

## Footpath dining

This interpretation guidance clarifies that the establishment of footpath dining when associated with a Food and drink outlet is **not** a material change of use for the purposes of triggering assessment against the *Brisbane City Plan 2014*.

### Footpath Dining Local Law 2011

Brisbane City Council's *Footpath Dining Local Law 2011* regulates outdoor dining to ensure the safety of diners and pedestrians.

An existing lawfully established food business offering dining on the public footpath outside the premises, will require a Footpath Dining permit from Council.

Section 7(1)(g) of the *Footpath Dining Local Law 2011* – Assessing permit applications - states that 'Council must consider every permit application having regard to — any applicable Commonwealth, State or Local Government laws, policies, plans, standards, guidelines or other requirements'.

### Where there is an existing lawful use established on site

Where there is an existing lawful use on a site (i.e. Food and drink outlet), pertaining to either an existing development approval or where the use is accepted development, the establishment of footpath dining is **not a material change of use**, and does not require the lodgement of a Development Application.

Notwithstanding, planning controls associated with the conditions of an existing development approval, or as governed by the applicable acceptable outcomes of the relevant *Brisbane City Plan 2014* use code remain relevant to the footpath dining, as they would to the indoor use of the premises. These may be included as conditions on the Footpath Dining Permit.

*For example, where a condition of an existing development approval limits the hours of operation till 7pm, the footpath dining must also comply with this condition.*

### Assessment of footpath dining permit

Environmental Health Assessments Team (EHAT), Compliance and Regulatory Services (CaRS), undertake the assessment of the footpath dining permit request. Once issued by CaRS, the permit is valid for 12 months and requires annual renewal. Footpath dining permits are subject to conditions, typically including the display of the permit on the premises, placement of Council markers to delineate areas approved for footpath dining, maintaining unimpeded access and hours of operation.

Outdoor dining in the Queen Street, Brunswick Street and Chinatown malls require a specific malls outdoor dining permit instead of the footpath dining permit.

The EHAT give consideration to the development history of the site in undertaking their assessment of the footpath dining permit request. Where it is observed that a use is operating without relevant planning permits (i.e. the existing Food and drink outlet), the EHAT may raise this matter with the applicant for resolution; this could mean that Development Approval is necessary for the Food and drink outlet. The EHAT also have regard to various other matters such as location of bus stops, loading zones, street and footpath assets and the general suitability of footpath dining at the proposed location.



Footpath Dining permits will contain operational conditions that will reflect any specific Development Approval conditions or Planning restrictions in place (i.e. hours of operations). However, the Development Approval does not regulate amplified noise levels from footpath dining areas (i.e. background music). This is a Queensland Police (QPS) function, or Liquor Licensing if a licensed area.

**Note:** *Outdoor dining that is not on the public footpath (i.e. the public footpath fronting the subject site) is assessed as a Material change of use as part of a new development application or extension to an existing development application.*

## Examples

### **Approved DA for Food and drink outlet on the site:**

Approval granted for a Commercial Character Building Activity (Food and drink outlet) in the Low density residential zone.

Footpath dining associated with the Food and drink outlet is not a material change of use, and does not require the lodgement of a Development Application. Notwithstanding, the conditions of the development approval remain relevant to the footpath dining, as they would to the indoor use of the premises.

Footpath dining in the verge in front of the premises will be subject to the provisions of the *Footpath Dining Local Law 2011*, the owner/operator of the premises will need to seek a footpath dining permit online.

### **Accepted development (no DA required) Food and drink outlet on the site:**

The subject site is zoned Neighbourhood center. Food and drink outlet is part of the Center activities – activity group under Schedule 1 of the *Brisbane City Plan 2014*.

Center activities (in this case a Food and drink outlet) if involving an existing premises with no increase in gross floor area, where complying with all acceptable outcomes in section A of the Centre or mixed use code is Accepted Development (no DA required). Hours of operation are one of the acceptable outcomes that must be complied with.

Notwithstanding, planning controls governed by the applicable acceptable outcomes, in this case section A of the Centre or mixed use code, remain relevant to the footpath dining, as they would to the indoor use of the premises.

Footpath dining in the verge in front of the premises will be subject to the provisions of the *Footpath Dining Local Law 2011*, the owner/operator of the premises will need to seek a footpath dining permit online.

### **Assessable development (DA required) for Food and drink outlet on the site**

Where proposed Food and drink outlet necessitates a development application, and a footpath dining area forms part of the overall proposal, the footpath dining component will not be assessed as part of the development application and will not form part of any development approvals.

If a development approval has been granted, the applicant will then be required to obtain a Footpath Dining Permit to lawfully establish footpath dining.

## More information

Visit: <https://www.brisbane.qld.gov.au/laws-and-permits/food-business-licences/footpath-and-outdoor-dining-permits>