

NOTE: This Chapter should not be read in isolation. You may need to consider other chapters of this DCP when preparing your application.



# CHAPTER G17: BUSINESS, COMMERCIAL AND RETAIL ACTIVITIES

# Chapter G17: Business, Commercial and Retail Activities

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**Amendment history**

Version Number	Date Adopted by Council	Commencement Date	Amendment Type
1	14 October 2014	22 October 2014	New
2	23 June 2015	1 July 2015	Amendment
3	7 November 2016	30 November 2016	Amendment
4	3 December 2019	18 December 2019	Amendment
5	7 September 2021	1 October 2021	Amendment

## 1 Purpose

The purpose of this Chapter is to set out guidelines for the establishment and operation of all business, commercial and retail activities, as well as the specific uses of [markets](#) and the commercial use of [footpaths](#).

## 2 Application

This Chapter applies to all land in Shoalhaven or as specified under the various Sections.

## 3 Context

A mix of traditional and alternative forms of business, commercial and retail activity is important to the social fabric of the Shoalhaven [community](#) and to add interest and vitality to streets and open spaces. Forms of business, commercial and retail activity such as [markets](#) and commercial use of [footpaths](#) create jobs and economic prosperity. When balanced with environmental and social outcomes, as well as more traditional forms of business, commercial and retail uses, they create a sustainable [community](#).

Using [footpaths](#) for [commercial uses](#) can also create pleasant and safe environments for shoppers and patrons. This Chapter provides guidelines about how this can be achieved without compromising the safety or amenity of the public domain for all users.

### Note:

#### First Occupation/Use

If the proposal is to occupy an existing [building](#) (or a unit within an existing [building](#)) to operate a business, it must be identified whether [development consent](#) is required.

[Consent](#) for the first occupation of a [commercial, business or retail premise](#) is usually obtained when the [development](#) application for the [building](#) is approved. If this is the case, then no further [consent](#) will be required.

A first occupation may also be [exempt development](#) under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). Refer to the Codes SEPP to identify if the proposal is exempt.

If the proposed use of the [building](#) or individual unit/s has not been specified in the original [development consent](#) or the proposal is not exempt, [development consent](#) will be required from [Council](#) before occupying the [building](#) or unit/s.

#### Change of Use

A change of use is when the proposed use of a [building](#) (or a unit within an existing [building](#)) is different to its previous use (e.g. retail [shop](#) to [restaurant](#) or office to a retail [shop](#)).

If the proposal is for a change of use, it must be identified whether [development consent](#) is required.

If the proposal is [exempt development](#) under the Codes SEPP then no further [consent](#) will be required. If the proposal is not exempt or complying development, or if additions or alterations are proposed, [development consent](#) will be required.

## 4 Objectives

The [objectives](#) are to:

- i. Encourage the growth and [development](#) of business and employment opportunities within [defined](#) limits and in a socially and economically responsible manner.
- ii. Safeguard the amenity of the area and, in particular, immediately adjoining and adjacent property [owners](#).
- iii. Moderate environmental impacts.
- iv. Clarify and make provision for business, commercial and retail development in [urban](#), environmental, rural and coastal locations.

Additional use specific [objectives](#) may also be provided in **Section 5**.

## 5 Controls

### 5.1 Business, Commercial and Retail Development

These controls apply in business zones and where business, commercial and retail [development](#) is permissible with [development consent](#). Other sections of this Chapter may also apply to a development application.

Performance Criteria	Acceptable Solutions
P1 <a href="#">Buildings</a> provide legibility and definition to the streetscape.	<p>A1.1 Where a front setback is applied, the area forward of the <a href="#">building line</a> (towards the kerb) may function as a private extension of the elements used in the public domain/ streetscape. All private elements within the setback shall contribute to interest and amenity (e.g. alfresco use, feature garden).</p> <p>A1.2 When a setback is applied, the area forward of the <a href="#">building line</a> integrates the desired streetscape design and materials in line with the <a href="#">Chapter G18</a></p>

		<a href="#">Streetscape Technical Manual</a> , where applicable.
	A1.3	<p><b>Developments</b> on intersections must consider pedestrian safety, including sight lines, street <b>signage</b> and <b>Council's</b> desired crossing threshold pavement in line with the <a href="#">Chapter G18 Streetscape Technical Manual</a>, where applicable.</p> <p><b>Note:</b> Refer also to Chapter G21: Car Parking and Traffic.</p>
P2	<p><b>Building</b> exteriors, <b>structures</b>, <b>awnings</b> and <b>fences</b> are robust, complementary of the existing character and make a positive contribution to the streetscape, especially pedestrian thoroughfares and public spaces.</p>	<p>A2.1 <b>Building</b> materials and finishes must be durable, low maintenance and suitable in the context of the adjoining local streetscape and existing and/or future desired character.</p> <p>A2.2 Blank <b>walls</b> and solid <b>fencing</b> that inhibit natural <b>surveillance</b> and encourage graffiti are avoided.</p> <p>A2.3 <b>Fence</b> heights <b>are</b> compatible with the adjoining local streetscape context.</p> <p>A2.4 Where <b>awnings</b> are <b>provided/proposed</b>:</p> <ul style="list-style-type: none"> <li>• The design considers and avoids negative impacts on heritage, <b>views</b> and visual amenity.</li> <li>• <b>Awnings</b> are consistent with the surrounding context and match surrounding <b>awnings</b> in character, height and depth.</li> <li>• Pedestrian lighting is incorporated where suitable.</li> <li>• The location of any posts associated with <b>awnings</b> considers proposed/future use of the footway and allowances required for reasonable pedestrian accessibility (minimum clearance of 2.6m).</li> <li>• <b>Awnings</b> are setback a minimum of 0.5m from the street edge to avoid conflict with vehicles utilising the adjoining <b>roadway</b>.</li> </ul> <p><b>Note:</b></p> <p><b>Maintenance of Awnings</b></p> <p><b>Awnings</b> will require structural engineering inspections on a regular basis and must be maintained in good</p>

		<p>repair and safe working order at all times.</p> <p><b>Awnings in Road Reserves</b></p> <p>A Section 138 approval under the <i>Roads Act 1993</i> may be required for the construction of the awning. Council does not provide any ongoing consent/approval for the continued occupation of the air space above the road reserve. Section 142 (1) and (2) of the <i>Roads Act 1993</i> places the responsibility for maintenance and insurance liability on the owner of the awning. Awning owners should ensure they have public liability insurance for the awning which notes Council as an interested party.</p>
P3	Commercial development in town and village centres contributes to street activity and provides engaging and safe streetscapes.	<p>A3.1 Active uses are included at the ground level along:</p> <ul style="list-style-type: none"> <li>• The primary frontage.</li> <li>• The secondary frontage/s on corner allotments.</li> <li>• An adjacent lane or path.</li> </ul> <p>A3.2 Service vehicle access and parking facilities shall be provided away from the primary frontage, where possible.</p> <p>A3.3 Service vehicle access shall prioritise pedestrian safety by maintaining clear sight lines and providing pedestrian crossing threshold pavement (vehicular threshold and pedestrian crossings) in line with the <a href="#">Chapter G18 Streetscape Technical Manual</a>.</p>
P4	Amenity and safety of existing streets, lanes, paths and through-site links is enhanced.	<p>A4.1 Development shall not obstruct:</p> <ul style="list-style-type: none"> <li>• Sight lines from each end of a laneway.</li> <li>• Through-site links.</li> </ul> <p>A4.2 Developments adjoining or including streets, laneways, paths and through-site links shall consider CPTED principles as outlined in Chapter 2: General and Environmental Considerations of this Development Control Plan.</p>
P5	The proposed development and/or use does not generate emissions that could	<p>A5.1 The proposal shall not cause unacceptable levels of perceptible</p>



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	adversely affect the amenity of neighbouring premises.		odours (including cooking odours), fumes, smoke, gas, vapours, steam, soot, ash, dust or grit.
P6	The <b>development</b> and/or use does not discharge any unregulated <b>waste</b> that may damage the environment or adversely affect the amenity of the area.	A6.1	The proposal shall not generate any contaminated <b>waste</b> .
		A6.2	The activity shall not cause soil or <b>ground water</b> contamination by the release or deposition of any liquid or solid <b>wastes</b> (including oil products and chemicals or their compounds) on to the soil.
			<b>Note:</b> If the proposal has the potential to discharge liquid <b>trade waste</b> to <b>Council's</b> sewer, a liquid <b>trade waste</b> discharge approval from Shoalhaven Water must be approved. Additional contaminant prevention devices may be required by <b>Council</b> . Businesses that may require a liquid <b>trade waste</b> approval could include <b>food and drink premises</b> and <b>retail premises</b> (e.g. hair dressing salons, photographic studios, paint sales).
P7	The <b>development</b> and/or use provides adequate provision for on-site collection, storage and disposal of <b>waste</b> products in a way that does not adversely affect neighbouring premises or the environment.	A7.1	Collection and disposal of <b>waste</b> should be through <b>Council's</b> regular collection service and/or a private <b>waste</b> contractor.
		A7.2	If <b>waste</b> is to be collected by a private <b>waste</b> contractor, the site design must be able to accommodate the manoeuvring requirements of that vehicle for onsite collection.
		A7.3	<b>Waste storage and recycling areas</b> should be of a size to meet the current and future needs of tenants. This includes potential <b>waste</b> and recycling requirements of a future change of use.
		A7.4	<b>Waste storage and recycling areas</b> should be sited to minimise negative amenity impacts (noise, visual amenity and odour).
		A7.5	<b>Development</b> applications should be accompanied by a <b>waste management plan</b> .
			<b>Note:</b> Refer to Chapter G7: Waste Minimisation and Management of this <b>Development Control Plan</b> for additional information.



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<p>P8 The hours of operation:</p> <ul style="list-style-type: none"><li>• Do not have an unreasonable adverse impact on any neighbouring premises.</li><li>• Encourage employment and street activation outside of standard business hours, in appropriate locations.</li></ul>	<p>A8.1 Hours of operation and trading days are appropriate for the location and type of business.</p> <div data-bbox="919 383 1431 577"><p><b>Note:</b> Extended hours may be permitted during daylight savings and Christmas holiday periods, special trading days or as otherwise agreed to in writing, in accordance with the <i>Retail Trading Act 2008</i> and other applicable legislation.</p></div> <p>A8.2 Despite <b>A8.1</b>, <b>Council</b> will consider variations to usual trading hours for the location and type of business if all of the following is satisfied:</p> <ul style="list-style-type: none"><li>• The proposed hours are required for the standard operation of the proposed business.</li><li>• The proposed hours are compatible with surrounding development and will not result in negative impacts on residential amenity.</li><li>• Extended trading hours will encourage employment, street activation and provide employment opportunities.</li><li>• Security and safety of employees and customers has been addressed.</li></ul>
<p>P9 A change of use meets relevant fire safety requirements.</p>	<p>A9.1 All existing fire safety measures, and those that are proposed to satisfy the fire safety requirements of the new use, are to be described as part of the change of use development application.</p> <div data-bbox="919 1503 1431 1603"><p><b>Note:</b> Where necessary, the <b>building</b> must be upgraded to satisfy fire safety requirements as required by <b>Council</b>.</p></div>

### 5.1.1 Shopping Trolleys

This Section applies to development applications for supermarkets, department stores and substantial retail outlets.

Performance Criteria	Acceptable Solutions
P10 Supermarkets, department stores and substantial retail outlets include a Plan of Management (POM) for shopping trolleys.	<p>The POM shall include:</p> <p>A10.1 A trolley containment system that encourages the confinement of trolleys to the retailer's premises, such examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Coin/token operated system with refund.</li> <li>• Trolleys with wheel locks activated by a radio signal or magnetic strip.</li> <li>• Cattle grids at carpark entrances and exits.</li> <li>• Radio signal transmitters on trolleys.</li> </ul> <p>A10.2 Any other system which demonstrates a commitment to contain trolleys to the retailer's premises, or within the boundaries of a shopping centre and may include staff permanently stationed at exits during trading hours.</p> <p>A10.3 <a href="#">Signage</a> and public education programs which may include (but not limited to);</p> <ul style="list-style-type: none"> <li>• <a href="#">Signage</a> within stores and carparks.</li> <li>• <a href="#">Signage</a> at entry and exit points of stores and carparks.</li> <li>• <a href="#">Signage</a> on trolleys.</li> <li>• Pamphlets in stores explaining the Code of Practice and the need for customer co-operation.</li> <li>• Local newspaper publicity.</li> <li>• Local Chambers of Commerce education programs on misuse of shopping trolleys.</li> </ul> <p>A10.4 How the POM will be implemented by the shopping centre management and/or individual retailer, as listed in <b>Table 1</b> below.</p>
P11 Retailers and/or centre management are responsible for the ongoing management of shopping trolleys.	<p>A11.1 Where possible, shopping trolleys should remain on the premises of the retailer who owns them.</p> <p>A11.2 The trolley <a href="#">owner</a> should develop and maintain a management program to ensure that shopping trolleys taken from</p>

retail premises are collected at least daily.

**Note:** Council may impound shopping trolleys in accordance with the *Impounding Act 1993* where a shopping trolley:

- Has been abandoned or left unattended in a public place or area.
- Is likely to cause imminent danger to a member of the public.
- Has not been collected by the owner or their collective agent following due notification.

The impounded trolleys may be offered to tender and/or disposed of.

**Table 1: Retailer and Management Responsibilities**

Responsibilities	
<b>Retailers</b>	<ul style="list-style-type: none"> <li>• Provide Council a list of contacts for their store/stores in the LGA (including phone and email address), with additional company contacts at senior management level.</li> <li>• Authorise the store manager or their delegate to be responsible for liaison with local government representatives about trolley management.</li> <li>• Ensure that all trolleys are easily identifiable by Council officers.</li> <li>• Ensure that trolley collection services are sufficiently resourced to enable collection within timeframes and at all times, including “after hours” details.</li> <li>• Ensure that trolleys reported as posing risk or nuisance are collected immediately on notification.</li> <li>• Ensure that all other trolleys reported are collected within the time limit agreed with/set by Council. This may require an “after hours” collection service.</li> <li>• Retain a brief record of all trolleys so reported and collected or the time at which a trolley collector attended to collect a reported trolley if no trolley was found at that location.</li> <li>• Inform customers (through clearly visible signage and other means within the premises) that trolleys should not be removed from premises or abandoned, and that penalties apply for the abandoning of trolleys outside the retail outlet/complex.</li> <li>• Provide suitable, well signed trolley bays at exit points to retail outlets or complexes.</li> <li>• Provide to Council, on request, an up to date map showing usual trolley collection routes and schedules.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Trolleys are to have prominent signage made of hard wearing resilient material clearly advising the contact telephone number of the collection agent for the trolley.</li> <li>• Each trolley is to have clearly and permanently display its own identification number.</li> <li>• Actively promote the sale of personal shopping trolleys/carts to customers.</li> <li>• Trolley collection agents are to provide statistics on the number of abandoned shopping trolleys collected within the LGA to Council every three (3) months.</li> </ul>
<b>Shopping Centre Management</b>	<ul style="list-style-type: none"> <li>• Allow erection of signage informing the public of their responsibility.</li> <li>• Provide adequate trolley bays within the boundaries of the shopping centre.</li> <li>• Ensure new tenants do not take and misuse shopping trolleys (may include clause in leases on formal agreements).</li> <li>• Where mechanical or electronic containment devices are not provided for all trolleys, security staff may be dispatched at shopping centre exits to advise shoppers to not remove trolleys from premises and provide shoppers with information brochures.</li> </ul>

**5.1.2 Security Grilles and Gates in the Nowra CBD.**

This Section applies to shopfronts and arcades in the Nowra CBD as shown in **Figure 1**.

**Note:** The installation of a security screen or grille may be considered **exempt development** under the Codes SEPP.

The specific **objectives** are to:

- Maintain shopping amenity within commercial areas out of hours.
- Provide for business security.
- Maximise sources of light within the commercial area.
- Minimise social problems associated with poorly lit spaces.

<b>Performance Criteria</b>	<b>Acceptable Solutions</b>
P12 Security grilles and gates provide security to shopfronts and arcades whilst maintaining an acceptable quality for the shopping centre/area outside normal trading hours.	<p>A12.1 Security grilles and gates shall be constructed of open mesh to complement the appearance of the <b>shop</b> frontage.</p> <p>A12.2 Security grilles and gates shall allow for the ability to <b>window shop</b> out of hours and allow the spill of light from <b>shop</b> front to the street <b>footpath</b>.</p>

A12.3 To maintain accessibility within the CBD, security grilles and gates shall be permitted in any arcade with the exception of:

- Morrison's Arcade between Junction Street and Egan's Lane car park.
- Rodway Arcade between Junction Street and Schofield's Lane.
- The Holt Arcade between Kinghorne Street and the Stewart Place car park.

**Note:** In respect to arcades, each application will be dealt with on its merits in regard to setback of grilles and gates.

Any consent for grilles and gates to arcades shall be for a limited period in order to assess their impact on the CBD.

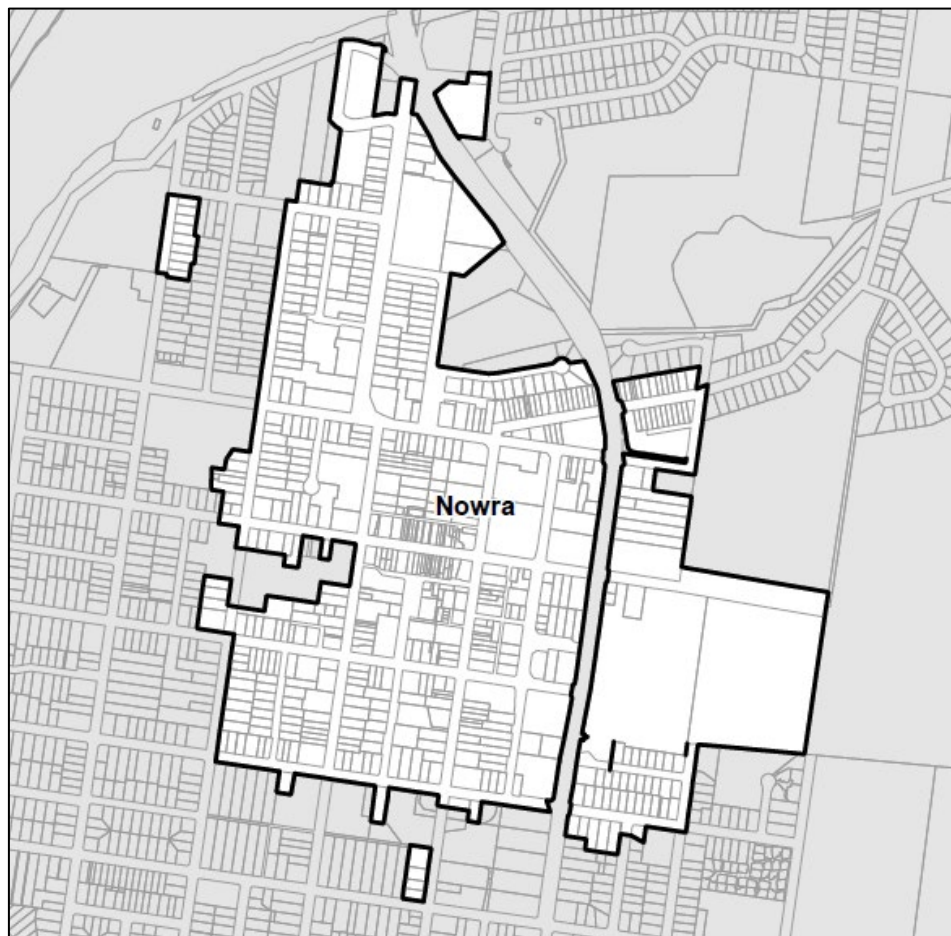


Figure 1: Land to which Section 5.1.2 applies

### 5.1.3 Local Shops in Coastal Villages

**Note:** Local [shops](#) in this Section refer to retail premises which may comprise takeaway [food and drink premises](#), [shops](#), [neighbourhood shops](#), [restaurants](#) and other similar retail uses where such uses are permitted under [SLEP 2014](#).

This Section applies to small Shoalhaven settlements with a population of between 200 and 3,000 people that are located along beaches, bays, [coastal lakes](#) and the like and where separate site specific [development control plans](#) are not available for those locations namely:

- Greenwell Point
- Orient Point
- Callala Bay
- Callala Beach
- Currarong
- Basin View
- Erowal Bay
- Swanhaven
- Cudmirrah
- Berrara
- Lake Conjola
- Bendalong
- Manyana
- Cunjurong Point
- Mollymook
- Narrawallee
- Kings Point
- Burrill Lake
- Dolphin Point
- Lake Tabourie
- Bawley point
- Kioloa
- Pebbly Beach
- Depot Beach
- North Durras

It is important that the design approach for local [shops](#) is sympathetic with the existing village character. The protection of amenity is essential, as is ensuring compatibility with the surrounding environment, local context and the natural and rural landscape setting. The encouraged design approach also reinforces Shoalhaven's scenic and tourist values by maintaining and improving the distinctive way in which [structures](#) sit within the coastal landscape.

The specific [objectives](#) are to:

- i. Guide desirable [development](#) of local [shops](#).
- ii. Ensure local [shops](#) are small [scale](#) in built form and do not dominate their natural setting.
- iii. Ensure that local [shops](#) address and respond to existing unique coastal locations in terms of [building](#) bulk, height, landscaping and parking.
- iv. Ensure compatibility with existing residential character/amenity.

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- v. Ensure design of local **shops** reinforces scenic and tourist values by protecting natural and rural lands.

Performance Criteria	Acceptable Solutions
P13 <b>Building height</b> is compatible with the local context.	<p>A13.1 Local <b>shops</b> are generally a maximum of 2 <b>storeys</b> in height, so that they are compatible with the domestic <b>scale</b> of surrounding <b>dwellings</b>.</p> <p>A13.2 Local <b>shops</b> located in main streets may include a recessed/stepped third <b>storey</b> with adequate <b>articulation</b>, provided that the <b>building</b> does not adversely impact on residential amenity.</p> <p>A13.3 The height of local <b>shops</b> takes into account environmental constraints such as steep slopes and <b>flooding</b>.</p>
P14 <b>Building form</b> retains the visual character of the coastal village and the relationship with the surrounding natural environment.	<p>A14.1 Proposed new <b>development</b> shall:</p> <ul style="list-style-type: none"> <li>• Reinforce the existing bulk and <b>scale</b> of the coastal village.</li> <li>• Be compatible and take into account surrounding <b>dwellings</b> and the streetscape.</li> <li>• Reflect the existing and desired future character and built form.</li> </ul> <p><b>Note:</b> Contact <b>Council</b> to determine whether a future desired character has been established for a specific coastal village.</p> <ul style="list-style-type: none"> <li>• Not dominate the natural environment and is designed to relate to the topography.</li> <li>• Maintain and protect <b>views</b> and <b>vistas</b>.</li> </ul> <p><b>Note:</b> The Coastal Design Guidelines for NSW provides design guidelines for new coastal <b>buildings</b>. These guidelines should be considered during the preparation of a <b>development application</b>.</p>



P15 **Building** materials and landscape elements:

- Respond to the natural environment.
- Are 'in harmony' with the coastal village location.
- Provide shade and amenity to outdoor and car parking areas.

A15.1 **Building** colours and materials are chosen to respond to the landscape setting surrounding the coastal village, where suitable and compatible. **Building** colours and materials shall be:

- Light neutral coastal colours.
- Variations of a colour/theme.
- Natural colours found in the surrounding landscape.

A15.2 **Landscaped** areas shall:

- Contribute to the coastal village streetscape character and are visually compatible with the local environment.
- Be suitable for local conditions and are low maintenance species.
- Not obstruct pedestrian or motor vehicle sight lines.
- Enhance the amenity of both public and private spaces and car parking areas associated with local **shops**.
- Include a continuation of design elements from the public domain.

A15.3 Existing **trees** should be retained where possible.

**Note:** Mature **trees** are an important asset as they provide shade, can be a visual feature and reduce the heat island effect.

A15.4 The design and location of street **trees** and plant beds must have regard to:

- Water Sensitive Urban Design (WSUD) principles to optimise passive watering.
- Potential impacts to overhead and underground services (including easements), kerbs and **footpaths**.

A15.5 The minimum pot size required for a street **tree** planting is 75L.

A15.6 Where applicable, pavement and planting is constructed in accordance with the specifications in [Chapter G18 Streetscape Technical Manual](#).

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|---|---|
| P16 Shop fronts and <b>building</b> entries address the street and provide active frontages to facilitate pedestrian movement and create a vibrant streetscape. | A16.1 Entrances are high quality and are designed to address the street and reflect the surrounding streetscape character.  |
|   | A16.2 <b>Shops</b> that are located on a corner <b>allotment</b> , address both street frontages.   |
|   | A16.3 Active uses are provided along street frontages and public spaces at ground/ <b>footpath</b> level to encourage pedestrian movement, and to enhance surveillance and public security. |
|   | A16.4 Local <b>shops</b> provide opportunities for outdoor dining or seating areas which encourage people to stay at the location.  |
|   | A16.5 Shop fronts are glazed wherever suitable to provide visual interest, light and foster natural surveillance of the street.   |
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### 5.1.4 Solar Access

This Section seeks to maximise **solar access** to the proposed and adjacent **development**.

**Note:** Council's assessment of development applications is guided by the [Land and Environment Court Planning Principles](#). In the case of sunlight access, Council may refer to the Planning Principle established in The Benevolent Society v Waverly Council [2010] NSWLEC 1082 to guide the decision making process.

Performance Criteria	Acceptable Solutions
P17 The <b>building</b> design encourages energy efficient <b>development</b> and good <b>solar access</b> to the <b>development</b> and surrounding development.	<p>A17.1 Direct <b>solar access</b> must be maintained for at least 3 hours between 9am and 3pm on June 21 to:</p> <ul style="list-style-type: none"> <li>Existing <b>rooftop solar systems</b>;</li> <li>10m<sup>2</sup> of north facing roofs where a <b>rooftop solar system</b> is not yet in place.</li> </ul> <p><b>Note:</b> North facing roofs are considered to be between the axes of 45° west to 45° east.</p> <p>A17.2 A reliable and accurate shadow diagram may be required to demonstrate the impact of shadows resulting from existing and proposed <b>building</b> works between 9am and 3pm on June 21.</p> <p><b>Note:</b> Council will determine if a shadow diagram is required based on the nature of the proposed <b>development</b> and the prevailing character and built form of the subject area.</p>

## 5.2 Markets

This Section applies to all land where **markets** are permissible with **development consent**.

The specific **objectives** are to:

- Reduce adverse effects upon the local area by providing guidelines for traffic, access, car parking and hours of operation.
- Recognise the importance of **markets** as a source of income to local **community**/charity groups and businesses, whilst also appreciating the economic implications that **markets** can have on existing commercial activities.
- Encourage the stall and product type to be from locally and regionally produced sources featuring “Make it, Bake it, Sew it, Grow it” products.

### 5.2.1 Site Requirements

Performance Criteria	Acceptable Solutions
<p>P18 <b>Markets:</b></p> <ul style="list-style-type: none"> <li>Reinforce existing retail centres.</li> <li>Provide for vehicular access, pedestrian access, <b>amenities</b> and car parking.</li> <li>Prevent traffic levels that may adversely affect traffic safety or the amenity of the <b>locality</b>.</li> <li>Provide public safety measures.</li> <li>Sell legal goods and services.</li> </ul>	<p>A18.1 <b>Markets</b> should be located within 250m walking distance of public car parking or provide sufficient area on site for vehicle parking.</p> <p>A18.2 Car parking areas to be used by <b>markets</b> should not have direct vehicle access to a main or arterial <b>road</b>.</p> <div style="background-color: #f0f0f0; padding: 5px; margin: 10px 0;"> <p><b>Note:</b> Refer to Chapter G21: Car parking and Traffic for more details on car parking requirements.</p> </div> <p>A18.3 If access to a <b>market</b> is from a main <b>road</b>, a semi-formal access arrangement is to be allowed for practicality purposes.</p> <p>A18.4 A minimum clear width of 2.4m must be maintained for pedestrian use on <b>highly trafficked</b> public <b>footpath</b> areas. Low to moderately trafficked public <b>footpath</b> areas require a minimum clear width of 2m.</p> <p>A18.5 If the <b>market</b> is on private land, no goods must be offered for sale on the <b>footpath</b> or any public place.</p> <p>A18.6 Tables and/or trestles and/or goods displayed must be laid out in an orderly manner to allow the free movement of pedestrians. All activities are to be contained wholly within the site.</p>

### 5.2.2 Amenity

Performance Criteria	Acceptable Solutions
P19 <b>Markets</b> are conducted within the context of the amenity of the local area.	<p>A19.1 Hours of operation of <b>markets</b> are within the limits of sunrise Saturday and sunset Sunday and Thursday/Friday evenings from 3pm to 7pm.</p> <p><b>Note:</b> Applications for <b>markets</b> outside these times will be considered on merit. Where a <b>market</b> is located opposite/adjoining residential land, stall set up is permitted from 8am onwards only.</p> <p>A19.2 Where music and/or musical instruments are to be played, no undue impacts will be made on neighbouring residents.</p> <p>A19.3 Public <b>amenities</b> are to be made available within a reasonable proximity of the proposed <b>market</b> or adequate provision is made on-site for temporary toilet facilities to the satisfaction of <b>Council</b>.</p>

### 5.2.3 Economic considerations

**Note:** All applications will be limited to an approval of 12 months initially, which can then be extended to a period of up to five (5) years to reduce the need for annual renewal.

Performance Criteria	Acceptable Solutions
<p>P20 The proposal:</p> <ul style="list-style-type: none"> <li>Minimises the economic impacts that the <b>market</b> may have on existing established <b>shops</b> and retail centres.</li> <li>Recognises <b>markets</b> as an important source of income for local <b>community/</b> charity groups.</li> </ul>	<p>A20.1 The maximum number of <b>markets</b> will be one per month per <b>locality</b> (e.g. town, suburb or village) unless it is clearly demonstrated that the <b>market</b> will:</p> <ul style="list-style-type: none"> <li>Be beneficial to the <b>community</b>.</li> <li>Not impact on financial viability of existing businesses and may include the participation of retailers located in close proximity/adjoining the <b>market</b>.</li> <li>Include a number of stalls featuring “Make it, Bake it, Sew it, Grow it” products.</li> </ul>

- A20.2 There shall be no constraint to the products, articles to be sold, or from where they were obtained, provided that such merchandise has been legally obtained and are not considered to be unsightly, objectionable or offensive to public morality.
- A20.3 Any goods or services offered for sale are to conform to the requirements of the *Fair Trading Act 1987*, the *Competition and Consumer Act 2010*, the *National Measurement Act 1960* and other applicable legislation.
- A20.4 The **market** operator must retain a register containing the names, address and description of goods of all stall holders for a period of twelve months.
- A20.5 The applicant/**market** operator ensures that:
- Retailers located in close proximity to/adjoining the **market** can participate.
  - Whenever possible, local retailers should be invited to participate in the **market**.
- 

### 5.3 Commercial Use of Footpaths

This Section applies to the **commercial use** of public **footpaths** within the **footpath** and public space area of the **road** reserve in conjunction with a **commercial premises**. This Section does not apply to a **commercial use** on private land.

**Note:** The **commercial use** of **footpaths** could take a number of forms, including:

- **A-board signs.**
- Tables and chairs (associated with a pub or small bar).
- Bollards.
- Planter boxes.
- Children's amusements/rides.
- Umbrellas.
- Screens.
- Safety rails.
- Display of goods and merchandise (e.g. racks of clothing).

- Newspaper baskets.

The primary purpose of the public **footpath** is to accommodate pedestrian traffic. The **commercial use** of the **footpath** will only be permitted at locations where sufficient pedestrian access can be maintained. Some Shoalhaven **footpaths** are not suitable for **commercial use** as the width is not sufficient to allow pedestrian access requirements under the *Disability Discrimination Act 1992* and relevant Australian Standards to be met.

Under the Codes SEPP, the **commercial use** of a **footpath** may be **exempt development** (e.g. an **outdoor dining area** associated with a **lawful food and drink premises** (excluding outdoor dining associated with a **pub** or **small bar**)). If a proposal meets the provisions for **exempt development**, development consent will not be required from **Council**.

Regardless of whether a change of use is **exempt development** or development consent is required, an approval may also be required under:

- Section 125 of the *Roads Act 1993* for outdoor dining.
- Section 138 or Section 139A of the *Roads Act 1993* for **A-board** signs, advertising or merchandise displays.
- Section 68 of the *Local Government Act 1993*.

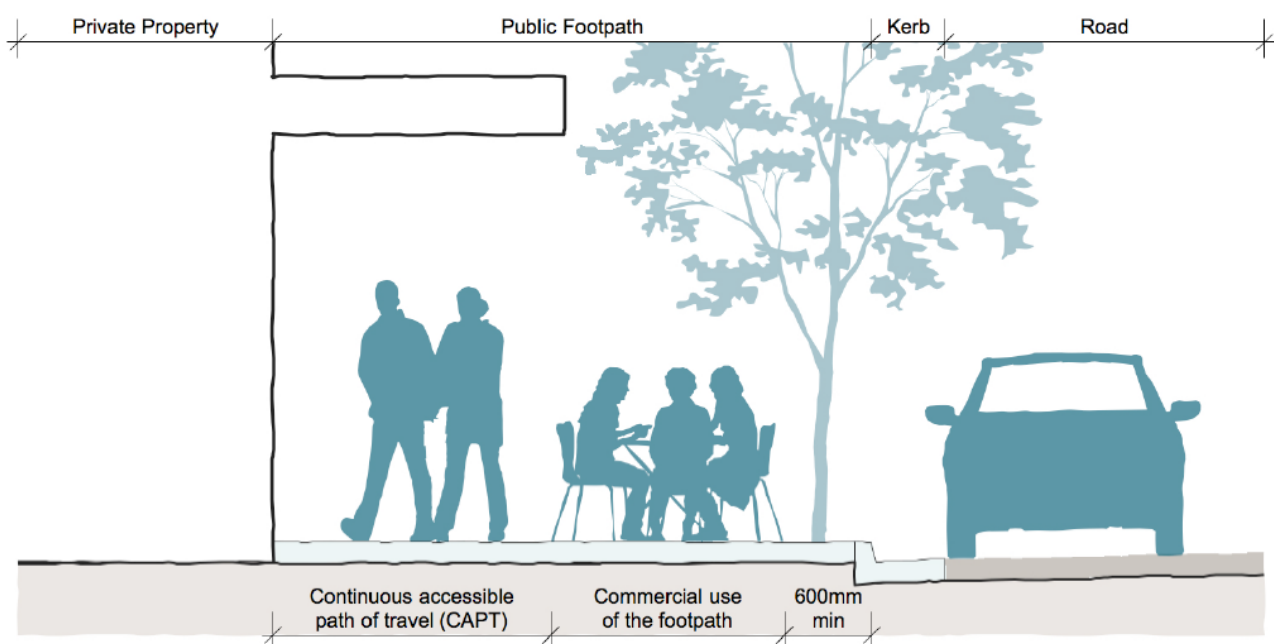


Figure 2: Continuous accessible path of travel (CAPT) area



The specific **objectives** are to:

- i. Enhance the economic viability of local businesses by managing **development** applications and also approvals for the use of public **footpaths** for commercial purposes at locations where sufficient space is available.
- ii. Encourage trading and enhance neighbourhood centres by providing a more vibrant and colourful atmosphere for shoppers.
- iii. Provide for an active and integrated street front.
- iv. Maintain visibility and exposure of **shop** fronts.
- v. Ensure safety and convenient passage of all pedestrians when using public **footpaths**.
- vi. Ensure the maintenance of clear **view** lines for both pedestrians and motorists, particularly near pedestrian crossings, street corners and key intersections.
- vii. Ensure adjoining premises are not adversely affected by any **commercial use** of public **footpath** areas.
- viii. Protect **Council** and the public interest while permitting effective use of public **footpaths** for commercial purposes.
- ix. Effectively address risk management issues for **Council**.
- x. Ensure that **commercial use** of public **footpaths** does not unduly impact on maintenance.
- xi. Ensure that public amenity will not be compromised by the provision of **commercial use** of public **footpath** areas.
- xii. Ensure that any commercial use of the **footpath** effectively addresses accessibility and disability inclusion to meet the needs of a range of ages and abilities including, but not limited to, persons with a disability or a vision impairment, parents with prams and pet owners.

### 5.3.1 Design

Performance Criteria	Acceptable Solutions
<p>P21 The <b>commercial use</b> of a <b>footpath</b> is appropriately located to maintain a <b>CAPT</b>, taking into account the local context.</p> <p><b>Note:</b> The local context includes any obstructions and an existing walkway established by adjoining/nearby premises</p>	<p>A21.1 The proposal shall address the <a href="#">Human Rights Commission Good practice principles</a>.</p> <p>A21.2 The proposal shall be located towards the kerbside of the <b>footpath</b>, wherever possible, or in a location that does not cause an impediment to other public <b>footpath</b> users.</p> <p>A21.3 As appropriate to the local context, the proposal demonstrates a <b>CAPT</b> walkway without barriers or obstructions:</p> <ul style="list-style-type: none"> <li>• Along the property/<a href="#">building line</a>; or</li> <li>• Continuing from adjoining/nearby premises along the same <b>footpath</b>.</li> </ul> <p>A21.4 A <b>commercial use</b> of a <b>footpath</b> is not to be located adjacent to a car parking space marked with a symbol for people with disabilities.</p> <p><b>Note:</b> For corner premises or those that have more than one street frontage, a proposal to extend a <b>commercial use</b> beyond the main frontage is subject to individual assessment. Written consent of the <b>business owner</b> of the neighbouring property will be required.</p>
<p>P22 The proposed <b>commercial use</b> of a <b>footpath</b> maintains a <b>CAPT</b> width suitable for the needs of all users.</p>	<p>A22.1 The <b>CAPT</b> complies with <b>Table 2</b> below.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• <b>Commercial use</b> of the <b>footpath</b> will not be supported by <a href="#">Council</a> where a <b>CAPT</b> of less than 1.5m is provided.</li> <li>• <b>Commercial use</b> of highly and moderately trafficked <b>footpaths</b> may not be supported by <a href="#">Council</a> where a <b>CAPT</b> of less than 2m and 2.4m (respectively), is provided.</li> <li>• The <b>CAPT</b> width should be measured out from the property (<a href="#">building</a>) line into the <b>footpath</b>, along the property (<a href="#">building</a>) line. It is acknowledged that in some locations the <b>CAPT</b> is more suitably extended/located towards the kerbside.</li> </ul>

**Chapter G17: Business, Commercial and Retail Activities**

- The **CAPT** is exclusive of fixtures, tables, displays, equipment or other encroachments that could obstruct pedestrian movement or use.

**Table 2: CAPT Widths**

<b>Nature of Footpath</b>	<b>Location</b>	<b>CAPT Width</b>
Highly Trafficked	Princes Highway at Ulladulla, Berry and Milton. Junction Street, Nowra.	2.4m
Low to Moderately Trafficked	Wason Street, Ulladulla. Kingshorne Street, Nowra. Berry Street, Ulladulla.	2m
General	All other footpaths	2m <b>OR</b> Where a <b>footpath</b> cannot accommodate a 2m wide <b>CAPT</b> : <ul style="list-style-type: none"> <li>• 1.8m; or</li> <li>• 1.5-1.8m where passing spaces are available at intervals of not more than 6m.</li> </ul>

Performance Criteria	Acceptable Solutions
<p>P23 Outdoor furniture and displays are appropriate, sympathetic and safe.</p> <p><b>Note:</b> Outdoor furniture associated with the commercial use of public footpaths includes shade structures, tables, chairs, display stands, heaters and perimeter barricades.</p>	<p>A23.1 The maximum width of the commercial display area is not to exceed 800mm.</p> <p>A23.2 Outdoor furniture shall be:</p> <ul style="list-style-type: none"> <li>• Located a minimum of 600mm from any kerb, bins, lights and 800mm from fixed seats.</li> <li>• Waterproof, weather resistant, durable and sturdy so as to withstand heavy use and not be blown away in windy conditions.</li> <li>• Made from high quality materials which enhance the character of the street.</li> </ul> <p><b>Note:</b> Lightweight plastic furniture is not acceptable.</p> <ul style="list-style-type: none"> <li>• Temporary and able to be removed from the footpath area when the business is closed and in extreme weather conditions.</li> <li>• Safe in its design and not cause any hazards to patrons, shopkeepers or pedestrians in terms of public safety and comfort.</li> </ul> <p>A23.3 A single colour and style for seats and tables shall be adopted to provide consistency and identity. Colours should be practical and serviceable (e.g. natural, green, terracotta, black).</p> <p>A23.4 Outdoor tables for dining shall be sturdy and not exceed 800mm x 800mm unless the location warrants a larger table size.</p> <p><b>Note:</b> Glass table tops are not acceptable.</p> <p>A23.5 Any furniture that becomes unserviceable, damaged or worn shall be replaced or removed.</p>

A23.6 Display stands shall be stable, firmly secured and of high quality design. Display stands shall be a minimum height of 700mm, maximum height of 1m, maximum depth of 800mm and width of 3m.

A23.7 Umbrellas shall be firmly anchored, free of sharp protrusions and consistent in style and colouring. Market style umbrellas offering generous shade protection is preferred. A minimum clearance of 2.2m between the **footpath** surface and the underside of the umbrella shall be provided.

A23.8 The public **footpath** shall not to be used for storage.

A23.9 Where a heating device is proposed, details of the type, location and design shall be provided.

**Note:** Heating devices shall turn off automatically if overturned to prevent injury to patrons and property. Heating devices must be removed when not in use and suitably screened from public **view**. All outdoor heaters shall comply with the relevant Australian Standard, and an appropriate fire extinguisher shall be provided in accessible proximity to the heating device.

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P24 Planter boxes are appropriately located and well maintained.

A24.1 Planter boxes may be considered in open areas, such as plazas or public **footpath** widening sections which are separated from the main pedestrian walkway.

A24.2 Permanent planter boxes will only be considered on public **footpath** areas where the public **footpath** has been widened for specific business use.

A24.3 Planter boxes shall be well maintained.

**Note:** **Council** reserves the right to order the removal of planter boxes that are not properly maintained including the consistent provision of approved high-quality flowers or **vegetation**.

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**Note:** If a proposal requires the removal or relocation of any **Council** assets (e.g. rubbish bins, furniture), **Council** will consider this on merit when assessing

an application. Any approved work will be at the cost of the applicant/owner.

The removal or relocation of any public utilities or infrastructure (e.g. traffic control boxes, drainage/sewerage pits) will generally not be supported unless it can be justified that the public benefit and approvals have been obtained from the relevant authorities. Works will be carried out at the cost of the applicant/owner.

### 5.3.2 Outdoor Dining

Performance Criteria	Acceptable Solutions
<p>P25 Perimeter barricades are appropriate for the <b>footpath</b> context.</p> <p><b>Note:</b> Perimeter barricades can take the form of screens, pot plants, planter boxes, moveable bollards and safety rails.</p>	<p>A25.1 <b>Council</b> may consider the use of perimeter barricades or suitable handrails if:</p> <ul style="list-style-type: none"> <li>• The <b>CAPT</b> along the <b>footpath</b> is less than 2m wide.</li> <li>• The <b>outdoor dining area</b> remains open and inviting (e.g. no drop-down sides for weather protection).</li> <li>• Barricades do not block access or force pedestrians onto the <b>road carriageway</b>.</li> <li>• There will be minimal impact on the use and enjoyment of patrons.</li> <li>• Safety of pedestrians and patrons is not compromised (including trip hazards).</li> <li>• Barricades will not be used as an opportunity for general advertising, other than name or logo.</li> <li>• Barricades are removed from the public <b>footpath</b> when the business is not open.</li> <li>• Perimeter barricades are a minimum height of 700mm and maximum height of 1m.</li> </ul>

		<p><b>Note:</b> Barricades between adjoining sites may be considered to provide a clear demarcation between the business activities. Perimeter barricades remain the responsibility of the applicant/operator, including the maintenance and replacement where required.</p>
P26	Amplified music or other entertainment in association with outdoor dining is restricted.	A26.1 Amplified music or other entertainment is not permitted within the <b>outdoor dining area</b> of the <b>footpath</b> .
<p><b>Note:</b> A separate or joint (combined) <b>development</b> application may be made for music or entertainment in conjunction with outdoor dining where the activity is undertaken on private land.</p>		

### 5.3.3 Signage

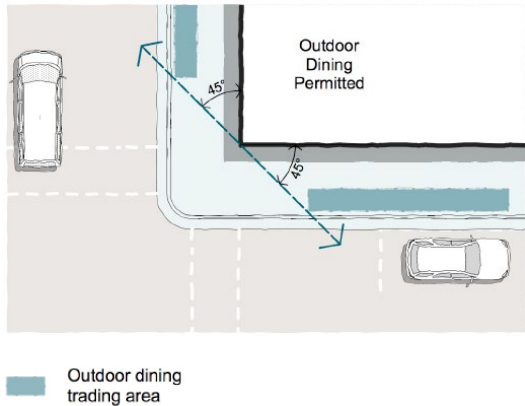
Performance Criteria	Acceptable Solutions
P27 <b>Signage</b> displayed in association with <b>commercial use</b> of <b>footpaths</b> is of a quantity, type, quality and style that is suitable for the streetscape.	<p>A27.1 One <b>A-board sign</b> may be displayed where the size/area does not exceed 750mm x 1000mm in area.</p> <p>A27.2 The only information that shall be displayed on the <b>A-board sign</b> is the:</p> <ul style="list-style-type: none"> <li>• The name of the business.</li> <li>• Food/ drink items.</li> <li>• An associated corporate name (logo) or product.</li> </ul> <p>A27.3 <b>A-board signs</b> shall not be located within the <b>CAPT</b>, along the <b>building line</b> or within 600mm from the kerb.</p> <p>A27.4 Any advertising on umbrellas or shade <b>structures</b> shall relate to the business to which they serve.</p> <p>A27.5 Any <b>signage</b> is to be suitably located so as to not obstruct pedestrian traffic.</p> <p><b>Note:</b> <b>A-board signs</b> located at entrances to (and within) arcades must be positioned to avoid obstruction of the <b>CAPT</b> along the public <b>footpath</b> or <b>public land</b>. Refer to:</p> <ul style="list-style-type: none"> <li>• Chapter G22: Advertising and Signage of this <b>Development</b></li> </ul>



[Control Plan](#) for more information on signage.

- [Council's Public Information Signs Policy](#) for signs within [Council road reserves](#), including the [footpath](#).

### 5.3.4 Safety

Performance Criteria	Acceptable Solutions
<p>P28 The <a href="#">commercial use</a> of the <a href="#">footpath</a> provides clear <a href="#">view</a> lines to allow pedestrians to <a href="#">view</a> on-coming traffic and for motorists to observe pedestrian movements.</p>	<p>A28.1 The use of the <a href="#">footpath</a> shall not obstruct the clear <a href="#">view</a> line of pedestrians or motorists.</p>
	<p>A28.2 Sight lines for vehicle and pedestrian safety must be maintained in accordance with current Australian Standards (e.g. AS2890.1 (2004)). Refer to <b>Figure 3</b>.</p>
<p><b>Note:</b> <a href="#">Council</a> may require the submission of a traffic safety risk assessment or traffic and transport study.</p>	
	
<p><b>Figure 3: Example of sight lines at intersections</b></p>	
<p>P29 The <a href="#">commercial use</a> of the <a href="#">footpath</a> does not compromise safety or access by obstructing use of the <a href="#">footpath</a> or access to and from the business.</p>	<p>A29.1 Use of the <a href="#">footpath</a> shall not obstruct safe patron/ pedestrian access to and from the <a href="#">business premises</a>.</p>
	<p>A29.2 Required paths of travel/egress and fire safety measures under the <a href="#">Building Code of Australia</a> or relevant Australian Standards (for the <a href="#">building</a> contained on site) shall not be reduced or obstructed during operations.</p>
<p><b>Note:</b> Any commercial use of the <a href="#">footpath</a> is to be in accordance with the Building Code of Australia and relevant Australian Standards.</p>	

A29.3 Where the public **footpath** must be altered to undertake the activity, works shall only be carried out in accordance with **Council's** specifications, supervision and approvals. A bond may be payable in these instances.

A29.4 Where it is proposed to operate after daylight trading hours, any additional lighting should not interfere with pedestrian or traffic safety and must comply with the current standards and state and local government requirements.

**Note:** Additional lighting details should be provided with the **development** application.

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## 6 Advisory Information

### 6.1 Liquor licence requirements

The selling or consumption of liquor is only permitted if the appropriate licence under the *Liquor Act 2007* and the Liquor Regulation 2008 has been obtained from the NSW Office of Liquor, Gaming and Racing (OLGR).

**Development consent** for a **food and drink premises** is required before applying to the OLGR for a liquor licence. This must include service of alcohol in conjunction with an **outdoor dining area** on the public **footpath**.

An existing **consent** for a **food and drink premises** may require modification to enable approval for the service of alcohol.

**Consent** for the service of alcohol within the public **footpath** area, in conjunction with outdoor dining, will not be provided where the **locality** is defined as an 'Alcohol Free Area' under the provisions of the *Local Government Act 1993*.

Further information can be obtained from the [NSW Government Licensing Service website](#).

### 6.2 Smoke-free Laws

Applicants should refer to the requirements of the Smoke-free Environment Act 2000 and Smoke-free Environment Regulation 2016 as it applies to the proposed **development** and continued operation of the activity.

Commercial **outdoor dining areas** in NSW must be smoke-free. Smoking is banned within 4m of a pedestrian entry or exit from a hospitality venue (the '4m law'). Further information including fact sheets are available at the [NSW Health website](#).

### 6.3 Other legislation or policies you may need to check

**Note:** This section is not exclusive and you may be required to consider other legislation, policies and other documents with your application.

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<b>Council Policies &amp; Guidelines</b>	<ul style="list-style-type: none"><li>• <a href="#">Management of Mobile Food Vending Vehicles on Council Owned or Managed Land Policy</a></li><li>• <a href="#">Mobile Food Vending Guidelines</a></li><li>• <a href="#">Shoalhaven Local Approvals Policy 2017</a></li><li>• <a href="#">Council's Public Information Signs Policy</a></li><li>• <a href="#">Chapter G18 Streetscape Technical Manual</a></li></ul>
<b>External Policies &amp; Guidelines</b>	<ul style="list-style-type: none"><li>• Relevant Australian Standards</li><li>• Relevant Roads and Maritime Services (RMS) Guidelines</li><li>• Building Code of Australia.</li><li>• Food Safety Standards (Food Safety Australia New Zealand)</li></ul>
<b>Legislation</b>	<ul style="list-style-type: none"><li>• <i>Competition and Consumer Act 2010</i></li><li>• <i>Disability Discrimination Act 1992</i></li><li>• <i>Disability Inclusion Act 2014</i></li><li>• <i>Fair Trading Act 1987</i></li><li>• <i>Liquor Act 2007</i></li><li>• Liquor Regulations 2008</li><li>• <i>Local Government Act 1993</i></li><li>• <i>National Measurement Act 1960</i></li><li>• <i>NSW Food Act 2003</i> and associated regulations</li><li>• <i>Retail Trading Act 2008</i></li><li>• <i>Roads Act 1993</i></li><li>• <i>Smoke-free Environment Act 2000</i> and associated regulations</li><li>• State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</li></ul>

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