

Post Exhibition - Planning Proposal and Local Approvals Policy - Display of Goods on the Footway

File No: S060627-02.011

Summary

Displaying goods on the footway is an opportunity for retailers and other businesses to attract customers. Goods displays also have the effect of creating a more vibrant and interesting streetscape, and when managed correctly, have little negative impact other than potentially restricting access or impacting on an adjoining business or neighbour.

Under current requirements, it is complex for businesses to obtain approvals for outdoor goods displays with approvals required under three types of NSW Government legislation. The level of complexity required to obtain approvals in most cases is disproportionate to the impact the activity has and discourages an activity which benefits retailers and the urban environment alike.

To simplify the approvals process for displaying goods, in 2016 Council endorsed a Local Approvals Policy (LAP), a Planning Proposal and an intention to provide a general approval under the Roads Act 1993. This new process will allow businesses to display goods outside their premises on the footway without needing to lodge an application or pay a fee to the City or Transport for NSW, so long as the minimum requirements in the Local Approvals Policy are followed.

While these changes arise from the City's long-term commitment to reduce where possible unnecessary regulation and support small business, they will also assist businesses to recover following the Covid-19 pandemic. They will help to re-activate the City's economy, which has been greatly impacted, with businesses forced to close and others struggling to survive with social distancing restrictions in place. The changes will remove or ease regulatory burden from businesses wanting to display goods outside, potentially freeing up valuable internal floor area for customers and staff to social distance.

The Local Approvals Policy minimum requirements include a 2-metre clear path of travel requirement for pedestrians on footpaths. It does not apply in Central Sydney and other high pedestrian traffic areas, where it is appropriate for a proposed goods display on public land to be properly assessed.

The Local Approvals Policy was exhibited alongside the Outdoor Dining Policy in 2016, and in October 2016 Council endorsed the draft Policy for the purpose of seeking concurrent consents from the Office of Local Government, in accordance with the Local Government Act 1993, and from Transport for NSW in accordance with the Roads Act 1993. To hasten implementation of the Outdoor Dining Policy, the goods display component was separated out into its own Planning Proposal entitled Display of Goods on the Footway.

This Planning Proposal received Gateway Determination from the Department of Planning, Industry and Environment on 18 November 2016, and was publicly exhibited from 9 January to 14 February 2017. During exhibition one submission was received in support of the proposal suggesting no changes. The City has been working with the Office of Local Government and Transport for NSW to secure the respective approvals. The agencies have recently provided their concurrent approvals for the Local Approvals Policy and the general Roads Act approval with minor amendments and clarifications.

This report seeks that Council adopt the Local Approvals Policy at Attachment A and approves the planning proposal at Attachment B to amend Sydney Local Environmental Plan 2012.

Recommendation

It is resolved that:

- (A) Council considers the post exhibition amendments made to the Local Approvals Policy: Display of Goods on the Footway to not be substantial and that further public exhibition is not required;
- (B) Council adopt the Local Approvals Policy: Display of Goods on the Footway, shown at Attachment A to the subject report;
- (C) Council approve the Planning Proposal: Display of Goods on the Footway, shown at Attachment B to the subject report, to be made as a local environmental plan under S3.36 of the Environmental Planning and Assessment Act 1979;
- (D) Council approve the General Consent under S138 of the Roads Act 1993, shown at Attachment C to the subject report;
- (E) Council note the concurrent approval of the Local Approvals Policy issued by the Office of Local Government under S162 of the Local Government Act 1993, shown at Attachment D to the subject report;
- (F) Council note the approval and the general terms of concurrence of the General Consent under S138 of the Roads Act 1993 issued by Transport for NSW, shown at Attachment E to the subject report; and
- (G) Authority be delegated to the Chief Executive Officer to make minor amendments to the Planning Proposal: Display of Goods on the Footway and Local Approvals Policy to correct any minor errors or omissions prior to finalisation.

Attachments

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| Attachment A. | Local Approvals Policy: Display of Goods on the Footway |
| Attachment B. | Planning Proposal: Display of Goods on the Footway |
| Attachment C. | Section 138 General Consent: Display of Goods on the Footway |
| Attachment D. | Office of Local Government Concurrence for Local Approvals Policy |
| Attachment E. | Transport for NSW General Terms of Concurrence for Section 138 General Consent |
| Attachment F. | Resolution of Council and Central Sydney Planning Committee |
| Attachment G. | Gateway Determination, Delegation to Make LEP and Extensions |

Background

1. Retailers and other businesses use displays of goods on the footway outside their premises to attract customers. These displays can contribute to a more colourful, vibrant and lively streetscape, offering the opportunity for businesses to express creativity and local character in the urban environment.
2. Under current regulations, it is complex and costly for businesses to use the public footway for a display of goods. A development application is often required, as well as express approvals from the City under two separate Acts and, for classified roads, Transport for NSW.
3. This Planning Proposal and Local Approvals Policy will make it possible for businesses to have a display of goods on the footway without submitting a development application. So long as the minimum requirements in the Local Approvals Policy are followed the goods display will meet all the required regulations.
4. This is achieved by making goods displays on the footway exempt development under the Sydney Local Environmental Plan 2012, by enacting a Local Approvals Policy under Section 168 of the Local Government Act 1993, and by enacting a General Consent under Section 138 of the Roads Act. This General Consent is supported by general terms of concurrence from Transport for NSW, to ensure the policy also applies on classified roads.
5. By removing regulatory burden and complexity for businesses wishing to have a display of goods on the footway, this policy will help support retail sales and make neighbourhood streets more attractive destinations for locals and tourists.

Covid-19 response

6. Retailers and other businesses across the city are experiencing an unprecedented downturn in activity as a result of the economic, social and health impacts of Covid-19. In this rapidly changing context, many businesses are struggling to trade according to the business model that, until relatively recently, had proven successful. This relates particularly to businesses impacted by physical distancing measures, such as retail, cafes, restaurants and bars.
7. While the development of this policy began prior to Covid-19, the aim to support retailers, more dynamic and active streets and assist in addressing the significant challenges retailers now face is particularly relevant. The proposed changes will complement the City's Small Business, Cultural and Creative Support Package, Creating More Space for People and its Open and Creative reforms. The Policy also clarifies regulations about use of footways to help support physical distancing initiatives.

History

8. The Planning Proposal and Local Approvals Policy for display of goods were originally included in the 2016 Outdoor Dining Policy, as a package of reforms to uses of the footway. However, additional concurrences were required from the Office of Local Government and Transport for NSW, so it was separated from the Outdoor Dining Policy package.

9. In October 2016 Council resolved to endorse a draft Local Approvals Policy and Planning Proposal for display of goods on the footway, for the purposes of seeking concurrent approvals from the Office of Local Government and Transport for NSW, and a Gateway Determination from the Department of Planning, Industry and Environment. The Resolution is shown at Attachment F.
10. In accordance with the Gateway Determination issued on 18 November 2016, the Planning Proposal to make goods displays exempt development in Sydney LEP 2012 was publicly exhibited from 9 January to 14 February 2017. One submission was received in support of the proposal, suggesting no changes.
11. In accordance with the resolution of Council, the City sought the concurrence of the Office of Local Government and Transport for NSW (then Roads and Maritime Services) for the Local Approvals Policy.
12. Roads and Maritime Services, now Transport for NSW, requested minor changes to the Local Approvals Policy. They also drafted a general term of concurrence, to append to the Local Approvals Policy, which applies for sites on classified roads. The requested changes were made to the Policy, summarised later in this report, and Transport for NSW provided their final approval on 8 April 2020.
13. The Office of Local Government originally provided their concurrence under Section 68 (1) of the Local Government Act on 2 March 2018. Following issue of final approval by Transport for NSW on 8 April 2020 and the associated changes to the Local Approvals Policy, the Office of Local Government issued an updated concurrence on 22 June 2020, shown at Attachment D.

Mitigating negative impacts

14. When not properly regulated, use of the public footway can obstruct pedestrian movement, cause accessibility issues for older people and people with disability, and have the impression of privatisation of public space. For these reasons, the Local Approvals Policy sets clear expectations of the use of the public footway for goods displays.
15. The Policy includes a minimum clear path of travel of two metres on footpaths, and four metres on shared paths, to ensure no goods display results in an unacceptable narrowing of the footpath in combination with other obstacles such as street furniture and bus stops. The Policy does not apply in Central Sydney and other high pedestrian traffic areas, where it is appropriate for a proposed goods display on public land to be individually assessed.
16. The Policy is also clear about the kinds of goods displays that are permissible. Displays must be well maintained, be on structures which are well designed and durable, and be put away at the end of every day. Displays cannot be for furniture, white goods, adult material, perishable food (other than fresh fruit and vegetables), or items that might injure pedestrians or damage the footpath, and they cannot be used for spruiking, conducting sales transactions or unrelated advertising.

17. The Policy allows for the removal of a specific goods display for several reasons, including if the area is needed to manage an increase in pedestrians, for special events, construction or if pedestrian flow is being compromised. Further, any breach of the conditions in the Policy means a goods display is no longer permitted and enforcement action can be initiated by the City. In practice, the Policy will be used to guide businesses about appropriate displays.

Public consultation

18. During exhibition of the combined Outdoor Dining Policy and Display of Goods on the Footway Policy in 2016, one submission was received expressly in support of the Display of Goods Policy, and another question was received about the permissibility of sandwich boards. In response, an amendment was made to the Policy confirming that sandwich boards are not permitted.
19. During statutory exhibition of the Display of Goods on the Footway Planning Proposal in 2017, one submission was received in support of the proposal. The submission supported efforts to reduce unnecessary regulation on small businesses and made no suggestions for changes to the policy.

Public authority consultation

20. The Gateway Determination issued for the Display of Goods on the Footway Planning Proposal did not require consultation with any public authorities. The Gateway Determination is shown at Attachment G.
21. In issuing an extension to the Gateway Determination, the Department of Planning, Industry and Environment requested updates to the Planning Proposal to reflect current requirements. The changes made include responses to the Greater Sydney Region Plan, Eastern City District Plan, Local Strategic Planning Statement, new State Environmental Planning Policies and Section 9.1 Ministerial Directions. The Planning Proposal at Attachment B shows the changes made, with deletions in strikethrough and new additions underlined.
22. Consultation was sought from the Office of Local Government and Transport for NSW in requesting their concurrent approval of the Local Approvals Policy.
23. The Office of Local Government provided their support to the aims of the Policy and made no requests for changes.
24. Roads and Maritime Services, now Transport for NSW, also provided their support to the objectives and aims of the Policy, and requested corrections, minor changes and clarifications. The Local Approvals Policy was amended in response to some of these requests, and Transport for NSW provided their approval on 8 April 2020.
25. The changes made to the Local Approvals Policy are detailed below, and the Local Approvals Policy at Attachment A shows with deletions in strikethrough and new additions in red font.
26. The Office of Local Government reviewed the updated Local Approvals Policy and reissued their concurrence on 22 June 2020.

Post exhibition amendments to the Local Approvals Policy

27. In accordance with Section 161 of the Local Government Act, a Local Approvals Policy can be amended after exhibition in response to submissions. The Policy can then be re-exhibited, or if the amendments are not substantial, it can be adopted without re-exhibition.
28. Transport for NSW requested clarifications and minor changes to the Local Approvals Policy in granting their concurrence. The changes include:
 - Clarification that displays are prohibited along the Light Rail Corridor;
 - Limiting goods displays on classified roads to the building side;
 - A new map (Figure 1 - Scope of Policy) showing classified roads, and showing areas where the policy will not apply due to being outside Sydney LEP 2012, such as NSW Government controlled sites, Green Square Town Centre and Harold Park;
 - A new appendix (Appendix A) listing classified roads;
 - Wording to say the criteria meet or exceed the standards of AUSTROADS;
 - Clarification of "unobstructed access" from public transport stops and taxi stands to mean three metres clearance;
 - Consolidation of landscaped areas, grates, etc. into a one metre clearance requirement, from a mixture of one metre and 0.8 metres;
 - Updating the public liability insurance requirement from \$10 million to \$20 million, and a requirement for displays on classified roads to note the interests of Transport for NSW;
 - An expanded graphic (Figure 3 - example of a clear path of travel and corner clearance) showing the clearance requirements from the policy text;
 - A new section detailing when a display can be directed to be removed, drawing from the S138 Roads Act consent appended to the LAP.
29. The amendments are limited to improving clarity on what is covered by the Local Approvals Policy and minor changes to specific requirements for goods displays and operators. They do not introduce substantial additions to the Policy as exhibited in February 2017.
30. The Local Approvals Policy at Attachment A shows all changes, with additions in red font and deletions in strikethrough.

Outdoor dining action plan

31. When Council adopted the associated Outdoor Dining Policy it also considered an action plan in response to issues raised in the exhibition and adoption of the Outdoor Dining Policy. These actions included education to raise awareness of accessibility issues, developing an approach to assist navigation in the public domain through environmental cues, such as tactile ground surface indicators, investigate the role of technology and trialling kerbside outdoor dining.
32. In 2017, a number of the actions and outcomes were incorporated into the City's A City for All: Inclusion (Disability) Action Plan 2017-2021. The City's Inclusive and Accessible Public Domain Policy and Guidelines, adopted in 2019, sets out the City's approach to improving access through the design of the public domain. The City provides an online access map identifying barriers and the integration of outdoor dining location is being considered for integration into the map.
33. Educational material is being developed to assist business owners with outdoor dining to understand access issues. Suitable locations for trialling the relocation of outdoor dining have not been identified due to the irregular nature of outdoor dining on the City's streets and infrastructure such as trees, smart poles and bins. This action was not incorporated into the Inclusion (Disability) Action Plan, however, opportunities for outdoor dining away from the building line are being looked at in the review of outdoor dining opportunities on George Street.
34. The City continues to assess outdoor dining applications in accordance with the adopted Policy and guidelines which sets out accessibility requirements and considerations.

Key Implications

Strategic Alignment - Eastern District Plan

35. The Eastern City District Plan prepared by the Greater Sydney Commission in March 2018 is a 20-year plan to manage growth in the context of economic, social and environmental matters. The District Plan identifies 22 planning priorities and associated actions that support a liveable, productive and sustainable future for the district. The planning proposal and Local Approvals Policy give effect to the District Plan by aligning with the following planning actions:
 - (a) Planning Priority E6: Creating and renewing great places and local centres and respecting the District's heritage - The Policy will help reinforce the retail character of local areas, presenting more opportunities for local businesses to express their creativity and show what they have for sale. The Local Approvals Policy includes clear expectations for clear path of travel and minimum distances from obstacles, delivering on the District Plan's desired balance of accessibility, connectivity and amenity.
 - (b) Planning Priority E13: Supporting growth of targeted industry sectors - This Policy supports the District Plan's vision for a diversified tourism offering in the form of experiential, retail-oriented tourism in neighbourhood shopping streets.

Strategic Alignment - Local Strategic Planning Statement

36. City Plan 2036: City of Sydney Local Strategic Planning Statement (the Planning Statement) sets out a 20-year land use vision for the City through local planning priorities and actions. It gives effect to and links the Greater Sydney Commission's Region and District Plans to Sustainable Sydney 2030 with the City's local planning controls. It will also guide the review of the City's planning controls, inform decisions about infrastructure and set out how we will collaborate with relevant stakeholders in planning for the City's liveability, productivity and sustainability. The Planning Proposal and Local Approvals Policy give effect to the following priority in the Planning Statement:
- (a) Priority L2: Creating great places - This priority highlights the importance of streets that are active, engaging and interesting, while still enabling safe and comfortable movement. This Policy balances the movement function of streets, by protecting clear path of travel and minimum clearances from obstacles, with the place function of streets for people to visit and enjoy, by encouraging creative and interesting displays of goods.

Strategic Alignment - Sustainable Sydney 2030 Vision

37. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This policy is aligned with the following strategic directions and objectives:
- (a) Direction 4 - A City for Walking and Cycling - This Policy supports Objective 4.2, that the City centre is managed to facilitate movement of people walking and cycling. The Local Approvals Policy does not apply in Central Sydney and other key areas where the display of goods on the footway may impede pedestrian flow.
 - (b) Direction 6 - Vibrant Local Communities and Economies - This Policy supports Objective 6.1 and 6.3, which speak to enhancing the distinct character and quality of local neighbourhoods, and supporting their economic viability, distinctiveness and diversity. The Policy helps support local retailers and other businesses to attract customers in a way that enables expression of creativity and local character.
 - (c) Direction 7 - A Cultural and Creative City - The Policy will contribute to creativity being a consistent and visible feature of the public domain as expressed in Objective 7.1. Retailers' displays of goods have the potential to be a creative and cultural expression, and this Policy reduces barriers to having frequently changing displays out on the public street.

Organisational Impact

38. City Rangers will be responsible for enforcing compliance with the Local Approvals Policy. Workload on Rangers may increase with the uptake of goods displays by retailers. As there are currently no approvals or guidelines for displays of goods the Policy will also assist Rangers carry out the efficient management of displays of goods. The Policy is designed to provide an easy to understand and consistent guide to measure whether a goods display is permissible or not, without having to consult individual approvals.

Risks

39. Goods displays have the potential to damage City property, especially the pavement. They also have the potential to cause injury to the public. The Local Approvals Policy includes practical requirements to reduce these risks, including suitable shelving for displays that will not damage the pavement, and not allowing displays of goods involving sharp or dangerous objects. The Policy also includes a requirement for businesses to hold a public liability insurance policy for at least \$20 million.

Social / Cultural / Community

40. Goods displays on the footway have the potential to impede movement of people with disability. The Local Approvals Policy includes requirements for shelving to have a base of contrasting colour, and for minimum clear path of travel and clearances from other obstacles such as street furniture, which are designed in line with accessibility criteria and the AUSTROADS Guide to Road Design Part 6A: Paths for Walking and Cycling, Section 5 Design Criteria.

Economic

41. The Planning Proposal and LAP supports the City's retail sector which make up 35 per cent of all businesses in the City. This sector is a major employer for the city with more than 57,000 jobs in the City of Sydney Local Government Area (11 per cent). The majority of businesses in the retail sector are small businesses on our high streets and play a key role in the character and attractiveness of our city and villages.
42. Our local retail community has been hugely impacted by forced closures and restricted trading conditions due to Covid-19; resulting in a considerable downturn in trade and cashflow for many businesses on our high streets, with many reporting declines of up to 80 per cent in revenue.
43. Further stakeholder consultation with our Nightlife and Creative Sector Panel, Retail Innovation Program, business chambers and industry organisations, and our Sydney Liquor and Night Safety Operations group notes the need for the City to maximise flexibility for businesses to trade throughout the recovery period. The Planning Proposal for display of goods as exempt development would remove a barrier for businesses, particularly during this difficult time.
44. This Policy will reduce regulatory barriers to retailers and other businesses promoting their stores and attracting customers. Retail streets with goods displays may also attract more tourism and foot traffic in general, contributing to more economically successful village centres.

Relevant Legislation

45. Roads Act 1993
46. Local Government Act 1993
47. Environmental Planning and Assessment Act 1979
48. Environmental Planning and Assessment Regulation 2000

Critical Dates / Time Frames

49. Gateway Determination has been granted by the Department of Planning, Industry and Environment to 25 August 2020. The LEP amendment must be made by this date.
50. The Gateway Determination authorises Council to exercise plan-making delegation and liaise directly with Parliamentary Counsel to draft and make the LEP.
51. If approved by Council and the Central Sydney Planning Committee, the City will commence the drafting and plan making process. Once completed, the amendment to Sydney LEP 2012 will come into effect when published on the NSW legislation website.
52. If approved by Council and the Central Sydney Planning Committee, the Local Approvals Policy will come into effect on the same day as the LEP.
53. The Office of Local Government has granted concurrence to the Local Approvals Policy until 12 months after the next local government election.

GRAHAM JAHN, AM

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