

# Outdoor Dining Policy

**December 2023**

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**City of  
Newcastle**

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## Part A Preliminary

### 1 Purpose

- 1.1 The purpose of the Outdoor Dining Policy ([this] Policy) is to provide the framework for the establishment and operation of outdoor dining and associated approval(s).
- 1.2 Facilitate the creation of a vibrant cosmopolitan atmosphere in appropriate areas of the city and surrounding suburbs.
- 1.3 Encourage the appropriate use of footways for the purposes of outdoor dining to stimulate business growth and development.
- 1.4 Ensure footways are safe and equitable for all people, including pedestrians with a pram or mobility aid, people who are vision impaired and users of wheelchairs and scooters.
- 1.5 Promote the creation of streets which are amenable and attractive for locals and visitors.
- 1.6 Provide opportunities for shop owners, residents, and visitors to benefit from pedestrian circulation.
- 1.7 Provide requirements and guidelines for outdoor dining to minimise disruption to neighbours, pedestrians, and other street users.

### 2 Scope

- 2.1 The policy applies to all applications for outdoor dining on footways within the local government area.
- 2.2 Outdoor dining comprises premises wanting to operate a footway dining area and requires an approval in accordance with Section 125 and Section 126 of the Roads Act 1993.
- 2.3 This policy does not apply to mobile food vending vehicles. Anyone seeking approval to operate a mobile food vending vehicle must apply to City of Newcastle (CN) for a permit in accordance with CN's Mobile Food Vending (Local Approvals) Policy.
- 2.4 This policy does not apply to other activities wanting to be conducted on a roadway or in any other public place e.g. public park, and any person wishing to undertake those activities should contact CN and seek advice about the appropriate permit and/or approvals process.
- 2.5 The information in this policy outlines the requirements CN considers when assessing outdoor dining applications and regulating outdoor dining activities.

### 3 Principles

- 3.1 City of Newcastle (CN) commits itself to the following:
  - a) **Retain accessibility and utility of outdoor public spaces** – ensure that the primary purpose of the footway shall be kept as a pedestrian thoroughfare, retain a consistent and clear path of travel for all users of footways, and ensure that the usability of footways is not unduly constrained by outdoor dining.
  - b) **Provide value and amenity to the City** – provide a framework to ensure recognition and maximisation of the value of Outdoor Dining venues, while minimising potential negative impacts.
  - c) **Ensure compliance with legislation and policies** – ensure public safety of Outdoor Dining operations, through granting approval for the use of footways and conducting compliance monitoring at venues.
  - d) **Align with Council strategies** – This Policy aligns with the strategic direction of the Newcastle 2040 Strategic Plan through providing enriched neighbourhoods and places and supporting a strong local economy, with safe and equitable access for all users.

## Part B Roles and Responsibilities

### 4 Applicants and Permit Holders

- 4.1 It is the responsibility of Applicants to provide all requisite information on application forms and pay any application fees liable in order to have an application assessed by CN.
- 4.2 It is the responsibility of Approval Holders to ensure that outdoor dining operations are always conducted in a safe and hygienic manner, and that footpath user mobility is not constrained by outdoor dining operations.
- 4.3 Approval Holders must ensure that all conditions of approval, the current Outdoor Dining Guidelines and relevant legislation are complied with at all times.

### 5 CN Officers

- 5.1 CN Officers with suitably delegated authority are responsible for reviewing applications for completeness, assessing applications received in accordance with this Policy and related legislation, and enforcing compliance with this Policy and related approvals in accordance with the CN's Compliance and Enforcement Policy.

## Part C Approvals

### 6 Legislative Context

In order for venues to use a footway for outdoor dining, the following approvals are necessary under State legislation:

- all outdoor dining on the footpath requires approval under the *Roads Act 1993*.
- outdoor dining that is not exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 will require a development application under the *Environmental Planning and Assessment Act 1979*.

### 7 Outdoor Dining Guidelines

This Policy aligns with CN's Outdoor Dining Guidelines. The Guidelines provide additional information on the requirements for outdoor dining in a footway and the responsibilities of an approval holder in terms of maintaining and enhancing the local character, heritage, ambience and safety of the public domain. An assessment of Outdoor Dining Applications shall be made against these Guidelines, however in the event of any inconsistency between the Policy and Guidelines, the Policy shall prevail.

The final decision on whether any given application shall receive approval shall remain at CN's sole discretion on land it owns or otherwise controls.

## Part D References

This Policy references the following pieces of State and Federal Legislation:

- Disability Discrimination Act 1992 (Cth)
- Environmental Planning and Assessment Act 1979
- Local Government Act 1993
- Roads Act 1993
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

In preparing this Policy, the following documents were reviewed:

- CN Mobile Food Vending (Local Approvals) Policy V3 February 2023

## Part E Annexures

### Annexure A - Definitions

**Applicant** means the entity (business or person) seeking approval for an Outdoor Dining Permit.

**Approval** means an approval granted by Council under section 125 or 126 of the Roads Act 1993; section 68 of the Local Government Act 1993; a condition of development consent under the Environmental and Assessment Act; or any other valid written agreement entered into with Council and the Approval Holder.

**Approval Holder** means the entity (business or person) to which an Approval has been granted.

**CEO** means Chief Executive Officer of the City of Newcastle and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the *Local Government Act 1993* (NSW).

**City of Newcastle (CN)** means Newcastle City Council.

**CN Officers** means employees of CN (including full time, part time, fixed term and casual) or Specific Talent Contractor who is engaged under a CN position description.

**Guidelines** means the associated Outdoor Dining Guidelines document.

**Footway** means the area adjacent the public road.

**[This] Policy** means the Outdoor Dining Policy document.

Unless stated otherwise, a reference to a section or clause is a reference to a section or clause of This Policy.

## Annexure B - Policy Authorisations

In accordance with section 378 of the Local Government Act 1993, the Chief Executive Officer delegates the following functions to the positions listed:

Title of authorisation	Description of authorisation	Position Number and Title
Authority to use footway for restaurant	Authority to determine an application for a footway dining approval. Pursuant to Section 125 of the Roads Act 1993.	Refer to CN Delegation Register due to the number of positions with this delegation.
Authority to erect structures	Authority to authorise the holder of a footway dining approval to erect and maintain structures in, or over any part, of the footway. Pursuant to Section 126 of the Roads Act 1993.	Refer to CN Delegation Register due to the number of positions with this delegation.
Footway restaurants	Authority to grant an approval pursuant to Part 9 Division 1 of the Roads Act 1993 to use part of a footway for the purposes of a restaurant and to authorise a holder of an approval to erect and maintain structures in, on or over any part of the footway the subject of the approval.	Refer to CN Delegation Register due to the number of positions with this delegation.

## Document Control

Policy title	Outdoor Dining Policy
Policy owner	Executive Director of Planning and Environment
Policy expert/writer	City Wide Development Assessment Manager
Associated Guideline or Procedure Title	Outdoor Dining Guidelines
Guideline or Procedure owner	Executive Director of Planning and Environment
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Details of previous versions	Nil
Keywords	Planning, Approvals, Outdoor, Dining
Relevant Newcastle 2040 Theme/s	Liveable Sustainable Creative Achieving Together
Relevant legislation/codes (reference specific sections)	This Policy supports CN's compliance with the following legislation: <ul style="list-style-type: none"> <li>- Environmental Planning and Assessment Act 1979</li> <li>- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</li> <li>- Roads Act 1993</li> <li>- Local Government Act 1993</li> <li>- Crown Land Management Act 2016.</li> </ul>
Other related documents	Outdoor Dining Guidelines
Related forms	Outdoor Dining Application
Required on website	Yes
Authorisations	Functions authorised under this Policy at Annexure B