

D.9: OUTDOOR DINING

9.1 INTRODUCTION

This Chapter provides location requirements and design criteria for outdoor dining facilities.

9.1.1 Application

This Chapter applies to all land to which this DCP applies that is zoned:

- RU5: Village;
- B1: Neighbourhood Centre;
- B2: Local Centre;
- B3: Commercial Core; and
- B4: Mixed Use Zone;

under the provisions of the Cessnock Local Environmental Plan (CLEP).

9.1.2 Purpose

To identify where outdoor dining will be permitted on footpaths, footways and other public areas and under what circumstances.

9.1.3 Aims and objectives

- to create a cosmopolitan cafe atmosphere in appropriate areas, thereby increasing its attractiveness to residents and tourists;
- to allow outdoor dining in association with a new or existing food business subject to certain criteria;
- to provide clear guidelines to developers wishing to provide outdoor dining areas in association with a new or existing food business;
- to describe when development consent is required in addition to approval under the *Roads Act, 1993* and when proposals can be considered as 'exempt development';
- to provide criteria for the various categories of development which shall be met by development proponents; and
- to put into place appropriate controls to ensure that adequate pedestrian access and safety is maintained.

9.2 REQUIREMENTS FOR OUTDOOR DINING

No development application will be required for an outdoor dining area if it complies with the criteria below and does not fall within any of the criteria where no exemption applies as listed in *CLEP, Schedule 2: Exempt Development*:

- (a) *have a clear footpath width of 1.5 metres, to ensure the free and unobstructed flow of pedestrians. A greater width may be required where ground levels, pavement surface or other conditions restrict access for disabled persons, or in the vicinity of pedestrian crossings and traffic lights, or where there is an existing high volume of pedestrian traffic;*

- (b) *have a minimum distance of 1.0 metre between the boundary of the seating area and the kerb of the road or any other area where vehicles may park and require door swing space;*
- (c) *not increase the overall seating capacity of the restaurant, such that additional toilet facilities or other essential services are required;*
- (d) *not extend beyond the frontage of the premises it is related to, without the written consent of the adjoining business and property owners;*
- (e) *have all outdoor furniture and other equipment as temporary (ie. not fixed or fastened in any way to the footpath or building);*
- (f) *have all outdoor furniture and other equipment such as: umbrellas; umbrella stands; pot plants; and barriers, used to define the seating area, being removed from the **approved area** upon completion of each days trading;*
- (g) *have no outdoor furniture, barrier or structure permanently fastened to the footway unless prior approval is obtained from Council;*
- (h) *permit access (not inhibit) to public utilities such as: fire hydrants; access holes; inspection chambers; telephone and electricity cables; water service pipes; and the like;*
- (i) *be located on a footpath area which is sealed or paved for its full width. The applicant / proponent may be required to pave, seal or repair the footway at its own expense prior to the use being approved;*
- (j) *maintain the footpath area in a clean and tidy condition at all times;*
- (k) *where the existing premises is licensed, serve liquor in the outdoor dining area with the approval of the Licensing Court; and*
- (l) *where the food business is located in a declared 'Alcohol Free Zone', not serve liquor on the footpath or public place.*

Notes: *The location of outdoor dining, being within the road reserve, requires an application to Council is required under Section 125 of the Roads Act 1993.*

Refer to Cessnock DCP, Part D: Specific Development, Chapter 9: Outdoor Dining, for additional information.

Not exempt where any internal or external work required to the existing building as a result of the outdoor dining proposal, is work other than work which is exempt under this Schedule.

Not exempt where the existing food premises consent, contains a condition requiring the provision of parking spaces or payment of a contribution, in lieu of such provision.

Development applications for food businesses shall also comply with the guidelines contained in this section. Regardless of whether development consent is required or not, all proposals for outdoor dining require an approval under Section 125 of the *Roads Act 1993*.

9.2.1 Proposals to use existing or install Council owned street furniture

Where the proponent proposes to use existing Council street furniture for outdoor dining by its patrons, or seeks Council agreement to place new street furniture outside a food business, this shall be negotiated and agreed with Council prior to lodging an application under this Chapter.

Use of existing furniture and Council provision of new furniture may be permitted in some circumstances, but may require licensing and / or leasing, and in the case of new furniture will be subject to budget constraints.

9.3 DURATION OF APPROVALS

Approvals under the Roads Act will remain in force from July 1 to June 30 the following year, unless revoked earlier. Approvals under the Roads Act may be revoked at any time where conditions or exemptions are not complied with to Council's satisfaction. Approvals are transferable to a new proprietor upon submission of satisfactory insurance documentation.

Development approvals will remain in force as set out in the *Environmental Planning and Assessment Act, 1979*.