

## Relevant Information for Council

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**FILE:** S060627-02 **DATE:** 10 March 2023

**TO:** Lord Mayor and Councillors

**FROM:** Graham Jahn AM, Director City Planning Development and Transport

**THROUGH:** Monica Barone, Chief Executive Officer

**SUBJECT:** Information Relevant To Item 7.3 – Extension of Temporary Use of Road Space for Outdoor Dining

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### For Noting

This memo is for the information of the Lord Mayor and Councillors.

### Background

At the meeting of the Transport, Heritage, Environment and Planning Committee on Monday 6 March 2023 further information was sought in relation to the requirements for operators to reapply for on-street dining and opportunities for other uses of on-street space.

### Reapplying for outdoor dining

Under the Roads Act 1993, councils can grant an approval that allows a person who operates a 'food or drink premises' adjacent to a public road to use part of the public road (including footpaths) for a 'food and drink premises'.

Section 125(4) of the Roads Act 1993 limits the period for approvals for outdoor dining on parts of a public road other than footways to 12 months. Approvals on footpaths can be issued for up to seven years. Approvals issued under s125 of the Act are personal to the person or operator of the food and drink premises and cannot be transferred or extended.

The City conditioned the current approvals to end by 30 April 2023 to align with the NSW Government's funding agreement requirements to remove the barriers during May and June 2023. As noted, a new application is needed for a new approval beyond the end of April 2023.

The subject report seeks a delegation for the Chief Executive Officer to extend existing on-street footway approvals to cover the notification and assessment period where the operator has lodged a new footway application prior to 30 April 2023.

### **Opportunities to explore other uses of on-street space**

The subject report recommends the temporary use of on-street space for outdoor dining continue until the end of December 2024. This provides time to review on-street dining approvals and determine which should become permanent and how they are made permanent.

The first part of reviewing the existing on-street dining spaces is to identify the locations that are not suitable for ongoing outdoor dining use or other uses. The second part is to then carry out a design process to determine how each can be best implemented. The design process will consider permanent (kerb extensions) and semi-permanent (parklets) options. It will also consider adaptability so permanent conversions could alternatively contribute to other outcomes such as greening or public seating or are usable at times when the food and drink business is not operating.

The use of on-street space for alternative uses is also considered through larger streetscape upgrade projects for high streets, such as that for Crown Street. These projects consider the use of street space for other purposes such as trees, greening, water sensitive urban design, street infrastructure, public seating or other suitable public activities.

The City's Neighbourhood Parking Policy contemplates parklets in commercial and mixed use areas. Under current arrangements, proposals for parklets need to comply with existing road transport legislation and road safety audit processes.

### **Opportunities for the community to comment**

Applications to continue on-street dining will be notified to properties within 25 metres and for a period of 10 days in accordance with the City's Outdoor Dining Guidelines. The community will also be able comment on individual applications when a permanent or semi permanent space is available and there is an opportunity to grant an approval for longer than 12 months.

### **Request for further funding from the NSW Government**

The Lord Mayor wrote to the NSW Premier on 25 November 2022 requesting further funding to support on-street outdoor dining. The Minister for Infrastructure, Transport and Active Cities has responded stating that there are no current funding programs to subsidise the costs of outdoor dining fees or infrastructure for Council or businesses. The Minister's response is at Attachment A.

### **Memo from Graham Jahn AM, Director City Planning, Development and Transport**

Prepared by: Ben Pechey, Executive Manager Strategic Planning and Urban Design

**Attachments**

**Attachment A.** Correspondence - Minister for Infrastructure, Transport and Active Cities to the Lord Mayor - On Street Outdoor Dining Funding

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Approved

A handwritten signature in black ink, appearing to read 'P.M. Barone', with a long horizontal flourish extending to the right.

**MONICA BARONE**

Chief Executive Officer

# **Attachment A**

**Correspondence – Minister for  
Infrastructure, Transport and Active Cities  
to the Lord Mayor – On Street Outdoor  
Dining Funding**



**The Hon. Rob Stokes MP**  
Minister for Infrastructure  
Minister for Cities  
Minister for Active Transport

Our Ref: 01692790

Councillor Clover Moore  
Lord Mayor of Sydney  
City of Sydney Council  
Sydney Town Hall  
483 George Street  
SYDNEY NSW 2000

Via email: [cmoore@cityofsydney.nsw.gov.au](mailto:cmoore@cityofsydney.nsw.gov.au)

Dear Cr Moore

*Clover,*

Thank you for your correspondence to the Premier regarding on-street dining. As this matter falls within the Infrastructure, Cities and Active Transport portfolio, your correspondence was referred to me.

I acknowledge your feedback on behalf of the City of Sydney Council in relation to on-street dining, and note Council's request for funding and infrastructure to enable on-street dining to continue.

The NSW Government is putting a focus on ensuring everyone has access to walkable, attractive and vibrant public spaces through collaboration with local councils, supporting pilot and demonstration projects, and developing tools and guides to build capacity across government and industry.

While there are no current funding programs available to subsidise the costs of outdoor dining fees or infrastructure for Council or businesses, there have been significant investment and reform measures over the past couple of years to support councils and businesses pave the way for longer-term changes to public spaces across NSW.

Outdoor dining reforms were instrumental in bringing central hubs back to life after the impacts of the pandemic and allowing businesses to take advantage of outdoor spaces. Application processes have been simplified to make it easier for businesses to apply for and operate outdoor dining.

The NSW Government has supported the activation of outdoor spaces investing over \$66 million, and is continuing to give the streets back to the people with many initiatives across NSW. Key to this has been the Alfresco Restart Package, launched in 2021 and designed to bring the streets of NSW back to life post-pandemic through outdoor dining, live music and entertainment.

The Alfresco Restart initiatives under *The Festival of Place...in your streets* include the Long Summer Nights Program, Streets as Shared Spaces Program, Summer Night Fund Program, and the Open Streets Program, assisting councils across NSW.

Further, Transport for NSW has assisted in support for Council with the pedestrianisation of George Street, which will see 20,000 sqm of space between Circular Quay and Central reclaimed and prioritised for walking, cycling and outdoor dining.

Transport for NSW works collaboratively with the Department of Planning and Environment (DPE), which has responsibility for the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*. Exempt development to use the footpath for food and drink premises, including pubs and small bars, is permanent in the Codes SEPP. To encourage more outdoor dining and give businesses longer to seek permanent approval, DPE has extended the temporary outdoor dining rules until 31 December 2023.

Consent authorities, usually councils, can approve outdoor dining more quickly and at a lower cost than requiring a development application. To help speed up the application process, DPE has created an online platform on the planning portal that allows participating councils to receive an online lodgement for outdoor dining.

In addition, the Small Business Commissioner's 'NSW Outdoor Dining User Guide' and the Office of Local Government's 'Streamlined Outdoor Dining Approvals' guide have been developed to support councils with outdoor dining and the approval process.

Should you have any questions, you are welcome to contact Ms Kiersten Fishburn, Deputy Secretary, Cities and Active Transport at Transport for NSW on 0417 201 965.

Yours sincerely



**The Hon. Rob Stokes MP**  
Minister for Infrastructure  
Minister for Cities  
Minister for Active Transport