

SANITARY FACILITIES FOR OUTDOOR DINING PREMISES

Purpose

The purpose of this Newsflash is to clarify the requirements relating to the numbers of sanitary facilities in premises where outdoor dining is available, in particular footpath dining.

Background

Over recent years, we have seen a significant increase in the number of restaurants and dining facilities in Queensland, particularly outdoor dining. Many of these premises are associated with other uses such as apartments, retail shops fast food outlets and offices. A report prepared last year for the Division of Liquor Licensing suggests there is a growing problem related to the access and provision of sanitary facilities in restaurants, cafes and dining facilities. The interpretation of the BCA requirements appears to be a major factor contributing to this situation.

Responsibilities of Certifier

The establishment of a restaurant, café or dining facility usually involves some form of ‘building work’ that may include a change in use within the same BCA classification. Therefore prior to a certifier issuing a development permit for building work, the certifier must ensure, amongst other things:-

- the owner’s written consent for the development has been obtained (IPA Section 3.2.1(3)(a)(ii));
- all necessary development permits are effective for other assessable development related to the building work (IPA Section 5.3.5(4)(a));
- all necessary preliminary approvals are effective for any aspects of the building work assessable under the planning scheme (IPA Section 5.3.5(4)(b)); and
- the building work complies with the Standard Building Regulation (SBR Section 4).
- Plans must be consistent with prior approvals (IPA Section 5.3.4)

Compliance with SBR

The BCA sets out the requirements for sanitary facilities in Part F2 that, for restaurants, is based on the number of employees and patrons. Clause F2.2(a) states- “*The number of persons accommodated must be calculated according to D1.13 if it cannot be more accurately determined by other means*”. D1.13 is based on the floor area of the storey. Where there is no enclosing wall (as in an outdoor restaurant), floor area is defined as the area which has a use that, inter alia, impacts on the health or amenity of the occupants in relation to the provisions of the BCA.



In the case of a restaurant or café, patrons occupying tables on a street and using the services of the building should be catered for in regards to sanitary facilities in accordance with the BCA. This would be no different from patrons occupying beer gardens, outdoor entertainment or outdoor dining areas contained on the allotment of the subject building serving these patrons.

Where a certifier is aware of how the premises are to be used, the number of facilities required must cater for the number of occupants expected on the premises.

In the case of a Class 6 building (shops) being changed to a Class 6 restaurant or dining establishment, while not a change in classification, a restaurant represents a change in the manner in which the building is being used. The BCA requirements for sanitary facilities in a class 6 restaurant are different to those for a shop. The building should comply with both the general and specific requirements of the BCA pertaining to the specific use.

In calculating the number of patrons for the purpose of Table F2.3, the whole use area, comprising the indoor floor area, together with the outdoor dining area occupied by tables and chairs, should be used as the floor area in applying Table D1.13.

The sanitary facilities must also meet the requirements of Clause F2.4 for facilities for people with disabilities.

Compliance with Other Requirements

Certifiers should also be aware that other requirements may need to be met in relation to applications involving dining or licensed premises. Local laws may deal with non-development matters such as the placement of tables, ancillary fittings and pedestrian movement relative to a sidewalk café.

Planning schemes may regulate matters such as the ‘material change of use’ of outdoor premises (eg the start of a new sidewalk café) and contain specific requirements to be met in relation to the use of the premises. The provision of sanitary facilities is not covered by a planning scheme.

Where the footpath space is to be used for commercial purposes eg a sidewalk café and it includes permanent improvements or a balcony restaurant, a road closure under the Land Act would also be required and a subsequent tenure issued by the Department of Natural Resources (DNR) as the owner of the land. (also refer to the definition of ‘road’ in IPA Schedule 10) The local District Officer of the DNR can be contacted if more information is required.

Responsibilities of Applicants

The applicant is responsible for the continued provision of the sanitary facilities and they are not to be used as storage rooms etc. It would be prudent for the applicant to be advised of these requirements, in particular the access provisions.

Please contact Mr Bruce Robb on (07) 3237 1705 should you require further information on this matter.