfort of the patrons and pedestrians, and must not adversely impact adjoining premises.

Heating Devices

- C4** If heating devices are proposed, details of the type, location and design must be submitted as part of the development application.
- C5** Heating devices are to be located wholly within the proposed outdoor dining area, must comply with relevant authority requirements, and be used in accordance with the manufacturer's instructions (i.e. clearance from other combustible objects).
- C6** Portable gas heaters are only permitted for well ventilated outdoor dining area.



7B.2.2 Furniture Requirements

General

- C1** All furniture and equipment must be easily stored within the premises, and must not be permanently installed in the outdoor dining area. In the event of an emergency, all furniture and equipment must be easily cleared within 1 hour.
- C2** All furniture and equipment must be stable and properly secured to prevent falling over when knocked by a pedestrian or strong wind.
- C3** All furniture and equipment is to be strong, durable, waterproof and weather resistant.
- C4** Outdoor furniture is to make a positive contribution to the existing character and streetscape, and is subject to the approval of the Council.
- C5** Tables and chairs for an outdoor dining area must not exceed the total shown on the approved plan.

Umbrella and Shade Structures

- C6** Utilise existing awnings for weather protection. Council may consider the use of removable umbrellas and retractable blinds.
- C7** All umbrellas and shade structures must be located wholly within the proposed outdoor dining area, and must be of the same type and colour.

Screens or Barriers

- C8** Screens or barriers will be considered on a case by case basis, subject to suitability of location in terms of safety and character, and traffic conditions.
- C9** Bollards are required if an outdoor dining area is on a Classified Road, or other high-traffic volume road, where no vehicular parking is available adjacent to the outdoor dining area and must comply with AS 3845.
- C10** Complete enclosure of an outdoor dining area is prohibited.

Planter Boxes

- C11** Non-permanent planter boxes must be removed at end of trading hours and stored within the premises.
- C12** Permanent planter boxes are only permitted on a kerbside location, in accordance with Council's local centre public domain plans.
- C13** Plants are to be properly maintained by the permit holder, make a positive contribution to the character of the streetscape, and must not obscure the vision of vehicle drivers.



7B.3 Use of Laneways for Outdoor Dining

Council may 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 and outdoor dining.

Before Council has the power to grant a development consent under Section 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, it needs to be satisfied that the laneway has been appropriately closed to vehicular access pursuant to s.116 of the *Roads Act 1993*.

The creation of pedestrian access and outdoor dining areas in the road reserve on a temporary basis or otherwise will require the lodgement of a Development Application for outdoor dining. 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.