



## Outdoor Dining Code

(April 2009)

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## 1. INTRODUCTION

This code aims to permit the establishment of business opportunities and to create a more vibrant and cosmopolitan atmosphere in the commercial centres of Hornsby Shire.

This code establishes Council's statements and principles when dealing with applications for use of the public footway for outdoor dining. The code applies to a range of businesses including cafes, restaurants and sandwich shops which meet the definition of "restaurant" under the Roads Act, 1993.

The code will allow the approval of business use of footway areas for dining purposes; which may include tables, chairs, shade structures, and planter boxes adjacent to businesses where there is adequate footway width for pedestrian circulation. Provisions for other uses such as street stalls, newspaper stands, A-frames, etc. are not subject to this code.

## 2. DEFINITIONS

**Approved Operator:**

The proprietor of a restaurant/take away/cafe who has been granted an approval by Hornsby Shire Council to operate an outdoor dining area.

**Footway:**

That part of a road as is set aside or formed as a path or way for pedestrian traffic.

**Furniture:**

Any movable or fixed manufactured item to be used in association with the outdoor dining area.

**Outdoor dining area:**

A restaurant the subject of an approval under Section 125 of the Roads Act 1993.

**Restaurant, Café, Food outlet:**

Premises in which food is regularly supplied on sale to the public for consumption on the premises.

## 3. PURPOSE

The purpose of this code is to enable business use of the footway in areas adjacent to business premises for the purposes of eating food and to ensure a pleasant and safe environment for shoppers and patrons without compromising the safety or amenity of the public domain or pedestrians using the public footway or adjoining public spaces.

## 4. OBJECTIVES

The objectives of this code are as follows:

- To promote a high quality visual environment.

- To support local economic development and commercial vitality.
- To ensure outdoor dining contributes to the improvement (i.e function and safety) of the streetscape.
- To ensure that pedestrians and other forms of traffic are not unduly obstructed by outdoor dining.
- To ensure that outdoor dining contributes to the amenity of adjoining or nearby properties.
- To ensure outdoor dining is compatible with other community uses of public space.
- To ensure that Council clearly communicates its desires and responsibilities for outdoor dining across the LGA and that the controls are easily understood and regulated.

## **5. LEGISLATIVE PROVISIONS**

The Roads Act 1993 and the Local Government Act 1993 generally require that a person shall not carry out any activity on a public road or place without the approval of Council.

Sections 125, 126 and 127 and in some cases Sections 137-139 of the Roads Act 1993 allow Council to approve the use of a footway for restaurant purposes, as long as using the footway for this purpose is not taken to constitute a public nuisance and does not give rise to an offence against the Roads Act or any other relevant legislation.

Section 68 of the Local Government Act 1993 allows Council to approve the placing of articles on or to overhang the footway.

Other relevant legislation includes the Food Act 2003 and Food Standards Code.

## **6. LOCATION REQUIREMENTS**

This code applies to footways and roadways, public plazas and public squares excluding the Hornsby Mall, under the ownership or management of Council, which would ordinarily be used by the public for pedestrian movements or recreation across Hornsby Local Government Area. This code should also guide any privately owned and managed spaces to achieve consistency between the public and private domain.

It applies to all outdoor dining areas where food and beverages are served and the approval process requires an application for permit to occupy. Please note that some conditions differentiate between the Hornsby Mall and the rest of the Hornsby Local Government Area, as the Hornsby Mall is excluded from this code.

### **a) Precincts**

For the purpose of this code, the Hornsby Shire has been segmented into various precincts for the assessment of business use of the footway. This segmentation reflects local conditions, opportunities and constraints.

The precincts are described with specific requirements in Appendix A.

## **b) Maintaining Footway Widths**

To ensure that access and equity objectives are met, there will be a minimum width for pedestrian circulation as detailed in the precinct guidelines (Appendix A). This will be at least 2 metres continuously maintained for the clear passage of footway users. Council may on merit of the situation consider variation to this standard where the applicant can show that the proposal is consistent with the surrounding environment, adequate pedestrian circulation is maintained or that agreement has been obtained from the Hornsby Council Access Committee. Where the remaining width for pedestrians is less than 2 metres, suitable handrails or appropriate barricades shall be installed along the kerbside as per Council's requirements to improve safety for all.

## **c) Access**

Minimum public access along the footway shall be 2 metres and this must be left in a clear and consistent lane along the kerb line or building line as determined by Council. If outdoor dining is to be located adjacent to the kerb, then a clear space of 600 millimetres is to be maintained behind the kerb to allow for parked vehicles to open kerb side doors.

Business use of footway areas is permitted, with the approval of Council, on footways immediately in front of the shop front in locations that do not cause an impediment to other footway users. For corner shops or those that have more than one street frontage, Council may consider having separate permits for each part of the footway, together with different permissible operating hours to address the extent of use and minimise impact on the surrounding environment and local amenities.

Business use of footway areas or use of shade structures may be prohibited or restricted, in locations where they obstruct the clear view line of pedestrians or motorists. Clear view lines allow pedestrians to view on-coming traffic and motorists to observe pedestrian movements.

Extension of an outdoor dining area where permitted by Council must be directly linked to the current outdoor dining permitted area, except where the alignment of parking spaces prevents this. Extension of outdoor dining beyond the principal premises is dependant on permission being granted from the operator and the property owner of the adjacent business. Should that permission be withdrawn, or the adjacent business change operation, approval will be withdrawn, and outdoor dining must be removed immediately. All structures must be removed at the cost of the permit holder.

Where Council is the adjoining landlord (eg a laneway); only half the space will be permitted to be used by the neighbouring restaurant. This will be required unless the landowner on the opposite side of the laneway consents to the use of the entire footway area. Where an extension of the outdoor dining area has been granted, the permit holder must take responsibility for any liability issues that are associated with the outdoor dining area.

## **d) Existing streetscape elements**

Whenever possible, an outdoor dining area should visually relate to and be physically aligned with, existing features and permanent elements of the streetscape and landscape such as trees, landscaping features, lighting, bollards, etc.

## **e) Circulation, safety, health and convenience**

In suitable locations a free space of not less than 2 metres in width is to be maintained between the adjoining restaurant and the approved outdoor dining area to ensure safe circulation of pedestrians and those users of mobility aids such as walkers and scooters.

It is essential that outdoor dining areas are kept clean and tidy; that care is taken to ensure that food is handled and presented in a hygienic manner; and that appropriate public risk insurance is in place, which indemnifies Council's interests. As with any restaurant or eating facility, the approved outdoor footway area is subject to the Food Act 2003 and Food Standards Code. In

particular an approved operator will be required to actively discourage patrons from feeding birds within the outdoor dining area. This may be achieved by the inclusion of the words "Do not Feed Birds" on menus or other similar material.

When the outdoor dining area is not in use by the approved operator, all moveable furnishings are to be removed and the approved area shall be made available to the public for normal pedestrian use.

#### **f) Suitable locations**

In accordance with Section 125 of the Roads Act 1993 outdoor dining areas for commercial use may be approved where conditions are favourable for their operation. Applicants will be required to take public safety, pedestrian and other relevant needs into consideration to ensure that no unreasonable pedestrian hazards will be created in using any part of the footway as an outdoor dining area.

Outdoor dining areas must not adversely impact on:

- Designated Fire Exits and Fire Hydrants.
- Emergency Access Areas/routes.
- Public Utility Infrastructure.
- Pedestrian thoroughfares.
- Pedestrian /vehicular movements.

The following issues also need to be considered when determining the location of an outdoor dining area:

- Ground Surface is suitably constructed and sufficiently level with a gradient of less than 1 in 15.
- The outdoor dining area is located directly in front of a restaurant.
- The outdoor dining area does not obstruct access to public utilities.
- The outdoor dining area will not cause any obstruction to signage located within the Mall.
- Power and light poles, Street Litter Bins, Post Office Boxes, and Fixed Signage are specifically excluded from any outdoor dining area.

## **7. FURNITURE REQUIREMENTS**

#### **a) Perimeter Barricades (excluding Bollards)**

- Outdoor dining areas must be easily accessible from the public footway and must present an open and inviting image to entice participation. Planter boxes may be used to physically define the perimeters of the outdoor dining area. Enclosures should be kept to a minimum. Barricades, safety rails, bollards, etc. may be permitted where required for safety reasons. All traffic safety barriers must be provided in accordance with Australian Standard 3845.
- The use of framed fabric or any other style of low-height barriers, including planter boxes within the public domain must be carefully designed and selected to ensure minimal impact on the use, enjoyment and safety of pedestrians and patrons. Barriers may be considered between adjoining café areas to have clear demarcation between business activities. Barriers must be removed from the footway when the business is not open. Barrier screens must not be used as an opportunity for advertising. Products, specials or sales may not be displayed on the screens. Pedestrians should not be forced onto the

road carriageway by outdoor dining activities or other non-permanent items/structures on the footway.

- Planter boxes may be considered in open areas, such as plazas or footway widening sections which are separated from the main pedestrian desire lines. The planter boxes must be well-maintained by the permit holder. Council reserves the right to order the removal of planter boxes that are not properly maintained including the consistent provision of approved high-quality flowers or vegetation. Permanent planter boxes will only be considered on footway areas where the footway has been widened for specific business use.
- When the business use is approved on the building line, suitable solid high contrast barriers should be installed on either side of the area being used for a business purpose. The height of any solid barrier should be between 900 millimetres and 1.2 metres in height. Solid barriers may be in the form of planter boxes containing vegetation to a total height between 900 millimetres and 1.2 metres.
- Any proposed transparent solid barrier (such as Perspex) should comply with AS 1428.1 Access and Mobility and should be clearly marked for the full width with a contrasting line.

#### **b) Bollards**

- Barricades, safety rails, bollards, etc. may be permitted where required for safety reasons. All traffic safety barriers must be provided in accordance with Australian Standard 3845.
- Bollards are to be placed between planters parallel to the kerb, 600 millimetres behind the kerb. Bollards and concrete footings are to be installed in accordance with the manufacturer's specifications and recommendations.

#### **c) Signage/Advertising**

The following controls apply to all advertising/signage to be displayed on the footway.

- Signage is permitted only on umbrellas.
- Only one sign is permitted per umbrella.
- Signage on umbrellas must relate to the business to which they serve. The signage may include the business name, an associated corporate name (logo) or product. For example, a café may have an umbrella sign which advertises their business name OR a coffee manufacturer OR the particular type of coffee sold at the premises.
- Signage on each umbrella must be consistent with all other umbrellas on the permitted area.
- No other signage will be permitted on any other structure on the footway. This includes signage on furniture, barricades or A-frame signs.

#### **d) Lighting**

Any proposed lighting must be included in the application for approval by Council and be in accordance with the relevant Australian Standards and Council's Development Control Plan – Outdoor Advertising.

#### **e) Public Assets**

The removal/relocation of any Council assets, such as rubbish bins, existing street furniture and planter boxes, shall be subject to Council approval and will be at the applicant's cost.

The removal/relocation of any public utilities/infrastructures, such as the RTA's traffic control boxes, Sydney Water's drainage /sewerage pits, Telstra's telephone boxes, shall not be permitted unless justification on public benefit can be made to Council and approvals have been obtained from the relevant authorities. Works will be carried out at the applicant's cost.

Access required by public utilities will require restoration to pre-work standards and be at no cost to Council.

#### **f) Public Health & Safety**

Each applicant is responsible for the cleanliness and tidiness of the area in front of the premises and the immediate surrounds used for outdoor dining. Tables must be cleaned of food scraps immediately after customers leave so as not to attract birds or vermin. All debris must be swept up and disposed of appropriately.

All spills must be attended to immediately.

The applicant is responsible for maintaining and storing all furniture items and this is to ensure that the furniture is kept neat, tidy and clean when in use. After close of business, all furniture must be removed from the footway area and the area should be swept and stains removed.

**Note:** Debris must not be swept or hosed into the gutter. This action constitutes a pollution offence for which penalties may be incurred.

Where waste receptacles are provided on the footway for the collection of disposable eating utensils it is the responsibility of the applicant to ensure that the receptacles are covered so as not to attract birds or vermin, are cleaned to ensure no odours are produced, and are removed after close of business. All waste from the receptacles must be disposed of by the applicant in the approved waste collection facility associated with the premises.

**Note:** Waste from receptacles must not be disposed of by the applicant in Council provided street litter bins.

#### **g) Smoking**

Smoking is NOT permitted in any area which is covered or substantially enclosed as defined in the Smoke-free Environment Act 2000. The designated smoking area associated with footway dining must have at least 3 sides open; this includes areas which have plastic drop down sides.

#### **h) Heating**

Any heating proposed for use in conjunction with an outdoor dining area must be to Council's satisfaction, to ensure the safety and amenity of patrons and the general public and be incorporated in the details provided with the outdoor dining permit application.

Free standing heaters located within outdoor dining areas must comply with Australian Standard AS 1596 (storage and handling) and AS 4565 Patio Heaters and must be certified by the Australian Gas Association. When not in use the free standing heaters are to be removed from the approved outdoor dining area.

Heating devices must be contained wholly within the outdoor dining area and are to be positioned and secured to ensure that they will not cause any injury to patrons or pedestrians. All heating devices shall possess automatic turn off devices in the event of overturning.

Direct access to the gas mains and use of electrical extension cords are not permitted. All costs associated with the provision of outdoor heating shall be borne by the applicant.



### **i) Umbrellas**

Umbrellas are appropriate for providing shade and shelter in exposed locations. The main factor to be considered in respect of the installation of umbrellas within an outdoor dining area is that they must have mechanisms to ensure that they are at all times securely fixed to withstand wind. While the installation of permanent umbrellas is desirable, Council will give consideration to the installation of temporary umbrellas in areas where permanent umbrellas are not practical. All umbrellas shall not extend beyond the approved outdoor dining area.

Temporary umbrellas must be a combination of powder coated or polished aluminium, brushed or stainless steel, stained or painted timber, canvas or plastic. Temporary umbrellas must be removed or closed in extremely windy conditions. The underside of the umbrellas must be a minimum of 2 metres above the ground.

### **j) Furniture Style**

Tables and chairs must be powder coated or polished aluminium, brushed or polished stainless steel, stained or painted timber, or a combination of these materials. Note: Plastic resin or other lightweight material will not be permitted. The use of mismatched tables and chairs will not be permitted. The tables and chairs must be of the same "family group" to ensure visual unity and enhancement of the surrounds.

Outdoor furniture should make a positive contribution to the street environment. A furniture style that is practical and elegant and integrates well with the surrounding streetscape is encouraged. The furniture must fold or stack for storage, and be readily removed and stored within the associated indoor premises. All furniture items will be subject to Council's approval. Favourable consideration may also be given to well designed, creative, and individual alternatives. Furniture colour schemes must form part of any application. Furniture for outdoor dining is required to meet the following criteria:

#### Structure

The furniture should be strong, durable, waterproof and weather resistant, designed for commercial outdoor use. The design must not contain parts that are likely to cause damage to the pavement. Public safety and comfort must be considered. Sharp edges, and hinges or other moving parts must not present a potential hazard to patrons or pedestrians.

#### Materials and colours

Tables, chairs, and umbrellas may be powder coated or polished aluminium, brushed or stainless steel, natural or painted timber or canvas. Suitable colours are natural, camel, terra cotta, brunswick green or black. Dark colours are recommended and surfaces such as table tops must be non-reflective. White table surfaces, chair seats and backs are discouraged due to the tendency for rapid deterioration and discolouring in the urban environment.

## **8. APPLICATIONS AND APPROVALS**

The following are standard conditions that are applied to approvals for all outdoor dining use of the footway. Additional requirements for each precinct will be in accordance with section 6a.

1. This approval is for the use of the footway adjacent to xxxxxxxxxxxxxx for the term of twelve (12) months. The standard requirements, terms and conditions contained in the permit are to be the conditions of the approval. The term of approval may be extended yearly at Council's discretion.

2. This approval is subject to the applicant and its guarantors if the applicant is a company, entering into an agreement attached to this approval which when executed by the applicant, any guarantors and Council will constitute a permit to occupy and use the approved footway area.
3. The permit holder must pay to the Council on or before the Commencement Date a Bond by a bank cheque or bank guarantee. The Council may use the Bond to make good the cost of remedying any breach of this permit by the permit holder. The permit holder must replace any amount used by the Council within 14 days of demand.
4. The requirements, terms and conditions contained in the permit are conditions of this approval including the provision of paying permit fees by one full payment of cash or cheque upfront or paying the permit fee quarterly by direct debit. A failed direct debit may incur an administration fee in accordance with Council's Schedule of Fees and Charges
5. Tables and chairs are not to be placed outside the approved area under any circumstances.
6. The outdoor furniture shall not pose any potential safety hazard, especially with sharp edges or moving parts, to passers-by, patrons, or employees. The furniture shall be firmly secured to avoid risk of moving and falling over in windy conditions or other circumstances. The furniture shall be removed in high wind conditions.
7. The outdoor furniture shall be stackable, foldable or easily dismantled so that it can be removed and stored away.
8. Appropriate footway service shall be provided which includes as a minimum the removal of any dirty plates, cups, cutlery, footway staining, and rubbish on a regular basis during each operating day. As such the area and its surrounds shall be maintained in a clean, tidy and hygienic state.
9. Paper, foam or plastic plates, cups and cutlery shall not be used for footway outdoor eating areas. The selling of any alcoholic or intoxicating liquor is only permitted in the public/footway area if the appropriate licence from the State Liquor Licensing Authority has been obtained and the area has not been designated an alcohol free zone.
10. No business or financial transactions shall be carried out on the footway. Such activities shall be carried out wholly within the confines of the premises. This does not include the giving and taking of bills, and associated tips and change.
11. No part of the footway shall be used as a permanent storage place for any item/s.
12. Where possible, the applicant must provide access in accordance with AS 1428 for people with disabilities.
13. No advertising signs (including menu boards) are permitted on the footway area without Council's consent.
14. Any aluminium furniture shall have a powder coated or polished finish.
15. Noise - Amplified music is permitted in business use of footway areas, providing it is recorded music and played at not more than 5dba above background noise level and properly licensed. Any amplified music or noise generated from the use of the footway area is to comply with the Protection of the Environment Operations Act – Noise provisions and be approved by Council.
16. Smoking is NOT permitted in any area which is covered or substantially enclosed as defined in the Smoke-free Environment Act 2000. The designated smoking area associated with footway dining must have at least 3 sides open; this includes areas which have plastic drop down sides.
17. Access for service authorities may be required from time to time. No rebate of Council's fees shall apply unless the area is disrupted for more than 2 weeks in a year.

#### **a) Applications**

Proprietors operating an outdoor dining area are required to obtain the necessary permits from Council. In most cases an applicant will be required to obtain consent and a Form of Approval granted in accordance with Section 125 of the Roads Act 1993.

Applicants will be required to complete an "Outdoor Dining Application Form" and submit the completed application form together with the relevant plans to:

The General Manager  
Hornsby Shire Council  
PO Box 37  
HORNSBY NSW 1630

All costs associated with completing and lodging the necessary applications are to be met by the applicant.

Any outdoor dining area intending to serve alcohol requires a separate licence under the Liquor Administration Board, Office of Liquor, Gaming and Racing telephone 9995 0750.

#### **b) Application requirements**

Applicants need to provide the following with their completed application form:

- Photographs of all of the proposed furniture.
- A clear scaled plan of the area proposed for use as an outdoor dining area including defined boundaries and existing infrastructure such as trees and surrounds, power & light poles, rubbish bins etc.
- A clear scaled plan of the proposed layout and orientation of the tables and chairs.
- Details of any other furniture elements proposed for inclusion in the outdoor dining area (eg lighting, heating, umbrellas, planter boxes etc)
- Fees if applicable, in accordance with Council's Schedule of Fees and Charges.

#### **c) Notification and approval**

Council will notify the outcome of the application for approval to operate. Where appropriate, the application may be referred to the Traffic Committee for comment on the possible impact of the proposed operation on traffic management. The term of an approval will be limited to twelve (12) months.

#### **d) Conditions**

The applicant must comply with the conditions set out in the permit and the consent.

#### **e) Approval fee**

There is an approval fee for the use of an outdoor dining area, charged per square metre per annum, based on market valuation in accordance with Council's Schedule of Fees and Charges. A property damage bond equivalent to two months fee is to be lodged by an approved operator with Council.

#### **f) Renewal of Approval**

The permit may be considered for renewal following a review of the local environmental factors and may be cancelled or amended if deemed necessary, specifically:

- if the approved operator fails to comply with the conditions contained within the permit; or
- to account for any altered local environmental conditions.

## **APPENDIX A – Precinct specific requirements**

1 - Hornsby Eastside (excluding Hornsby Mall)

2 - All other precincts

### **1 - Hornsby Eastside (excluding Hornsby Mall)**

#### **Assessment Principle**

The layout and orientation of furniture should be chosen according to the extent and shape of the available space. It shall provide enough space and practicability to ensure patron comfort and deter patrons from moving furniture outside the approved outdoor footway restaurant area. The importance of this issue is stressed to provide permanent unobstructed access for all people, including wheelchair users, visually impaired, electric powered scooters, prams etc. Approved operators are advised that they should make themselves aware of their obligations under the Disability Discrimination Act 1992.

Applicants will be required to submit with their application a scaled plan showing the layout and orientation of all furniture proposed to be used in association with the outdoor footway restaurant area.

#### **Enclosures and weather protection**

Outdoor footway restaurant areas should enrich the pedestrian experience and public life. It is therefore important that they present an open, inviting image and are easily accessible. Enclosures should be kept to a minimum and permanent barricade fencing with planters is not permitted.

#### **Planter Boxes / Boundary Structures**

Planter boxes may be used to physically define the perimeters of an outdoor footway restaurant area to prevent pedestrian conflict and ensure the patron's safety. Planter boxes should not exceed a total length of 1.8 metres and the total height, including the plants, should not be more than 1.2 metres. The planter boxes are to be maintained in good condition by the outdoor operator and no advertising is to be placed on the planter boxes. All plants located within the planter boxes are to be healthy and well watered by the approved operator. The approved operator will ensure that unhealthy or dead plants are removed and replaced as necessary.

The style, design and colour of all planter boxes proposed to be installed by an approved operator shall be subject to the approval of Council.

Council will give consideration to the installation of contemporary removable boundary structures or safety railing. Such elements shall be constructed of powder coated or polished aluminium, brushed or polished stainless steel framing and contain suitable clear panel inserts.

#### **Umbrellas**

Umbrellas are appropriate for providing shade and shelter in exposed locations. The main factor to be considered in respect of the installation of umbrellas within a footway restaurant area is that they must have mechanisms to ensure that they are at all times securely fixed to withstand wind. While the installation of permanent umbrellas is desirable, Council will give consideration to the installation of temporary umbrellas in areas where permanent umbrellas are not practical. All umbrellas shall not extend beyond the approved outdoor footway restaurant area.

**Umbrellas- Permanent**

The dimensions of permanent umbrellas shall be no greater than 4 metres x 4 metres square and be of a similar style to the existing permanent umbrellas installed within the Hornsby Mall. The underside of the umbrella must be a minimum 2 metres above ground level on all sides. Permanent umbrellas may be joined together where the outdoor footway dining area is sufficient. Umbrellas shall consist of a white coloured membrane fabric with powder coated aluminium frames. Drop down sides will be considered however they must be made of a clear plastic material and maintained in sound and aesthetically acceptable condition to Council's satisfaction. Approved drop down sides must only be used during periods of inclement weather.

**Umbrellas-Temporary**

Temporary umbrellas must be a combination of powder coated or polished aluminium, brushed or stainless steel, stained or painted timber, canvas or plastic. Temporary umbrellas must be removed or closed in extremely windy conditions. The underside of the umbrellas must be a minimum of 2 metres above the ground.

**2 - All other precincts****Area to be occupied**

Items of furniture must be located on the kerbside of the footway, unless otherwise approved on the building line. Occupation shall not cause inconvenience to pedestrians. Areas adjoining bus-stops or areas closer than 10 metres from an intersection or corner shall not be occupied except specially designed and fenced areas.

**Location to be occupied**

A distance of 600 millimetres from the kerbside must be kept clear at all times.

**Pedestrian Access**

Minimum public access along the footway is 2 metres and must be left in a clear and consistent line of sight.

**Shade Structures**

Businesses may erect temporary shade structures that must be removed at the close of business daily.

Shade covers attached to existing store structures can be considered if they do not block the sight lines adjoining business or services, do not impede access and egress from the shopping strip and do not require attaching to the footway.

The unobstructed vertical clearance should be a minimum height of 2 metres and a maximum height of 2.3 metres.

