

# Outdoor Dining Policy

## Purpose

The purpose of this policy is to set out the circumstances and conditions under which Council ~~the City of Sydney~~ will issue approvals for outdoor dining ~~on the public footway and other similar public domain areas.~~ in public places, including the footway, parts of the road and other similar areas.

## Scope

This policy applies to the business use of ~~the footway~~ public places for outdoor dining in the City of Sydney Local Government Area ~~for outdoor dining.~~

## Definitions

Term	Meaning
Clear path of travel	<p>The area of the footway maintained for safe and equitable pedestrian circulation which is free from obstructions and assists in wayfinding and navigation. Also referred to as the continuous accessible path of travel, which is defined by the Australian Human Rights Commission as:</p> <p><i>An uninterrupted route to and within an area providing access to all features, services and facilities. It should not incorporate any step, stairway, turnstile, revolving door, escalator, hazard or other obstacle or impediment which would prevent it from being safely negotiated by people with disability.</i></p>
Exempt development	<p>Development which does not need development consent under the Environmental Planning and Assessment Act 1979, but which may still need some other approval.</p> <p>At the time of adoption, State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 makes outdoor dining on the footway exempt development if it is:</p> <ul style="list-style-type: none"> <li><del>(a) not associated with a pub or small bar, and</del></li> <li>(a) 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</li> <li>(b) <del>be</del> carried out in accordance with an approval granted under section 68 of the Local Government Act 1993, and</li> <li><u>(c) not under an awning, or under an awning that complies with the requirements set out in BP1.1 and BP1.2 of Volume 1 of the Building Code of Australia.</u></li> </ul>
Outdoor dining	<p><del>Seating on the public footway associated with an approved food and drink premises. Also sometimes referred to as footway dining or a footway restaurant.</del></p>

Term	Meaning
	<u>The use of public places, including the footway, parts of the road, and other similar areas for the purposes of an outdoor dining area associated with a lawful food and drink premises.</u>
Public footway	<del>The part of the road that is set aside or formed as a path or way for pedestrian traffic, whether or not it may also be used by bicycle traffic.</del>
Restaurant	<del>Defined in the Roads Act 1993 as “premises in which food is regularly supplied on sale to the public for consumption on the premises”. It includes cafes, pubs and take away food and drink premises where food is also regularly served for consumption at indoor seating on the premises.</del>
<u>Food and drink premises</u>	<u>Defined in Sydney Local Environmental Plan 2012 as premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:</u> <u>(a) a restaurant or cafe</u> <u>(b) take away food and drink premises</u> <u>(c) a pub</u> <u>(d) a small bar.</u>

## Policy Statement

### Background

A well-managed footway promotes both equitable access and supports local businesses by creating places and streets that are amenable and attractive to all visitors.

~~In consultation with a range of stakeholders Council has developed policies and strategies to encourage city businesses, create great retail experiences for all residents and visitors, and encourage social, cultural and economic amenity and vitality.~~

~~Council must manage the footway and other public spaces to provide safe and equal access for all people around the City. This includes pedestrians with a pram or mobility aid, or who are blind, have low vision or use a wheel chair and require a clear path of travel to be maintained at all times. Council recognises that a clear path of travel is a necessity. Stakeholders who are blind or have low vision prefer that the location for the clear path of travel is along the building side of the footway to allow for best practice in safe and dignified wayfinding. This policy reinforces the requirement that a clear path of travel be maintained at all times, while also allowing opportunities for beneficial uses on the public footway.~~

Outdoor dining supports strong local economies, brings life to our high streets and fosters dining precincts as destinations. The City of Sydney’s policy can encourage outdoor dining by providing a safe and comfortable experience for diners and all other uses of the public places.

The City of Sydney manages the footway and other public places to provide safe and equitable access for all people around the City including pedestrians with a pram or mobility aid, people with disability and those who are blind or have low vision. This policy and associated guidelines

ensure a clear and predictable path of travel is maintained to ensure safe, equitable and dignified pedestrian use.

## **Actions**

To promote public access and well managed outdoor dining on the ~~footway~~ public places, Council ~~the City of Sydney~~ will:

- value the contribution that well-managed businesses make to the character of the City's streets
- maintain the pedestrian thoroughfare as the primary purpose of the ~~footway~~ footpath
- promote accessibility by maintaining a consistent and predictable clear path of travel for all users
- continue to work with all stakeholders towards best practice wayfinding on the City's footways and public places
- manage neighbourhood amenity through minimising additional noise, visual, and other impacts
- encourage appropriate outdoor dining and manage particular issues in specific precincts such as Cenotaph block of Martin Place, Lankelly Place, Potts Point and George Street, Sydney
- ~~— encourage appropriate outdoor dining in the Cenotaph block of Martin Place, and ensure the views of the NSW Returned Services League are considered in the assessment of applications;~~
- ~~— promote activation of Lankelly Place by exempting it from Council 'footway freeze' of December 2012;~~
- consider the appropriateness of applications for approval against Council's the City of Sydney's adopted Outdoor Dining Guidelines
- monitor compliance with approvals, and undertake enforcement action when appropriate
- grant approvals for use of the footway for a maximum of 7 years or a maximum of 12 months for any other part of the road in accordance with ~~under~~ the Roads Act 1993
- revoke approvals where there are continuing unresolved substantiated breaches of the approval
- charge a fee for the use of ~~footway~~ public places as set out in Council's the City of Sydney's annual Fees and Charges available on our website.

## **Approvals**

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

- all outdoor dining on the footway requires an approval under the Roads Act 1993
- outdoor dining that is not exempt development will require a development consent under the Environmental Planning and Assessment Act 1979
- outdoor dining that is on Crown land requires an approval under the Crown Lands Act 1989
- outdoor dining on community land, such as a park or reserve, requires an approval under the Local Government Act 1993.

## **Outdoor Dining Guidelines**

~~The City of Sydney's Outdoor Dining Guidelines for outdoor dining have been prepared to implement the policy objectives.~~ support this policy and provide additional guidance to applicants on the City of Sydney's requirements in relation to approvals for outdoor dining in public places, including the footway, parts of the road and other similar areas in the City of Sydney LGA.

## Responsibilities

### Review and update

Responsibility for drafting, reviewing and updating this policy lies with the Strategic Planning and Urban Design unit.

### Approvals

Responsibility for issuing approvals in accordance with this policy and the Outdoor Dining Guidelines lies with the Planning Assessments Unit.

### Enforcement

Responsibility for ensuring outdoor dining is carried out in accordance with approvals lies with City Rangers.

## Consultation

This policy has been developed following consultation with:

- Council’s Inclusion (Disability) Advisory Panel;
- Vision Australia, Guide Dogs NSW and other stakeholders who represent people who are blind or have impaired low vision;
- Council’s Retail Advisory Panel; and
- local chambers of commerce, liquor accords and other business groups.

In addition, Strategic Planning & Urban Design consulted internally with Legal & Governance, Planning Assessments, City Rangers and City Business units.

## References

Laws and Standards
<ul style="list-style-type: none"> <li>• <del>Crown Lands Act 1989</del> <u>Crown Land Management Act 2016</u></li> </ul>
<ul style="list-style-type: none"> <li>• Disability Discrimination Act 1992 (Cth)</li> </ul>
<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> </ul>
<ul style="list-style-type: none"> <li>• Roads Act 1993</li> </ul>
<ul style="list-style-type: none"> <li>• Local Government Act 1993</li> </ul>
<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</li> </ul>
Policies and Procedures
<ul style="list-style-type: none"> <li>• <del>Guidelines for outdoor dining</del> <u>Outdoor Dining Guidelines</u></li> </ul>
<ul style="list-style-type: none"> <li>• <del>City of Sydney Inclusion Disability Action Plan 2014-2017</del> <u>A city for all – inclusion (disability) action plan 2021-2025</u></li> </ul>
<ul style="list-style-type: none"> <li>• City of Sydney Retail Action Plan 2013</li> </ul>
<ul style="list-style-type: none"> <li>• City of Sydney Tourism Action Plan 2013</li> </ul>

**Policies and Procedures**

- Open Sydney – Strategy and Action Plan 2013-2030

**Review period**

This policy will be reviewed every 4 years.

~~(State the number of years it will be reviewed and approved in. Two years is best practice and the maximum review and approval period is 4 years.)~~

**Approval Status**

Council approved this policy on [DD MONTH YYYY].

**Approval History**

Stage	Date	Comment	TRIM Reference
Original Policy	17 October 2016	Approved by Council	2016/602376
Reviewed	(Date, month, year of when it was approved by CEO or Council)	To reflect amendments to state government policy for outdoor dining, and amendments to the Outdoor Dining Guidelines following implementation of certain temporary provisions for Covid-19 and the pedestrianisation of George Street.	20XX/XXXXXX (Governance to populate)
Commence Review Date	(Date, month, year – should be 9 months prior to the end of the next review period)		
Approval Due Date	(Date, month, year of when the next review of the policy is due to be finalised/ approved)		

**Ownership and approval**

Responsibility	Role
Author	Specialist Planner (Strategic)

<b>Responsibility</b>	<b>Role</b>
Owner	Director City Planning Development & Transport
Endorser	City of Sydney Executive
Approver	City of Sydney Council