

# The Commercial use of Footpaths, Plazas and Public Area



**DCP**

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## 1.0 INTRODUCTION

### 1.1 PURPOSE

- Facilitate the use of footpaths, plazas and public area for the purposes of outdoor dining areas and other footpath activities where feasible and appropriate throughout the Ku-ring-gai Local Government Area
- Ensure Council can charge fair rental fees for the use of Council footpaths, plazas and public area as outdoor dining areas and other footpath activities
- Ensure outdoor dining and footpath activities that are appropriate to the site and its surrounds
- Facilitate the long term improvement of the appearance, amenity, economic viability and convenience of business zones
- Ensure the opportunity for shop owners and residents to benefit from pedestrian circulation as well as to generate and maintain street vitality
- Guide the operation of footpath, plaza and public area occupations while maintaining public safety and encouraging good aesthetic and streetscape conditions at all times
- Ensure Council can effectively assess the design, amenity, social, streetscape and environmental implications of the proposal in relation to other buildings and uses in the area

### 1.2 CITATION

This Policy is cited as Development Control Plan No 54 - The Commercial Use of Footpaths, Plazas and Public Area.

### 1.3 OBJECTIVES

The objectives of this policy are:

- Appropriate use of footpaths, plazas and public area for outdoor dining areas and footpath activities
- Outdoor dining areas and footpath activities that contribute to the improvement of the streetscape and existing character
- Use of footpaths/plazas and public area that does not unduly obstruct pedestrians and other traffic
- Outdoor dining areas and footpath activities compatible with other community uses of public space
- Safe, durable and aesthetically pleasing outdoor dining areas and footpath activities

1.4 CIRCUMSTANCES  
TO WHICH THIS  
PLAN APPLIES

This plan applies to all food premises within commercial areas and other areas where food premises are permitted or operating under existing use rights that seek the use of Council's footpaths, plazas or public area to establish an outdoor dining area and other commercial entities who seek to carry out footpath activities on council's footpaths, plazas and public area within the Ku-ring-gai Local Government Area.

1.5 RELATIONSHIP  
TO OTHER  
KU-RING-GAI  
COUNCIL  
PLANS/ POLICIES

This Development Control Plan should be read in conjunction with the Ku-ring-gai Planning Scheme Ordinance

Applicants should contact Council's Development and Assessment Department before lodging any application to ensure that they have considered all the relevant plans and policies which will regulate their proposal.

## 2.0 DEFINITIONS

**"Consent Authority"** means Ku-ring-gai Council

**"Footpath"** means the part of a road that is set aside or formed as a path or way for pedestrian traffic

**"Outdoor dining area"** means an area as the porportion of a cafe, restaurant, takeaway food shop or the like which is located on Council owned footpaths, plazas or public area that is directly in front of the premises for the use of its patrons.

**"Outdoor dining in public area"** means a dining establishment that is situated on Council owned footpath, plaza or public area, and that is owned, operated or managed by Council.

**"Outdoor dining on private land"** means a dining establishment that is situated on privately owned land that is not the responsibility of Council, rather the responsibility of the proprietor and/or owner of the establishment. The proprietor of such a dining establishment must comply with all relevant Council regulations and policies.

**"Footpath/ Plaza/ Public Area Restaurant Lease"** means the standard footpath/ Plaza/ Public area restaurant lease which must be entered into between Council and the proprietor of the premises before business operations can begin on the leased area.

**"Leased Area/ Licensed Area/ Permitted Area"** means the site of the footpath/ Plaza/ Public Area restaurant defined on the plan to be attached to the Footpath/ Plaza/ Public Area Restaurant Lease.

"**Food Premises**" means the café, restaurant, take away food shop or the like to which the footpath/ plaza/ public area restaurant will be annexed.

"**Footpath Activity**" means any use of a Council owned footpath deemed as permissible under Section 4.3 of this DCP

"**Review Date**" means the date of each anniversary of the commencement of the lease which shall be the date for the review of the fee payable

"**Existing Use**" means a use of a building, work or land for the purpose for which it was used immediately before the appointed day and, in the case of a building or work erected, constructed or carried out in accordance with clause 64 of the Ku-ring-gai Planning Scheme Ordinance, the use of such building or work for the purpose for which the erection of the building or carrying out of the work, as the case may be, was approved.

### **3.0 LEGISLATIVE PROVISIONS**

Roads Act 1993 - Sections 125, 126 and 127  
Local Government Act 1993  
Environmental Planning and Assessment Act 1979

## **4.0 PART 1 - OUTDOOR DINING AREAS**

### **General Controls**

Only restaurants, cafes and take away shops that meet the following criteria will be permitted an outdoor dining area:

- Provide non-disposable eating utensils
- Does not have any advertising or corporate logos/colour schemes on any of the utensils or furniture items

### **4.1 TYPES OF PREMISES TO WHICH THIS PLAN APPLIES**

4.2 SUITABLE LOCATIONS FOR OUTDOOR DINING AREAS:

<p>Site gradient allows outdoor dining furniture to be located on a safe, stable and hard surface</p>	<p>A minimum footpath width of 2.0 metres is maintained for public access, where appropriate</p>
<p>Eatery fits well with surrounding land uses in the area, and enhances the existing streetscape</p>	<p>Furniture to be located against shop front so as not to interfere with car parking and moving vehicles ' </p>
<p>Outdoor Dining areas located on arterial roads will be subject to RTA Approval</p>	<p>Council will consider the location of Outdoor Dining Areas located adjacent to the road kerb or other locations where an applicant can illustrate that the dining area will have no adverse impact upon carparking, moving vehicles, pedestrians and other traffic flows</p>

4.3 THE ALLOCATION OF SEATING SPACE WILL BE DETERMINED AS FOLLOWS:

The space directly in front of a restaurant/ café or takeaway premises is allocated to that eatery. If adjoining space is not used by the adjacent shop, then shops immediately adjacent may take up that space as long as written consent from the adjoining proprietor is provided and that criteria for approval in this plan are met. The following controls apply:

- If the eatery is located on a pavement adjacent to a road, a minimum width of unobstructed footpath (minimum clearance) of 2.0 metres should be kept clear at all times between a restaurant/cafes outdoor dining area and the kerb line of a road (and other public street furniture and objects)
- If the eatery is located within a public area or plaza, the minimum width of unobstructed footpath is 2.0 metres
- No furniture shall be located within 3.0 metres of any road corner, bus stop or taxi stand to allow adequate pedestrian circulation and queuing
- The slope of the footpath is considered to be of a safe and useable gradient for outdoor dining purposes
- No other goods and materials shall be placed on the footpath, except tables, chairs and umbrellas
- Existing street furniture including bins and public seating will not be relocated to meet the criteria set out in the Development Control Plan by an applicant
- The minimum practical depth for an outdoor dining area is 1.0 metre
- If the seating capacity is in excess of 20 persons (including indoor and outdoor seating capacity) details of the existing sanitary facilities provided shall be submitted to Council with the application for determination of compliance with the provisions of the Building Code of Australia
- The diagrams included at the end of this document illustrate the nominal controls that apply for the allocation of outdoor dining in Ku-ring-gai

#### 4.4 OUTDOOR DINING FURNITURE (TABLES, CHAIRS, UMBRELLAS)

Furniture adopted by an establishment must be approved by Council and should adhere to the following guidelines:

- Outdoor furniture shall be strong, durable and robust to withstand the weather and outdoor commercial usage
- All furniture shall be of a high aesthetic quality that enhances the existing streetscape
- Umbrellas are to be securely anchored (permanent anchoring not permitted)
- Furniture for all establishments to be in a clean, hygienic and safe condition at all times
- All furnishings are the responsibility of the proprietor and are to be of a nature that allows them to be removed and stored elsewhere outside of trading hours
- All furnishings are to be well maintained in the interest of public safety
- No advertising is permitted on any furnishings

#### 4.5 COUNCIL ENCOURAGES ESTABLISHMENTS TO CHOOSE FURNITURE THAT IS:

- Powder coated or polished aluminium, brushed or stainless steel, natural or painted timber
- Furniture that is of a reasonable design and medium weight construction
- Weather resistant and durable
- Furniture of a colour that does not show dirt or grime easily (ie. White is not a suitable colour)
- Surface of table tops should be non reflective

#### 4.6 TOILET FACILITIES

If the seating capacity for the café/ restaurant or takeaway shop is in excess of 20 persons (including indoor and outdoor seating capacity) details of the existing sanitary facilities provided shall be submitted with the application for determination of compliance with the provisions of the Building Code of Australia.

If Council determines that additional sanitary facilities are required, a Development Application for such works must be lodged for consideration by Council. The use of the public area shall not commence until such time as the necessary approvals are obtained from Council and the sanitary facilities are constructed and operational.

#### 4.7 LIGHTING

- Any outdoor dining area licensed to operate outside daylight hours must provide adequate lighting, to Council's satisfaction, to ensure the safety and amenity of patrons and the general public.
- Lighting is to be down lights
- Lighting shall not be directed towards the roadway

#### 4.8 ADVERTISING AND SIGNAGE

Advertising on furniture and umbrellas is not permitted as specified in Ku-ring-gai Council Development Control Plan (DCP) Number 28 - Advertising Signs.

#### 4.9 ASSOCIATED WORKS

In some cases, the applicant may wish to undertake streetscape works to accommodate an outdoor dining area. Such works may include street tree planting, landscaping, pedestrian lighting etc. Any such works require specific development approval by Council.

#### 4.10 PUBLIC HEALTH AND SAFETY

The proprietor is to ensure that the requirements of the National Code for Food Premises are fully met, while also being responsible for maintaining the cleanliness and tidiness of the area in front of the premises and the immediate surrounds used for outdoor dining.

The proprietor of the restaurant is responsible for maintaining and storing all furniture items and is to ensure that the furniture is kept neat, tidy and clean when in use. All furniture must be removed from the footpath/plaza/public area outside approved hours of operation

#### 4.11 OUTDOOR DINING APPLICATION REQUIREMENTS

Applicants are required to complete an application form for an Outdoor Dining Area Licence, Indemnity Statement, and Insurance Agreement and submit it to Council with the following information:

- \$250 annual application fee (non refundable)
- Photographs of the proposed furniture, site frontage (of applicants food premises and the immediate adjoining premises) and proposed area to be used for dining
- Sketch plan drawn to a scale of 1:20 in respect to the subject site
- Locality map of the proposed outdoor dining area
- Copy of original consent
- Statement of proposed number of seats within outdoor dining area



4.11 OUTDOOR DINING APPLICATION REQUIREMENTS (CONTINUED)

- A plan must be drawn to scale (1:50 or 1:100) and include:
  - the boundaries of the proposed seating area
  - kerb line of the street
  - building line of the shop and adjacent shops either side
  - any existing street furniture, litter bins, gardens, street trees or light poles
  - Complete layout of indoor shop premises
  - proposed position of tables, chairs and umbrellas
  - a brief description of each component including dimensions, colours and materials
  - proposed positioning of lighting and cabling
  - The location of any storage facilities which may be required
- Written consent from adjacent premises, if outdoor dining area is to use the space of properties immediately adjacent
- Proof of Liquor Licence is required where alcohol is to be served in outdoor dining area

Note: The annual Application Fee quoted in the Plan was correct at the time of printing. Council reviews application fees on an annual basis, for current application fees refer to Council's Fees and Charges Schedule.

4.12 RENTAL FEES

There is a rental fee for the use of Council footpaths, plazas and public area as outdoor dining areas, the fee is charged per square metre or part thereof of per annum. The following fees applies:

Footpath Use	Outdoor Dining Total fee per square metre per annum or part thereof (\$) (including GST).
Council owned footpaths, plazas and public areas	100.00

- Payment must be made in full before the Licence is issued.
- The rental fee quoted in this Plan was correct at the time of printing. Council reviews rental fees on an annual basis, for current rental fees refer to Council's Fees and Charges Schedule.

## 5.0 PART 2 - FOOTPATH ACTIVITIES

### General Controls

#### 5.1 SUITABLE LOCATIONS FOR FOOTPATH ACTIVITIES:

Site gradient allows for footpath activities to be located on a safe, stable and hard surface

Supervision of activity/goods from shop is possible

A minimum footpath width of 2.0 metres is maintained for public access, where appropriate

No footpath activity shall be located within 3.0 metres of any road corner, bus stop or taxi stand to allow adequate pedestrian circulation and queuing

Footpath activity to be located against shop front so as not to interfere with car parking and moving vehicles

#### 5.2 FOOTPATH ACTIVITY APPLICATIONS WILL BE DETERMINED AS FOLLOWS:

The space directly in front of a retail premise is allocated to that shop. The following controls apply:

- Maximum width of footpath activity projecting onto footpath of 1.0 metre from the front property alignment where a minimum footpath width of 2.0 metres is maintained for public access
- Footpath activity is not to extend beyond the side of property alignment
- Footpath activity is not to obstruct access to shop or other premises
- Footpath activity is not to create litter, rubbish or other form of degradation of the footpath
- Supervision of footpath activity from shop is possible
- No footpath activity to be located within 3.0 metres of any road corner, bus stop or taxi stand to allow adequate pedestrian circulation and queuing
- The slope of the footpath is considered to be of a safe and useable gradient for footpath activities
- Adequate access for utilities to be provided
- No anchoring of furniture and footpath activities (including display stands) into footpath
- Existing seating and furniture locations require application to be lodged

5.3 FOOTPATH  
ACTIVITIES IN  
KU-RING-GAI

Permissible

Not Permissible

Merchandise Displays (that adhere to Council controls)

Use of A-Frame signs and other forms of advertising signs not permissible under DCP 28 - Advertising Signs

5.4 MERCHANDISE  
DISPLAYED ON  
FOOTPATHS

Merchandise such as liquor, drugs, tobacco, food that is not packaged (excluding whole fruit and vegetables) and other merchandise considered inappropriate by Council shall not be displayed on footpaths, plazas and public area.

5.5 DISPLAY STANDS

When using display stands on footpath areas to present goods, the following conditions apply:

- All goods are to be presented on a display stand approved by Council
- Display stands are aesthetically pleasing, durable, well finished and secure
- Materials and finish will be weather resistant
- Edges and corners to be finished so as not to cause any injury to a passer by
- All display stands to be custom made for the goods being displayed ie. A stand can not consist of packing materials or cardboard boxes.
- Goods on display to be adequately secured (ie. In the case of paper brochures that may easily blow away when not secured)

5.6 DISPLAY OF  
GOODS ON  
FOOTPATH

When displaying goods on a footpath:

- Fresh food should be kept at least 750mm above the footpath
- All goods shall be displayed on stands, racks or in containers above the level of the footpath, unless goods to be displayed on the ground are specifically designed for that purpose (Excluding white goods). For example large plant containers, outdoor furniture such as chairs and tables
- No sound shall be associated with the display of goods
- No food shall be cooked, processed or prepared for consumption within the leased area

5.7 FOOTPATH  
ACTIVITY  
APPLICATION  
REQUIREMENTS

Applicants are required to complete an application form for a Footpath Activity Licence, Indemnity Statement, and Insurance Agreement and submit it to Council with the following information:

- \$250 annual application fee (non refundable)
- Photographs of the proposed structure of furnishings to be constructed for the proposed footpath activity
- Sketch plan drawn to a scale of 1:20 in respect to the subject site
- Locality map of the proposed footpath activity area
- Copy of original consent
- A plan must be drawn to scale (1:50 or 1:100) and include:
  - the boundaries of the proposed footpath activity area
  - kerb line of the street
  - building line of the shop and adjacent shops either side
  - any existing street furniture, litter bins, gardens, street trees or light poles
  - complete layout of indoor shop premises
  - proposed position of footpath activity ie. Merchandise display
  - a brief description of each component including dimensions, colours and materials
  - the location of any storage facilities which may be required for use in connection with the activity

Note: Annual Application Fee quoted in the Plan was correct at the time of printing. Council reviews application fees on an annual basis, for current application fees refer to Council's Fees and Charges Schedule.

5.8 RENTAL FEES

There is a rental fee for the use of Council footpaths, plazas and public area for carrying out footpath activities, the fee is charged per square metre or part there of per annum. The following fees applies:

Footpath Use	Other Footpath Activity Total fee per square metre per annum or part thereof (\$)
Council owned footpaths, plazas and public areas	300.00

- Payment must be made in full before the Licence is issued
- The rental fees quoted in the Plan were correct at the time of printing. Council reviews rental fees on an annual basis, for current rental fees refer to Council's Fees and Charges Schedule

## 6.0 PART 3 - GENERAL CONSIDERATIONS

### 6.1 MAINTENANCE

All furniture of an outdoor dining area must at all times be maintained in a safe, useable and aesthetically pleasing condition to Council's satisfaction, and remain clean and well maintained by the proprietor

### 6.2 HOURS OF OPERATION/ NOISE IMPACTS

The hours of operation will generally be the same as the hours approved under the premises development consent unless a lesser period is determined due to environmental considerations.

An application for an outdoor dining area or footpath activity/s will not be approved under this Development Control Plan if the proposal is of such a scale that the noise generated will have a significant adverse effect upon nearby residential properties.

### 6.3 INSURANCE

Proprietors of the premises are to maintain a minimum \$ 20 million public liability insurance to cover the utilisation of the footpath area and are required to provide evidence of that cover with their application and whenever required by Council.

### 6.4 CONDUCT OF PATRONS

The conduct of patrons is the responsibility of the Licence holder.

### 6.5 WORK ON COUNCIL FOOTPATHS/ PLAZAS/ PUBLIC AREA

Licence holders can not claim for any loss of income or refund of lease fees as a result of works carried out by Council or other Service Providers on Council owned footpaths, plazas and public area.

## 6.6 RENEWAL OF LICENCE

The licence must be renewed on an annual basis. The licence fee will be a "pro rate" fee and will depend upon when the application was lodged. For example if a licence was granted in May the proprietor will only be charged for a two-month period, as the licence will expire on 30 June of that year. It will be the licence holders responsibility to ensure renewal of licence when required.

## 6.7 APPROVALS

### Breaches of Consent

Council may terminate or vary an approval granted under the Roads Act 1993 in respect to any Outdoor Dining Area or Footpath Activity in order to maintain and preserve the amenity of the area. Repeated breaches will result in termination of the Licence Agreement.

Breaches of consent include but are not limited to:

- Non payment of rental fee
- Encroachment beyond permitted outdoor dining area
- Non compliance with the controls set out in this DCP

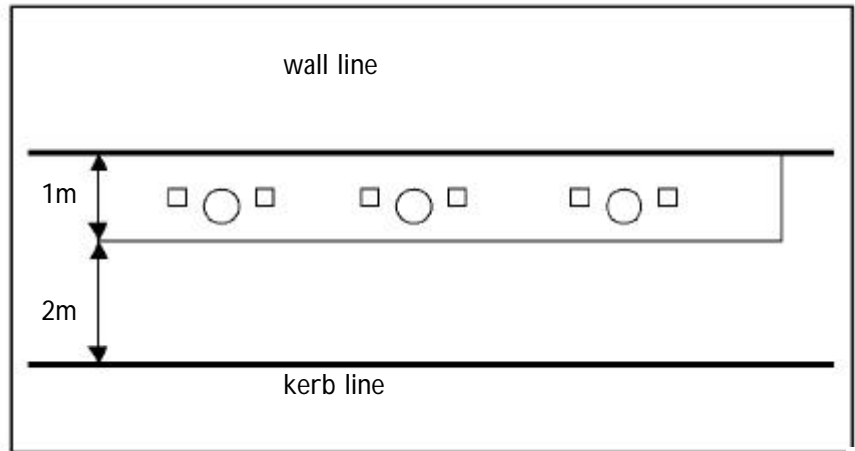
## 6.8 COUNCIL CONTACT

Persons making enquires regarding this Development Control Plan are advised to contact Ku-ring-gai Council's Customer Service Department on 9424 0888.



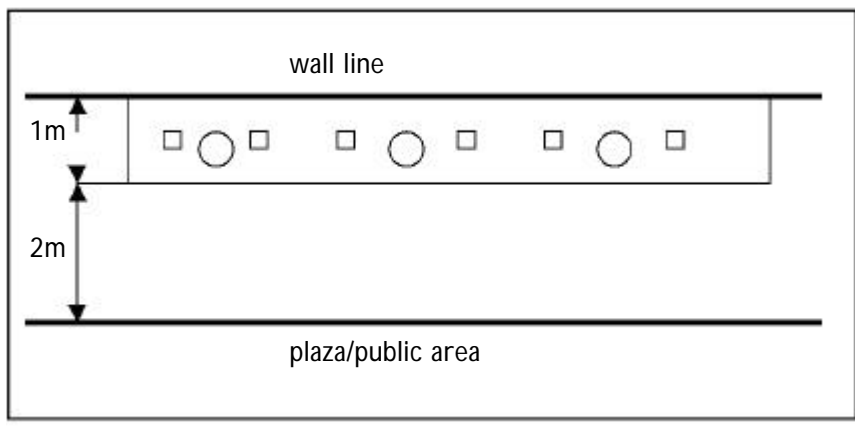
**APPENDIX A**

**Nominal controls for the allocation of outdoor dining in Ku-ring-gai.**



**Diagram 1**

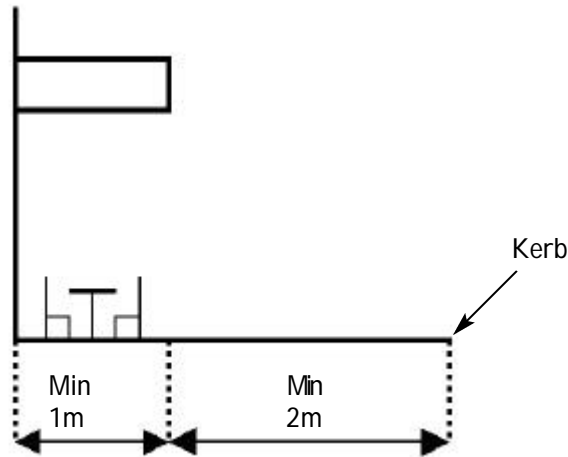
- Outdoor dining area adjacent to respective indoor premises
- Alignment and minimum clearance for pedestrian traffic
  - Nominal dimensions for furniture layout with 2 chairs per table



**Diagram 2**

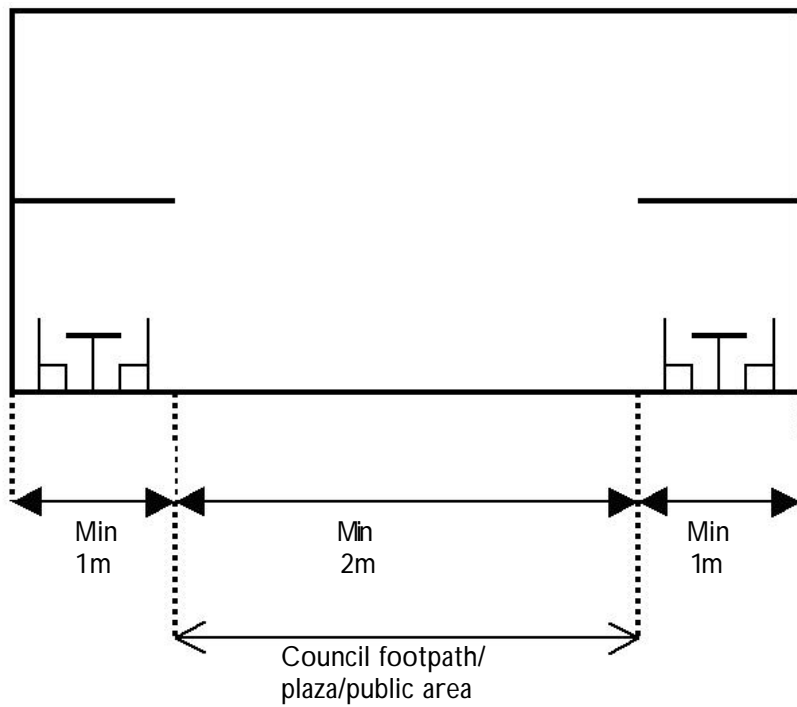
- Outdoor dining area located within Council owned plaza/public area, adjacent to the respective indoor premises
- Alignment and minimum clearance for pedestrian traffic
  - Nominal dimensions for furniture layout with 2 chairs per table

**Outdoor dining area adjacent to the respective indoor premises.**



**Diagram 3**

- Minimum width of outdoor dining area 1.0 metre
- Minimum footpath clearance 2.0 metres



**Diagram 4**

Outdoor dining area located within Council owned plaza/public area, adjacent to the respective indoor premises

- Minimum width of outdoor dining area 1.0metre
- Minimum footpath clearance 2.0metres



APPENDIX A

**Example:** Encouraged Outdoor Dining Area Layout



Furniture setting type encouraged

Minimum footpath Clearance 2.0 metres

Minimum width of outdoor dining Area 1.0 metre

## APPENDIX B

### Recommended Outdoor Furniture Styles

The following images provide a guideline to applicants on the recommended types of Outdoor Furniture for their proposals on Outdoor Dining Area.

**Examples:** Outdoor Dining Furniture



Figure 1.0



Figure 1.1



Figure 1.2

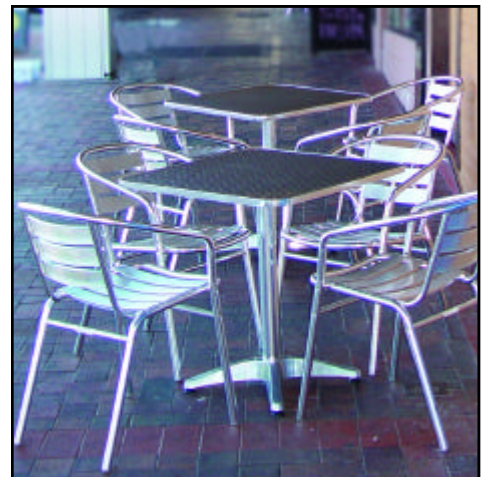


Figure 1.3

Example: Footpath activities



Figure 1.4



Figure 1.5



Figure 1.6

Appendix