

# Outdoor Dining and Footpath Merchandise Guide



northern  
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council

# Outdoor Dining and Footpath Merchandise Guide

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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 through 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 for which Council manages, 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 notify Council by submitting a Food Business Owner Details form with up to date business details.
- 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 along 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 One.
- Details of the all the proposed furniture such as colour photographs, brochures and dimension specifications.
- Proof of a Certificate of Currency (Public Liability Insurance) for a minimum of \$20 million dollars.
- Ensure that the application form is fully completed (available from Council's website) and includes contact details and signatures. 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 footways safe and accessible for all pedestrians.

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 One).
- The need to provide a clear visual pathway in areas where this is of designated importance.
- The closeness 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 two 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 landlord/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 that streets do not become cluttered and obstructed by the placement of furniture and other items.

Streets that are physically and visually cluttered can make business identification and general way finding more difficult and can detract from the street attractions. Signage, branding and advertising can all add to visual clutter and take away from the positive characteristics of the street.

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

Barriers or structures around the area give the appearance that the public space has privatised and become an obstacle to access and movement 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 in 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 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.
- Table- top heaters are not supported.
- 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 yearly with service records kept to be produced on demand.
- Must not exceed the maximum of one (1) per table.

## Blinds

Encourage privatisation of the public space by enclosing the area and obstruct the view of the building façade or view pathway and are therefore not supported.

## 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.
- No rope or chain barriers are supported.
- The use of weather protection screens is not supported by Council.

## 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.

### 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. Council will not support an application for Primary Service Authorisation.

The consumption of alcohol in outdoor dining areas will only be supported if licensed and can only be served in conjunction with a meal.

No outdoor dining approval will be granted for the consumption of alcohol only.

## 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 are 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 under the policy.



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 three (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 will 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 three (3) month's 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 - Footpath Merchandise

### 3.1 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 proposal 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 two (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.

## 3.2 Fees and Bonds

### Application Fee

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

Application fees currently charged are based on the number of square metres used in the footpath Merchandise display area for the period of the term.

### Security Bond

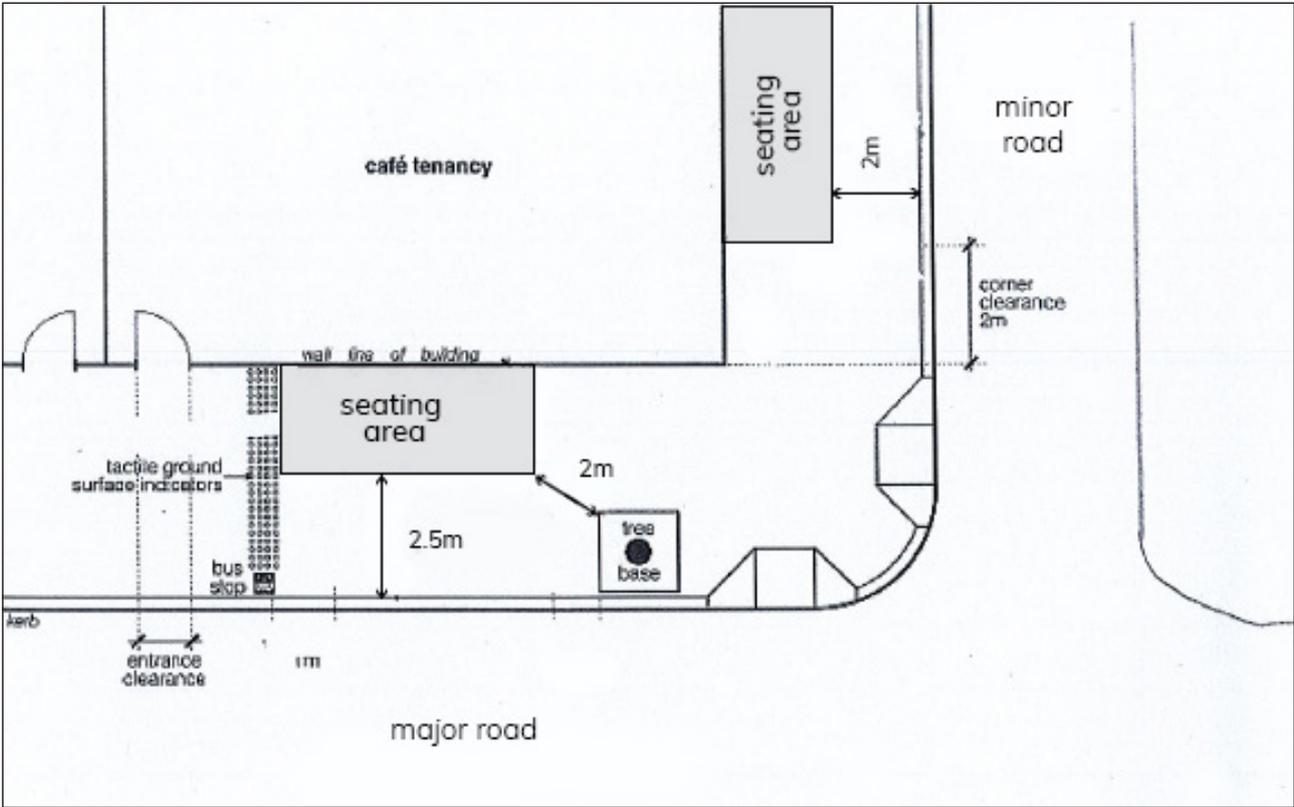
The applicant shall pay a Security Bond on application to use of the Footpath Merchandise area. This amount shall be in accordance with the Council's Schedule of Fees and Charges. The Security Bond is intended to provide insurance for Council where damage to Council property has occurred, rent for the footpath merchandise area has not been paid and similar issues.

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



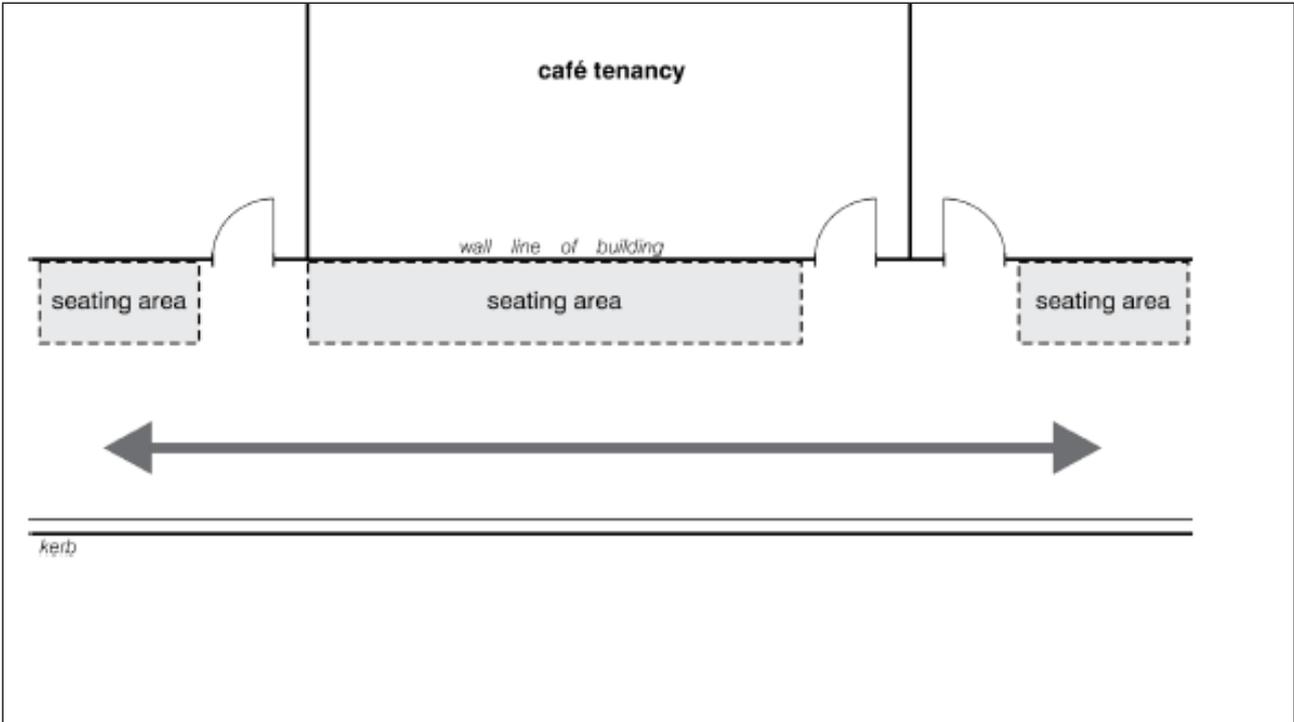
Appendix

1.



Appendix

2.



Appendix

3.





## Appendix

### 4.

#### Current Footpath Merchandise Exclusion Zones

- The Corso, Manly