



CUMBERLAND
CITY COUNCIL

Outdoor Dining Guidelines

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BACKGROUND

Council actively supports the creation of a vibrant café atmosphere within its commercial centres. In doing so, it is imperative that an adequate footpath width is maintained at all times for the safe movement of pedestrians and other street activities. It is also imperative that a balance between footpath space for outdoor dining and footpath space for public use by all community members (including play spaces and public seating) be provided in each of Cumberland's commercial centres.

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.

These guidelines support the implementation of the *Outdoor Dining Policy*.

PURPOSE

The purpose of these guidelines are to:

- set out the principles, requirements, and approvals process for outdoor dining applications;
- 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 cafés do not obstruct the safe and reasonable movement of pedestrians and vehicular traffic, and other street activities.

DEFINITIONS

- **Activity Approval** - an approval issued under Section 68 of the Local Government Act 1993 (NSW)
- **Footway Approval** - an approval issued under Section 125 of the Roads Act 1993 (NSW)
- **Outdoor Dining Area** - premises that are the subject of an Activity Approval or a Footway Approval or both
- **LGA** - the Local Government Area of Cumberland City Council
- **Policy** - refers to this document, and any schedules or annexures to it

SCOPE

These Guidelines apply to all land which is affected by the *Roads Act 1993* and/or is owned by Cumberland City Council. This includes public footpaths, blisters, plazas and public squares that are within the public domain and would ordinarily be used by the public for pedestrian movement or recreation. These areas are generally located immediately adjacent to restaurants and cafes in the commercial business centres of Cumberland.

GUIDELINES

Outdoor dining areas are only permitted in association with an approved food business and the applicant is the owner/proprietor of that food business, and only in locations that do not cause an impediment to other users of footpaths.

1. 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 (refer to map at Annexure 1 of the Cumberland Outdoor Dining Policy)
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.

1.1 Minimum Footpath Width

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.

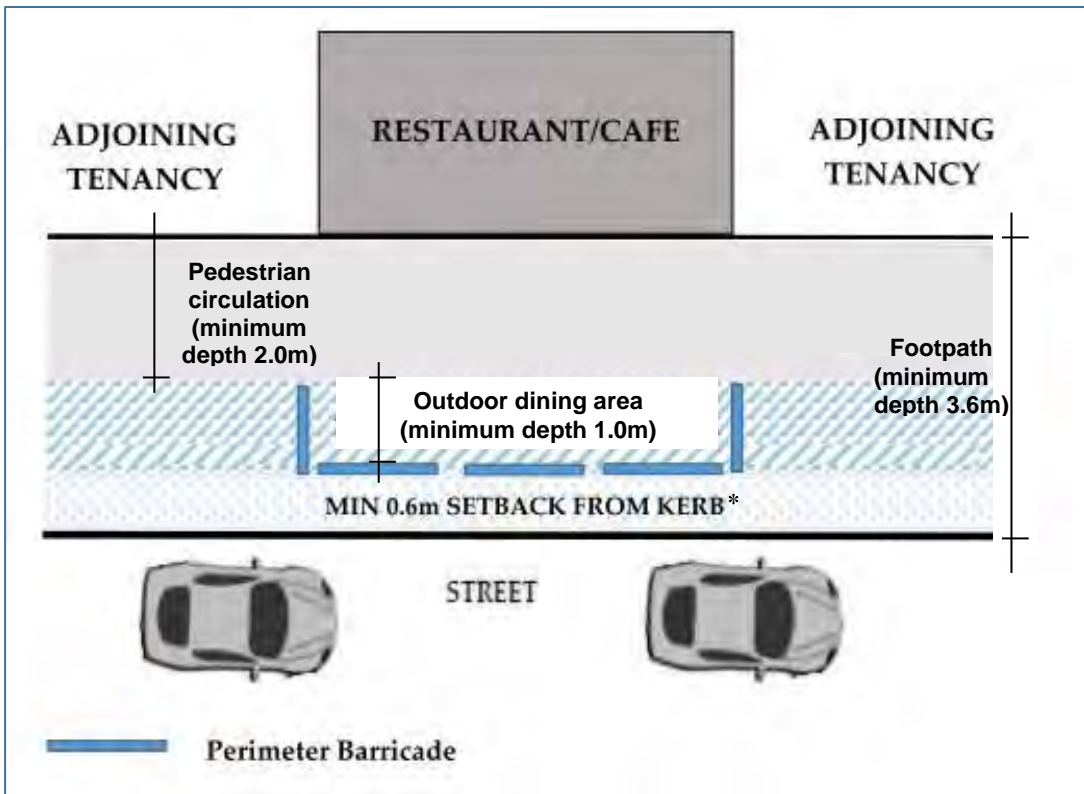


Figure 1: Minimum dimensions for outdoor dining on primary retail streets adjoining car parking

Where parking is not permitted adjacent to the footpath dining area, a perimeter barricade (see section 3.1) may be positioned adjacent to the kerb (Figure 2).

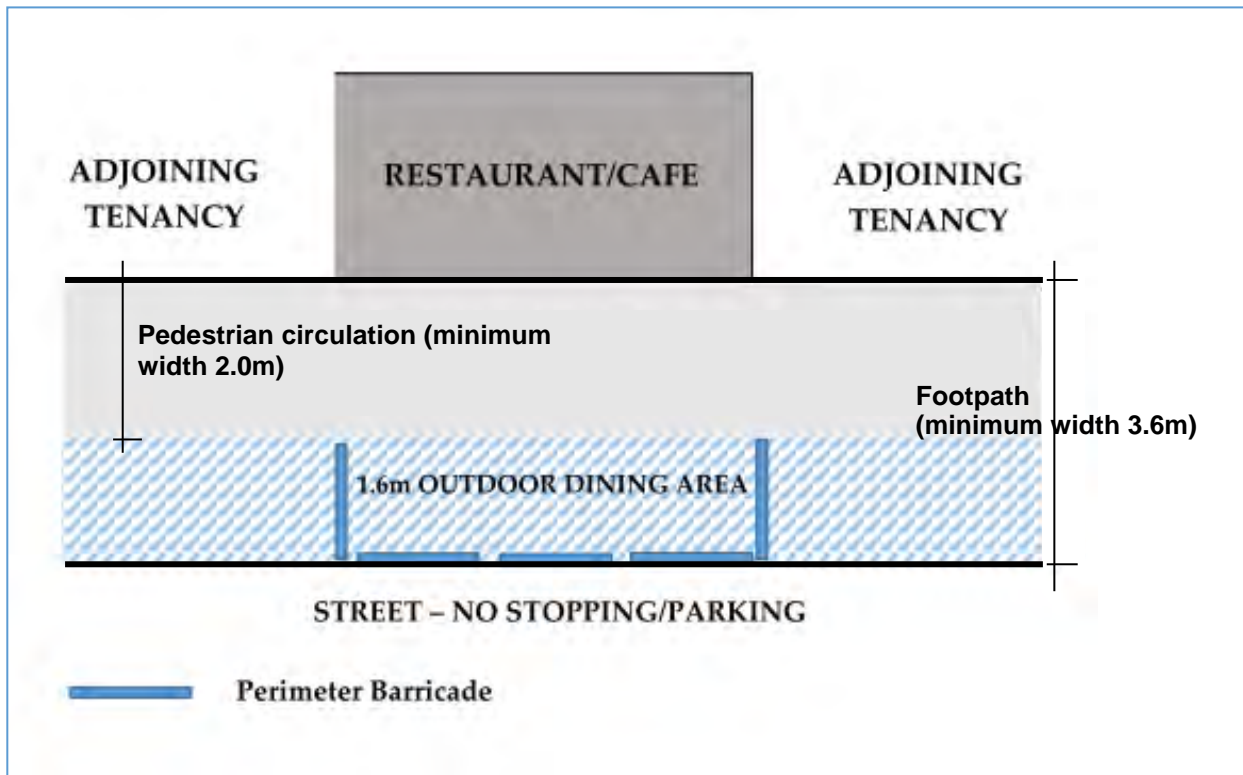


Figure 2: Minimum dimensions for outdoor dining on primary retail streets not adjoining car parking.

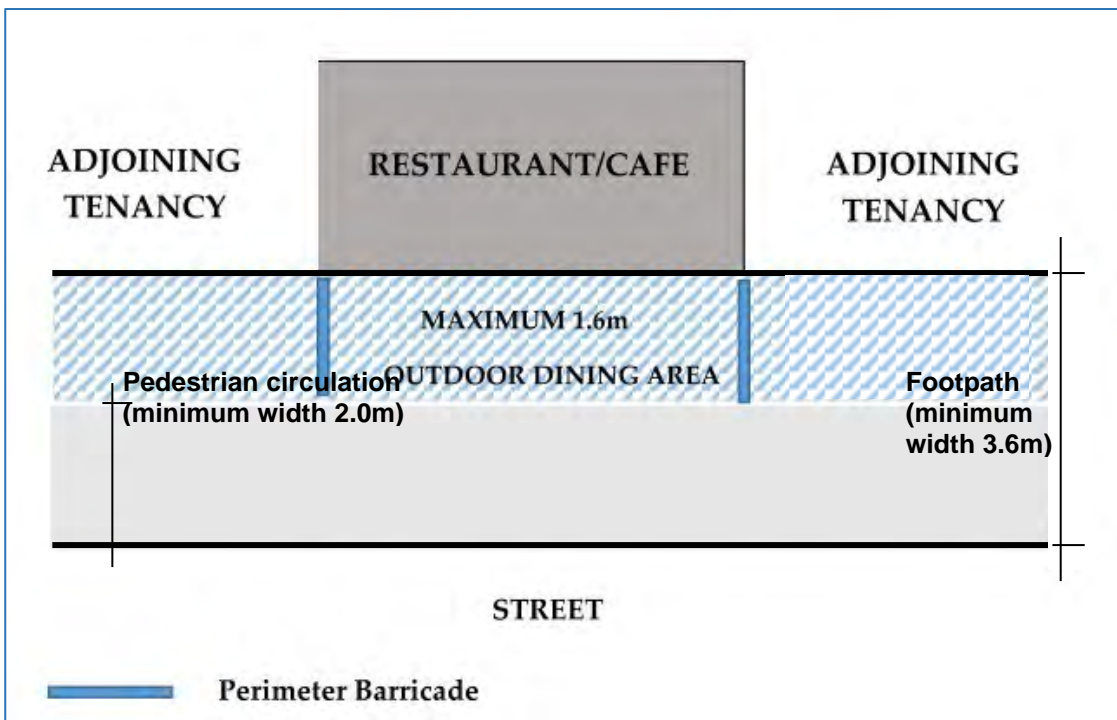


Figure 3: Dimensions for outdoor dining for all other locations with or without parking adjoining

1.2 Corner Locations

Outdoor dining areas are not permitted on corner locations at street intersections. In locations where the business premises are 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

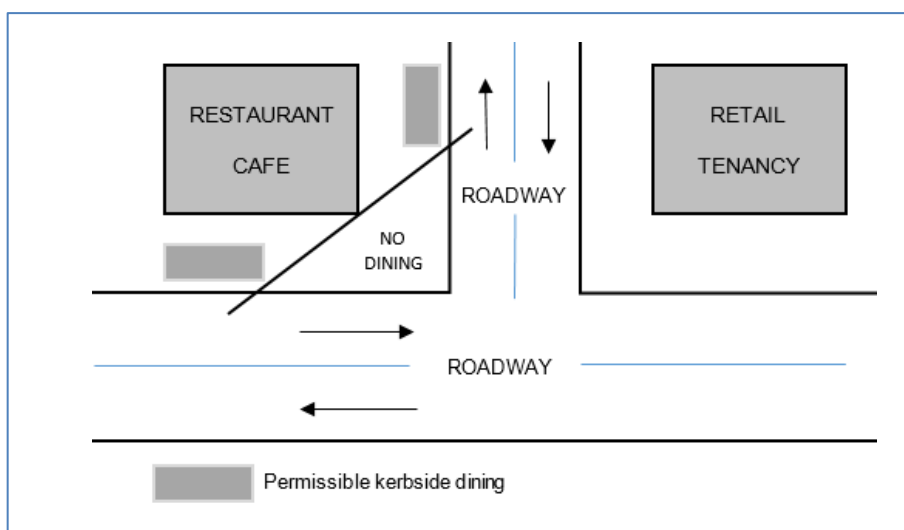


Figure 4: Minimum dimensions for corner locations.

2. 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.

3. 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 will be installed by Council at the applicant's expense.

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.

3.1 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 not 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.

3.2 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/café that is the subject of the outdoor dining activity.

4. 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.

5. FURNITURE

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.

5.1 Outdoor dining furniture requirements

Outdoor dining furniture:

- Satisfy relevant Australian Standards;
- must be strong, durable and robust 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/café;
- 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; and
- the colour scheme of the proposed furniture will be assessed on merit and considered in the context of the surrounding streetscape.

5.2 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.

6. SHADE STRUCTURES, AWNINGS AND BLINDS

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 Council's prior written approval;
- must not be attached to or above the awning;
- be of a single colour and style to provide consistency and identity and must be compatible with the surrounding streetscape;
- not cause significant overshadowing of the footpath or reduce the amenity of the public domain by creating a large enclosed space;
- 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;
- must not obstruct views to neighbouring premises and those opposite;
- 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;

- umbrellas must be fixed at a minimum height of 2.1 metres so as to not interfere with passing footpath or vehicular traffic or pedestrian view lines;
- umbrellas must be of a commercial quality;
- 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; and
- all structures and furnishings in an Outdoor dining area must be able to be moved to allow Council staff and Utilities staff (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.

7. HEATING DEVICES

- Where the use of a heating device is proposed, details of the type, location and design must be included with the application;
- All heating devices must comply with the laws and requirements relating to them (including without limitation, AS 4565-2004 Radiant Gas Heaters);
- To prevent injury and ensure the safety of patrons, the device must be capable of being turned off automatically if overturned; and
- Access to the gas mains and use of electrical extension cords are not permitted.

8. STORAGE FACILITIES

Adequate storage facilities must be provided in the associated restaurant/café or in the building containing the restaurant/café for tables, chairs, umbrellas, heating devices, etc., when not in use.

It is necessary that those with outdoor dining licenses 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* 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.

9. TOILET FACILITIES

An outdoor dining area may result in an increase in the seating capacity of an associated restaurant/café. 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.

10. 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* of Auburn Development Control Plan 2010, Holroyd

Development Control Plan 2013, and Parramatta Development Control Plan 2011;

- 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/café advertising is permitted on any Cumberland City 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.

11. 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.

12. 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.

13. NO SMOKING LEGISLATION

In accordance with Section 6A of the *Smoke Free Environment Act 2000*, smoking is prohibited in all outdoor dining areas and within 4 metres of the pedestrian access point to the restaurant building.

14. OPERATIONAL MATTERS

14.1 Conduct of Business

It is the business operators' 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 practise 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/café 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 license 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/café; *[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
- Ensure that the outdoor dining area remains smoke free at all times in accordance with the Smoke Free Environment Act 2000.

14.2 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 inquire at Council's Customer Service Desk as to current fees applicable.

14.3 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/café, together with an A4 copy of the approved layout showing the number of tables and chairs.

14.4 Transfer of Approval

Council may at its discretion, consent to transfer an approval and agreement to another party upon receiving written request. If agreed, the transfer will be conditional upon the transferee entering into an identical agreement for the residue of the term of the approval and proof of their public liability insurance policy.

14.5 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 Cumberland City 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 goods are displayed. 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.

14.6 Maintenance and Cleaning

The approval holder is responsible for cleaning the approved outdoor dining area and ensuring that the area is clean and well-maintained in strict compliance with the conditions of the approval.

All furniture must at all times be maintained in a physically sound and aesthetically acceptable condition to Council's satisfaction.

14.7 Waste Disposal

Street rubbish bins are not to be used for the disposal of waste and the approval holder must have suitable arrangement for commercial waste collection services. A copy of the approval must be attached with application.

15. APPROVAL PROCESS

Council approval is required prior to establishing an outdoor dining area and the erection of any shade structures / heating on the footpath pursuant to:

- i) Local Government Act 1993; and
- ii) Roads Act 1993.

Any business that applies for approval to establish an outdoor dining area must have current development consent to occupy the associated shop. If approval has not been granted, the application will not be considered.

All requests for outdoor dining must be made on the appropriate application form, copies of which are available from Council's website www.cumberland.nsw.gov.au or at Council's Customer Service Centre, 16 Memorial Avenue, Merrylands. All applications must be accompanied by payment of the prescribed application fee (as per Council's adopted Fees and Charges Policy) and all relevant documentation.

15.1 Council Owned Land

The written authority of the General Manager or delegate will be required to be obtained to formally lodge an application to occupy Council owned footpaths. The application form contains provision for the General Manager's or delegate's signature. If the application is complete, it will be referred to the General Manager or delegate for signature. Incomplete applications will be returned to the applicant.

Once the General Manager's signature has been obtained the applicant will be contacted to pay the appropriate fees upon which the application can be lodged and formal assessment will commence. The signature of the General Manager does not infer that approval will be granted.

15.2 How to Apply

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 has provisions for outdoor dining to be undertaken as exempt development, subject to the outdoor dining area being associated with a lawful food and drink premises and the following criteria being satisfied:

That the development must:

- a) not be associated with a pub or a small bar;
- b) 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
- c) be carried out in accordance with any approval granted under section 68 of the Local Government Act 1993.

The food and drink premises is required to be subject to a current and valid development consent. If this is not the case, development consent for the food and drink premises is required to be obtained prior to the lodgment of any outdoor dining application.

Awnings and fixed structures are required to seek consent through either a Complying Development Certificate (CDC) or a Development Application (DA)/Construction Certificate (CC). Note that a DA will apply in the instance that the development is unable to satisfy the criteria for complying development.

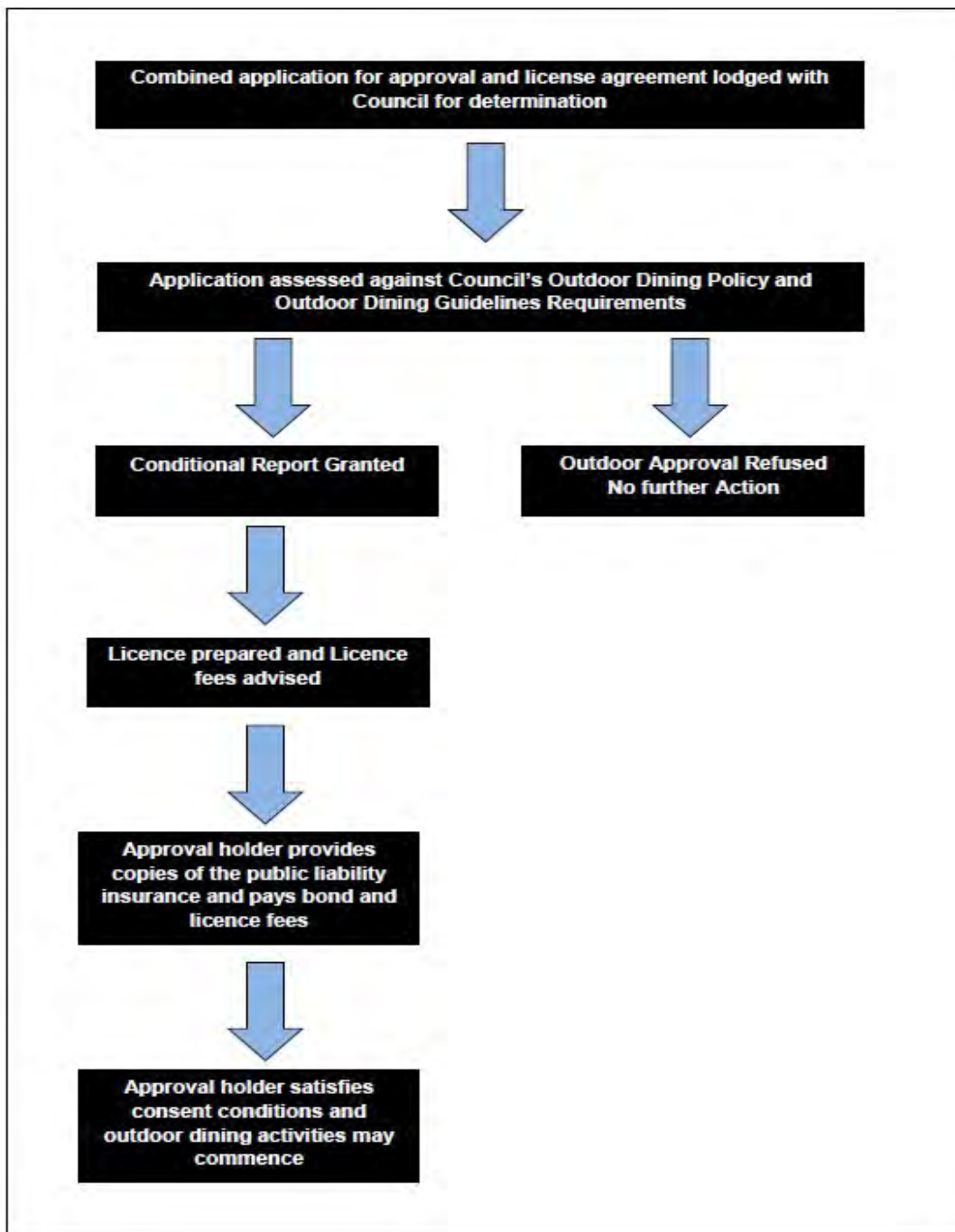


Figure 5: Outdoor Dining Approval Process

15.3 Information to be lodged with an Application

This application must be accompanied by the prescribed fee and the following information:

- Written authority of the land owner to lodge the application;
- A copy of the Development Consent pertaining to the associated restaurant/café;
- Colour photographs of the site and 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);*
- Four (4) copies of a site plan/footpath area drawn to a professional standard at a scale of 1:100 detailing:
 1. Street name and north point;

2. Property boundary and entry points, boundaries of the proposed seating area and of adjoining tenancies;
3. Kerb line of the street;
4. Width of the footpath from outside face of kerb to building line, and the length of the building frontage associated with the cafe;
5. Building line of the shop and adjacent shops either side;
6. 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, bollards, planter boxes, trees, light poles, pits, fire hydrants and car parking;
7. Proposed location and configuration of all tables, chairs, umbrellas, shade structures, planter boxes, including all setback dimensions;
8. Any adjoining outdoor dining area;
9. Full dimensional details and photographs of proposed umbrellas or shade structures;
10. Cross section through the site indicating heights of shade structures, barriers etc. in relation to shop front and awnings;
11. Proposed shop names or logos which are to be included on any furniture in the approved area or as part of the umbrella design;
12. Details of any proposed external lighting showing the type of fixtures and their proposed placement; and
13. 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.
14. 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. This will be strictly enforced;
15. A written statement detailing the proposed hours of operation; storage of furniture; cleaning of the footpath and furniture; lighting and music;
16. Fees in accordance with Council's Schedule of Fees and Charges; and
17. Liquor License.

The application will be notified to neighbouring property owners and business proprietors in accordance with Council's Notification Policy.

The submission of an application **does not** imply automatic approval.

16. FEES

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 three zones are *B1 Neighbourhood Centre*; *B2 Local Centre* and *B4 Mixed Use*. 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.

17. PERMIT RENEWAL AND CANCELLATION

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

- The operator fails to comply with the permit conditions; or
- 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.

18. HOURS OF OPERATION

Outdoor dining 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.

19. LEGAL AND OTHER COSTS

The approval holder is required to pay all legal and other costs incurred by Council in the preparation and execution of the licence. Any additional costs incurred by Council will also be payable by the approval holder.

RELATED LEGISLATION

- Local Government Act 1993 (NSW)
- Work Health and Safety Act 2011
- Food Act 2003 (NSW)
- Smoke Free Environment Act 2000 (NSW)
- Auburn Local Environmental Plan 2010
- Holroyd Local Environmental Plan 2013
- Parramatta Local Environmental Plan 2011
- Environmental Planning & Assessment Act 1979 (NSW)
- Roads Act 1993 (NSW)
- Liquor and Gaming Legislation Amendment Act 2018

RELATED DOCUMENTS AND COUNCIL POLICY

Cumberland City Council Outdoor Dining Policy