



CUMBERLAND
CITY COUNCIL

Outdoor Dining Policy

AUTHORISATION & VERSION CONTROL

| | |
|----------------------|----------------------------|
| Policy Number | POL-051 |
| Policy Owner | Director Governance & Risk |
| Date Adopted | 17 April 2024 |
| Version No | 2 |
| Document ID | 6482574 |
| Review Date | April 2028 |

1. POLICY STATEMENT

Council supports and encourages footway dining on footpaths as a means of creating vibrant community town centres, creating strong local economies and opportunities for local restaurants and cafes by allowing seating for outdoor dining. Council's Outdoor Dining Policy encourages a safe and comfortable experience for diners and all other uses of the public places.

In determining the appropriateness of whether a location is suitable for outdoor dining, Council will assess each application against this Policy, and the criteria and requirements detailed in Council's Outdoor Dining Guidelines.

2. SCOPE

The Policy applies to the business use of all land within the Cumberland LGA that is affected by the *Roads Act 1993 (NSW)* and/or is managed by Council and sets out the conditions under which Council will issue approvals for outdoor dining in public areas.

3. OBJECTIVES

To promote public access and well managed outdoor dining in public places, Council will:

- Permit outdoor dining areas in association with an approved food business, and the applicant is the owner/proprietor of that food business;
- Be safe and protected from vehicles and cyclists;
- Maintain the safe pedestrian thoroughfare as the primary purpose of the footpath where sufficient space is available;
- Promote accessibility by maintaining a consistent and a clear path of travel for all users;
- Outdoor dining areas should not interfere or obstruct line of sight to or from passing vehicles;
- Be attractive and well maintained and contribute positively to the streetscape;
- Consider surrounding users and the community through minimising additional noise, visual and other impacts;
- Monitor compliance with approvals, and undertake enforcement action when appropriate; and
- Consider the appropriateness of applications for approval against Council's adopted Outdoor Dining Guidelines.

4. 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> (EP&A Act) 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 | This document, 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: a) Any road that is opened or dedicated as a public road, whether under the Roads Act or any other Act or law, and b) 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 this Policy and the Guidelines includes food and drinks premises, pub and small bar. |
| <i>Roads Act 1993</i> | Legal legislation which supports this Policy. |

5. LEGAL REQUIREMENTS

In order for an operator to have outdoor dining on the footway, NSW Government legislation sets out that following approvals are required:

- All outdoor dining on the footway requires an approval under the *Roads Act 1993*;
- Outdoor dining that is not exempt development will require a development consent under the *Environmental Planning and Assessment Act 1979* (EP&A Act);
- Outdoor dining that is on Crown land requires approval under the *Crown Land Management Act 2016*;
- Outdoor dining on Community land, such as park or reserve, reserve, requires approval under the *Local Government Act 1993*.

5.1 Roads Act 1993 (NSW)

An approval may be issued by Council under section 125 of the Roads Act:

“A Council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road (being a public road that is vested in fee simple in the council) to use part of the footway for the purposes of the restaurant.”

The maximum term permitted for an approval for the use of a footway of a public road is seven (7) years.

Council as the Roads Authority may terminate, or temporarily suspend, an approval granted by the Roads Authority under this section.

- a) Immediately, if in the roads authority’s opinion, it is necessary for safety reasons, or
- b) Otherwise, if the roads authority has given the holder of the approval at least 7 days written notice.

Unless soon terminated, an approval lapses on the earlier of the following:

- a) The end of the term
- b) If the part of the public road the subject of the approval ceases to be used for the purposes of food and drink premises, when the use for that purpose ceases.

5.2 Section 126 Authority to Erect Structures

Under section 126 of the Roads Act, should the holder of the approval wish to erect, place structures or furniture over any part of the road, they must seek prior relevant approval from Council. Detailed drawings of the proposed structures must be submitted with the application.

5.3 Classified Roads

Classified Roads are listed major arterial roads controlled by the Roads and Maritime Services (RMS) on behalf of the State Government of NSW.

The RMS has delegated its power to issue approvals on Classified Roads to Council.

When considering an application on these roads, Council will apply the rules and guidelines provided by the RMS to these applications. The RMS rules and guidelines are included in the Outdoor Dining Guidelines.

5.4 Other Requirements

The approval will be subject to this Policy, Council's Guidelines and may be granted by the Council on such conditions as determined by the Council.

Development Consent under the EP&A Act is as follows:

1. The use of a footway for outdoor dining associated with a lawful food and drink premises is exempt development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) if the restaurant adjoining the footway is:
 - (a) Not associated with a pub or small bar; and
 - (b) Is carried out in accordance with an Approval granted under Section 125 of the Roads Act.
2. An applicant must have a current Development Consent for the adjoining premises to operate as a food and drink premises.
3. If the premises is a pub or small bar, a Development Application will need to be lodged and a Development Consent issued for the use of the footway before an application is made under section 125 of the Roads Act NSW.

5.5 General Considerations

Council will give consideration to how the proposed approval will impact on or benefit the amenity of the surrounding area. Council will have consideration of matters raised in this Policy and the Guidelines, and whether the proposed new footway dining area will:

- (a) Ensure that a consistent and clear flow path of travel for all users is maintained on the footway;
- (b) Ensure that trees, signs, rubbish bins, light poles and other existing or proposed obstructions are taken into account in calculating the unobstructed pedestrian route;
- (c) Contributes positively to the social activity of the business centre and area;
- (d) Not conflict with existing and surrounding businesses.

5.6 Liquor Licences

- (a) Restaurants wishing to sell liquor must have an appropriate liquor licence which extends to the approved area and must comply with the terms of the liquor licence and the *Liquor Act 2007*.
- (b) Restaurants that do not have a liquor licence may not make a separate application for the issue of an on licence/restaurant permit (under the Liquor Act) for an approved footway dining area without prior written consent of Council.
- (c) The type of licence issued under the Liquor Act will determine requirements in relation to the service of alcohol and food. For example:
 - For a restaurant with an on-premises license, under the conditions of that liquor licence, liquor may only be sold or supplied for consumption with, or ancillary to, another product or service that is sold, supplied or provided unless the business also has a primary service authorisation (PSA).
 - A PSA allows the sale and supply of liquor to customers without meals. When a PSA is in place, a restaurant must still continue to meet the primary purpose test and operate as a restaurant at all times of day or night, where serving meals is always the main business focus.
 - For a small bar licence or a hotel licence, under the conditions of that licence, food must be made available to patrons whenever alcohol is sold but it is not compulsory for food to be served with alcohol.

5.7 Footway Trading Hours

The trading hours for each approval will be determined by Council in its absolute discretion at the time of assessing each application and will be subject to each individual operator's approved Development Application (DA).

6. RELATED LEGISLATION

- *Local Government Act 1993 (NSW)*
- *Work Health and Safety Act 2011*
- *Food Act 2003 (NSW)*
- *Smoke Free Environment Act 2000 (NSW)*
- *Environmental Planning & Assessment Act 1979 (NSW)*
- *Roads Act 1993 (NSW)*
- *Crown Land Management Act 2016*
- *Disability Discrimination Act 1992 (Cth)*
- *Disability Inclusion Act 2014*
- *Liquor Act 2007*

7. RELATED DOCUMENTS AND COUNCIL POLICY

- Outdoor Dining Guidelines
- Cumberland Development Control Plan (DCP) 2021