



# **OUTDOOR DINING AND GOODS ON FOOTPATH POLICY AND GUIDELINES**

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## 1.0 Purpose

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To approve and regulate the occupation of Council's footpaths and other public places within Mosman local government area for the commercial purpose of outdoor dining and display of shop goods to:

- Facilitate appropriate use of Council's footpaths and public areas for outdoor dining and display of shop goods by applying controls and standards
- Contribute positively to the streetscape
- Encourage outdoor dining
- Facilitate improvement to the street activation, vitality, amenity and economic viability of Mosman Business Centres and other neighbourhood business localities
- Maintain public safety and avoid disruption to pedestrian movement
- Maintain pedestrian and vehicular circulation, convenience and safety of patrons and the public, existing streetscape elements and , in residential areas and where applicable residential amenity

This policy and guidelines provides general and specific controls for outdoor dining and displays of shop goods consistent with the following legislation and planning instruments. It addresses the application, assessment, approval and compliance processes.

## 2.0 Definitions

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**Approved area** means the site of the footpath or other public place for which approval for the conduct of outdoor dining or display of shop goods has been granted by Council.

**Approval holder** means the proprietor of the food or other shop premises who has applied for and been granted approval for the conduct of outdoor dining or display of shop goods

**Classified road** means roads classified under Sections 46, 47, 50 or 51 of the *Roads Act 1993* that have a legal class. The classified roads in Mosman are Spit Road, Military Road, Bradleys Head Road and Athol Wharf Road which are either State or Regional roads.

**Demountable** means furniture that is fixed in place and not meant to be removed at the end of each day's trading however is able to be easily removed and replaced without disruption to the footpath or its use.

**Fixed bench tables and seats** means an outdoor picnic / barbeque table setting, typically one piece and constructed in timber, or any other outdoor table setting that is of such bulk that it cannot be easily removed and replaced.

**Food premises** means restaurants, cafes, bars, pubs and other food establishments (including bakeries, patisseries, delicatessens, sandwich bars and juice bars) which serve plated food and refreshments with tableware. Such businesses must have the appropriate development consent to operate as a food premises.

**Footpaths and public places** mean any area of footpath, road reserve and open space owned or managed by Council and used for pedestrian movement or recreation by the community. It excludes road reserve or other thoroughfare intended predominantly for vehicular traffic or privately owned open spaces.

**Goods on footpath** means shop goods on display on Council's footpath or other public place outside a shop premises for sale or otherwise.

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**Mosman Business Centres** means the nine precincts identified in the Mosman Business Centres Development Control Plan 2012 (BCDCP) as business centres and shown on the maps annexed to this policy as **Annexure A**.

**Outdoor dining** means the placing of tables, chairs and other items deemed appropriate under this policy on the footpath or other public places for the purpose of *al fresco* dining associated with an approved food premises.

**Parent property** means the food or other shop premises associated with the occupation of a footpath or other public place.

**Tableware** means non-disposable dinnerware, drinkware and utensils for use at the table for dining including plates, platters, bowls, cups, mugs, glasses and cutlery.

### 3.0 Scope

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Covers all applications to occupy footpaths and other public places, within the Mosman local government area, for the purpose of outdoor dining and display of shop goods activities.

Does not relate to the exempt pathway for registered clubs, food and drink premises, and artisan food and drink industries to set up outdoor dining on private land such as bowling greens and car parks, without increasing patron capacity, under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

### 4.0 Legislation and Planning Instruments

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The following legislation and planning instruments contain provisions relating to the occupation of Council land for the purposes of outdoor dining and display of shop goods:

**Local Government Act 1993**, Chapter 7, Part 1, Division 1, Section 68(1), Part E (public roads) of the approvals table provides that a person may occupy Council's footpath for the display of shop goods only with the prior approval of Council. The approval is specified as follows:

Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.

**Roads Act 1993**, Part 9, Division 1, Section 125 provides that Council may grant an approval for a restaurant adjacent a footpath of a public road to use part of the footpath for the purposes of the restaurant. An approval may be granted on such conditions (including conditions as to payments in the nature of rent) as Council determines. An approval may not be granted in respect of a classified road except with the concurrence of the Roads and Maritime Services. Approvals may be granted for a maximum term of seven years or up to when such use ceases.

Sections 138/139 of the **Roads Act 1993** requires a person to obtain the consent of Council to erect a structure or carry out work in, on or over a public road and such consent may be granted on such conditions as the Council thinks fit. Where the installation of structures on the footpath is proposed in association with outdoor dining proposals, Council consent for works on a public road is also required.

#### **State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

Part 2, Division 1, Subdivision 20A Footpaths – outdoor dining specifies that the use of a footpath or public open space within the meaning of the *Roads Act 1993* as an outdoor dining area

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associated with lawful food and drink premises is exempt development. The relevant development standards specified are that outdoor dining activity must:

- be associated with a lawful ‘food and drink’ premises – that is, the venue has approved use; and
- be carried out in accordance with an approval granted under Section 125 of the *Roads Act 1993* including in accordance with any hours of operation to which the approval is subject; and
- be carried out in accordance with any approval granted under Section 68 of the *Local Government Act 1993*; and
- not be under an awning, unless the awning complies with the requirements set out in the *Building Code of Australia*, Volume 1, B1P1 and B1P2.

Subdivision 20B – Outdoor dining general covers public land that is not a “footpath”.

**Mosman Local Environmental Plan 2012** (Mosman LEP 2012), Schedule 2 Exempt development specifies that outdoor dining (associated with food and drink premises) is an exempt development which may be carried out without the need for development consent. Such development is not exempt from any approval, licence, permit or authority that is required under any other Act and adjoining owners’ property rights and the common law still apply. The relevant provisions of Mosman LEP 2012 follow:

Outdoor dining (associated with food and drink premises)

1. Must be associated with an adjacent food and drink premises being carried out with lawful consent.
2. If located on the footway of a public road, must be consistent with an approval granted under section 125 of the *Roads Act 1993*
3. Must not be located on land steeper than 1:50 gradient.

**Mosman Business Centres Development Control Plan 2012** (Mosman BSDCP 2012), Part 7 Miscellaneous Controls, 7.1 Use of footpaths for outdoor dining and display of goods, provides a number of planning controls to meet the following objectives:

1. To have uses at street level that adds vitality and provides pedestrian interest and an active street frontage while maintaining the primary purpose of footpaths as a pedestrian thoroughfare for access.
2. To have provision for public safety and visual amenity.
3. To have the size and location of retail displays and outdoor dining on footpaths restricted so the activities can occur in a safe and unobtrusive manner.
4. To ensure that accessibility is not significantly compromised by the use of footpaths for display of goods or outdoor dining.

### 5.0 General Controls

The following general controls apply to proposals for the occupation of Council's footpath and other public places for the purpose of outdoor dining and display of shop goods:

- 5.1 Approvals shall have regard to principles of access and mobility provided for in Council's Pedestrian Access and Mobility Plan.
- 5.2 The parent property must have development consent for the business being conducted in the premises and the footpath occupation must be related to that use.
- 5.3 Pubs and small bars shall not be granted an approval under the *Roads Act 1993* to conduct outdoor dining activities unless development consent for outdoor dining has been obtained under the *Environmental Planning and Assessment Act 1979*.

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- 5.4 A minimum two metre wide unimpeded public pathway must be maintained adjacent the approved outdoor dining area or display of shop goods for pedestrian circulation.
- 5.5 Outdoor dining furniture and equipment and displays of shop goods must minimise the risk of harm, injury or inconvenience to the public and should be:
- portable and temporary
  - made of safe design and construction and material
  - visually attractive and maintained in good condition
  - placed within the approved area safely and securely
- 5.6 The ground surface must be suitably constructed and sufficiently level to support a proper layout and safe use of the required furniture, displays and items as appropriate and associated circulation areas.
- 5.7 Smoking on Council's land is prohibited at all times in accordance with Council's policy on the management of smoking in public places (the *Smoke-Free Environment Act 2000* bans smoking in certain outdoor areas and an extension of the ban to include licenced premises, restaurants and outdoor dining areas comes into effect on 6 July 2015 which will supersede Council's no smoking policy in this regard).
- 5.8 The provision of food in outdoor dining areas and display and sale of foodstuff on Council's footpaths must comply with the *Food Act 2003* and the Food Standards Code.
- 5.9 The display of advertisements and business signs within approved areas and on furniture and equipment is not permitted except for that associated with the proprietor's business. For example, the logo of the brand of coffee sold at a café may appear on umbrellas and barriers. Council reserves the right to determine inappropriate advertising.
- 5.10 Chalkboards and the like promoting in-store specials and events may be placed on the exterior walls of premises within or adjacent to approved area provided they contribute to the streetscape and public domain; are fixed securely; and do not represent a hazard or impediment to pedestrian movement. Council reserves the right to determine inappropriate signage.
- 5.11 An application can be made to Council to conduct outdoor dining and the display of shop goods adjacent properties neighbouring the subject site, where appropriate, and subject to the ongoing consent of the owner and proprietor of that neighbouring property.
- 5.12 Council will mark the boundaries of areas approved for outdoor dining and the display of shop goods with the installation of 'approved trading area' discs on the footpath.
- 5.13 All approval holders are required to hold a current public liability insurance policy for \$20M and provide Council with a certificate of currency noting Council's interest upon renewal each year.

## 6.0 Outdoor Dining Controls

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- 6.1 The following specific controls apply to proposals for the occupation of Council's footpath and other public places for the purpose of outdoor dining:
- 6.1.1 Approval to occupy Council's footpath for the purposes of outdoor dining is granted under Section 125 of the *Roads Act 1993*.

- 6.1.2 Where consent is granted for works on Council's footpath, annual fees and conditions in addition to any outdoor dining approval fees and conditions, will apply.
- 6.1.3 Consents under Sections 125, 138/139 and 153 of the *Roads Act 1993* may not be given with respect to classified road except with the concurrence of Transport for NSW (TfNSW), which will require a minimum 2.5 metre wide unimpeded public pathway be maintained adjacent roadways classified as secondary roads in the Schedule of Classified Roads and Unclassified Regional Roads published by TfNSW and the requirements outlined for clearance widths for pedestrians to be maintained in accordance with AUSTRROADS Guide to Road Design Part 6A – Pedestrian and Cyclist Paths (Section 6 Design Criteria for Pedestrian Paths).
- 6.1.4 Outdoor dining is only allowed in conjunction with food premises which use tableware for serving food and refreshments. Outdoor dining is not permitted for the consumption of takeaway food and refreshments using disposable containers, utensils and wrapping.
- 6.1.5 Single use plastics are prohibited at any time in Council's approved outdoor dining areas under the NSW Plastics Action Plan and the *Plastic Reduction and Circular Economy Act 2021*.
- 6.1.6 Outdoor dining must not be located on land steeper than 1:50 gradient.
- 6.1.7 Wherever possible, outdoor dining should visually relate and complement the surrounding public domain to promote design and visual quality.
- 6.1.8 Outdoor dining should be physically aligned with existing features in the streetscape and be clearly discernible to sight impaired persons.
- 6.1.9 Kerb side dining is permissible and applications will be considered on merit. Criteria used in assessing merit include:
- footpath or public place being an appropriate width
  - site is adjacent 'no stopping' zone
  - provision of safety barriers and structures
  - site does not represent a hazard or unduly impede access for persons with special needs including the sight impaired (noting that patrons shall place prams, motorised wheel chairs and the like wholly within the approved area)
  - usual surrounding public domain and design / visual quality considerations that apply to any outdoor dining application
- 6.1.10 Outdoor dining may not be permitted in potentially hazardous places such as on narrow roads, corners of street intersections, elevated positions or where pedestrian congestion may occur. If approved, mitigating measures may be required such as the installation of bollards or railings at the applicant's expense.
- 6.1.11 Outdoor dining may not be permitted near civic, ceremonial and memorial spaces.
- 6.1.12 The boundaries of areas approved for outdoor dining may be delineated with the use of umbrellas, planters, removable barriers and bollards or other features that complement the streetscape subject to Council approval. These markers are to be kept strictly within the boundaries of the approved area as delineated by the 'approved trading area' discs.

6.1.13 Whilst there is no specific limit on the number of tables and chairs for outdoor dining, proprietors will need to ensure that the number of tables and chairs placed within an approved outdoor dining area is safe and comfortable for patrons and that all furniture always remains wholly within the approved area. Council reserves the right to impose limitations on the number of tables and chairs in sensitive areas such as those adjacent residential areas and in high pedestrian traffic thoroughfares.

#### 6.1.14 Fixed structures and furniture

Where an application proposes the installation of fixed structures on the footpath (such as flooring, decking, railings, balustrades and built planter boxes) in association with outdoor dining proposals, Council consent for works on a public road under Sections 138/139 of the *Roads Act 1993* is also required. All works approved together with removal of works and making good the land at the end of an approval period is to be at the approval holder's expense.

Fixed structures including furniture are otherwise not permitted on Council's footpath or other public places. Council will not permit installation of fixed bench tables and seats, without the written consent of Council, with the exception of 17-21 The Esplanade which is permitted to retain existing fixed furniture only for the life of that furniture. (Special conditions of approval relating to fixed furniture at 17-21 The Esplanade were determined by Council on 3 March 2009 (NM/4)).

The installation of demountable bench seating in the approved outdoor dining areas on Council's footpath at 11-21 The Esplanade only is permitted subject to application and approval. Refer to Section 2 of Policy for definition of demountable.

Council will only consider approval of an application to install fixed bench tables and seats in extenuating circumstances, where the permanent placement of such furniture is not detrimental to pedestrian access and safety, the amenity of the street environment; and ability to appropriately clean the footpath.

The installation of glazing and other structures such as barriers, walls and screens on Council land designed to create an 'outdoor room' are not permitted.

#### 6.1.15 Hours of use

The approved hours of use for outdoor dining purposes may be less than the approved hours contained in the development consent for the parent property. Approvals will have regard to matters such as proximity of residential properties and pedestrian congestion.

#### 6.1.16 Liquor licences

Where it is intended to serve alcohol, the approval holder must obtain the Council's consent to apply for a liquor licence applying to the land and obtain the appropriate licence under the *Liquor Act 1982* from the relevant authority. Council will not unreasonably deny consent for a liquor licence covering an approved outdoor dining area provided the parent property is a food premises that is also licenced and provides indoor seating. A copy of the liquor licence and any amendments thereto is to be provided to Council.

Pubs and small bars must also obtain development consent to conduct outdoor dining activities.



Premises that have a liquor licence and change the boundaries of the approved outdoor dining area, need to change the boundaries on the liquor licence in order to serve alcohol in an outdoor dining area.

6.2 The following specific controls apply to furniture and equipment temporarily placed on Council's footpaths and other public places for the purpose of outdoor dining:

6.2.1 Furniture and equipment may be placed in an approved area in order to define and delineate the footpath area occupied by individual food premises.

6.2.2 All furniture and equipment must be removed from the footpath at the cessation of trading or by the time specified in the Approval whichever is earliest.

6.2.3 Tables and chairs

The style of tables and chairs should visually relate and complement the surrounding public domain. Chairs should be single café style seats and of lightweight construction however Council will consider benches, ottomans and stools where appropriate.

6.2.4 Barriers

Temporary barriers may be placed on the boundary of or within approved areas for wind protection purposes and to delineate boundaries and access ways. Barriers must be no more than 1.2 metres in length and 900mm in height; constructed of metal with fabric or vinyl insert either bonded or laced to the metal frame. Flexible weight bags are to be used on the pedestal foot to assist with stability.

6.2.5 Umbrellas

Moveable umbrellas may be placed within the approved area and are to be secured by a stabiliser foot or other restraining or anchoring device to ensure stability particularly during windy weather. The edge of an umbrella must be kept at least 600mm from the kerb. In other instances, umbrellas may overhang the boundary of an outdoor dining area to achieve adequate weather protection subject to pedestrian access not being impeded. Where more than one umbrella is placed in an outdoor dining area of a food premises, they must be identical in all aspects. Roll/drop down plastic screens are not permitted to be attached to umbrellas.

6.2.6 Planter boxes and pot plants

Planter boxes and pot plants may be placed within the approved area. Where more than one planter box is placed on the approved area, they must be of uniform appearance for the premises they serve. Planter boxes and plants therein must be maintained, present well and kept free of litter. Moveable pot plants do not need to be of uniform appearance however must be maintained and present well and be removed from the approved area outside of trading hours. Larger moveable pot plants that prove difficult in being removed from the approved area on a daily basis may remain in the approved area outside of trading hours provided they do not represent a hindrance to pedestrian movement and safety.

6.2.7 Heaters

Heaters may be placed within the approved area and are to be compliant with the relevant gas association standards or electrical authority requirements. Electric heaters must comply with Australian Standards and the circuit be fitted with earth leakage shut off safety devices. Gas heaters must incorporate an integrated and compliant (in date) gas bottle, fitted with a safety shut off valve. Heaters are to be used in accordance with manufacturer's instructions and placed clear of all combustible material and at recommended distances under or near umbrellas, canopies and barriers.

#### 6.2.8 Weather screens

The installation and use of roll down / drop down clear plastic screens or clear plastic sails and windbreaks is only permitted at Balmoral and Spit Waterside Business Centres (as identified in the BCDCP maps at Annexure A) and is only to be used during intemperate weather conditions (meaning episodes of wind, rain and cold temperatures that are not reasonably conducive to *al fresco* dining). Council's specific consent is required for the installation and use of weather screens which must be retracted or removed when the outdoor dining area is not in use. Such consent will have regard to the Austroads Technical Standards, maintenance of pedestrian circulation and the surrounding public domain.

Weather screens are not permitted within any other locality with the exception of sites which meet the following additional criteria:

- Not located on main pedestrian and vehicular thoroughfares (applies in general to sites located in lanes, alleys and narrow streets where a 'wind tunnel' effect prejudices *al fresco* dining during intemperate weather)
- Not located within a civic precinct
- Located within an area of low pedestrian and vehicular movement
- Not interfering with pedestrian movements
- Not interfering with access or sight lines to adjacent or nearby premises
- Not unreasonably affecting the visual amenity of the locality including views and vistas through the site of the approved area and the locality

#### 6.2.9 Retractable awnings and canopies

Council's specific consent is required for the installation of retractable awnings and canopies to provide protection over an associated approved outdoor dining area. Such fixtures are to be installed on the parent property and retracted when the outdoor dining area is not in use. They are to be cleaned and maintained to Council's satisfaction. Fixed awnings and canopies are not permitted.

Awnings and canopies proposed for properties in a Conservation Area require development consent. Installation is a complying development in all other areas however will still require Council's consent as part of the outdoor dining approval.

#### 6.2.10 Signs

Signs such as A-frame signs, sandwich boards and temporary signs are not permitted. A moveable menu board is permitted provided it is either mounted on or placed against a wall of the parent property or other suitable structure within the approved area. Menu boards must not be placed outside the approved area or in any position within the approved area where it represents a hazard to patrons or pedestrians.

6.2.11 Maintenance of furniture and equipment

All furniture and equipment is to be maintained in a serviceable condition or replaced for general public safety and aesthetic reasons. Approval holders must regularly inspect furniture and equipment for visible wear and tear or damage and immediately arrange repair or replacement. Council may require removal of unsafe or unserviceable items.

Council retains the right to require removal of any temporary item of furniture and equipment for reasons of safety, amenity and aesthetics.

**7.0 Goods on Footpath Controls**

The following specific controls apply to proposals for the occupation of Council's footpath and other public places for the display of shop goods:

- 7.1 Approval to occupy Council's footpath for the display of shop goods is granted under Part E (Public roads) of the approvals table specified in Section 68(1) of the *Local Government Act 1993*.
- 7.2 There is no maximum term for a display of shop goods approval. Once granted by Council an approval will remain valid whilst the proprietor operates from the parent premises and continues to comply with the conditions of the approval.
- 7.3 Goods on display must be an attractive display that contributes to the streetscape and public domain.
- 7.4 Goods allowed to be displayed and offered for sale on the approved area include grocery items, foodstuffs, flowers and potted plants together with merchandise such as books, stationery, toys, fashion displays and hardware items which can be attractively arranged. Foodstuffs may be prepared and sold or given away as part of one-off promotional events and food fairs.
- 7.5 Display stands includes items such as tables, racks, shelves, boxes and frames which are to be removed from the footpath at the cessation of trading. Display stands are to be:
  - visually attractive
  - maintained in good condition
  - fitted with a stabiliser foot or locking wheels/rollers to prevent movement
  - fitted with a tether on sloping sites
  - replaced when not serviceable
- 7.6 Goods not permitted to be displayed include but are not limited to:
  - variety store items such as plastic storage containers, bins and buckets
  - brochures, pamphlets, fliers and booklets
  - merchandise offered in cardboard boxes
  - oversized items
- 7.7 Signs such as A-frame signs, sandwich boards and temporary signs together with newspaper banners are not permitted.
- 7.8 The footpath area fronting shop premises is not to be used for the storage of goods.
- 7.9 Waste bins should be kept in a specified storage area and not be stored on the street.

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7.10 The display of shop goods is to project no more than 900mm from the face of the shop front.

7.11 The minimum height for the display of shop goods is 750mm above the footpath level unless individual items on display are placed against the shop wall/window/boundary.

7.12 All items must be removed from the footpath when the premises are not trading.

### 8.0 Land other than road reserve

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Council may grant approval for outdoor dining and display of shop goods in other public places (other than road reserve) which is owned freehold by Council. Consents to occupy other public places may be granted by Council on the same terms and conditions of approvals granted under the *Roads Act 1993* and *Local Government Act 1993* for road reserve occupations.

Should Council receive a proposal to conduct outdoor dining or display of shop goods on Crown land managed by Council as Council Crown land manager, the application shall be considered having regard to the purpose of the Reserve and any approval would be subject to the endorsement of the Minister administering the *Crown Land Management Act 2016*. In general any consent granted would be on the same terms and conditions of approvals granted under the *Roads Act 1993* and *Local Government Act 1993* for road reserve occupations.

### 9.0 Application Process

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Council will use this policy to assess all applications for the commercial use of footpaths, road reserves and other public places.

#### 9.1 Application process for outdoor dining

Applications must be submitted for new and amended proposals and where the business of the parent property has been sold or transferred.

Applicants must complete and lodge the appropriate application form, acknowledging the conditions of the application and provide the following information:

- Copy of development consent to operate as a food premises (or pub or small bar)
- Plan of the proposed occupation, drawn to scale no less than 1:100 showing the dimensions and area, position of furniture and any other equipment or items to be placed on the land, and in relation to the width of the footpath and any adjacent trees, posts, signage or street furniture
- Certificate of currency for public liability insurance policy of \$20M noting Council's interest
- Where the outdoor dining is conducted under or adjacent an awning, a structural engineer's certification attesting the structural integrity and safety of the awning
- Details of the type, design and construction of furniture and any other equipment or items proposed to be placed on the land including umbrellas, barriers and heaters
- Details of other items proposed to be installed on the land requiring Council's specific consent including weather screens, awnings and canopies
- Where the proposal is to also conduct outdoor dining in front of neighbouring premises, written consent of both the owner and proprietor of the neighbouring premises
- Details of toilet facilities if provided by the parent property

Where permanent structures are proposed in association with outdoor dining proposals, such as flooring, decking, railings and planter boxes, an application for works on a public road under Sections 138/139 of the *Roads Act 1993* must also be completed and lodged.

### 9.2 Application process for display of shop goods

Applicants must complete and lodge the appropriate application form, acknowledging the conditions of the application and provide the following information:

- Copy of development consent to operate a shop from the premises
- Plan of the proposed occupation, drawn to scale no less than 1:100 showing the dimensions and area, position of display stands and any other equipment or items to be placed on the land, and in relation to the width of the footpath and any adjacent trees, posts, signage or street furniture
- Certificate of currency for public liability insurance policy of \$20M noting Council's interest
- Where the proposal is to also display goods in front of neighbouring premises, written consent of both the owner and proprietor of the neighbouring premises

### 9.3 Public notification

Council staff will conduct an initial assessment of the application and where such application meets the above requirements and complies with this policy, the proposal will be subject to public notification inviting submissions.

#### 9.3.1 Public notification for outdoor dining applications

Council will conduct the following public notification of proposals for outdoor dining:

- Write to adjacent property owners, proprietors and residents (this may be widened to the surrounding precinct in sensitive areas, such as those near residential areas, on the assessment of staff)
- Council's website
- Council's column in the Mosman Daily
- Installation of a notice on site of the proposed occupation
- notification to TfNSW for concurrence to the application (where necessary)

The exhibition period will be for a minimum 14 days to allow for receipt of submissions.

Applications for renewal of approvals at the end of the seven year term without amendment will not be notified.

Where a business with an approval has been sold or transferred, applications by new proprietors to be granted an approval the same as the previous proprietor without amendment will not be notified.

#### 9.3.2 Public notification for display of shop goods applications

Council will conduct the following public notification of proposals for display of shop goods:

- Write to the owners and proprietors of the premises immediately adjacent the proposal
- Installation of a notice on site of the proposed occupation

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The exhibition period will be for a minimum 14 days to allow for receipt of submissions.

Where a business with an approval has been sold or transferred, applications by new proprietors to be granted an approval the same as the previous proprietor without amendment will not be notified.

### 10.0 Assessment

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Assessment of applications for outdoor dining and display of shop goods shall be conducted by the Manager Governance or delegate.

Assessment of applications is merit based having regard to the controls provided in this policy and will consider submissions received as a result of the public notification process. Significant considerations include:

- Pedestrian and vehicular circulation
- Convenience and safety of both patrons and the general public
- Existing streetscape elements
- Opportunities to complement the public domain and activate business centres and other business localities
- Residential amenity

Upon completion of assessment, a report and recommendation shall be submitted to the General Manager for determination.

In some circumstances a trial period for up to 12 months may be approved to assist in the assessment of the impact and suitability for outdoor dining or display of shop goods approval. Following a trial period, the occupation may be approved subject to variations to design, operations and conditions or it may be refused. Council reserves the right to revoke an approval for a trial period if the occupation is proving to be unsuitable.

### 11.0 Fees and charges

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11.1 Council's adopted Schedule of Fees and Charges makes provision for the following fees and charges with respect to footpath occupation:

- Application fees
- Annual approval fees (rate per square metre) for outdoor dining based on locality as follows:
  - Spit Junction
  - Mosman Junctions
  - Balmoral (except 11-21 The Esplanade)
  - Food premises at 11-21 The Esplanade
  - All other areas
- Annual approval fees (rate per square metre) for display of shop goods on footpath based on locality as follows:
  - Spit Junction
  - Mosman Junctions
  - All other areas
- Notification, advertising and document preparation fee for outdoor dining approvals
- Installation of boundary marker discs
- Bond of 50% of first year approval fees

The annual approval fees are determined by means of independent commercial valuation which assesses market rates by analysing comparable fees for other Sydney councils and applying differential rates to localities on the basis of their special characteristics. These base market rates are indexed generally in line with the increase in the Sydney All Groups Consumer Price Index as part of the annual review of Council's adopted Schedule of Fees and Charges.

Council undertakes periodic reviews of the fees following consideration of independent valuation advice on the proposed fee structure and market rates together with submissions received from stakeholders in response to community consultation. Council also monitors annual approval fees levied in neighbouring local government areas to ensure fees are within market parameters and reflect the financial benefit derived from the occupation of public land.

11.2 Payments are to be made at least monthly in advance.

11.3 Localities for the purpose of assessing the annual approval fees are those nine precincts identified as business centres in the BCDCP maps at Annexure A, subject to clauses 11.4 and 11.5.

11.4 11-21 The Esplanade

The three cafes located at 11-21 The Esplanade are provided with Council funded umbrella facilities over the adjacent approved outdoor dining areas to provide a degree of weather protection and improve the aesthetics of the streetscape for the benefit of the café owners and patrons. These facilities are also maintained by Council.

Council's adopted Schedule of Fees and Charges provides for a separate 'Three cafes at 11-21 The Esplanade' locality rate. The rate is equivalent to the 'Balmoral (except 11-21 The Esplanade)' locality rate plus an additional rate based on cost recovery of Council providing and maintaining the umbrella facilities. The cost recovery rate is based on the capital costs of the umbrellas amortised over the serviceable life of the facilities including opportunity cost together with maintenance costs.

Should replacement of the umbrellas be planned and approved, the additional rate shall be reviewed based on actual cost of replacement and ongoing maintenance. Should Council remove the umbrellas at the end of their serviceable life and not replace them, the 'Three cafes at 11-21 The Esplanade' locality rate will become redundant and the 'Balmoral (except 11-21 The Esplanade)' locality rate will then apply as the 'Balmoral' locality rate.

11.5 17-21 The Esplanade

Special conditions of approval apply to 17-21 The Esplanade due to the inability of the business to use weather protection on the full approved area during intemperate weather. The approval holder cannot place weather protection on the northern half of the site due to the location of the pedestrian crossing and Austroads Technical Standards requirement to keep a clear sight line on either side of the crossing for vehicles travelling north along The Esplanade.

The rate applicable for the 'Balmoral (except 11-21 The Esplanade)' locality provided in the adopted Schedule of Fees and Charges applies to the northern half of the approved area (approximately 14.5m<sup>2</sup>) for the business operating at 17-21 The Esplanade, in lieu of the rate applicable for the 'Three cafes at 11-21 The Esplanade' locality.

11.6 Other exceptions

Council may from time to time amend its adopted Schedule of Fees and Charges to make provision for discounts to fees and charges for footpath occupation, in order to promote and encourage use of certain localities for *al fresco* dining purposes. This may include localities where new infrastructure has been constructed or where there is a downturn in food premises business, or otherwise subdued demand for outdoor dining space.

### 12.0 Shared Outdoor Dining Zones

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- 12.1 Notwithstanding the other provisions of this Policy and in order to achieve more vibrant and accessible *al fresco* food precincts, Council may from time to time under this Policy designate a specific area of footpath or other public place as a **Shared Outdoor Dining Zone** (Shared Zone) for the purpose of outdoor dining. A Shared Zone is for use by patrons of food premises that are either adjacent or within the vicinity of the Shared Zone. There is no specification on the distance that a food premises needs to be located from a Shared Zone to qualify it for consent to use it for outdoor dining purposes as that will be a commercial and operational decision for the food premises operator. In any event practicality of a proposal will be determined by Council staff in assessing an application to use a Shared Zone.
- 12.2 The number of food premises using a Shared Zone at one particular time will be determined by Council staff when assessing applications. Council staff will allocate space on a square metre basis and will have the final determination on how much space is allocated to applicants. Where there are more applicants than adequate dining spaces available, preference will be given to those food premises adjacent the Shared Zone. Consent to use a Shared Zone will be on an annual basis only in order to allow a regular review of allocated spaces having regard to existing food premises closing and new food premises opening. This will ensure all food premises are afforded the opportunity to participate in the use of the Shared Zone rather than on a first in first served basis for the maximum term of seven years and thereby locking out any new users of the Shared Zone. Takeaway only food premises are not permitted to use a Shared Zone.
- 12.3 Council will prepare the Shared Zone for use for outdoor dining by undertaking required infrastructure works including surface and access works and installation of any necessary balustrading or bollards. Council will not provide any furniture, fixtures or equipment for the Shared Zone nor will it permit an applicant to install fixed furniture, fixtures or equipment. The onus will be on an applicant to provide Council approved furniture, fixtures or equipment which is to be removed each day. Users are permitted to place barriers on the boundaries of their allocated space within Shared Zones in order to differentiate individual users' spaces. Council accepts no responsibility or liability for patrons of one food premises using another food premises' allocated space.
- 12.4 This Policy acknowledges that proprietors of non-food premises (including retail, commercial and takeaway only premises) adjacent a Shared Zone may object to outdoor dining in front of their business. However provided reasonable access is provided to the non-food premises and past the Shared Zone, Council will not consider such objections when assessing an application to use a Shared Zone.
- 12.5 All other relevant provisions and controls related to outdoor dining under this Policy (including fees and charges) will apply to Shared Zones.
- 12.6 In compliance with General Control 5.4 of this Policy, the public footpath immediately outside any individual shop be protected (approximating 2 metres in width) for the purposes of pedestrian ingress and egress.



## Outdoor Dining and Goods on Footpath Policy

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12.7 Areas currently designated under this Policy as a Shared Outdoor Dining Zone are:

- Centenary Circle adjacent 938 Military Road and 155-161 Middle Head Road
- Myahgah Mews

Designation of further shared al fresco areas as a Shared Zone under this Policy are to be determined by Council.

### 13.0 Road area reallocated to outdoor dining

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13.1 The use of on-street car parking spaces for outdoor dining to increase the public realm, generally in line with the placemaking initiatives under NSW Movement and Place Framework, may be permissible. Reallocation of road area to outdoor dining proposals should facilitate public safety and improve amenity as well as support local businesses.

Presently, Council will only consider **temporary** proposals for up to two years:

- to assist new and existing food and drink premises establish an *al fresco* area where there is either no or limited suitable footpath space available for outdoor space to support the business; and
- to act as a trial to assess whether it is appropriate to consider permanently reclaiming the roadway by constructing permanent outdoor dining streetscape infrastructure (such as blister kerbing, re-levelling, and installing balustrading or bollards); or
- in extenuating circumstances where temporary outdoor dining space is required by a food and drink premises to ensure its sustainability

13.2 Council will only consider applications for reallocation of the road area to outdoor dining where the proposed area does not include:

- Bus stops and bus zones
- Roads with speed limits of more than 50km/h
- Clearways
- Parking zones for Australia Post, police, fire, ambulance, taxi or car share
- No stopping zones
- Bike lanes
- Parking in front of a residence
- Accessible parking
- In-road fire hydrant

13.3 Other types of parking space may not be suitable and Council will balance the reallocation of on-street parking for outdoor dining with the need to maintain access to other businesses and access to residential parking, particularly in the following circumstances:

- in high-density mixed-use areas where there is a need to balance business and resident street parking
- in areas where the cumulative impact of reallocating roadway space will unreasonably impact vehicle access to the commercial area and access to residential parking
- in areas where significant concerns, objections and complaints have arisen due to existing road space dining sites, and
- in areas where there is a high occurrence and concentration of approved road area outdoor dining

13.4 All applications are considered on a case-by-case basis in view of the exclusions above and the specific context of individual locations, parking restrictions, neighbouring

## Outdoor Dining and Goods on Footpath Policy

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businesses, the aesthetics and impact on streetscape of the proposal, and the road environment.

- 13.5 Council may revoke, suspend or amend an approval for outdoor dining if the road area is, in Council's opinion, not being used by patrons of the business.
- 13.6 Any approval would require the installation of vehicle-proof barriers appropriate to the speed of traffic to protect the space reclaimed and clearances from the kerb or roadway may be adjusted by the presence of standard concrete vehicle-proof barriers.
- 13.7 The space reclaimed may extend beyond the alignment of the business tenancy provided:
- it is continuous
  - it is not in front of another food and drink premises, and
  - the space in front of a non-food and drink premises is equally shared with any other food and drink premises that adjoins the non-food and drink premises.

Space reclaimed across the frontage of adjacent vacant retail tenancies may be considered however any approval will be reviewed and adjusted if that vacant tenancy becomes occupied by a food and drink premises.

- 13.8 Any approval will be subject to an applicant contributing to the direct costs in the reallocation, namely acquisition and installation of concrete barriers and changes to signage.
- 13.9 Applications for road area reallocation to outdoor dining will be determined by the General Manager (in consultation with Councillors) or the Council, where the General Manager declines to exercise delegated authority.

### 14.0 Approval and conditions

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Standard and environmental conditions of approval will be developed and reviewed in accordance with this policy.

Should an application be approved, an Approval detailing conditions will be issued to the applicant.

Approvals cannot be transferred or assigned. When a business is sold, the new proprietor is required to make application for an approval.

### 15.0 Compliance

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Council will conduct ongoing audits of footpath occupations to ensure compliance with the conditions of approval.

Council reserves the right to terminate or amend an Approval in the following circumstances:

- Repeated breach of conditions of approval
- Inappropriate conduct of approval holders or patrons
- Payment of annual approval fees or other applicable fees remain in arrears for more than two months
- Failure to provide Council with a certificate of currency for public liability insurance
- Council requiring the approved area for other purposes, including operational matters

### 16.0 Responsibility

The Manager Governance is responsible for the review of this policy and for the management of the occupation of Council's footpaths and other public places for the commercial purpose of outdoor dining and display of shop goods.

The Property Officer administers the operational aspects of these applications including ensuring applications are complete and valid, the community consultation process and receipt of submissions, the assessment of proposals, and reporting and recommending action to the Manager Governance.

The General Manager, Director Corporate Services and Manager Governance are responsible for determining applications under their respective delegated authorities, if exercised. Otherwise, the Manager Governance reports the matter to Council for determination.

### 17.0 Related Information

- *Crown Land Management Act 2016*
- *Environmental Planning and Assessment Act 1979*
- *Food Act 2003*
- *Liquor Act 2007*
- *Local Government Act 1993*
- Mosman Council Asset Management Plan 2020-2029
- Mosman Business Centres Development Control Plan (2012) Part 7
- Mosman Disability Inclusion Action Plan 2022-2026
- Mosman Council Pedestrian Access and Mobility Plan
- Mosman Council Policy on Management of Smoking in Public Places
- Mosman Local Environmental Plan 2012 - Schedule 2 Exempt Development
- *Plastic Reduction and Circular Economy Act 2021*
- *Roads Act 1993*
- *Smoke-Free Environment Act 2000*
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Part 2, Division 1, Subdivision 20A Footpaths and Subdivision 20B Outdoor dining general
- Streamlined Outdoor Dining Approvals, A guide for NSW councils, published by the Office of Local Government

### 18.0 Review

This policy will be reviewed every four years unless otherwise directed by Council or the Executive.

### 19.0 Contact

Enquiries should be directed to the Manager Governance on 9978 4010 or [council@mosman.nsw.gov.au](mailto:council@mosman.nsw.gov.au)

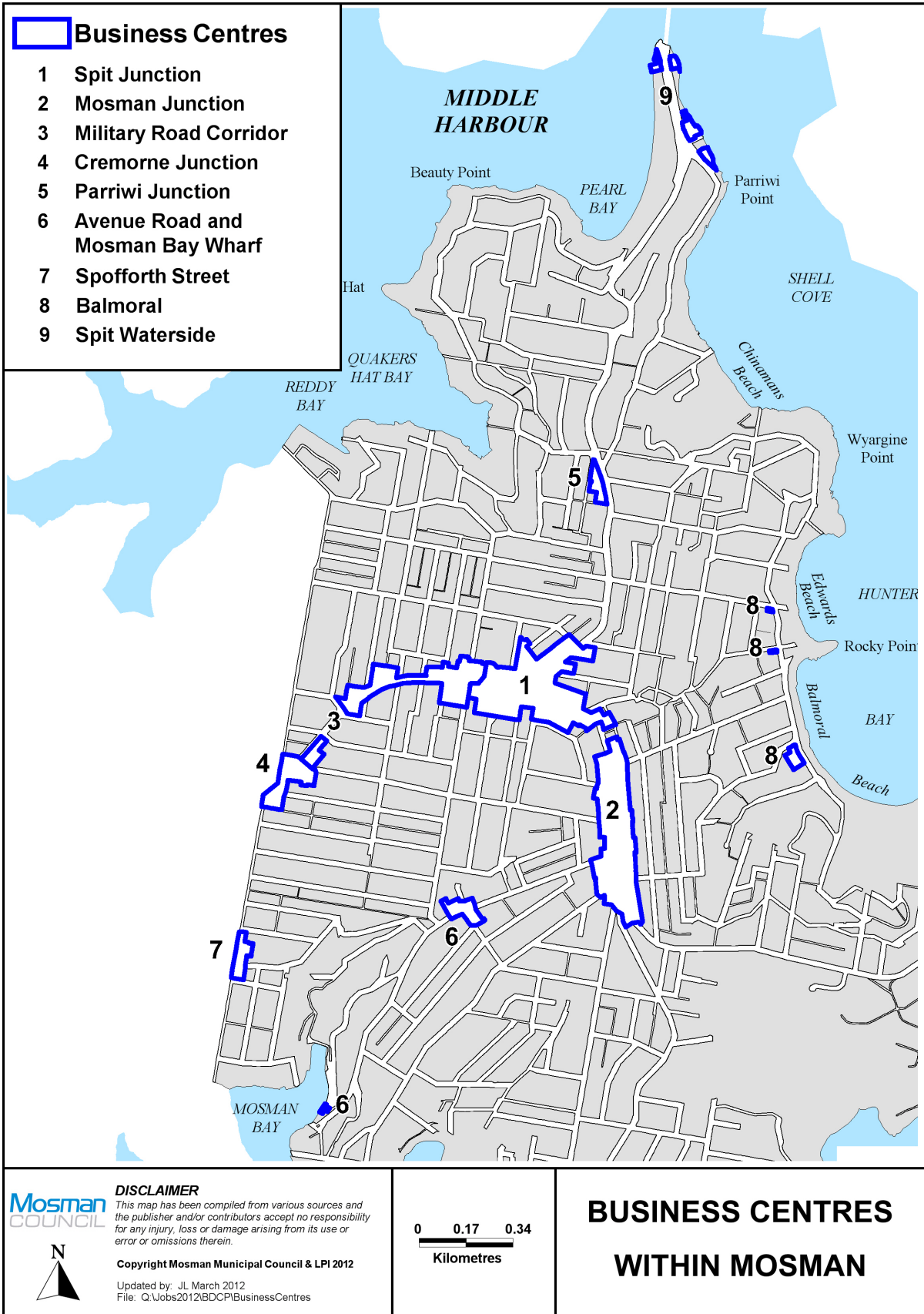
### 20.0 Amendments

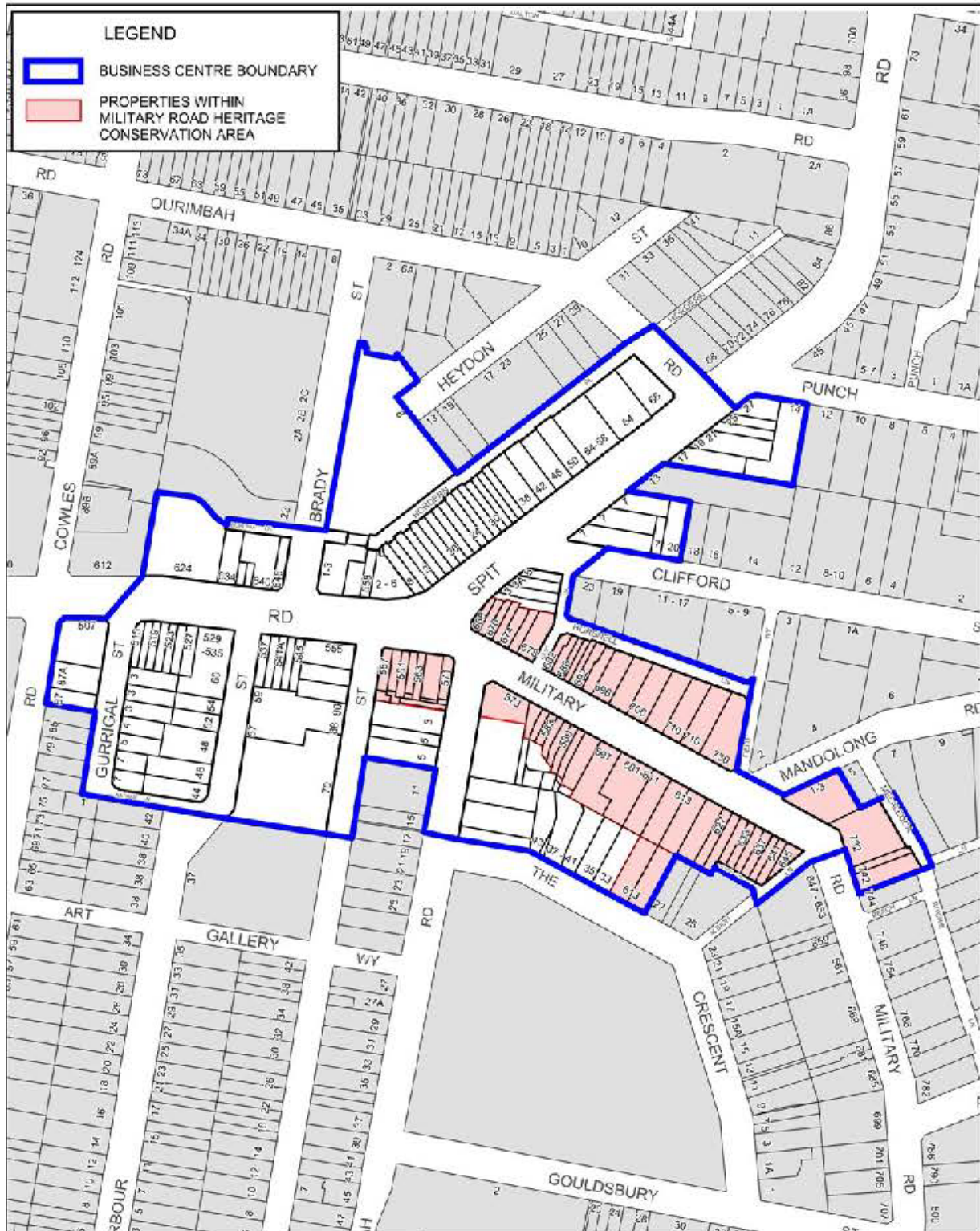
Date	Detail of Amendment	Reference
2 September 2014	Policy adopted	CS/26
3 March 2015	Clause 11 amended - review of fee structure	CS/4
2 May 2017	Definitions and Clause 6.1.13 amended - demountable bench seating at 11-21 The Esplanade	CS/14
6 February 2018	Introduction of Shared Outdoor Dining Zones	CS/3

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7 May 2024	Scheduled review	CS/10
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Annexure A

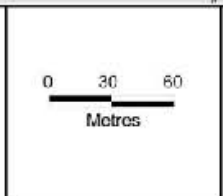




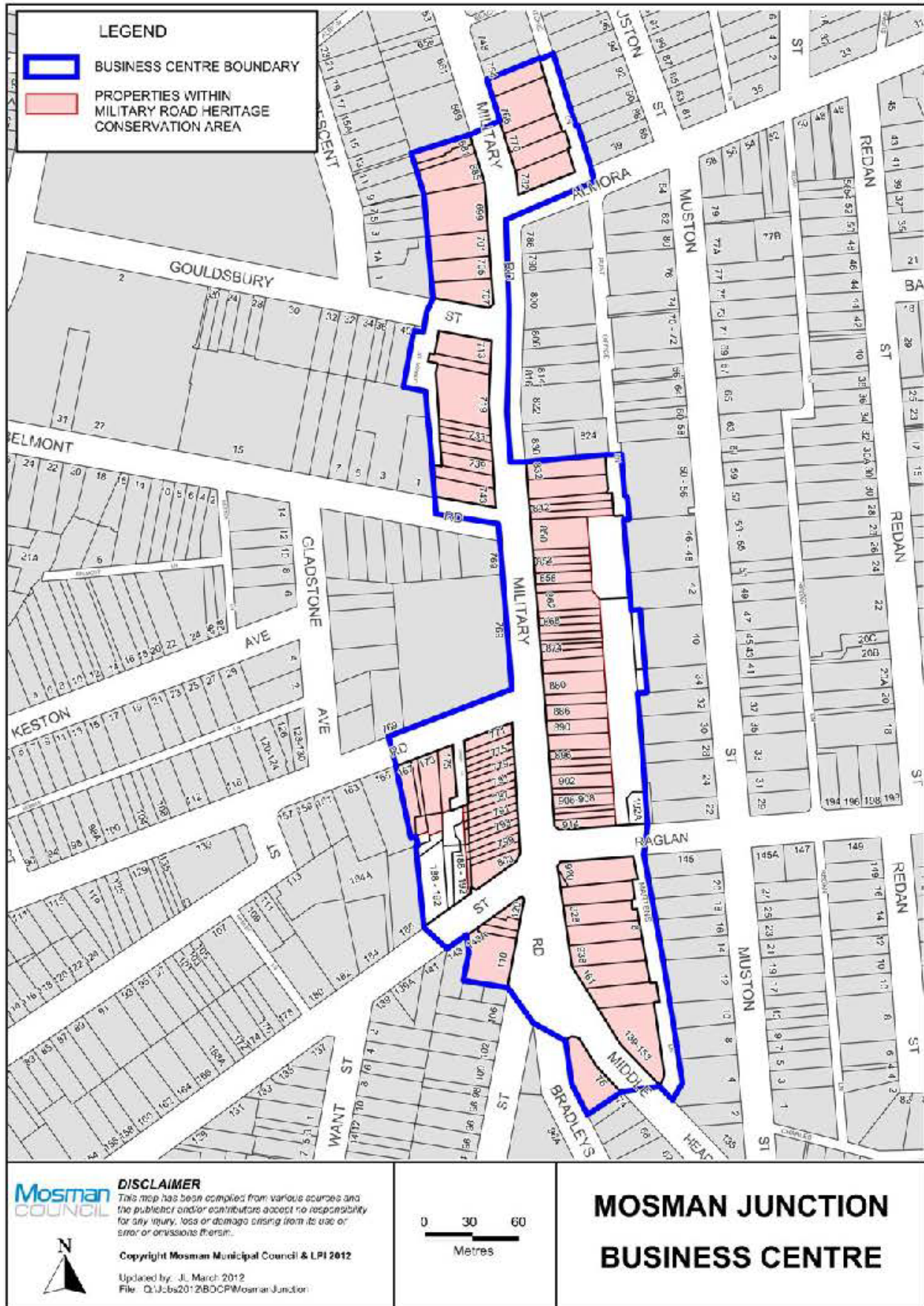
**Mosman COUNCIL**

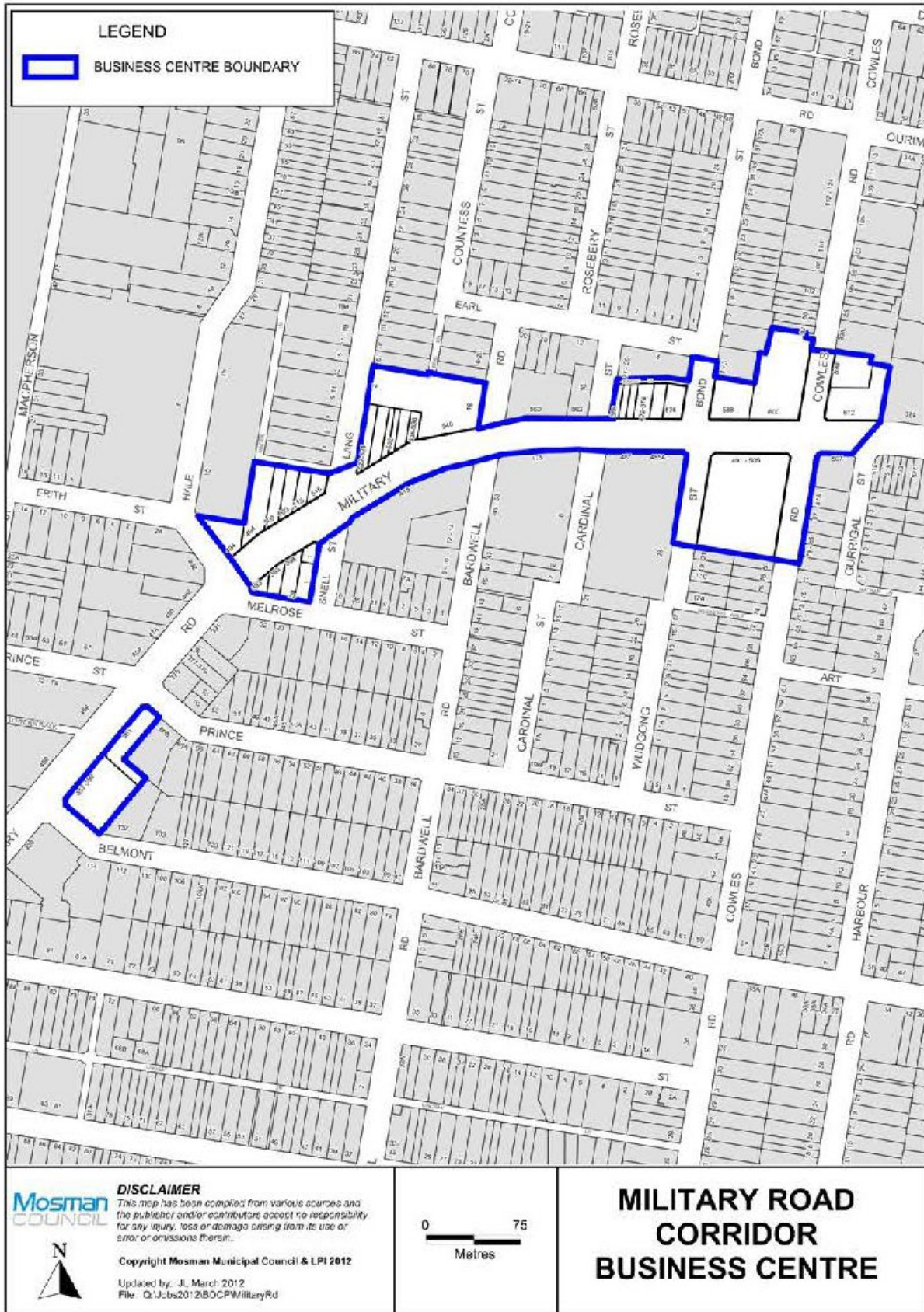
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**SPIT JUNCTION  
 BUSINESS CENTRE**

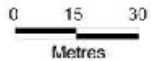






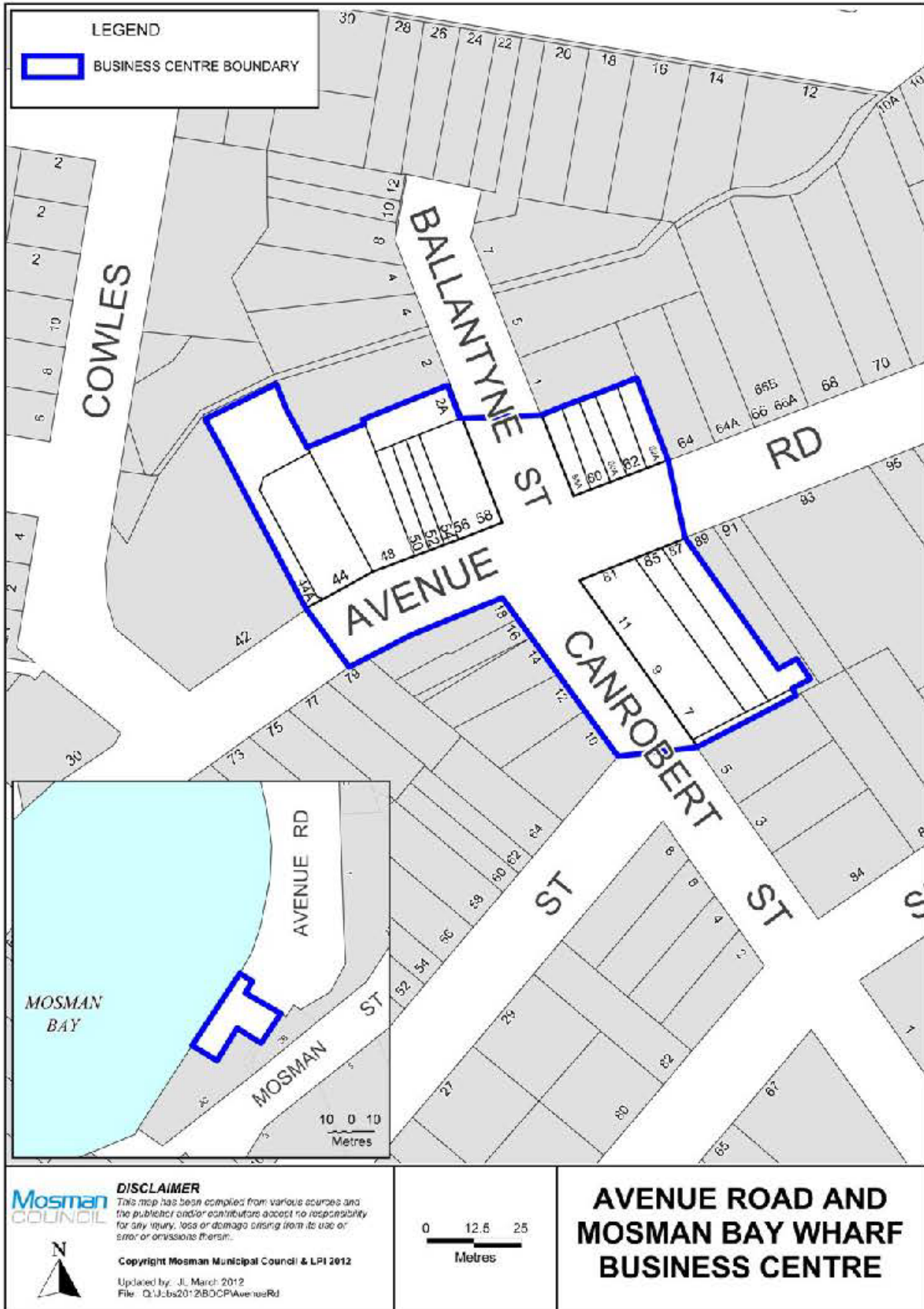


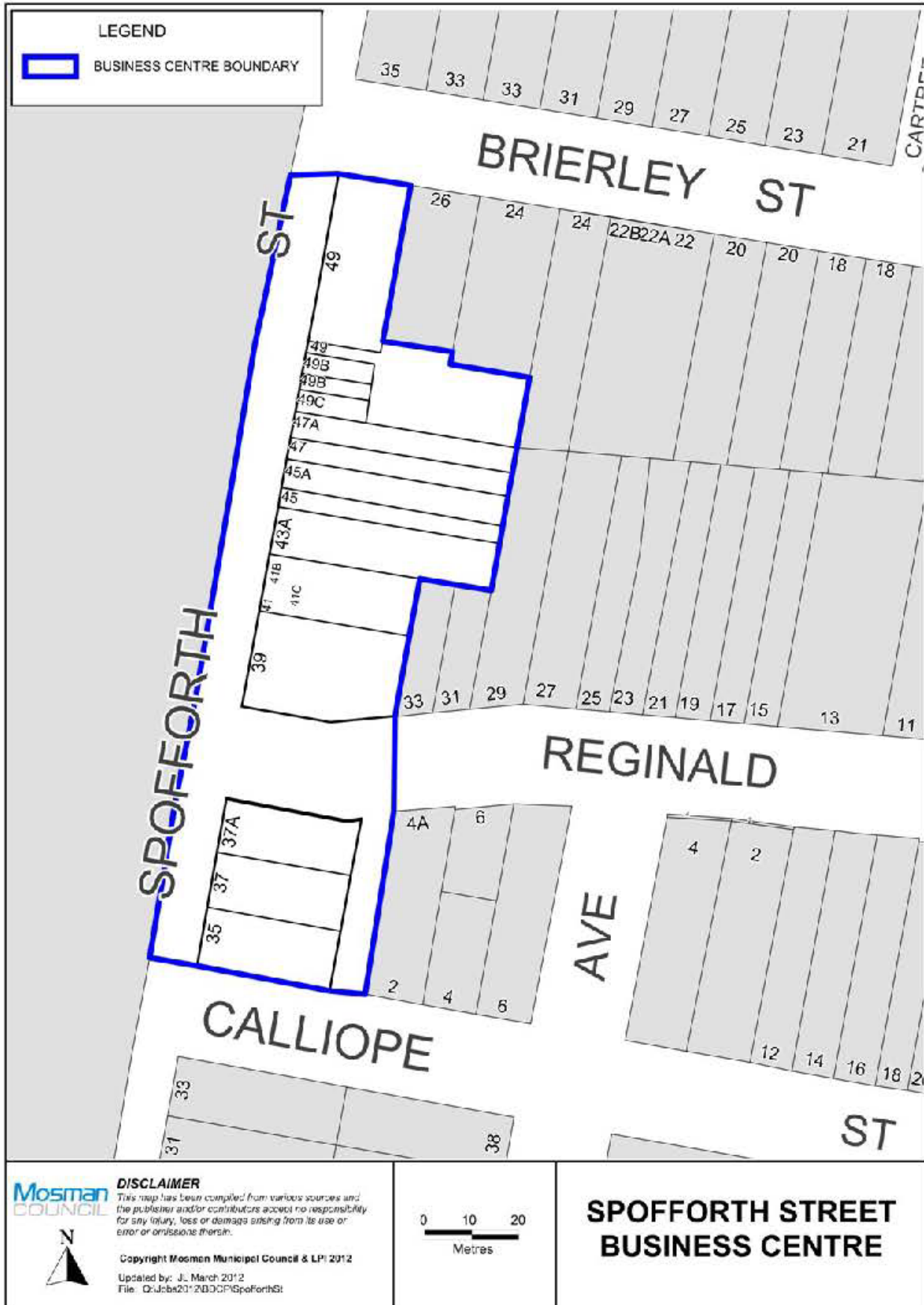
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**CREMORNE JUNCTION  
 BUSINESS CENTRE**







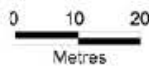
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**SPOFFORTH STREET BUSINESS CENTRE**

