

CUMBERLAND
CITY COUNCIL

Outdoor Dining Guidelines

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BACKGROUND

Council actively supports and encourages outdoor dining as a means of creating a vibrant cafe atmosphere within its commercial town centres, allowing businesses to grow and prosper while creating an enjoyable footway dining experience for the community, patrons, residents, and visitors.

Council promotes and encourages well managed use of outdoor dining, allowing food and drink premises such as restaurants, cafes, takeaway food venues, small bars, and pubs to use part of the footpath space adjacent to their shopfront for outdoor dining purposes.

In determining the appropriateness of whether a location is suitable for outdoor dining, Council will assess each application against the criteria and requirements detailed in these Guidelines.

Council's Outdoor Dining Policy and Outdoor Dining Guidelines apply to the business use of footways for food premises purposes on all Council owned footways including Roads and Maritime Services roads in the Cumberland Council Local Government Area (LGA).

OBJECTIVES

To support and implement the Outdoor Dining Policy, the purpose of the Outdoor Dining Guidelines is to:

- Establish the details, requirements, principles and approvals process for outdoor dining applications;
- Address pedestrian accessibility, safety and amenity;
- Promote the reasonable use of Council owned and managed land for outdoor dining associated with adjoining approved businesses;
- Manage the competing needs and interests of pedestrians and business owners by allowing outdoor dining in a manner that improves the usage, quality and image of Council;
- Support local business activity and vitality in Cumberland's commercial areas; and
- Ensure outdoor cafes do not obstruct the safe and reasonable movement of pedestrians and vehicular traffic, and other street activities.

HOW TO USE THESE GUIDELINES

Before making an application, applicants must read Council's Outdoor Dining Policy and Guidelines.

The Outdoor Dining Guidelines:

- Provide rules for applicants seeking to use the footways for food and drink purposes;
- Provide information for the public and for applicants seeking to use the road including the footway for outdoor dining under the *Roads Act 1993*; or the *Local Government Act 1993* for other public spaces;
- Provide guidance for Council in determining applications for use of the road and other public spaces for outdoor dining; and
- Form part of the approval if granted by Council.

DEFINITIONS

Term	Meaning
Approved Area	The approved footway dining area that the Business Operator's tables, chairs and equipment must be placed on, as shown on the survey plan included in the Footway Approval Notice.
Business Operator	A business/person applying for or in receipt of an Outdoor Dining Approval.
Classified Roads	Major arterial roads controlled by the Roads and Maritime Services (RMS) on behalf of the State Government of NSW. A schedule of all classified roads is available on the RMS website.
Council	Cumberland Council
DCP	Means <i>Cumberland Development Control Plan (DCP) 2021</i> .
Development Consent	As defined in the <i>Environmental Planning and Assessment Act 1979</i> means consent under Part 4 to carry out development and includes, unless expressly excluded, a complying development certificate.
Footway	Means that part of a road as is set aside or formed as a path or way of pedestrian traffic (whether or not it may be used by bicycle traffic).
LGA	The Local Government Area of Cumberland Council.
Outdoor Dining	The use of the public footway by a Business Operator for the purpose of extending the seating space of a restaurant or cafe in which food is regularly supplied on sale to the public for consumption on the Premises.
Outdoor Dining Approval (Approval)	An approval issued under Section 125 of the <i>Roads Act 1993</i> , granted by Council in accordance with Council's Outdoor Dining Policy and Guidelines.
Outdoor Dining Area	Premises that are subject of an Outdoor Dining Approval.
Policy	The document that relates to the Outdoor Dining Policy, and any schedules or annexures to it.
Premises	A property with an appropriate Development Consent to operate as a restaurant, that is adjacent to the road where the approved area will be located.
Public Road	Means: Any road that is opened or dedicated as a public road, whether under the Roads Act or any other Act or law, and Any road that is declared to be a public road for the purposes of the Roads Act.
Restaurant	Premises in which food is regularly supplied on sale to the public for consumption on the Premises, as defined under the <i>Roads Act 1993</i> , and for the purposes of the Policy and Guidelines includes food and drinks premises, pubs and small bars.
Roads Act 1993	Legal legislation which supports the Outdoor Dining Policy and Guidelines.

OUTDOOR DINING APPROVAL

These Guidelines apply to food business operators such as restaurants, cafes, takeaway venues and small bars wishing to occupy the footway immediately adjacent to the premises in Cumberland Commercial Business Centres. This includes public footpaths, plazas and public squares that are within the public domain and would ordinarily be used by the public for pedestrian movement or recreation. These operators must apply to Council for an approval under the *Roads Act 1993*.

Before an application is made for an approval, the business operator must ensure that the operation of the premises has an appropriate Development Consent.

DEVELOPMENT EXEMPTIONS AND REQUIREMENTS

The use of a footway for outdoor dining associated with the sale of lawful food and drink premises is exempt under the *State Environmental Planning Policy (Exempt and Complying Development Codes 2008)* if the use is not associated with a pub or small bar.

Exempt development does not require planning approval. However:

- The business operation must have a current Development Approval (DA) from the relevant authority to operate;
- The business operation cannot rely on existing use rights under the current Development Approval to operate footway dining;
- The use of the footway associated with a pub or small bar requires Development Consent under the EP&A Act.

ROADS ACT 1993 (NSW)

An approval is issued by Council under section 125 of the Roads Act.

An approval allows a person who conducts an approved food operation adjacent to the footway of a public road:

- To use part of the footway for the purposes of serving food and beverage;
- Subject to the conditions (including conditions as payment of rent) as determined by Council;
- Not exceeding the term as set out by Council which is three (3) years.

LOCATION REQUIREMENTS

Generally, the preferred location of an outdoor dining area is directly adjacent to the indoor location of the parent food business, rather than being separated by a pedestrian thoroughfare. However, location of outdoor dining areas needs to be balanced with other locational factors.

To ensure pedestrian circulation is maintained on busy retail streets, streets with widened footpaths, or streets that extend beyond 100m in length, all outdoor dining areas must be located away from the shop front. In all other locations, the outdoor dining area must abut the shop front, subject to tables and chairs not impeding the flow of pedestrians, particularly those who may have a disability or be vision impaired (Table 1).

Table 1: Locational Requirements

Street/Centre	Outdoor dining locational requirements
Auburn Town Centre	Away from shopfront, adjacent to kerb. The Auburn Town Centre Public Domain Plan 2009 identifies areas of widened footpath within the town centre core where outdoor dining activities may occur subject to consent. These areas are clearly defined and separated from areas of public open space, to ensure a balance of activities along the street.
Granville Town Centre	Away from shopfront, adjacent to kerb.
Guildford Town Centre	Away from shopfront, adjacent to kerb.
Merrylands Town Centre	Away from shopfront, adjacent to kerb.
Pendle Hill Town Centre	Away from shopfront, adjacent to kerb.
Toongabbie Town Centre	Away from shopfront, adjacent to kerb.
Wentworthville Town Centre	Away from shopfront, adjacent to kerb.
All other locations	Subject to approval, outdoor dining areas must be located adjacent to the shopfront. Where footpath width is insufficient to allow outdoor dining and sufficient pedestrian circulation space, outdoor dining will not be permitted.

Minimum Footpath Width

Pedestrians should not be forced on to the road or carriageway by the proposed footway area. Outdoor dining will generally only be considered on footpaths that have a minimum width of 3.6m. In situations where the footpath is less than 3.6m, consideration will be given on a case by case basis.

A minimum unobstructed pedestrian corridor of 2.0m must be maintained within the 3.6m corridor to allow for continuous accessible paths of travel at all times. Council may increase this minimum clearance where circumstances, such as pedestrian traffic, warrant it.

In situations where parking is permitted adjacent to the footpath dining area, a distance of at least 600mm from the kerbside must be kept clear to allow car doors to open (Figure 1). If the food business is located adjacent to a disabled parking space, a clearance of 1.3m from the kerb must be maintained to allow access for wheelchairs.

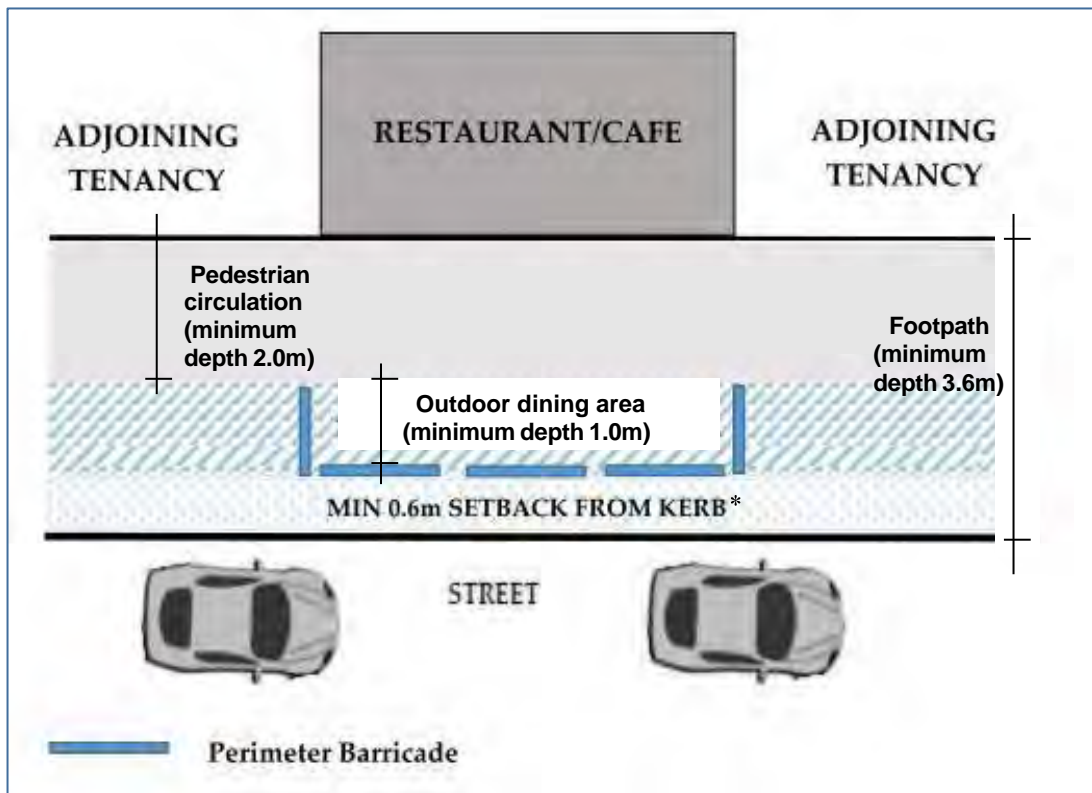


Figure 1: Minimum dimensions for outdoor dining on primary retail streets adjoining car parking.

Where parking is not permitted adjacent to the footpath dining area, a perimeter barricade may be positioned adjacent to the kerb (Figure 2).

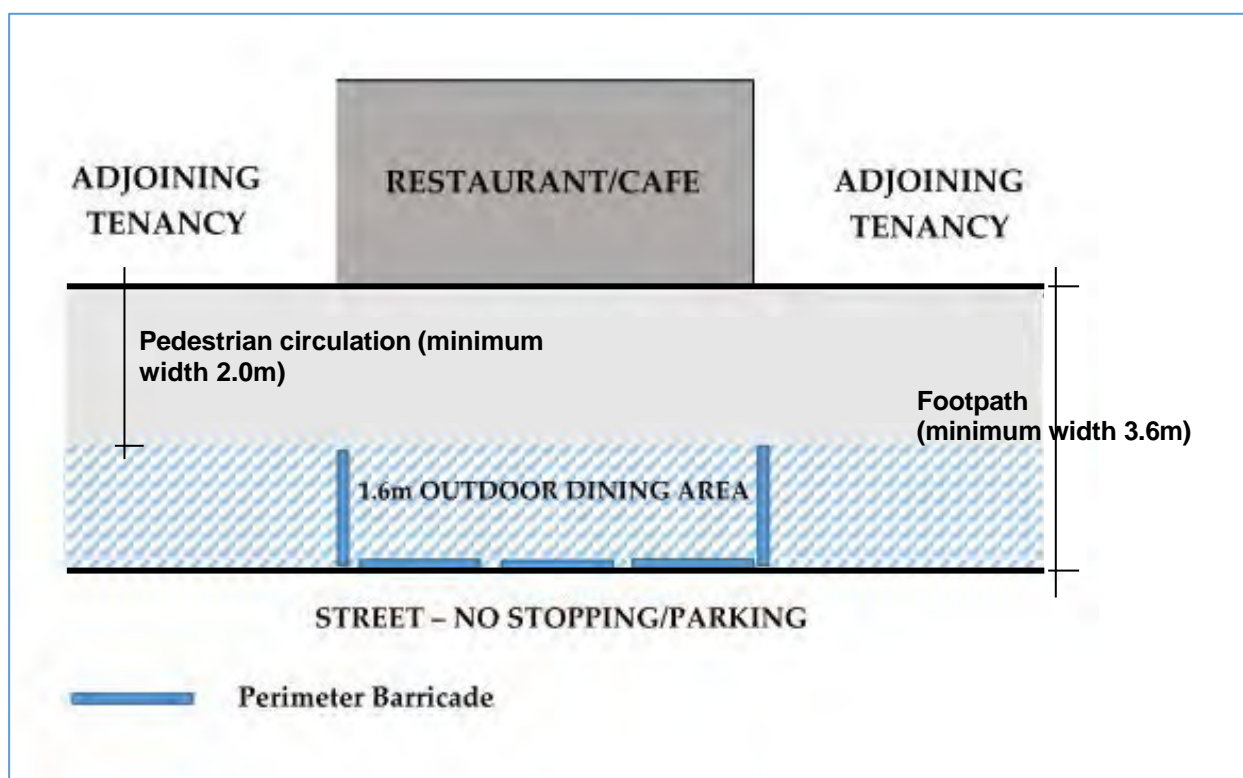


Figure 2: Minimum dimensions for outdoor dining on primary retail streets not adjoining car parking.

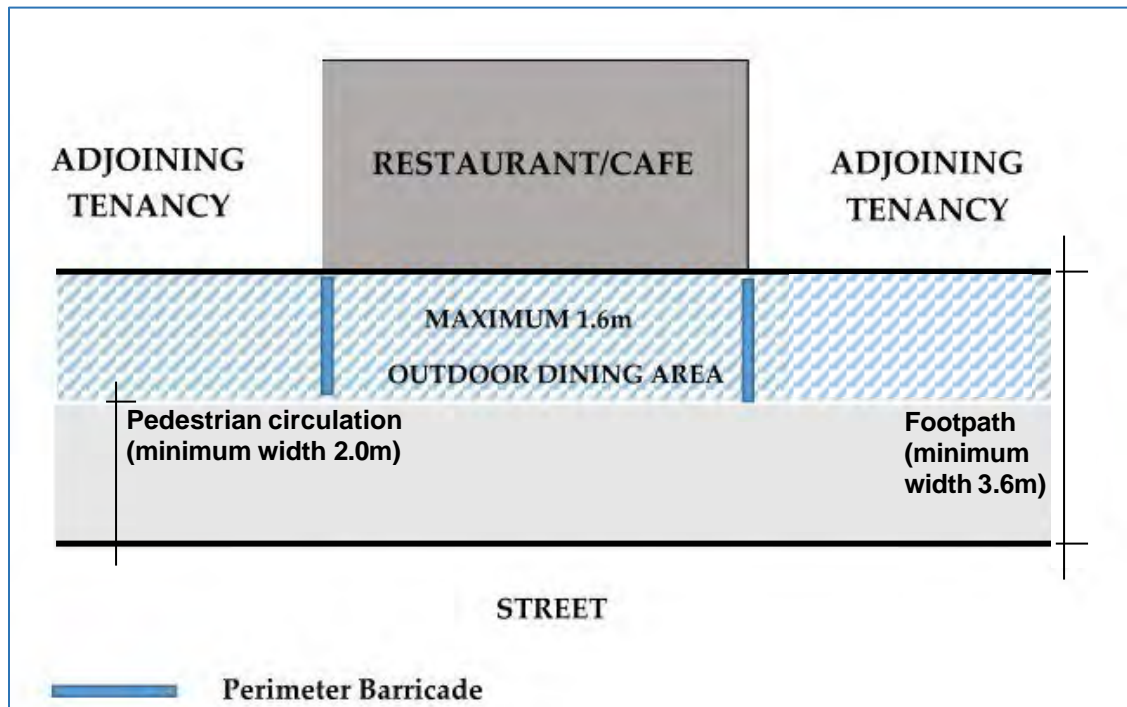


Figure 3: Dimensions for outdoor dining for all other locations with or without parking adjoining

Corner Locations

Outdoor dining areas are not permitted on corner locations at street intersections. In locations where the business premises is located next to an intersection, a clear unobstructed line of sight must be maintained for turning vehicles.

The minimum setback area from the outdoor dining area will be determined by a line of sight from the corner, which is set at a 45° angle from the corner of the building. In situations where the corner building has a splayed frontage, the 45° angle can be interpreted from the splayed building line.

An application may be refused based on safety concerns where an outdoor dining area obstructs the clear view line of pedestrians and/or motorists (Figure 4).

Parameters as per figures 1 & 2

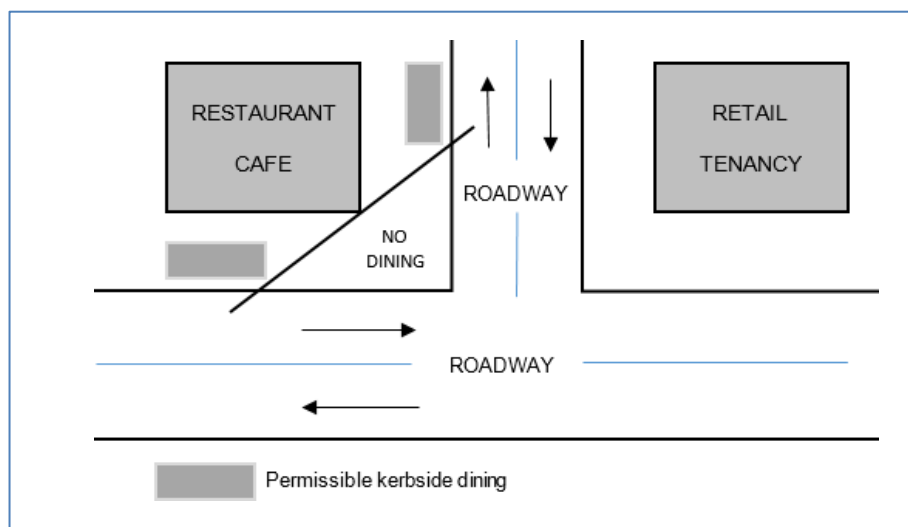


Figure 4: Minimum dimensions for corner locations.

SITE CONDITIONS AND ASSOCIATED WORKS

The surface area of the footpath must be sufficiently level to support a functional and accessible outdoor dining area, and the safe use of furniture and associated structures.

In the event that a business operator wishes to undertake associated streetscape works to accommodate an outdoor dining area, all works must be undertaken or approved by Council prior to works commencing and paid for by the approval holder.

DEFINING THE OUTDOOR DINING AREA

The minimum practical depth for outdoor dining is 1.0 metre which allows for 2 chairs and one table. All boundaries of the approved seating area must be appropriately identified by markers; typically, by the use of metal studs/discs that are flush with the paved surface. These should be installed by the applicant at the applicant's expense in accordance with Council's requirements.

The markers must remain in place throughout the duration of the approval and must not be removed or their position altered without Council approval. All furniture, including umbrellas and plants, must be kept strictly within the boundaries of the approved seating area at all times.

Perimeter Barricades

Low height screens with a maximum height of 600mm (e.g. framed fabric) are to be used to delineate the outdoor dining area. Advertising covering no more than 30% of the area of each screen may be permitted. Bollards with chains will not be permitted as this does not provide an adequate safety barrier between restaurant patrons and passing pedestrian traffic.

The proposed perimeter barricade will be assessed on merit and considered in the context of the surrounding streetscape, flooding/overland flow path areas and Council's Public Domain Policies. Council staff are available to assist in providing advice as to what form of barrier would be appropriate.

If it is determined that additional safety protection is required following a risk assessment, Council may require energy absorbing bollards (EABs) to be installed to shield patrons from potential dangers of out-of-control vehicles. This will be determined with the assessment of the application.

Use of Footpath Area Outside an Adjoining Property

The use of a footpath is limited to the area located directly in front of the approved restaurant/cafe that is the subject of the outdoor dining activity only.

CONSTRUCTION ZONES

An approved outdoor dining area is not permitted to operate in areas that immediately adjoin or surround a construction/work zone. A minimum setback of 3m from construction zones must be provided at all times to protect patrons from any potential dangers.

Council reserves the right to temporarily suspend or cancel an agreement to ensure public safety during major construction projects. A period of 14 days' notice will be given to the approval holder in these circumstances.

Where an agreement is suspended or cancelled, Council will not be liable for any compensation to the approval holder under any circumstances.

FURNITURE & ACCESSORIES

Outdoor dining areas make a positive contribution to the character of the streets and public spaces. They are to appear as temporary uses of the public domain, not as permanent fixtures. The type of furniture and permanent shade structures (requiring prior approval) that is used in an outdoor dining area can often influence the atmosphere and general feeling of the space. It is Council's aim to ensure that all furniture is of a high standard in appearance and style and is respecting of the disabled and vision impaired. Subsequently, approval holders must give consideration to providing a minimum of 1:10 chairs with armrests.

Outdoor Dining Furniture Requirements

Outdoor dining furniture requirements:

- Satisfy relevant Australian Standards;
- Must be strong, durable, weather resistant and robust designed that withstands the wear and tear of outdoor commercial usage;
- Must be made from high quality commercial materials to enhance the character of the street [Note: domestic quality furniture will not be permitted];
- Must be of non-lightweight construction so as not to be easily blown around in strong winds;
- Must be capable of being removed or retracted without difficulty from the outdoor space on a daily basis;
- Should be of a colour and style that provides consistency with the associated restaurant/cafe;
- The use of mismatched tables and chairs is not permitted;
- The surface of table tops must be non-reflective;
- Must not have any sharp edges or moving parts that could present as a potential safety hazard to patrons;
- Is to be flood compatible if located within an identified flooding/overland flow path area;
- Is to be capable of accommodating a wheelchair;
- Accessories such as amplification equipment, dumbwaiters or cash registers are not permitted in outdoor dining areas;
- The colour scheme of the proposed furniture will be assessed on merit and considered in the context of the surrounding streetscape;
- Must not cause damage to the footpath; and
- Must have an open appearance, and must not be cluttered.

Furniture Layout

Furniture placement should be commensurate with the size and shape of the available space. The width of the footpath will determine the depth of the outdoor dining area.

The location of all furniture and barriers must not extend beyond the boundaries of the approved seating area. The approval holder is responsible to ensure patrons maintain furniture within the boundaries of the approved seating area at all times.

Furniture layout is to be capable of accommodating a wheelchair.

BARRIERS

- Barriers should only be used to separate an approved area from traffic and/or parked cars or otherwise on the side of an approved area to separate it from the adjoining businesses and must not be a rope or chain.
- Barriers must be used where required by approval.

AWNING

All shade structures and awnings must comply with any condition of approvals and the following requirements:

- No shelter for weather protection may be erected or installed in or about an outdoor dining area without prior Council Development Consent.
- It is mandatory that the shop front awning is inspected by an appropriately qualified structural engineer to determine the awnings structural adequacy to withstand and support loads in accordance with 1170.2 – Minimum design Load on Structures – Wind.
- All costs and risk associated with the approval, erection, maintenance and removal of the structure are to be paid and or borne by the business operator/approval holder of an approved area.

UMBRELLA/SHADE STRUCTURE

- Where footpath awnings do not exist over the area proposed for outdoor dining, removable or temporary shade structures such as outdoor umbrellas are permissible, subject to approval by Council;
- Temporary umbrellas must be fixed at a minimum height of 2.1m so as to not interfere with passing footpath or vehicular traffic or pedestrian view lines;
- Temporary umbrellas must be of a commercial quality; should be of a fabric or matte-finish with a safe, simple, solid and compact sturdy base that is wind proof and does not cause a trip hazard;
- Temporary umbrella stands must be placed in the approved area and must not extend on to the roadway;
- If more than one umbrella is used, they must be the same type and not connected in any way;
- Side panels coming down from the umbrellas will not be permitted. Umbrellas must be closed and removed from the footway during periods of strong wind;
- Must not be attached to or above the awning;

- Must be of a single colour and style to provide consistency and identity, and must be compatible with the surrounding streetscape;
- Must not cause significant overshadowing of the footpath or reduce the amenity of the public domain by creating a large, enclosed space.

BLINDS

- Blinds must not be attached to or above the awning;
- Blinds/plastic sheeting must be well maintained, including regular cleaning;
- If blinds/plastic sheeting are damaged or become discoloured, they must be removed and replaced, as determined by Council;
- Blinds must not obstruct views to neighbouring premises and those opposite;
- Whilst clear, transparent, and colourless plastic blinds are permitted, they may only be used where it can be demonstrated that the amenity of the surrounding streetscape and pedestrian safety will not be compromised, and will not have an impact on flooding/overland flow within an identified area;
- Opaque or coloured blinds are not permitted;
- Plastic blinds must be raised or removed during fine weather;
- Plastic blinds are permitted on a maximum of 3 sides of the outdoor dining area;
- Blinds must be removeable to allow Council and utility contractors (e.g. gas, water, telecommunications etc.) access to public infrastructure;
- Council will not be liable for any costs, expenses or losses resulting from the public infrastructure being accessed.

OUTDOOR HEATING DEVICES

- Must be located in the approved area;
- All heating devices must comply with the laws and requirements relating to them (including without limitation, AS 4565-2004 Radiant Gas Heaters);
- Where the use of a heating device is proposed, details of the type, location and design must be included with the application;
- Heaters must turn off automatically if overturned to prevent injury and ensure the safety of patrons;
- Only be turned on when the approved area is being used by customers;
- Must only be operated by the business operator or business employees who have received relevant training;
- Access to the gas mains and use of electrical extension cords are not permitted; and
- Must be turned off and safely stored inside the premises when not used.

STORAGE FACILITIES

- Adequate storage facilities must be provided in the associated restaurant/cafe or in the building containing the restaurant/cafe for tables, chairs, umbrellas, heating devices, etc., when not in use;
- It is necessary that those with outdoor dining licences are responsive to extreme weather warnings, and secure or take in unsecured outdoor dining furniture during severe weather occurrences;
- Storage of LPG devices are to be compliant with Australian Standard AS/NZS 1596:2008;
- Meet requirements in regards to safe storage of flammable gases and comply with the *Food Act 2003*;
- SafeWork NSW require portable LPG devices not to be permitted to be stored in commercial kitchens and must be stored in a well-ventilated area.

TOILET FACILITIES

- An outdoor dining area may result in an increase in the seating capacity of an associated restaurant/cafe. Subsequently, this leads to the need to increase toilet facilities for customers and staff;
- Toilet facilities must be available for patrons when the combined seating capacity of both internal and external dining area is greater than 20 places either on the premises or within 80m walking distance of the outdoor dining area;
- Members of the public are not permitted to access toilet facilities via any food handling and/or food preparation area within the premises.

SIGNAGE/ADVERTISING

All signage and advertising associated with an outdoor dining area must be in keeping with the surrounding streetscape and pedestrian environment and comply with the following requirements:

- Advertising and signage controls must comply with the *Cumberland Development Control Plan (DCP) 2021*;
- Advertising of a single company or business is permissible on outdoor furniture, such as outdoor umbrellas, as long as the advertising is not dominant on the structure and covers no more than 30% of any surface;
- Hanging advertisements from shade structure is not permissible;
- No private restaurant/cafe advertising is permitted on any Council street furniture;
- No liquor or tobacco advertising is permitted on any item within the outdoor dining area, nor is advertising permitted on planter boxes; and
- Details of all signage and advertising, including menu boards, must be submitted for approval as part of the application.

LIGHTING

- To ensure the safety and amenity for patrons and pedestrians, adequate lighting must be provided where outdoor dining occurs outside daylight hours;
- Freestanding lighting will not be permitted;
- Full details must be included with the application and be in accordance with the Australian Standard AS/NZS 1158 3.1:1999 Pedestrian Area (Category P) Lighting;
- Lighting must be non-invasive to adjoining businesses and or residences; and
- Must be located within the approved area.

MUSIC

Ensure that any amplified music within the outdoor dining area is recorded music and played at not more than 5dba above background noise level. The business operator is responsible for obtaining any relevant licences to play music.

NO SMOKING LEGISLATION

All applicants must comply with relevant legislation, including the *Smoke Free Environment Act 2000*.

LIQUOR LICENCES

- A pub or small bar must have Development Consent (DC) and will also require an approval to use the footway for dining purposes. The approval may be subject to different conditions than those specified in the DC;
- Food operators that do not have a liquor licence may make an application for the issue of a liquor licence which includes the approved area without prior written consent from Council in its capacity as landowner;
- Food operators wishing to sell liquor must have an appropriate liquor licence which includes the approved area and must comply with the terms of their liquor licence and the *Liquor Act 2007 (NSW)*;
- The services of alcohol in the approved area is restricted to seated patrons;
- Failure to comply with the liquor licence or Liquor Act may result in termination of an approval.

FOOTWAY TRADING HOURS

Outdoor dining approval trading hours shall only operate during the normal hours of operation of the approved parent business. Trading beyond these hours may result in an immediate cancellation of the approval and subject to each individual operator's approved DA.

DRAINAGE

- Depending on the size and location of the proposed outdoor dining area, additional drainage works may be required. This will be determined by Council's engineers at time of assessment;
- If additional works are required, these will be carried out by Council at the applicant's expense.

MAINTENANCE, CLEANING AND WASTE DISPOSAL

- The business operator using the approved area must maintain the area by regular cleaning throughout the day and at the close of trade day;
- All furniture must at all times be maintained in a physically sound and aesthetically acceptable condition to Council's satisfaction;
- Waste and litter must be removed promptly from the approved area and disposed of properly;
- Public bins are not to be used for the disposal of waste by the business operator and the approval holder must have suitable arrangement for commercial waste collection services. A copy of the approval must be attached with application;
- Business operators must not use disposable tableware in the approved areas;
- Approved areas should be kept dry swept and solid waste disposed of appropriately or recycled where possible; and
- Washing down of the approved area must only be done in compliance with Sydney Water rules and regulations. Wet cleaning waste should be disposed safely and appropriately.

OPERATIONAL MATTERS

Conduct of Business

It is the business operator's responsibility to:

- Ensure the outdoor dining area does not intrude or impact on the amenity of neighbouring shops or surrounding street activities;
- Monitor and manage the behaviour of patrons;
- Ensure that staff practice responsible service of alcohol;
- Monitor noise and disturbances to adjoining premises;
- Minimise the potential for personal injury;
- Ensure patrons keep furniture within the boundaries of the approved seating area and the designated pedestrian zone is clear of all obstacles at all times;
- All food and drink is prepared within the approved restaurant/cafe and not in the area agreed for outdoor dining;
- Ensure that the sale and serving of alcoholic beverages within the outdoor dining area fully complies with prior Council approval and the appropriate liquor licence obtained from the *Liquor and Gaming Legislation Amendment Act 2018* (NSW liquor laws);
- Maintain that the hours of operation are consistent with the associated restaurant/cafe [Note: the hours of operation for the outdoor dining areas may be limited if it is considered that the amenity of the surrounding area or the safety of pedestrians or footpath diners could adversely be affected];
- Remove all tables and chairs and other features (heating devices, menu boards, etc.) from the footpath and ensure they are stored within the building outside business operation hours;

- Ensure that any amplified music within the outdoor dining area is recorded music and played at not more than 5dba above background noise level; and
- Comply with relevant legislation, including the *Smoke Free Environment Act 2000*.

Public Liability

The business operator is required to maintain a valid public liability insurance policy for a minimum of twenty million dollars (\$20,000,000). The policy must:

- Indemnify Council against any public liability claims within the area between the front property boundary of the shop and the kerb line for the full frontage of the shop;
- Be in force at all times that outdoor dining is in operation. Upon annual renewal, the business operator must send a copy of the renewal to Council. Proof of currency must be kept on the premises and produced on demand by any authorised Council officer; and
- The policy should be on an “occurrence based” wording to ensure that actions arising through the course of an insurance period are covered if the claims arise in future years.

Agreement and Rental Cost

Once Council approves an application, written notification will be issued to the approval holder stipulating the conditions of approval. Upon receipt of the approval, the approval holder is then required to produce a copy of their public liability insurance and payment of appropriate fees and bond to Council. An outdoor dining agreement will then be issued to use and occupy the footpath in accordance with conditions of approval.

The agreement, which must be signed by the approval holder, will detail the provision for an annual rental fee based on a square metre basis.

All fees are set by Council each year as part of its Fees and Charges. Council’s Fees and Charges document is available on the website (www.cumberland.nsw.gov.au). Approval holders may also enquire at Council’s Customer Service Desk as to current fees applicable.

Public Display of Agreement

Prior to the opening of the outdoor dining area, a laminated copy of the agreement must be prominently displayed in the front window of the restaurant/cafe, together with an A4 copy of the approved layout showing the number of tables and chairs.

An Approval Can’t be Sold, Reassigned or Transferred

The approval applies to the business operator that applied for and received the approval for the outdoor dining area.

The approval cannot be sold, reassigned or transferred.

If the business is sold or leased to another party or entity, then the new owner or tenant will need to make an application for a new approval.

Revoking, Suspending or Amending an Outdoor Dining Approval

As an outdoor dining approval is an activity occurring on a public road or footpath, Council may as a Roads Authority may revoke, suspend or amend the approval at any time and for any reason.

Specific circumstances where Council may revoke, suspend or amend an approval include but are not limited to:

- The conditions of the outdoor dining approval being breached (including the non-payment of rent);
- The use of the footpath/approved area for the purposes of the approval is causing public safety and or public access is compromised;
- The conditions of the liquor licence or Liquor Act are breached;
- The use of the footpath is causing a disturbance to the adjoining business operators, neighbourhood and residents;
- The approved outdoor dining area is needed for public infrastructure works;
- The approved outdoor dining area is needed for a special event; or
- The approved outdoor dining area is needed to manage the flow of pedestrians or vehicle traffic.

Repeated or continuous breaches or failure to comply with an existing approval and/or the reasonable directions of Council officers, including but not limited to Compliance Officers, may result in the early termination of an approval, and all paid fees and rental paid in advance will not be refunded and all subsequent applications are made by the offending party and/or their associated businesses may not be considered.

Outdoor Dining Approval

An outdoor dining approval is valid for 3 years upon approval and may be cancelled or amended if:

- The business operator fails to comply with the permit conditions;
- There are changed conditions affecting the outdoor dining area in its particular location, e.g., an increased risk to health or safety; or
- The operator fails to comply with all relevant legislation, including but not limited to the *Smoke Free Environment Act 2000*. Non-compliance with legislation may lead to enforcement action by Council which may include fines and/or termination of outdoor dining approvals.

Other valid reasons that may necessitate an approval being cancelled include matters as streetscape upgrades and/or refurbishment. Council will only renew an approval after a review of health and safety conditions are undertaken to ensure compliance with policy guidelines and a history check of past operations.

HOW TO MAKE AN APPLICATION

The applicant must provide the following:

1. A completed application form – the application form is available on Council's website www.cumberland.nsw.gov.au or visit one of Council's Customer Service Centres.
2. Payment for the application fee – All applications must be accompanied by payment of the prescribed application fee (as per Council's adopted Fees and Charges) and all relevant documentation;

3. Proof of Development Consent to conduct a food operation on the premises;
4. Evidence that the applicant is the business operator of the adjoining premises; such as contract of sale, executed lease agreement, business registration and or other evidence requested by Council under receipt of application;
5. If applying under a company name, a copy of an ASIC report showing the name of the company, the ACN, ABN and company director names.
6. Written authority of the land owner to lodge the application;
7. Food premises registration number;
8. If proposing to serve liquor in the approved outdoor dining area, evidence of the following must be submitted:
 - Development Consent approving the use of the footway; and
 - Copy of the liquor licence.
9. Requested trading hours for the proposed outdoor dining area, which will be subject to the individual applicant's approved DA, these Guidelines and the DCP where applicable.
10. A professional drawing/plan of the proposed outdoor dining and surrounds must accompany the application consistent with the requirements to include:
 - a. Street name and north point;
 - b. Property boundary and entry points, boundaries of the proposed seating area and of adjoining tenancies;
 - c. Kerb line of the street;
 - d. Width of the footpath from outside face of kerb to building line, and the length of the building frontage associated with the cafe;
 - e. Building line of the shop and adjacent shops either side;
 - f. Location of all existing features and permanent features of the streetscape such as existing awnings, bus stops, taxi zones, traffic signs, poles, waste bins, pedestrian lights and crossings, bollards, planter boxes, trees, light poles, pits, fire hydrants and car parking;
 - g. Proposed location and configuration of all tables, chairs, umbrellas, shade structures, planter boxes, including all setback dimensions.
11. Colour photographs of the site and the surrounding areas, including the paved footpath area – (Note: where the existing paved area will be disturbed as part of new construction works, details are to be provided of new paving);
12. Any adjoining outdoor dining area;
13. Proposed location and configuration of all tables, chairs, umbrellas, shade structures, planter boxes, including all setback dimensions;
14. Proposed shop names or logos which are to be included on any furniture in the approved area or as part of the umbrella design;
15. Details of any proposed external lighting showing the type of fixtures and their proposed placement;
16. Details of any proposed heating devices including the type, capacity, design and location – to ensure the safety of patrons and prevent injury, the device must be capable of been turned off automatically if overturned. of any proposed heating devices including the type, capacity, design and location – to ensure the safety of patrons and prevent injury, the device must be capable of been turned off automatically if overturned;

17. Full details of the number of tables and chairs, including manufacturer's brochures, specifications and photographs, and any other furniture that may be proposed. Council must be satisfied that the designated area is capable of accommodating the maximum number of tables and chairs that are proposed. Whilst Council recognises that the actual number of tables and chairs and their configuration may vary according to demand, it is the business operator's responsibility to ensure that a 2.0m pedestrian corridor is maintained at all times;
18. A written statement detailing the proposed hours of operation, storage of furniture, cleaning of the footpath and furniture, lighting and music;
19. Details on liquor licence approval number;
 - Fees in accordance with Council's Schedule of Fees and Charges.

FEES & CHARGES

All fees and the appropriate bond will be charged in accordance with Council's adopted Fees and Charges. Fees are calculated on a square metre basis.

The two zones are E1 Local Centre and E2 Commercial Centre. The minimum practical depth for outdoor dining is 1.0 metre which allows for 2 chairs per table.

Where any charge, fee, supply of products or services under this Policy is subject to a goods and services tax (GST), an amount equal to the GST paid or payable in respect of the charge, fee, supply of products or services, shall be included in the amount of consideration paid or payable under this Policy.

RELATED LEGISLATION

- *Local Government Act 1993 (NSW)*
- *Roads Act 1993 (NSW)*
- *Crown Land Management Act 2016*
- *Cumberland Development Control Plan (DCP) 2021*
- *Environmental Planning & Assessment Act 1979 (NSW)*
- *Work Health and Safety Act 2011 Food Act 2003 (NSW)*
- *Liquor and Gaming Legislation Amendment Act 2018*
- *Disability Inclusion Act 2014*
- *Smoke Free Environment Act 2000 (NSW)*

RELATED DOCUMENTS AND COUNCIL POLICY

- Outdoor Dining Policy