

August 2022

# Outdoor Dining Structure Guidelines

*Draft for consultation*



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# 1.Introduction

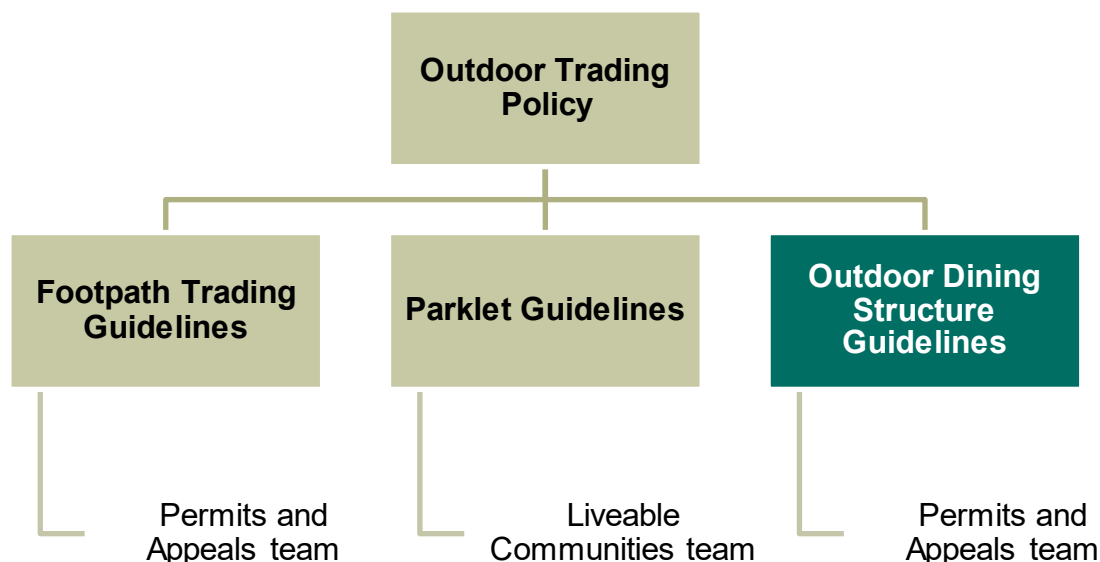
Outdoor trading has played a significant role in activating public footpaths and roadways for commercial activity. There has been much happening in the area of outdoor trading to align outdoor trading opportunities with community expectations while providing business with new initiatives to facilitate additional patronage to activate and encourage economic recovery.

The Outdoor Trading Policy provides the foundation and guiding principles for outdoor trading within Boroondara and aims to support a strong and vibrant local economy for the benefit of the community and visitors to the municipality while maintaining safety and local amenity in shared spaces.

The City of Boroondara offers the following opportunities for outdoor trading:

1. Footpath Trading: Activities occurring on the footpath, where the dining furniture, display of goods, advertising signs and other associated infrastructure needs to be brought in at the end of trade.
2. Parklets: Activities occurring within car parking spaces.
3. Outdoor dining structures: Activities occurring on the footpath within a fixed structure that can remain in place overnight

This document refers to the Outdoor Dining Structures Guidelines which are underpinned by the Outdoor Trading Policy.





## 1.1. Definitions

Term	Definition or description
Applicant	Person making the application for Outdoor Trading.
Arterial Road	Roads which provide the principal routes for the movement of people and goods between major regions and population centres, and between major metropolitan activity centres.
Authorised Officer	A person appointed by Council under section 224 of the <i>Local Government Act 2020</i> .
Council	City of Boroondara.
Council-controlled land (definition as of Amenity Local Law)	Any land which Council, owns, occupies, manages, has leased or licensed to another person or is otherwise under Council's control and management.
Commercial Area	A locality where business and commercial activities are primarily conducted.
Footpath trading	Use of public footpaths for commercial purposes.
Outdoor Trading Activity	Nature of activity as defined by with the Footpath Trading, Parklets and Outdoor dining structures guidelines.
Outdoor dining structure	A structure installed on a footpath which can remain in place overnight (unlike footpath trading) but able to be removed at the end of the permit.
Parklet	Outdoor dining area within a car park.
Patron	Customer of a business.
Permit holder	The person or company named as the applicant in a Footpath Trading, Parklet or Outdoor Dining Structure agreement and to whom the permit is issued. In the case of a company, the director, or directors will be considered the permit holder.
Planning Permit	A permit issued under the Boroondara planning scheme.
Registered trader	A person, organisation or group of persons who conduct a business either under a registered business name and/or registered company.
Statutory Authority	Australian Government body established through legislative instruments for a public purpose.
Trader	A person, organization or group of persons who conduct a business either under a registered business name and/or registered company.
Footpath Trading Furniture	All footpath dining furniture including tables, chairs and umbrellas, heaters and planter boxes, screens, signage and display of goods.
VGCCC	Victorian Gambling and Casino Control Commission.

## 1.2. Diagram legend

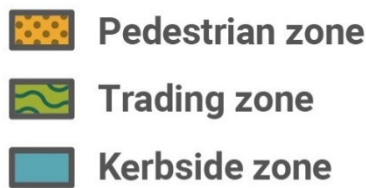


Figure 1: Legend for diagrams used in the document

## 2. What is an outdoor dining structure?

An outdoor dining structure is a structure installed on a footpath which is subject to a permit, unlike traditional footpath trading where furniture needs to be brought in at the end of the trading day, the structure can remain in place overnight.

The structure must be capable of being easily removed at the expiry of the permit, built in accordance with the relevant building standards and planning requirements and meet the requirements of the *Disability Discrimination Act 1992*.

An outdoor dining structure can only be located only within the available Trading zone adjacent to an applicants' property.

## 3. Footpath zones

An outdoor dining structure can only be considered in a location where the footpath width is greater than 3 metres.

To ensure a clear, safe, and unobstructed walkway for pedestrians, footpath trading is made up of 3 zones (see Figure 1 Footpath trading zones):

1. Pedestrian zone
2. Trading zone
3. Kerbside zone

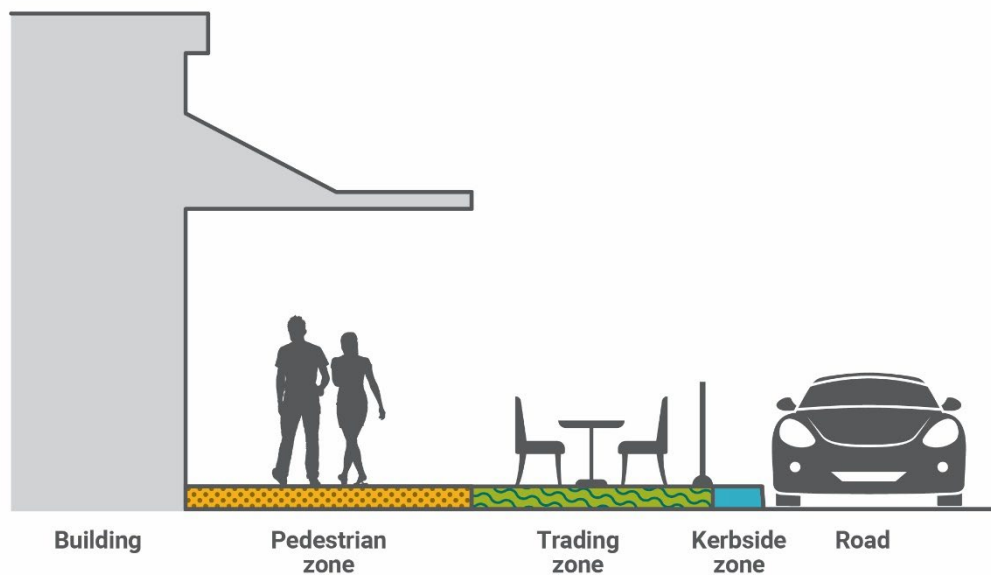


Figure 2 Footpath trading zones

### 3.1. Pedestrian zone

The Pedestrian zone extends immediately from the property line to the potential Trading zone. This allows for uninterrupted and accessible path of travel for pedestrians. This area is for the exclusive use of pedestrians.

The Pedestrian zone must be a minimum width of 1.5 metres for a footpath that is up to 4 metres wide, and 1.8 metres for a footpath that is 4 metres wide or more, measured from the property line. This area must always be kept clear.

Council reserves the right to vary the Pedestrian zone depending on pedestrian needs, vehicle traffic and access, and existing footpath widths.

### 3.2. Trading zone

The Trading zone is the area located between the pedestrian and kerbside zones after the appropriate clearances are applied. The Trading zone will vary depending on the overall width of the footpath, the Pedestrian zone, the Kerbside zone and any clearances from infrastructure that is located within the Trading zone. It is the only area of the footpath where commercial activity can be conducted in accordance with a permit.

Where the use of the footpath is not directly in front of a business for example a plaza or courtyard, Council may use its discretion to approve a permit if the outcome is to the benefit of the streetscape and the community.

Council will assess such applications on a case-by-case basis and reserves the right to approve or refuse any application.

### 3.3. Kerbside zone

The Kerbside zone is located between the Trading zone and the face of the kerb/road. This zone is important for the safety of pedestrians crossing the road, allowing access to

and from parked vehicles including loading and delivery bays. It must be always kept free from any items or structures.

The minimum distance between the face of the kerb and the Trading Zone is 0.5m and must be kept free from any items or structures.

Council may vary the width of the kerbside zone to achieve minimum clearances for pedestrian activity, existing public infrastructure, essential services, adjacent parking restrictions and public transport access requirements.

## 4. Minimum clearances and setbacks

The following clearances and setbacks from an object ensure that access can be maintained safely, for the duration of the occupation of Council land for the purpose of outdoor trading.

### 4.1. Minimum clearances from an object

Object	Minimum clearance
Council or public infrastructure; examples include: <ul style="list-style-type: none"> <li>• Litters and recycling bins</li> <li>• Public seating</li> <li>• Bicycle stands</li> <li>• Drinking Fountains</li> <li>• Garden beds and climber frames</li> <li>• Way finding signs</li> </ul>	1 metre
<ul style="list-style-type: none"> <li>• Trees (must not interrupt the tree canopy or root system)</li> </ul>	Determined on application
Essential services; examples include: <ul style="list-style-type: none"> <li>• Substations/Electricity boxes</li> <li>• Exit doors incl. Fire Exit doors</li> <li>• Switchboards</li> <li>• Hose reel cupboards and fire equipment</li> <li>• Boosters</li> <li>• Fire Hydrants/fire plugs</li> <li>• Payphones</li> <li>• Traffic lights</li> <li>• Pedestrian-operated lights</li> </ul>	1 metre
<ul style="list-style-type: none"> <li>• Electricity boxes</li> </ul>	0.5 metres
Street light poles and Electricity poles	No minimum set back



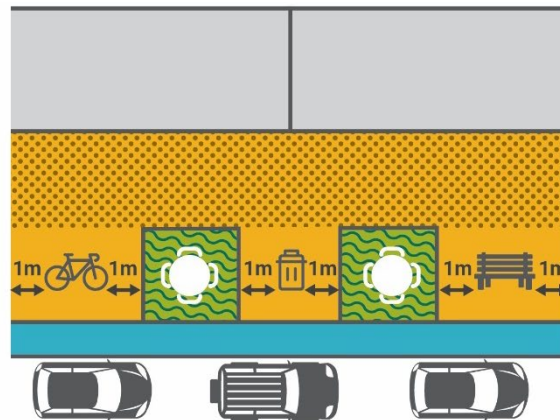


Figure 3: Minimum clearances from an object

## 4.2. Minimum clearances from the kerbside zone

Parking	Minimum clearance
Parking meters and multi-bay parking meters	1 metre
Parallel parking bays	0.5 metres
No stopping and no standing zones	1 metre
Angled Parking	1.2 metres
Disabled Parking Bays	1.5 metres
Loading zones	1 metre
Kerb line at any intersection	10 metres
Numbers painted on the footpath indicating bay number and direction of the multi-bay machine	0.5 metres

## 4.3. Setback from an intersection and required line of sight

Outdoor dining located next to intersections must be set back from the intersection to allow a clear line of sight for turning vehicles, cyclists and pedestrians.

The minimum setback is determined by a line of sight from the corner. This is set at a 45-degree angle from the corner of the building, often resulting in a 1 metre to 3 metre clearance from the corner to the edge of the Trading zone.

Applications within the 10 metre setback, will be considered on a case by case basis taking into consideration speed of vehicles and existing obstructions.

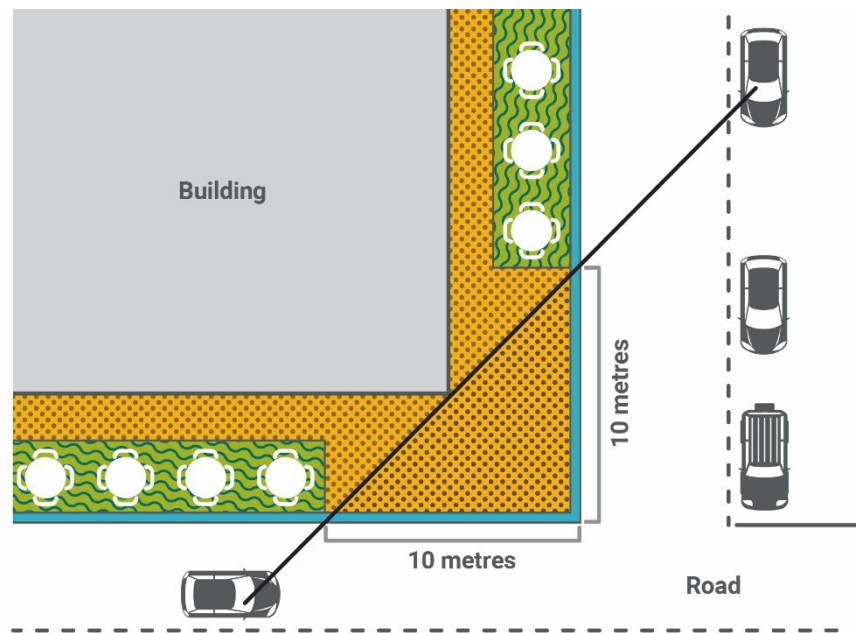


Figure 4: Setback from an intersection and required line of sight

#### 4.4. Setback from tram and bus stops

Clearances from tram and bus stops must be maintained to ensure direct access from the Pedestrian zone is provided to passengers boarding and alighting from a tram or bus. A minimum of 1.5 metres clearance must be kept from the departure side of a tram stop sign and 10m from the approach side.

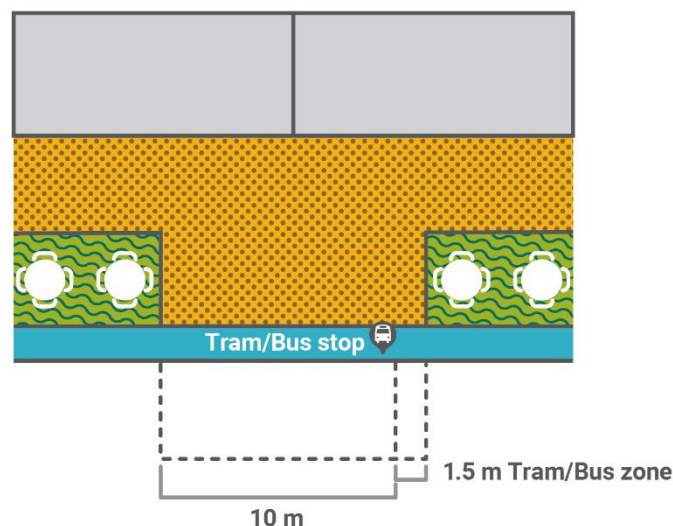


Figure 5: Setback from tram and bus stops

#### 4.5. Setback from taxi zones

Clearances from a taxi zone must be maintained to ensure direct access from the Pedestrian zone is provided to all users of this service. A minimum of 1.5 metres

clearance must be kept to either side of taxi zone signage to ensure adequate access for users and to maintain visibility for taxi drivers.

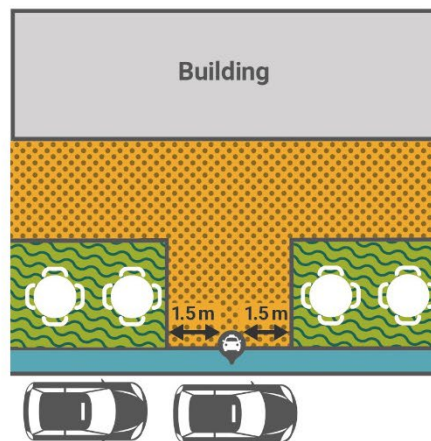


Figure 6: Setback from taxi zones

## 4.6. Pedestrian access

### 4.6.1. Minimum gap between neighbouring Trading zone

A gap of 1 metre is required between adjoining Trading zones to ensure safe pedestrian access when crossing the road or to allow vehicle passengers accessing or exiting their vehicle access.

Each trader must reduce the width of their Trading zone by 0.5 metres. This also applies in the placement of screens.

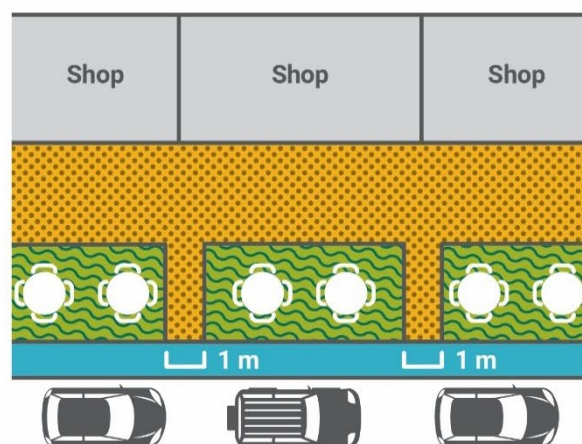


Figure 7: Minimum gap between neighbouring Trading zones

### 4.6.2 Minimum gap with extended Trading zone

Where a Trading zone exceeds 10 metres, a gap of 1.5 metres must be left.

## 5. Access to public infrastructure

In the event of an emergency, maintenance or renewal works access to any Public Authority or Council infrastructure will be required.

Council may deem the location proposed by an applicant not suitable to be considered for outdoor trading. To determine if this may impact a proposed trading area, an application to Dial before you Dig should be made via the website [Dial before you Dig application](#). This service is free and will provide information regarding any infrastructure beneath a proposed trading area.

If assistance is required to understand how the infrastructure may impact an application, please contact Council on 9278 4444.

Council does not provide compensation for any loss of availability to access the trading area, or any costs incurred to temporarily remove the structure other related components where access is required to maintain, access or create new infrastructure.

## 6. Waste service vehicle access

The installation of outdoor trading activities must not compromise access by essential waste vehicles, obstruct loading and construction zones or entrances to private buildings and car parks.

It is essential that access to services to the applicant's property and neighbouring properties is maintained, therefore:

- Outdoor trading should not impede pedestrian flow including waste transport trollies and bins, access to waste bin storage areas including Council's communal waste service locations
- Waste collection and service vehicle access must be maintained to all properties or public land where bins are stored.

## 7. Advertising

Council accepts that traders may have advertising on certain commercial street furniture for example temporary screens. To avoid excessive advertising there is a limit of 30% of the total area of for example the screens surrounding a cafe or the display of goods in a Trading zone.

Signage/advertising over 10m<sup>2</sup> may require a planning permit. Contact the planning department on 9278 4444 or email [boroondara@boroondara.vic.gov.au](mailto:boroondara@boroondara.vic.gov.au) for further information.

## 8. Heritage zones

Footpath dining locations need to consider heritage impact, as our community has told us how important heritage is to them. Structures in these locations have the potential to

impede views to significant heritage frontages and detract from the significance of our heritage buildings.

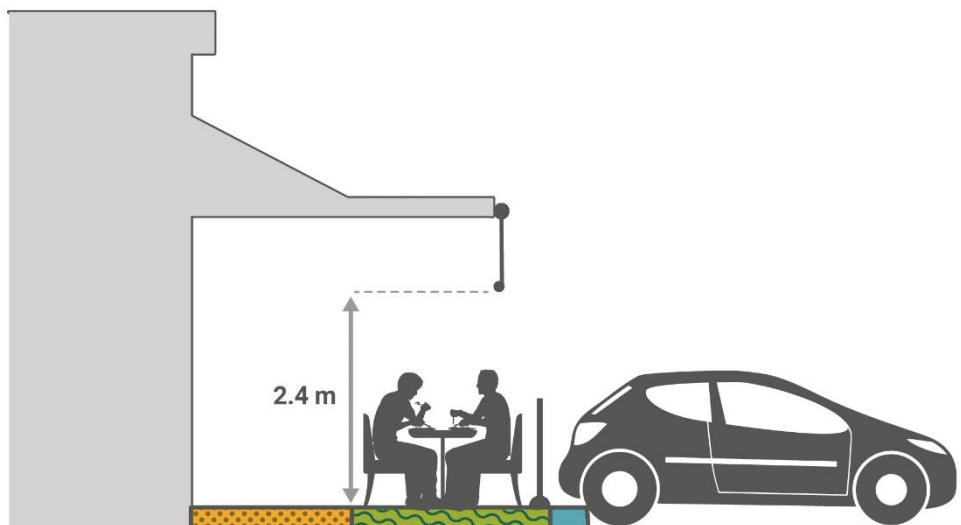
Applications may be referred to the planning department and/or heritage advisor.

## 9. Awnings and verandas

Awnings can be horizontal that are fixed to a building and project over a footpath to form a veranda or can be vertical and drop down either partially or full length and are fixed to a veranda and/or project over a footpath.

The installation of an awning or veranda attached to the building will require Building approval and may be subject to Planning approval.

Horizontal awnings must have a vertical clearance of at least 2.4 metres from the ground to its underside and must not extend over the roadway or adjacent carpark.



*Figure 8: Awning*

## 10. Patron numbers and hours of operation

Planning permits determine how many patrons can receive seated service and the hours of operation. Applications may be referred to planning to confirm these details.

## 11. Supporting structures and facilities

### 11.1. Planter boxes

Planter boxes are permitted and must be located within the Trading zone.

The construction of the planter box can be a maximum height of 1 metre with planted foliage a maximum height of 0.5 metres or a total combined height of 1.5 metres.



The planter box must be removed at the end of the trading day and are required to be regularly maintained by the trader. Maintenance includes regularly watering and pruning and the removal of any rubbish or debris.

Planter boxes cannot be located within 10 metres of an intersection as they may impede line of sight for oncoming vehicles, pedestrians, and cyclists.

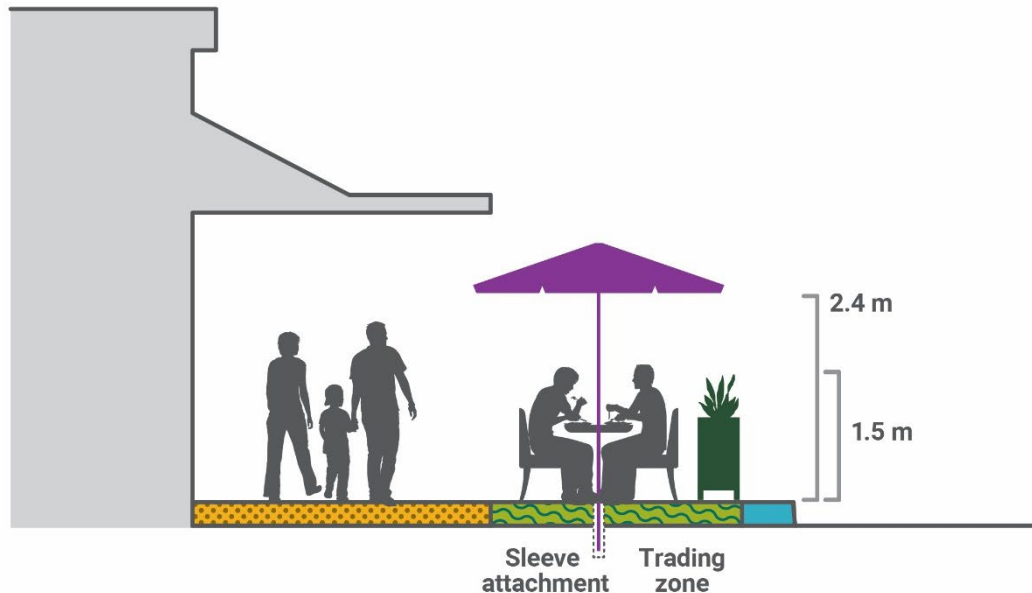


Figure 9: Planter boxes and umbrellas with heights and installation options

## 11.2. Umbrellas

The lowest edge of an umbrella canopy must be 2.4 metres above the footpath and must not protrude over the kerbside zone or over the road.

An umbrella may be securely anchored to the ground using e.g., a sandbag or a 'sleeve attachment'.

Prior to installation of a sleeve attachment, an application must be made to Council to apply for and receive a Council Road opening permit. A bond will also be required to be paid as part of the permit application and will be used to reinstate the surface of the footpath. See the [road opening permit](#).

## 11.3. Gas heaters

Outdoor free-standing heaters conforming to Australian Standards may be placed in line with the table and chairs within the Trading zone.

Council will consider a gas heater or permanent heating attached to an awning. Each application will be assessed on an individual basis to ensure the heating is provided safely.

Where permanent heating is installed, a certificate of compliance issued by a registered plumber is required to be produced to Council on the completion of works.

Heating attached to an umbrella is not permitted.

## **12. Power to site**

To ensure lighting is provided safely to an outdoor dining area the following options are available:

- Solar power
- Light supply from an overhead awning.

Light supplied from an overhead awning cannot be exposed and is required to be installed by a registered electrician. A certificate of compliance issued by a registered electrician is required to be produced to Council on the completion of works.

Exposed wiring will not be considered to ensure risk of tripping or other hazardous events can be prevented.

## **13. Lighting overnight**

Outdoor Dining Structures can create dark and potentially unsafe areas in and around the structure. An assessment will be made to determine whether additional lighting is required.

To determine if there is sufficient lighting and any impacts to safe passage an assessment will occur once the licence is approved and the structure in place. Cost incurred to retrospectively fit lighting will be at the licensee's expense.

## **14. Toilet and sanitary conveniences**

An increase in seating from outdoor dining increases seating capacity and therefore may require the need for the provision of additional toilet facilities for staff and customers.

Where the increase in seating capacity is greater than 20 seats it may be necessary.

Contact Council's Building Department on 9278 4444 or [boroondara@boroondara.vic.gov.au](mailto:boroondara@boroondara.vic.gov.au) if this applies.

## **15. Car parking**

If an Outdoor Dining Structure is over 28sqm, a planning approval may be required for a reduction in car parking. Restaurants in activity centres generally operate a car parking requirement of 3.5 car parking spaces to each 100 sqm of floor areas. 1 car park is therefore equal to 28 sqm.

## **16. Structure heights**

Maximum heights will be assessed on an individual basis dependent on characteristics of the location. The following heights apply as a guide:

- The external wall must not exceed one metre in height to allow for flow of air
- The minimum ceiling height is 2.4m and overall structure height should not exceed 2.7m.

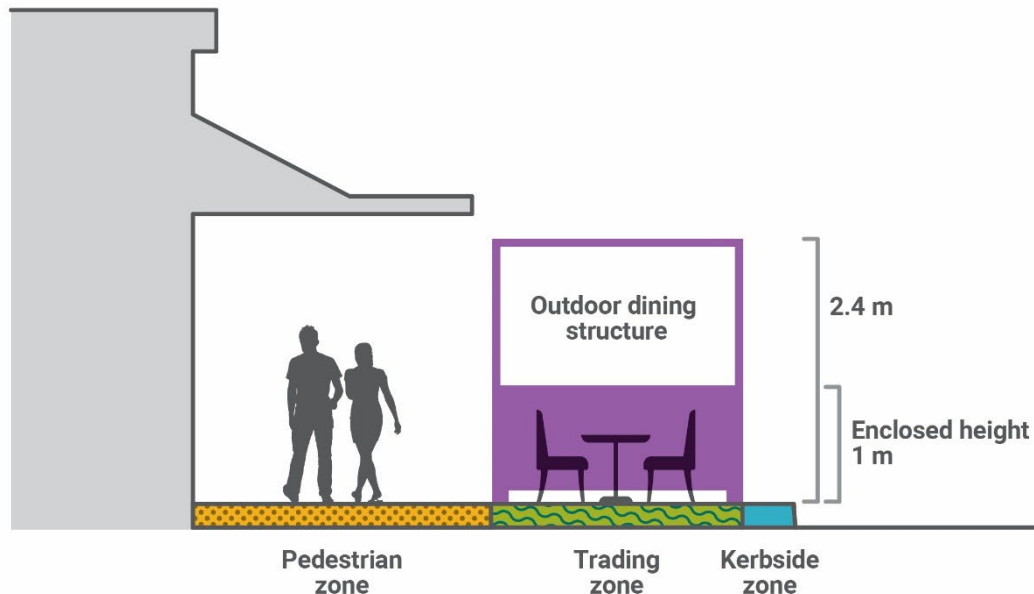


Figure 10: Structure heights for external wall

## 17. Airflow

Outdoor Dining Structures' can only be enclosed up to a height of 1metre to ensure air to flow. Café style blinds will only be considered on the kerb zone and must be clear and retractable and need to be able to be secured at the base. Retractable Café style blinds must be retracted at the end of each trading night.

## 18. Solar compactor bins

If a solar compactor bin is located within or nearby a proposed Outdoor Dining Structure, Council may consider at the applicant's cost, relocating the bin if there is a suitable alternative location nearby. The relocation of the bin however, may not always be possible due for example to other street furniture, trees, utility covers, pedestrian crossings and shading (solar bins require direct sunlight). Cost to relocate the solar bin is at the applicants expense.

## 19. Service and amenity

### 19.1. Cleanliness of trading area

Permit holders are responsible for maintaining the safety and cleanliness of their Trading zone including the equipment and structures contained within. Regular cleaning is required to ensure rubbish does not accumulate or is not windblown into neighbouring areas.

Permit holders are also responsible for providing hand sanitising stations and other patron management systems as part of the COVIDSafe Plan. Outdoor dining structures should not create hazards for pedestrians and be able to withstand hot and windy conditions. Appropriate selection of furniture and fittings, as well as regular maintenance of items is important.

## **19.2. Managing noise and amenity**

Where permitted, loudspeakers directing sound to the outdoor dining area must not be used outside the permitted trading hours provided in the conditions of the permit and must always be limited to background levels, unless otherwise specified on a permit.

## **20. Service of liquor**

Permit holders are responsible for monitoring and managing patron behaviour. If serving alcohol staff must practice of responsible serving of alcohol.

Applicants will need to apply for a planning permit and liquor licence to serve alcohol within the Trading zone. A liquor licence is applied for separately through the Victorian Gambling and Casino Control (VGCCC). Please visit [Liquor licensing | Victorian Government \(www.vic.gov.au\)](https://www.vic.gov.au/liquor-licensing)

## **21. Smoking and vaping**

Smoking or vaping is allowed in the outdoor dining area provided that the area complies with the requirements of the Tobacco Act. 1987.

## **22. Patron queuing**

A trader is responsible for ensuring the pedestrian zone in front of their business remains clear of patrons queuing outside their premises to gain entry.

A minimum of 1.5 metres of unobstructed footpath must be maintained at all times to ensure pedestrians have the ability to walk past a venue unimpeded.

In the instance where the commercial activity of a business extends onto the footpath, an application can be made for a permit at no cost, to allow it to 'rope off' a section of the footpath.

## **23. Public Liability**

Traders must hold a valid public liability insurance policy to the value of at least 20 million dollars (\$20,000,000). The insurance policy must cover injury, loss or damage to persons arising out of the activity carried out under or the granting of a permit.

This insurance policy must be maintained for the duration of the permit or licence and specifically note the interest of the City of Boroondara as an insured party. The Certificate of Currency may be requested by Council and must be readily available.

## 24. Enforcement

Council aims to support traders to achieve compliance through permit conditions and the Amenity Local Law. Traders not in compliance unwilling to comply may receive infringement notices, be subject to further enforcement action and a review of the continuation of their permit.

## 25. Implementation and monitoring accountabilities

The responsible department coordinates the implementation, maintenance, and review of this document, arranging for its availability on Council's website and hard copies at Council offices and libraries to ensure stakeholders are aware of their accountabilities.

For all queries or feedback regarding this document, please use the contact details for the responsible department below:

Contact department	Contact number	Contact email
Urban Living - Permits and Appeals team	9278 4444	<a href="mailto:boroondara@boroondara.vic.gov.au">boroondara@boroondara.vic.gov.au</a>

\*Any changes to the Footpath Trading Guidelines must be made in conjunction with the Outdoor Trading Policy, Parklets and the Outdoor Dining guidelines.

## 26. References

Related documents:

- City of Boroondara Amenity Local Law 2019
- Local Government Act 1989
- Planning and Environment Act 1987
- Road Management Act 2004



## Appendix 1: Application process

### How to apply for a permit

To apply visit [www.boroondara.vic.gov.au](http://www.boroondara.vic.gov.au)

So that we can assess an application in a timely manner please include the following information with the application:

- completed and signed application form (available to download on our Outdoor Trading Permits webpage)
- a site plan showing the proposed location of the outdoor trading activity including dimensions and position of local infrastructure
- photographs of the proposed outdoor trading location (taken no more than 2 weeks prior to making an application)
- a copy of a current business registration certificate.
- Certificate of Public Liability Insurance for a minimum of \$20 million, noting the interest of the City of Boroondara as an insured party.

Additional requirements as relevant include:

- the proposed hours of operation
- details of the advertising signage
- copy of current registration to serve food and/or beverages under the Food Act 1984
- a liquor licence that includes footpath or roadway a part of the licensed area where alcohol can be consumed or served.

Consideration will be given to site-specific constraints such as access, traffic and parking conditions and permits may be issued with specific conditions. Permits may also be subject to change at any time during the permit period to ensure safety and amenity is not compromised.

Please contact our Concierge Business Support Service on 9278 4444 assistance is needed to complete an application.

This service provides a one stop shop for businesses which includes broad advice and assistance to determine which Council permits and approvals they may require and triage any other business's needs.

### Application assessment timelines

Council is committed to activating the city and helping businesses to establish appropriate Outdoor Dining Structure as quickly as possible.

Businesses must ensure applications contain all necessary information, so Council are able to thoroughly assess and process applications in a timely manner. Assessments may take up to two months to review as they require approvals from several departments and externally by others to ensure they have met the assessment criteria.

## **Applications in a residential area or close to a residential area**

Applications located in a residential area where residential dwellings are directly affected, will be carefully considered on a case-by-case basis to ensure safety is upheld and, the residential amenity of the area is maintained during the licence period.

The threshold distance considered “close” is any residential property within 50 metres of the proposed location of the Outdoor Dining Structure. Access, safety, amenity conditions and noise restrictions will apply.

## **Proposals for trading after 9.30 pm in close to a residential dwelling or building**

Applications to operate after 9.30 pm from Sunday to Thursday and 10.30 pm from Friday to Saturday will be considered strictly on a case-by-case basis. Residents within 50 metres of the property will be sent a notification letter and provided 14 days to provide feedback.

Applicants proposing to establish an Outdoor Dining Structure in a residential area past 9.30 pm are strongly encouraged to engage with affected residents, the residential precinct association and/or the body corporate of a residential building to seek support for the proposal.

## **Decision to issue a permit**

The decisions whether to grant a permit will be made by a panel of representatives from Civic Services, Traffic and Transport, Local Economies, Building, Health and Town Planning.

The panel will assess submissions in accordance with impacts to safety, access and amenity in the immediate area and compliant with statutory requirements.

## **Fees and charges**

A fee is charged for all outdoor trading. Additional fees may apply for changes and amendments. Fees and charges are reviewed annually.

## **Costs associated with moving existing infrastructure**

The costs will be at the expense of the applicant for:

- Installation of new infrastructure
- Repair or amendment of existing infrastructure; and
- Removal of outdoor dining

All Outdoor Dining Structure infrastructure is required to be removed by the applicant at either the expiry of the Permit or at the request of Council, whichever is sooner.

## **Display of permit**

Permit sticker must be displayed on the front window of the trader's business.

## **Public liability insurance**

Traders require a valid public liability insurance policy to the value of at least 20 million dollars (\$20,000,000). The insurance policy must cover injury, loss or damage to persons arising out of the activity carried out under or the granting of a permit.

This insurance policy must be maintained for the duration of the permit or licence and specifically note the interest of the City of Boroondara as an insured party. The Certificate of Currency may be requested by Council and must be readily available.

## **Renewals**

Permit renewal fees are paid every two years from the date of approval and accompanied by the renewal form. Renewal notices will be sent to permit holders in the month prior to their permit expiry date.

Renewals are not automatic. Council will consider whether compliance with the conditions of the permit during the permitted occupation of Council land for footpath trading have been met, whether all reasonable requests made by officers were complied with and any additional impacts that may effect the ability to support the continued occupation of Council land.

Where Council considers a renewal is not appropriate, permit holders will be notified in writing of the reasons why their permit is not being renewed.

## **Removal of outdoor dining structure**

An outdoor dining structure may need to be removed temporarily or permanently for improvements maintenance or other works as required by the city of Boroondara or its contractors, or a public authority that is required to access their infrastructure. The City of Boroondara will give the permit holder as much notice as possible.

Costs to remove and store any footpath trading items are borne by the permit holder both at the conclusion of the permit or if requested by Council to remove the items either temporarily or permanently.