

Circular	BS 17-001
Issued	10 May 2017
Related	BS 13-001

Safety of awnings over public lands

The purpose of this Circular is to remind councils about the potential safety issues related to awnings over public lands (e.g footpaths) and provide advice on appropriate triggers to consider the assessment of existing awnings.

Introduction

This circular is issued to highlight the potential safety issues related to awnings over public lands and should be read in conjunction with the previous circular issued by the then Department of Planning and Infrastructure dated 8 March 2013.

Awnings are part of the buildings to which they are attached and are the responsibility of the owner of the building, even when an awning is located over a public footpath.

The *Roads Act 1993* clarifies in section 142(1) the responsibility for awnings over roads (including footpaths) by requiring that a person having a right to control the structure must maintain it in a satisfactory state of repair.

To address the safety of awnings across the state, councils need to adopt a strategy of progressively requiring inspection, certification and where required, upgrading of existing awnings. An awning safety program is considered a practical and appropriate way of addressing the existing awning stock.

Planning Circular BS 13-001 dated 8 March 2013 raised the awareness of the safety of awnings and provided advice about components of a program. However, any awning safety program may not be limited to these components only.

In addition to, or as part of, an awning safety program, there are various triggers to consider the safety of an existing awning over public lands, such as the lodgement of a development or license application for a proposed commercial outdoor dining area, or a proposed change of use of a premises. These examples are expanded on below.

Outdoor dining and associated awning safety

Outdoor dining can lead to an intensification of the use of public space under or near an awning.

Councils could utilise the lodgement of an application for proposed outdoor dining as part of a broader strategy to address the adequacy of existing awning stock.

Outdoor dining licenses are dealt with in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* ("Codes SEPP"). The use of a footway or public open space as an outdoor dining area associated with a lawful food and drink premises can be carried out as exempt development under Part 2 Division 1 Subdivision 20A of the Codes SEPP. A person may carry out exempt development without obtaining development consent if the person complies with the development standards that apply to the development. The development standards for this type of activity appear in clause 2.40B and include having an approval under section 125 of the *Roads Act 1993*, and any required approval under section 68 of the *Local Government Act 1993*.

Councils can impose conditions on outdoor dining approvals issued under section 125 of the *Roads Act 1993* and in relation to any approval granted under section 68 of the *Local Government Act 1993*.

A proposed use of a footway or public open space as an outdoor dining area associated with a lawful food and drink premises which does not comply with the development standards in the Codes SEPP may require the lodgement of a development application. If so, Section 79C of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") deals with the matters for consideration for a consent authority in determining a development application, including the likely impacts of the development, the suitability of the site and the public interest.

Section 80A of the EP&A Act deals with the imposition of conditions on development consents generally and provides that a condition may be imposed if it relates to a matter in section 79C, including a condition requiring the carrying out of works.

In considering a license application under section 125 of the *Roads Act* and or in determining a development application for the use of the footway or public open space as an outdoor dining area, consideration should be given to the imposition of an appropriate condition to address the safety of any associated awning.

A condition could be imposed to require certification by a structural engineer that the associated awning is structurally adequate and complies with Section B of Volume 1 of the Building Code of Australia.

Change of use of a premises and awning safety

A change of use of premises can be carried out as exempt development under Part 2, Division 1, Subdivision 10A of the Codes SEPP. Provided that the current use is lawful and the development standards in clause 2.20B are met, the change of use can be carried out without development approval.

A change of use of premises can also be carried out as complying development under Part 5, Subdivision 2 of the Codes SEPP. If the development complies with the development standards set out in clause 5.3, a certifier can issue a complying development certificate (CDC) approving the change of use.

A change of use of a premises which does not comply with the development standards in the Codes SEPP may require the lodgement of a development application. As discussed above, section 79C of the EP&A Act deals with matters for consideration in determining a development application. In addition, section 80A of the EP&A Act deals with the imposition of conditions on development consents.

In determining a development application for the change of use of a premises, consideration should be given to the imposition of an appropriate condition to address the safety of any associated awning. A condition could be imposed to require certification by a structural engineer that any associated awning is structurally adequate and complies with the technical standard referred to above.

Council powers regarding public safety

As stated in the previous circular dated 8 March 2013, legislation provides councils with powers to carry out inspections of, or require repairs to, unsafe structures (where considered necessary) by the issue of orders in the following circumstances:

- *Environmental Planning and Assessment Act 1979* ("EP&A Act"); section 121B, Order No 2 or 4, when a "building is or is likely to become a danger to the public" or a "building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood";
- *Local Government Act 1993*; section 124, Order 21 or 29, when "the land or premises are not in a safe or healthy condition"; or where it is necessary to "alter or repair a work or structure on, over or under a public place", because "it is in the public interest to do so".

Other related powers are available to councils under the *Roads Act 1993*.

- Councils, as the relevant authority, are provided with powers under sections 98, 142, 164 and 165, to take any necessary action required to secure the safety of the general public in their use of public footpaths, from dangerous or potentially dangerous awnings.

These powers are available to councils to assist in achieving timely and required outcomes regarding the safety of awnings.

Further Information

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

More [building circulars](#) can be found on the Department of Planning and Environment website.

Authorised by:

Carolyn McNally
Secretary

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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