

# Outdoor Trading Policy

September 2018

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# Part A Preliminary

## 1 Purpose

- 1.1 Facilitate the creation of a vibrant cosmopolitan trade atmosphere in appropriate areas of the city and surrounding suburbs.
- 1.2 Ensure an equitable and safe throughway is maintained on footpaths for pedestrians including the vision impaired, users of mobility aids – wheelchairs and scooters.
- 1.3 Facilitate the appropriate use of footpaths and public areas for the purposes of outdoor trading and dining activities including the use of free standing A-frame signage and flags to promote and activate business.
- 1.4 Facilitate improvement to the street vitality, amenity and economic viability.
- 1.5 Provide opportunities for shop owners, residents and visitors to benefit from pedestrian circulation.
- 1.6 Provide requirements and guidelines to inform the regulation of outdoor trading activities to avoid nuisance, obstruction, endangerment or inconvenience to the public and residential neighbourhoods.

## 2 Scope

- 2.1 The policy applies to all applications for outdoor trading on roads or in public places (land other than a road) within the local government area.
- 2.2 Applications for permanent structures require separate approval in addition to meeting the requirements of this policy (refer to clause 4.3 for more information).

# Part B Application

## 3 Making an application for outdoor trading area

- 3.1 Application for outdoor trading area - roads
  - 3.1.1 Applicants seeking approval for an outdoor trading area on a road must complete an *Application for Outdoor Trading Form*. Application forms are available from the City of Newcastle Customer Enquiry Centre at 282 King Street, Newcastle or CN's website [www.newcastle.nsw.gov.au](http://www.newcastle.nsw.gov.au).
- 3.2 Application for outdoor trading area - public places (land other than a road)
  - 3.2.1 Applicants seeking approval for an outdoor trading area in a public place (land other than a road) must lodge a Development Application. Information about lodging a Development Application is available from the City of Newcastle Customer Enquiry Centre at 282 King Street, Newcastle or CN's website [www.newcastle.nsw.gov.au](http://www.newcastle.nsw.gov.au).

- 3.3 Application for outdoor trading area – permanent structures
  - 3.3.1 If an outdoor trading area is to involve a permanent structure, approval in addition to approval under this policy is required. Applicants seeking approval for outdoor trading areas involving a permanent structure should contact CN's Infrastructure Services on (02) 4974 2000 to discuss the application.
- 3.4 Lodging applications
  - 3.4.1 Outdoor Trading applications may be lodged at the Customer Enquiry Centre or at [outdoortrading@ncc.nsw.gov.au](mailto:outdoortrading@ncc.nsw.gov.au).
- 3.5 Prior to lodging an application for an outdoor trading area, it is recommended that applicants contact the City of Newcastle's Customer Enquiry Centre to ensure they have the required plans, details and insurance certificates for submission to CN and to clarify application fees.
- 3.6 Application to renew an existing approval should be lodged a minimum of four weeks prior to expiry of the existing approval to allow invoice processing.

## 4 Fees for application

- 4.1 Non-refundable fees and charges will be applied to applications for outdoor trading areas. Fees can be transferred to new business owners upon application, ODT area map and proof of \$20,000,000 public liability insurance.
- 4.2 CN's Fees and Charges are reviewed annually. Current adopted and draft fees and charges schedules are accessible at CN's website [www.newcastle.nsw.gov.au](http://www.newcastle.nsw.gov.au)

# Part C Exemptions from approval

## 5 Exemption from approval for A-frame signs

- 5.1 Approval is not required for placement of a single A-Frame sign where it is placed:
  - 5.1.1 in accordance with the Locational Guidelines at Annexure A and;
  - 5.1.2 in accordance with the Placement Guidelines at Annexure B and;
  - 5.1.3 is a single sign that specifically conforms to the Articles Placed Within Area Guidelines – A-Frame Signs at Annexure D; and
  - 5.1.4 that single sign is placed separately from any other articles, is placed kerbside and not obstructing the pedestrian zone or is placed in an approved outdoor trading area.

## 6 Exemption from approval for flags

- 6.1 Approval is not required for placement of flags where they are placed:
  - 6.1.1 in accordance with the Locational Guidelines at Annexure A and;
  - 6.1.2 in accordance with the Placement Guidelines at Annexure B and;
  - 6.1.3 with no more than three flags that specifically conform to the Articles Placed Within Area Guidelines – Flags including Tear Drop flags at Annexure E and;

- 6.1.4 separately from any other articles, are placed kerbside and not obstructing a pedestrian zone or are placed in an approved outdoor trading area.

## Part D Approval

### 7 Factors considered when assessing applications for approval

- 7.1 CN will consider the following factors when assessing all applications for approval of an outdoor trading area:
- 7.1.1 the *Local Government Act 1993* (NSW), *Roads Act 1993* (NSW); *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW), *Work Health and Safety Act 2011* (NSW), *Disability Discrimination Act 1992* (Cth);
  - 7.1.2 any current Development Application conditions. CN's guidelines contained in Annexures A, B, C and D as appropriate;
  - 7.1.3 the provision of a continuous path of travel minimum 1.8m in width for pedestrians within the footpath to ensure equitable access, disability inclusiveness;
  - 7.1.4 the proximity of other outdoor trading areas;
  - 7.1.5 the frequency of use of the footpath;
  - 7.1.6 the features of the footpath including the width and construction; placement of existing permanent structures – CN rubbish bins, seats, bus stop shelters, post office box and the like;
  - 7.1.7 footpath construction and condition;
  - 7.1.8 traffic considerations including pedestrian and customer safety issues;
  - 7.1.9 traffic considerations including areas adjacent to the road kerb or within existing sign posted zones relating to bus stops, taxi stands, parking for disabled and the like;
  - 7.1.10 applications for ODT liquor licensing approval require review by the Licensed Premises Reference Group;
  - 7.1.11 the ability of the premises to comply with this Policy.
- 7.2 Despite clause 8.1, CN will assess applications for alternative arrangements where the applicant can demonstrate that, on the merits of the individual case, the alternative arrangement will better achieve the purposes of this Policy. Consideration is to be given to the need to balance public safety against business needs and amenity considerations. Refer to the *Disability Discrimination Act 1992* (Cth) sections 23, 24 and 29A.

### 8 RMS concurrence

- 8.1 Application for an outdoor trading area on a Classified State Road or adjacent to traffic control signals is prohibited without concurrence from the NSW Roads and Maritime Service (RMS). CN will seek this concurrence after an application is made.

## 9 Conditions of approval

- 9.1 It is the responsibility of the outdoor trading operator to meet all of the conditions of approval which may include operating hours. An approval may be revoked by CN at any time for failure to comply with any condition of the approval.
- 9.2 An approval will be granted for a period determined by CN and will conclude at the end of that period.
- 9.3 Expiration of the approval will require lodgement of a new application.
- 9.4 CN may revoke or suspend an approval if access is required to the footway.
- 9.5 An approval lapses if the outdoor trading operator's business ceases to trade, however, approvals are transferable, provided CN is notified and proof of a current Public Liability Risk Insurance Certificate for the new proprietor is submitted to CN.
- 9.6 Despite any provisions of this Policy, CN may amend any approval to meet legislative requirements or altered circumstances at specific sites at any time.

## Part E Insurance

### 10 Notification of claims

- 10.1 The applicant/operator for outdoor trading approval is to indemnify CN in writing against any action taken against it by persons suffering any loss of injury as a result of the existence or operation of the outdoor trading area.

### 11 Public Liability

- 11.1 Public Liability insurance must be taken out by the applicant/operator of the food business. This policy must have a limit of not less than \$20,000,000 indemnity cover.
- 11.2 CN requires 'Newcastle City Council' to be noted on the policy as an "**Interested Party**" for the respective rights and interest.
- 11.3 The applicant/operator is required to lodge a copy of their current Public Liability Certificate of currency to CN, prior to the placement of furniture within the approved outdoor trading area. A Certificate of Currency is required to be furnished with each renewal application.

## Part F Non-compliance

### 12 No approval

- 12.1 The use of an outdoor trading area without approval or not in accordance with an approval is an offence and may result in the issue of an infringement notice or other regulatory action.

## 13 Breach of approval

- 13.1 The use of an outdoor trading area will be reviewed if the use is not in accordance with the approval requirements.
- 13.2 CN will send out a notification of the review process to the outdoor trading operator requesting representations within seven days of receiving the notification.
- 13.3 Following review of any representations and evidence gathered, CN may terminate the approval or otherwise cause the approval to lapse with one month's notice in writing.

## Part G Other

### 14 Cleanliness and maintenance

- 14.1 The outdoor trading area must be maintained in a clean and tidy condition at all times.
- 14.2 Environmentally sound methods of cleaning and maintaining the outdoor trading area must be used.
- 14.3 An 'assistance animal' is permitted in an outdoor trading area in accordance with the *Disability Discrimination Act 1992* (Cth). Animals are otherwise only permitted in accordance with the *Companion Animals Act 1998* (NSW).
- 14.4 An outdoor trading area must be paved or sealed for its full width. The approval holder is to bear the cost of all pavement repairs carried out by the City of Newcastle which have been caused by outdoor trading activities.

### 15 Smoking in outdoor trading areas used for outdoor dining purposes

- 15.1 Smoking in or adjacent to an outdoor trading area is prohibited when an outdoor trading area is used for the purpose of providing outdoor dining.
- 15.2 Outdoor Dining Operator must display No Smoking signage and abide by *Smoke-free Environment Act 2000* (NSW).

### 16 Dogs in Outdoor Dining Areas

- 16.1 A dog, except a restricted or declared dangerous or menacing dog, is allowed in the outdoor dining area of a cafe or restaurant with the cafe or restaurant owner's consent. Certain restrictions apply:
  - 1.1.1. the outdoor dining area must not be enclosed and must be accessible without the requirement to pass through an enclosed area;
  - 1.1.2. the dog must be on a leash at all times;
  - 1.1.3. the dog may be provided with drink, but not food;
  - 1.1.4. the dog must be on the ground at all times.
- 16.2 Refer *Companion Animals Act 1998* (NSW) S14A.

## 17 Crime Prevention

- 17.1 Operators of the business with an approved outdoor trading area are encouraged to provide a notice advising patrons to secure their bags or valuables while using an outdoor trading area particularly when an outdoor trading area is used for the purpose of providing outdoor dining

## Part H Definitions

### 18 Definitions

- 18.1 **A-frame sign** – upright, rigid supporting frame with two flat connected panels at the top in the form of a triangle or an inverted V. Refer Annexure D.
- 18.2 **Barriers** (café) – safety screening - refer Annexure F.
- 18.3 **City of Newcastle (CN)** means Newcastle City Council.
- 18.4 **Flag Structure** – pole, staff or similar article with a piece of cloth or bunting displaying a design, symbolic colours or patterns. Refer Annexure E.
- 18.5 **Permanent Structure** – any article not intended to be moved around frequently and would be difficult to move without mechanical and other assistance.
- 18.6 **Outdoor Dining Operator** – the entity that exercises management and control over an outdoor trading area used for the purpose of outdoor dining.
- 18.7 **Outdoor Trading Area (ODT)** – an outdoor public place including but not limited to roads, footpaths and nature strips, utilised on a temporary basis for commercial activities which may include the display of articles, signs, goods, food or beverages for consumption or display in association with an adjacent approved business.
- 18.8 **Pedestrian Zone** – unobstructed access area of at least 1.8m.

Unless stated otherwise, a reference to a clause is a reference to a clause of the policy.

# Annexure A - Locational Guidelines

## Locational Guidelines

### A.1 Associated premises

A.1.1 An outdoor trading area will only be considered by CN where:

A.1.1.1 it is in association with an adjacent approved business premises

A.1.1.2 the applicant is the owner/proprietor of that business premises.

### A.2 Site requirements

A.2.1 An outdoor trading area is only appropriate where:

A.2.1.1 the public space is wide enough to accommodate the outdoor trading area while still maintaining a clear pathway of travel minimum 1.8m in width for all pedestrians including those who use mobility aids and;

A.2.1.2 the ground surface of the outdoor trading area is suitably constructed and sufficiently level to accommodate proposed articles and enable the area to be used safely and without inconvenience to pedestrians or vehicles and;

A.2.1.3 there is no unreasonable hazard to pedestrians, users of trading areas or vehicular traffic.

### A.3 Neighbourhood amenity

A.3.1 The location and operation of outdoor trading areas must take into consideration the amenity of neighbours and other users of public areas.

A.3.2 Applications submitted within a residential zone will be publicly notified in accordance with the provisions of Newcastle Development Control Plan 2012 Section 8.00 Public Participation.

# Annexure B - Placement Guidelines

## Placement Guidelines

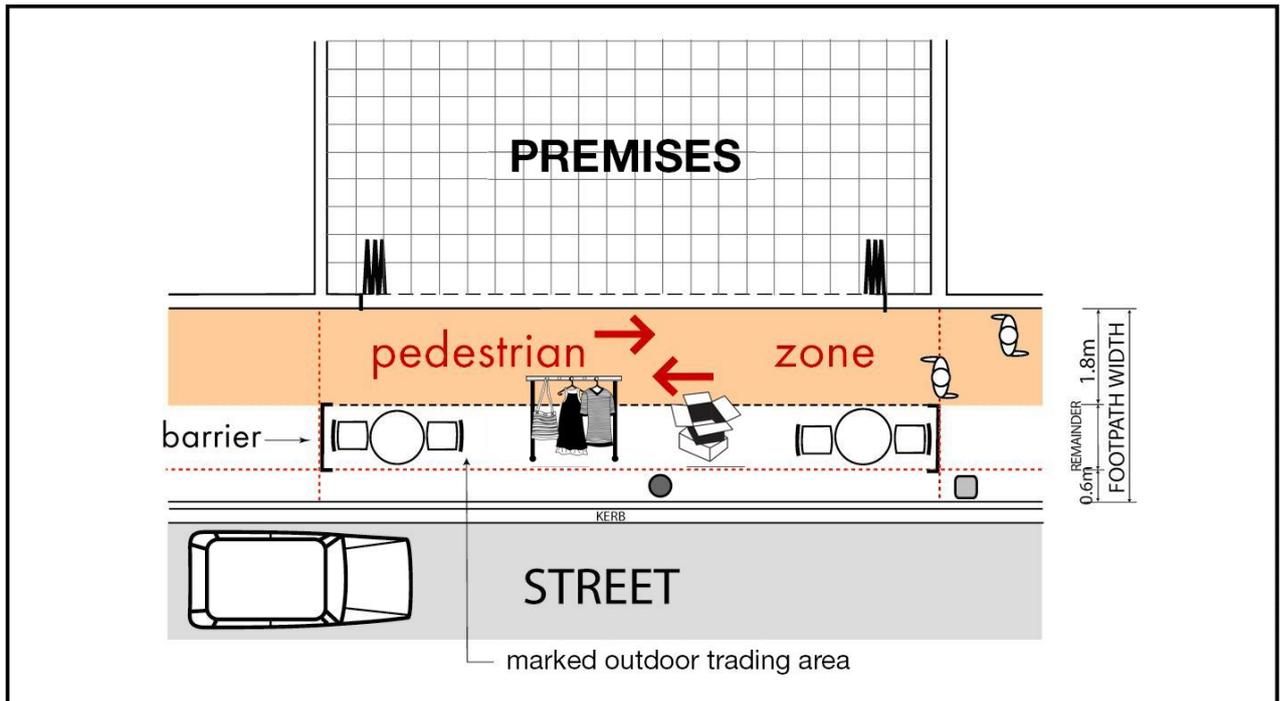
### B.1 Placement and defining outdoor trading areas

- B.1.1 An outdoor trading area is to be clearly marked and operated within the approved area (as determined by CN) only.
- B.1.2 The boundary markers of the outdoor trading area shall be installed and maintained by CN after approval is granted.
- B.1.3 Outdoor trading areas will only be approved immediately adjacent to the business to which it relates.
- B.1.4 Outdoor trading areas must be located so that the proprietor is able to supervise activities in the area from within the premises.

### B.2 Access requirements – adjacent to kerb trading areas.

### B.3 An outdoor trading area must:

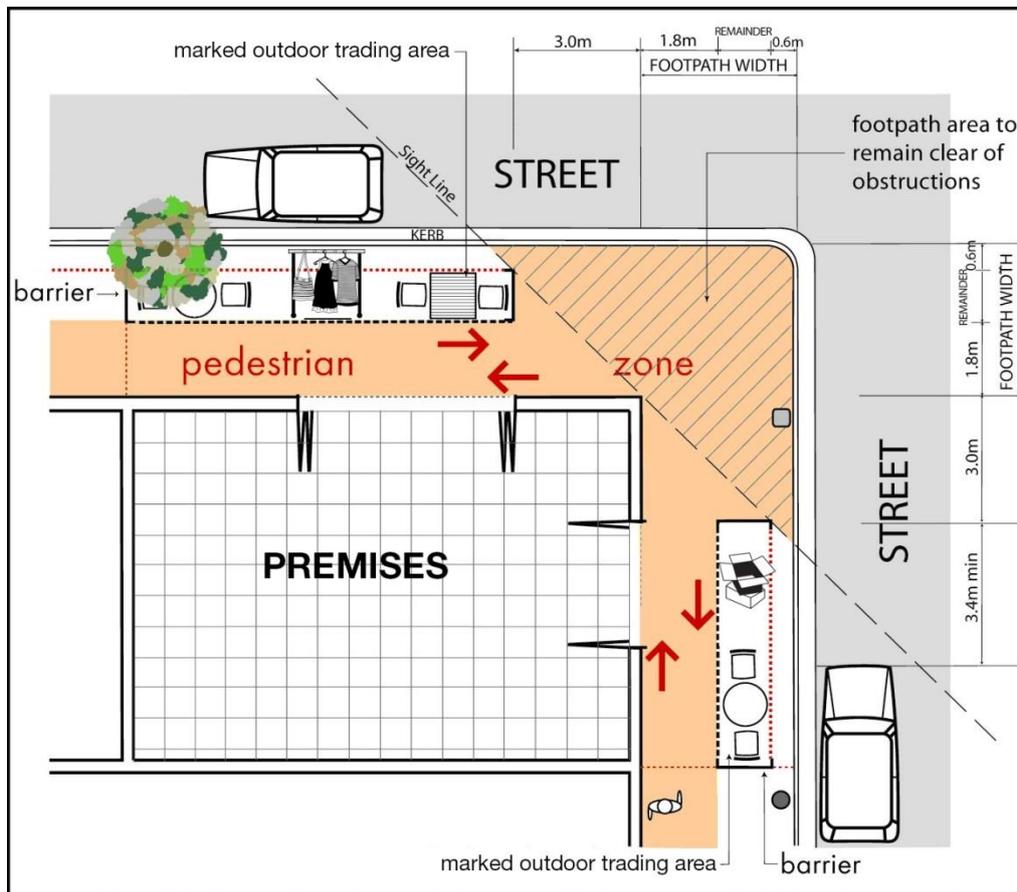
- B.3.1 provide an unobstructed pedestrian path of travel along the footway
- B.3.2 be located adjacent to the road kerb, generally in accordance with Figure 1, to optimise pedestrian access
- B.3.3 maintain a minimum clear width of 1.8m exclusive of any obstruction or street fixtures (eg. seats, bench, tree, rubbish bin, pole) from the property boundary towards the roadway to provide access for pedestrians using a mobility aid. In special circumstances (eg. high volume pedestrian or traffic areas, such as near busy intersections) greater widths may be required
- B.3.4 where vehicles are permitted to park against the kerb, be at least 0.6m from the kerb edge to provide a safety buffer from vehicles and to enable passengers to alight from and access parked vehicles
- B.3.5 provide a suitable barrier (temporary, framed fabric style or planter box style or a suitable contrast to the surrounds to be visible at all times) aligned at each end of the outdoor trading area with the outdoor trading boundaries specified in 6.1 Refer Annexure F.
- B.3.6 not inhibit access to public utilities such as fire hydrants, access holes, inspection chambers, telephone and electricity underground cables, water service pipes and the like
- B.3.7 where situated at a street intersection corner, be designed to reflect how the appropriate principles in *AustRoads Guide to Traffic Engineering Practice - Part 5* and the RMS's *Road Design Guide* have been applied to the intersection typology and traffic calming infrastructure in order to maximise public safety.
- B.3.8 At some locations reduced setbacks may be permitted having regard to the sight lines present at the location.
- B.3.9 provide adequate clear zone provision to the trading area in accordance with the RMS's *Road Design Guide* where relevant
- B.3.10 not be located adjacent to the road kerb or within existing sign posted zones relating to bus stops, taxi stands, parking for disabled and the like.
- B.3.11 not be located on both sides of the pedestrian access path unless the location has been purpose built to accommodate placement of furniture.



**Figure 1: Adjacent to kerb**

Marked outdoor trading area adjacent to the kerb aligned to the respective business.

- i) Minimum pedestrian path of 1.8m.
- ii) Set back 0.6m from kerb.
- iii) All tables, chairs and other outdoor furniture are to be kept in the designated outdoor trading area at all times.



**Figure 2: Adjacent to kerb at corner location**

Marked outdoor trading area adjacent to the kerb at street corner.

- i) Vehicle sight line maintained with nominal 3m setback pending locational circumstances.
- ii) Minimum unobstructed pedestrian path of 1.8m on both street frontages.
- iii) Set back 0.6m from kerb.
- iv) All articles, signs, goods, food or beverages for consumption, display are to be kept in the designated outdoor trading area at all times.

• **Note:** Figure 2 should be read as a guide only. Relevant traffic requirements must be complied with on a site by site basis.

B.3.12 Toilet facilities must be available for patrons at the premises to which it relates when an outdoor trading area is used for the purpose of providing outdoor dining and the combined seating capacity of both internal and outdoor trading areas is greater than 20 places.

**B.4 Consumption of alcohol -**

B.4.1 Alcohol may be supplied or consumed in an outdoor trading area subject to any requirements of the Independent Liquor and Gaming Authority and any approval conditions imposed by CN.

# Annexure C - Articles Placed Within Area Guidelines Generally

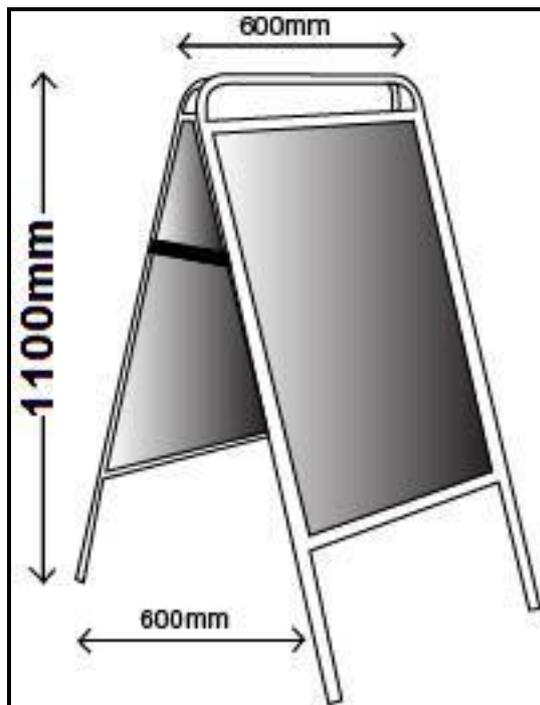
## Articles Placed Within Area Generally

- C.1 Articles placed within outdoor trading areas including articles, furniture, tables, chairs, planter boxes, barriers and menu boards must, at all times, be properly placed and confined within the outdoor trading area and shall not impact upon the safety of other users.
- C.2 Articles placed within outdoor trading area shall not protrude from the area except for flags, umbrellas and shade structures.
- C.3 Items placed in the outdoor trading area must not cause damage to the existing footway or other public infrastructure. The outdoor trading operator is responsible for any damage caused to third parties.
- C.4 It is the responsibility of the business to ensure that patrons do not move furniture or goods from within the boundaries of the outdoor trading area onto the pedestrian path of travel.
- C.5 No article including furniture is to be permanently fastened to the footway without the separate prior approval of CN.
- C.6 Articles or structures not permanently fastened to the footway must be removed from the outdoor trading area upon completion of trading each day.
- C.7 Outdoor trading areas on footways and public spaces to which vehicular traffic has access must be protected by approved barriers. Refer Annexure F
- C.8 Umbrellas and shade structures
  - C.8.1 Umbrellas and shade structures must be anchored to ensure that they are secured to withstand the effects of wind.
  - C.8.2 Umbrellas and shade structures must be positioned to ensure that they will not cause an injury to patrons or pedestrians.
- C.9 Heating devices
  - C.9.1 Free standing heaters located within outdoor trading areas must comply with *Australian Standard AS 1596 (Storage and Handling)* and must be certified by the Australian Gas Association.
  - C.9.2 Heating devices must be contained wholly within the outdoor trading area.
  - C.9.3 Heating devices must be positioned and secured to ensure that they will not cause any injury to patrons or pedestrians. Outdoor trading operators are responsible for any damage caused.

# Annexure D - Articles Placed Within Area Guidelines – A-Frame Signs

## A-Frame Signs

- D.1 A-frame signs must not exceed 1100mm high when open x 600mm wide x 600mm deep. (When open, signs are required not have a base footprint exceeding 600mm x 600mm).
- D.2 A-frame signs must be sturdy and unable to fall or be blown over and must be constructed of suitable durable materials.
- D.3 A-frame signs must not have protruding or moving parts when displayed.
- D.4 A-frame signs must not have flashing lights or any elements that can reflect light or dazzle.
- D.5 A-frame signs must not display offensive content.
- D.6 A-frame sign content must relate to the associated business.
- D.7 Where the A-Frame sign is located in a Heritage Conservation Area as defined in the Newcastle *Local Environmental Plan 2012* (LEP), the sign must only display business identification information in accordance with the provisions of *State Environmental Planning Policy No 64*.
- D.8 A-Frame signs must not cause an obstruction to pedestrian zones and are to be placed kerbside or within an approved ODT area.

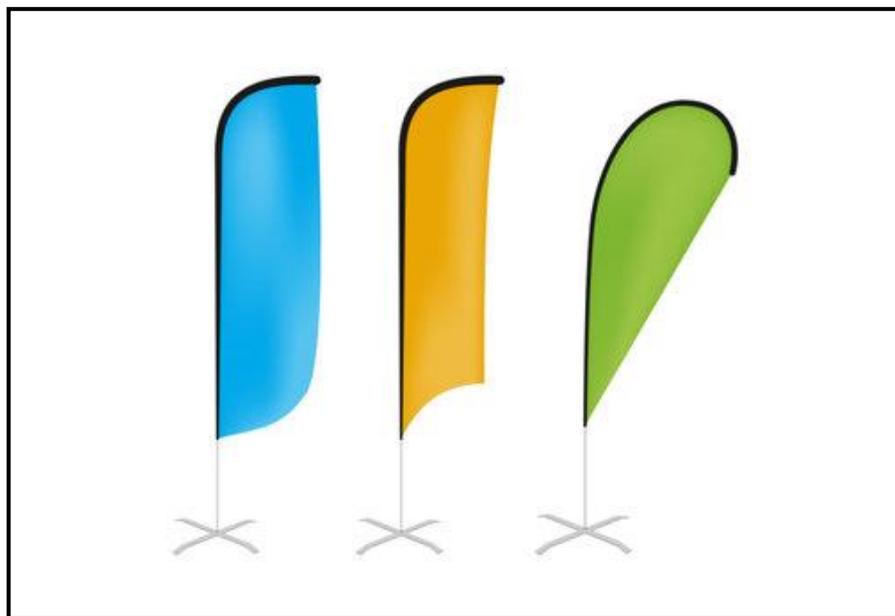


**Figure 3:** A-frame sign maximum dimensions

# Annexure E - Articles Placed Within Area Guidelines – Flags including Tear Drop Flags

## Flag structures including tear drop flags

- E.1 Flag structures must not exceed 2.5m high or the height of adjacent awnings or similar structures within a 10m radius, whichever is lower, and must not have a width exceeding 600mm at any point or in any direction.
- E.2 Flag structures must be free standing or in a base or holder that does not exceed 1100mm high x 600mm wide x 600mm deep and must not penetrate or have any associated part that penetrates the ground.
- E.3 Flag structures must be sturdy and unable to fall or be blown over and must be constructed of suitable durable materials.
- E.4 Flag structures and flags must not have any elements that can reflect light or dazzle.
- E.5 Flags must not display offensive content.
- E.6 Flag content must relate to the associated business.
- E.7 Where the flag is located in a Heritage Conservation Area as defined in the *Newcastle Local Environmental Plan 2012* (LEP), the sign must only display business identification information in accordance with the provisions of *State Environmental Planning Policy No 64*.



# Annexure F - Barrier Image

## Barriers (café) safety screening

- F.1 Barriers must be free standing or in a base or holder that does not exceed 1100mm high x 600mm wide x 600mm deep and must not penetrate or have any associated part that penetrates the ground.
- F.2 Barriers must be sturdy and unable to fall or be blown over and must be constructed of suitable durable materials.
- F.3 Barriers must not have any elements that can reflect light or dazzle.
- F.4 Barriers must not display offensive content.
- F.5 Barrier content must relate to the associated business.



## Document Control

Policy title	Outdoor Trading Policy
Policy owner	Manager, Regulatory and Assessment
Policy expert/writer	Planning Investigations and Ranger Coordinator
Associated Procedure Title (if applicable)	N/A
Procedure owner (if applicable)	N/A
Prepared by	Regulatory and Assessment Service Unit
Approved by	Council
Date approved	25/09/2018
Policy approval form reference	ECM# 5708092
Commencement Date	25/09/2018
Next revision date (date policy will be revised)	25/09/2020
Termination date	25/09/2021 (one year post revision date)
Version	3
Category	Governance
Keywords	Food, business, display, seating, disability inclusion, access, items for sale, pedestrian, kerbside, sales, footpath, stall, shops, outdoor, trading, dining, liquor license, tear drop, signs, footpath, a-frame, alcohol.
Details of previous versions	Version 1 – ECM # 3320575 Version 2 – ECM # 4475248
Legislative amendments	Nil
Relevant strategic direction	Vibrant and Activated Public Places
Relevant strategy	N/a

<p>Relevant legislation/codes (reference specific sections)</p>	<p><i>Local Government Act 1993 (NSW)</i>  S68 approval of Council  Div1 Part E Public Roads S2  Div3 Making and determination of applications for approval  - generally  Part 2 Orders Div1 Giving of Orders S27 obstruction  <i>State Environment Planning Policy (Exempt and Complying Development Codes) 2008 (NSW)</i>  Subdivision 20A Footpaths - outdoor dining  <i>Liquor Act 2007 (NSW)</i>  Part 3 Division 1 S10, S11  Part 3 Division 3A S20C  Part 3 Division 4 - S27 can only sell liquor ancillary to a meal  Part 4 Licensing procedures and relates matters Division 1  <i>Workplace Health and Safety Act 2011 (NSW)</i>  Division 4 Duty of officers, workers and other persons  <i>Disability Discrimination Act 1992 (Cth)</i>  S11 &amp; 29A - Unjustifiable hardship  S23 - Access to premises  S24 Goods, services and facilities  S122 - Liability of persons involved in unlawful acts  <i>Disability Inclusion Act 2014 (NSW)</i>- a local council is an eligible entity and public authority as defined in the Act  Part 1 Div3 Disability inclusion action plans - ODT would form part of this.  <i>Environmental Planning and Assessment Act 1979 (NSW)</i>  <i>Roads Act 1993 (NSW)</i>  S125 Approval to use footway for restaurant purposes  Div 3 S138 Works and Structures  <i>Smoke-free Environment Act 2000 (NSW)</i>  Section 4A  Part 2 Prohibition on smoking in smoke free areas 6A  Smoke free areas - outdoor public places  <i>Companion Animals Act 1998 (NSW)</i>  S14A - Dogs in Outdoor Dining  S59-61 - Assistance Animals  Australian Standard 1428.2 Public seating for ambulant people  Australian Standard 1428.2 continuous accessible path of travel</p>
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Other related policies/ documents/ strategies	<p>Australian Human Rights Commission Guides</p> <p>Advisory note on streetscape, public outdoor areas, fixtures, fittings and furniture</p> <p>Newcastle Development Control Plan 2012</p> <p>Public Participation</p> <p>RMS's Road Design</p> <p>AustRoad Guide to Traffic Engineering Practice Part 5</p>
Related forms	<p>Outdoor Trading Application Form</p> <p>Application for New Infrastructure on a Public Road (Type 2) - Section 138 - Roads Act 1993</p> <p>NDCP Public Participation</p>
Required on website	Yes