

Item 9.

Public Exhibition - Outdoor Dining Policy, Outdoor Dining Guidelines, and Display of Goods on the Footway Local Approvals Policy

File No: S060627-02

Summary

Outdoor dining and goods displays support strong local businesses, bring life to our high streets and foster dining and shopping precincts as destinations. Council policies encourage these activities and provide a safe and comfortable experience for all users of footways and public spaces including pedestrians, diners and shoppers.

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. This report seeks public exhibition for policies and guidelines that manage business use of the public footway for goods displays and outdoor dining. These policies and guidelines are currently in force and have undergone their periodic review.

The Display of Goods on the Footway Local Approvals Policy came into force in November 2020. Under section 165 (4) of the Local Government Act, the Local Approvals Policy is automatically revoked 12 months following a local government election. To continue to be in force it must be adopted by Council, including public exhibition and approval by the Office of Local Government, by 22 December 2022. The revised LAP includes some error corrections and minor restructuring.

The Outdoor Dining Policy and Outdoor Dining Guidelines came into force in October 2016 and were due for a five year review in October 2021. This review was postponed to understand the longer-term implications of the Covid-19 pandemic and the use of public space.

As part of the Alfresco City policy response to the Covid-19 pandemic, the Outdoor Dining Guidelines were amended in November 2020 and again in July 2021. Temporary provisions were introduced to help businesses when indoor dining was restricted due to social distancing, to respond to City and state government initiatives and legislative changes, and to respond to temporarily lower pedestrian and traffic volumes.

The revised Policy and Guidelines are based on the original versions approved in October 2016, with amendments to reflect permanent changes to state legislation, the permanent adoption of certain temporary provisions with the experience of their operation, and other changes to ensure they are up to date.

The revised Outdoor Dining Guidelines has an appendix which extends the temporary provision permitting conversion of on-street parking bays to outdoor dining. This is enabled by temporary state government legislation and City funding for road barriers, and is proposed to operate to 30 April 2023. This report recommends delegating authority to the CEO to delete this appendix from the revised Guidelines when applications for road area reallocation are no longer accepted.

At its 16 May 2022 meeting Council resolved to waive fees associated with outdoor dining up to 30 June 2023 and to extend the provisions in the temporary Guidelines. To enable a reasonable operating period new applications under the temporary Guidelines will be accepted until 31 December 2022. The revised Guidelines will then come into force 1 January 2023 if adopted following exhibition.

This report recommends public exhibition for the draft revised Outdoor Dining Policy, Outdoor Dining Guidelines and Display of Goods on the Footway Local Approvals Policy.

This report recommends continuing a temporary delegation of authority to the CEO to approve the use of roads, footways and public open spaces for outdoor dining and other permitted uses under Part 12 of the Liquor Act 2007 'Special provisions relating to COVID-19 pandemic'. This will enable the City to continue to use of these special provisions for events similar to Summer Streets, and temporary reallocation of parking spaces for outdoor dining while the enabling legislation is in place.

Recommendation

It is resolved that:

- (A) Council approve for public exhibition:
 - (i) the draft Outdoor Dining Policy shown at Attachment A to the subject report;
 - (ii) the draft Outdoor Dining Guidelines shown at Attachment B to the subject report; and
 - (iii) the draft Display of Goods on the Footway Local Approvals Policy shown at Attachment C to the subject report;
- (B) Council approve the draft Display of Goods on the Footway Local Approvals Policy shown at Attachment C for submission to the Office of Local Government with a request for the consent of the Departmental Chief Executive for the adoption of the Policy in accordance with section 162 of the Local Government Act 1993;
- (C) authority be delegated to the Chief Executive Officer to amend the Outdoor Dining Guidelines to remove Appendix 1 'Road area reallocated to outdoor dining' at such time as applications for on-street outdoor dining are no longer accepted;
- (D) the Chief Executive Officer be requested to write to Liquor and Gaming NSW to request that barriers not be included in the license conditions of premises in alcohol free zones on George Street and Martin Place; and
- (E) authority continue to be delegated to the Chief Executive Officer to, by notice on the City's website, approve the use of roads, footways and public open spaces for outdoor dining, extension of foyer space, performance space and other permitted uses under Part 12 of the Liquor Act 2007 in accordance with the requirements of that Act, with the delegation to apply until 11 December 2023.

Attachments

Attachment A. Draft Outdoor Dining Policy

Attachment B. Draft Outdoor Dining Guidelines

Attachment C. Draft Display of Goods on the Footway Local Approvals Policy

Background

1. Outdoor dining and goods displays support strong local businesses, bring life to our high streets and foster dining and shopping precincts as destinations. Council policies can encourage these activities by providing a safe and comfortable experience for diners and all other uses of the public places. 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.

The policies are due for review

2. The Outdoor Dining Policy and Outdoor Dining Guidelines came into force in October 2016 and were due for review five years afterwards in October 2021. The Display of Goods on the Footway Local Approvals Policy came into force November 2020. Under section 165 (4) of the Local Government Act, it is automatically revoked 12 months following the Council election, which will be December 2022.
3. Temporary Outdoor Dining Guidelines have been in place since November 2020, updated in July 2021, to enable the Alfresco City policy package in response to Covid-19 and restrictions on indoor dining. The Outdoor Dining Policy and Guidelines were not reviewed when they became due in October 2021 to allow the City to understand the longer-term implications of the Covid-19 pandemic on businesses and the use of public space.
4. The documents attached to this report are:
 - Outdoor Dining Policy (the revised Policy)
 - Outdoor Dining Guidelines (the revised Guidelines)
 - Display of Goods on the Footway Local Approvals Policy (the revised LAP)
5. The revised Guidelines are based on the Outdoor Dining Guidelines approved in October 2016 (the original Guidelines), not the amended versions of the Guidelines approved in November 2020 or July 2021 (the temporary Guidelines).
6. The revised Policy is based on the Outdoor Dining Policy approved in October 2016 (the original Policy) and the revised LAP is based on the Display of Goods on the Footway Local Approvals Policy approved in November 2020 (the original LAP). There has been no temporary version of either since their original adoption.
7. In the attached documents, changes are shown with deletions in strikethrough and new text in underline.

The policies manage business use of public places

8. Use of the footway for outdoor dining and goods displays has many benefits, including contributing to the City's character, vibrancy and attractiveness, as well as direct economic benefits to businesses using the space. However, footpaths also serve an essential movement function, and business uses should not compromise equitable movement and safety on busy pedestrian corridors, or dignified freedom of movement for people with disability or who are blind or have low vision. Also, the public nature of footways must be maintained and business use should not dominate or overwhelm the space.

9. These policies and guidelines set out expectations for business use of public places, including streets and footpaths, so that the benefits can be optimised while respecting their primary role in supporting movement and status as public space.
10. The Outdoor Dining Policy and Guidelines provide criteria to guide assessment of footway applications by the City. They include minimum criteria all outdoor seating needs to comply with to manage any impacts of outdoor dining, including adequate footpath clearances, providing a clear and predictable path of travel, using appropriate furniture, and reducing noise, lighting and unnecessary barriers and branding. They also establish clear expectations for the responsibility of the operator to manage and maintain the outdoor dining area. The Guidelines set out the information and details required to be submitted with a footway application to ensure a full and proper assessment by the City.
11. For goods displays, the LAP sets the criteria for when approval is not required. If the criteria are not met then the display cannot be placed on the footpath. The criteria for placement on the footpath are similar to outdoor dining, including maintaining a predictable and consistent clear path of travel and establishing clearances around common obstacles on the footpath to not cause pinch points. The LAP also includes criteria about the goods on the display, prohibiting anything dangerous, damaging or offensive, and about the size, design and maintenance of the display structure.
12. Both policies include specific circumstances where the City may remove a footway use if it is causing problems or the footway is needed for another purpose. In the case of outdoor dining the approval can be revoked by the City, and for goods displays City Rangers can instruct removal for certain reasons, including non-compliance with the LAP.

Revisions to the Outdoor Dining Policy and Guidelines reflect changes to state government legislation

13. The Liquor Amendment (Night-time Economy) Act 2020 came into force in November 2020 and included both temporary and permanent amendments to the Liquor Act 2007, Local Government Act 1993, Roads Act 1993 and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 that are consequential to outdoor dining and use of the footway.
14. The temporary Guidelines include provisions to support both the temporary and permanent amendments in the Liquor Amendment, to ensure businesses in the local area can access the full scope of initiatives.
15. To reflect the permanent changes from the Liquor Amendment, the revised Policy and Guidelines include changes to certain key areas on an ongoing basis. These changes are:
 - Permitting all food and drink premises, including take away premises, to have outdoor dining. Previously this was limited to restaurants with indoor seating.
 - Recognising that outdoor dining for pubs and small bars are exempt development in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Previously these land uses required a development application for outdoor dining.
 - Allowing use of the road space for outdoor dining. Previously this was only allowed on the footway.

16. The temporary Guidelines include a provision concerning plans of management covering outdoor dining areas for small bars and pubs. This has been clarified in the revised Guidelines, stating the City will require an updated plan of management within 3 months of an approved footway application, but only in the case where the outdoor dining area (or part of it) is not visible from inside the premises.
17. Provisions for reallocation of on-street car parking space to outdoor dining in the temporary Guidelines have been moved to an appendix in the revised Guidelines. These rely on temporary state legislation and Council funding for road barriers. This report includes a recommendation to delegate authority to the CEO to remove this appendix when new applications will no longer be accepted.

Certain temporary provisions have been adopted in the revised Guidelines

18. Higher impact footway applications must be notified through a notice on the premises, on the City's website and a letter to neighbours. The original Guidelines included a minimum notification period of 14 days. This was reduced to 7 days under the temporary Guidelines, however in response to community feedback, in practice 10 days was used to allow enough time for postage. The revised Guidelines proposes 10 days as the new notification period.
19. The landscaping clearance of 1 metre has been removed from the revised guidelines. Although the minimum clearance from landscaping remained in the temporary Guidelines, the provision was not enforced during this period and there has been no negative consequence.

The revised Guidelines does not incorporate all temporary provisions

20. A provision in the temporary Guidelines allowing performance and music in outdoor dining areas is not being retained in the revised Guidelines. This was a special provision to provide performance space when indoor performances were prohibited by health orders. The temporary provision is not recommended to be made permanent as performance can again be carried out indoors where noise and amenity impacts can be managed.
21. The provisions concerning a reduced or waived trial period for extended trading hours, and waiving security deposits where rental charges are waived, are not included in the revised Guidelines as they are only relevant to the temporary Guidelines.

The minimum width of the clear path of travel has been restored to 2 metres

22. The width of the clear path of travel is important for balancing the desire for business uses on the footway with the obligation to provide safe, equitable and comfortable pedestrian access. The Guidelines require a continuous path that is clear of all obstacles and obstructions. The City typically uses a minimum width of 2 metres to support high levels of pedestrian traffic in the local area, and ensure safe and dignified use by people with disability and people who are blind or have low vision. The original Guidelines and original LAP both require footway uses to protect a minimum 2 metre clear path of travel.
23. Existing narrow footpaths and trees may not always guarantee an adequate clear path of travel can be provided on many of the City's streets. However it is important for business uses such as goods displays and outdoor dining to not reduce this further, or reduce an existing adequate clear path to an inadequate one.

24. The temporary Guidelines included a provision to allow a reduced clear path of travel in certain circumstances. This has allowed outdoor dining to occur on footpaths, or parts of footpaths, where it would normally not be permissible. The temporary flexibility has been appropriate to support businesses with an alternative to indoor dining which was restricted by health orders and when pedestrian flows on footpaths were lower. For the revised Guidelines it is appropriate to remove this flexibility and restore the 2 metre clear path of travel requirement.

The George Street South Outdoor Dining Plan is incorporated into the revised Outdoor Dining Guidelines

25. As part of the pedestrianisation of George Street South and the Alfresco City policy, outdoor dining has been introduced to the part of George Street south of Bathurst Street. To manage appropriate locations and suitable furniture, the City developed the "George Street South Outdoor Dining Plan" in conjunction with the light rail operator Transdev. It sets out pre-approved areas where outdoor dining can safely occur accounting for intersections, street furniture and the light rail.
26. The provisions for George Street require a wider clear path of travel of 3.6 metres, recognising the unique role of George Street as a public space and pedestrian "spine" of Central Sydney. It also includes design requirements for furniture and barriers, ensuring outdoor dining areas support the unified public look and feel of George Street.
27. The revised Guideline incorporates this plan and expands outdoor dining to George Street north of Bathurst Street to Hunter Street and to Devonshire Street, Surry Hills. The requirements for tables and chairs, and for barriers, are the same as Martin Place, however it does not use the Martin Place criteria for umbrellas and waiter stations. The general requirements for clearances are set out in the provisions and illustrated in a figure. This is possible due to the more uniform nature of the light rail and public domain in this part of George Street.
28. For George Street between Bathurst Street and Railway Square, general requirements cannot account for the non-uniform alignment of trees, street furniture, smart poles and fixtures. This is partly due to pedestrianisation coming in after the original design of the light rail and public domain on this part of George Street. To ensure outdoor dining is only provided where it is safe and provides a consistent and predictable clear path of travel, appropriate locations are identified in maps in Appendix 2 to the revised Guidelines.

Other changes to the revised Guidelines ensure it is fit for purpose

29. The Guidelines referred to a future map identifying areas in Central Sydney where outdoor dining is not suitable. The Central Sydney Planning Strategy had anticipated some areas may be unsuitable for outdoor dining due to higher pedestrian volumes. Rather than a map as foreshadowed, the revised Guidelines contain new special area requirements for George Street which fulfill this role, with a wider clear path of travel and areas designated as not suitable for outdoor dining.
30. A new clearance from cycleways has been introduced to the revised Guidelines. In cases where outdoor dining could abut the edge of the cycleway, a 0.5 metre minimum clearance is now required. In most cases at least 0.5 metres side clearance is provided by landscaping and road design, as it is part of the recommended cyclist envelope in the Austroads guide for cycleways.

31. The requirements for pubs and small bars to have barriers in alcohol free zones have been clarified for the revised Guidelines to say barriers are only permitted for licensed premises where they are a condition of the liquor licence. Liquor and Gaming NSW have advised that barriers may be conditioned as part of the operator's licence, but are not automatically required in all alcohol free zones.
32. In the Martin Place and George Street special outdoor dining areas, the City's strong preference is for no barriers. George Street is an alcohol free zone, and Martin Place has alcohol free zones at the intersections of Pitt Street and George Street. Barriers contribute to visual clutter and privatisation of the public space, disrupt pedestrian access and introduce accessibility complications. Liquor and Gaming NSW have invited the City to request barriers not be included in the conditions of licences in these areas. A recommendation of this report is to request the CEO to write to Liquor and Gaming NSW to make this request.
33. The revised Guidelines propose to introduce the ability to have dining and drinking at standing tables. In the existing Guidelines this is prohibited, requiring all dining and drinking to be seated, and feedback from operators has indicated this is overly restrictive, especially for pubs and small bars. To manage capacity and noise impacts, standing is proposed to be limited to high tables such as bars and cocktail tables, and the location of these is to be nominated on an outdoor dining plan for assessment. In assessment the City may limit the number of standing tables and request they be located in less noise sensitive parts of the outdoor dining area.

Minor amendments to the revised LAP correct errors and improve clarity

34. The Display of Goods on the Footway Local Approvals Policy has been in operation since November 2020. It was not subject to temporary amendments as part of the Alfresco City policy. To date no significant issues have arisen from implementation of the policy. The following minor amendments are proposed to correct errors and improve clarity:
 - (a) Regional, non-classified roads were incorrectly identified as classified roads in the original LAP. Kerbside displays are not permitted on classified roads but are permissible on regional, non-classified roads in accordance with the general consent issued by Transport for NSW. These roads were incorrectly identified on a map and listed out to aid operators in understanding whether the restriction applied to them. In the revised LAP the maps are edited to remove these roads, and the roads are removed from the list of classified roads.
 - (b) The headings for display size have been removed and the provisions moved to another section, as their content is related to the location of the display. Maximum display dimensions are already set out under a heading of that name.
 - (c) The provision for clearances has been edited to clarify that the minimum required clearances around street furniture, crossings and other street features, most of which are less than 2 metres, do not override the 2 metre minimum width of the clear path of travel. Those smaller clearances are required around the item, whereas the clear path of travel is the continuous path of travel used by all pedestrians.

Transitional arrangements allow flexibility in an uncertain business environment

35. A May 2022 Resolution of Council delegated authority to the CEO to extend the temporary Guidelines in line with both continued funding for the Alfresco City policy and extensions to temporary state government legislation. This is currently set to expire on 30 June 2023.

36. Approvals involving reallocation of on-street parking to outdoor dining are proposed to apply until 30 April 2023. This will allow time for removing road barriers and program finalisation prior to the end of financial year.
37. It is proposed for the revised Guidelines to come into force for new applications on 1 January 2023. This will allow applications under the temporary provisions to be made until 31 December 2022. New applications and renewals submitted from 1 January 2023 will be assessed against the revised Guidelines.
38. The revised Policy can come into force following public exhibition and post exhibition Council approval, as it is compatible with both the temporary Guidelines and the revised Guidelines.
39. The original Display of Goods LAP will be automatically revoked on 22 December 2022 (being 12 months after the local government election was declared) under Section 165 (4) of the Local Government Act. The revised LAP must come into force before that date, and can be enacted at any point following consent of the Office of Local Government, and post exhibition approval of Council.

Delegation is required to continue use of special provisions in the Liquor Act 2007

40. Part 12 of the Liquor Act 2007 'Special provisions relating to COVID-19 pandemic' provides councils with temporary powers to encourage use of outdoor space. This part has enabled Alfresco City programs such as the reallocation of parking spaces to outdoor dining, the use of outdoor dining for performance space, and other activities involving road closures such as the Summer Streets program.
41. Part 12 has recently been extended by the NSW Government to 11 December 2023, enabling the continuation of road closures for events and reallocation of parking spaces to outdoor dining through the rest of this year and most of 2023. Use of outdoor dining for performance space is proposed to be discontinued with the introduction of the revised Guidelines, potentially at 1 January 2023.
42. Authority was delegated to the CEO to undertake the required steps to make use of Part 12, including publishing a notice on the City's website and providing notice to the required minister and state authorities. This delegation is due to expire on 30 June 2022. To match the latest extension to Part 12, this report recommends extending the delegation to 11 December 2023.

Key Implications

Strategic Alignment - Sustainable Sydney 2030

43. 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 1 - A Globally Competitive and Innovative City - Footway uses contribute to Objective 1.2, enabling businesses to be competitive and prosperous.

- (b) Direction 4 - A City for Walking and Cycling - The policies support Objective 4.2, ensuring that footway uses are managed in a way that facilitates movement of people walking and cycling.
- (c) Direction 5 - A Lively and Engaging City Centre - The outdoor dining provisions for George Street support Objective 5.1, contributing to George Street being a distinctive spine of Central Sydney and focus of public activity. The policies also contribute to Objective 5.3, supporting small businesses in the hospitality and tourism industries in Central Sydney and helping to create a premier dining destination.
- (d) Direction 6 - Vibrant Local Communities and Economies - Footway uses contribute to Objectives 6.1 in creating lively village centres with options for activities, socialising and taking part in community, civic and cultural life.
- (e) Direction 7 - A Cultural and Creative City - The Display of Goods LAP supports Objective 7.1 in enabling businesses to contribute to creativity being a constant and visible feature of the public domain, and improving the visibility of distinctive cultural elements in village centres.

Risks

- 44. Footway uses have the potential to damage City property, especially the pavement, and have potential to cause injury to the public. The policies contain provisions concerning appropriate furniture and goods on display, and clearances around obstacles on the footway, to reduce risk of injury and damage to pavements. For outdoor dining a deposit will again be required when the revised Guidelines come into force, and for goods displays a public liability insurance policy of at least \$20 million must be held.

Social / Cultural / Community

- 45. Footway uses have the potential to impede movement of people with disability and people who are blind or have low vision. The revised Guidelines reintroduces, and the LAP continues, a minimum 2 metre clear path of travel which is to be provided in a predictable pattern consistent with footway uses along the length of the street. The LAP also includes requirements for shelving to have a solid base of a contrasting colour for people who are blind or have low vision.

Economic

- 46. The policies enable businesses to use the footway for dining and displays of goods on sale. Footway uses are important for attracting customers, placemaking and additional earning potential for businesses. Through the Covid-19 pandemic, outdoor dining has been vital in supporting the hospitality industry. The permanent adoption of more flexible provisions and an adaptable transition plan for the reintroduction of other provisions will ensure the City continues to support the industry in its recovery.

Relevant Legislation

- 47. Local Government Act 1993.
- 48. Roads Act 1993.
- 49. Liquor Act 1997.

50. Sydney Local Environmental Plan 2012.
51. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Critical Dates / Time Frames

52. The Display of Goods on the Footway Local Approvals Policy will be automatically revoked on 22 December 2022. The revised LAP needs to be in place by that date for displays to be permissible.
53. The Outdoor Dining Policy became due for a five-year review in October 2021. This was postponed to enable the consideration of temporary provisions responding to Covid-19.
54. All three documents require a minimum 28-day public exhibition period. The revised LAP also requires consent of the Office of Local Government as it exempts goods displays from needing an approval where the criteria is met. The consent will be sought after exhibition and prior to post-exhibition reporting back to Council. This approval takes approximately two to three months, which will determine when the documents can be reported back to Council for approval.

Public Consultation

55. This report seeks approval to exhibit the Outdoor Dining Policy (at Attachment A), Outdoor Dining Guidelines (at Attachment B) and Display of Goods on the Footway Local Approvals Policy (at Attachment C). Following exhibition a report will be provided to Council detailing the outcomes of consultation and any changes made as a result of submissions.
56. The revised Display of Goods LAP is subject to specific provisions in the Local Government Act 1993. Under section 160 of the Act the LAP must go on exhibition for 28 days, with documents available 7 days prior and submissions accepted for 42 days. Public notice will be given on the City's website in accordance with the Act and Regulations.
57. The revised Outdoor Dining Policy and Guidelines are proposed to go on public exhibition for a period of 28 days. These documents are not subject to any additional public exhibition requirements by the state government.

58. The draft revised documents will all be available on the City's website and available for viewing at Customer Service locations.

59. Because the LAP sets out criteria for when goods displays are exempt from seeking approval of Council, it is subject to section 162 of the Local Government Act 1993. This section requires the Departmental Chief Executive in the Office of Local Government to give consent to the LAP. The original LAP has this consent, and the revised LAP will require an updated consent. This report recommends submitting the revised LAP to the Office of Local Government following public exhibition.

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