

Item 7.

Post-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 the display of goods 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 approval of 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 current Display of Goods on the Footway Local Approvals Policy (LAP) 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 Outdoor Dining Policy and Guidelines were due for review in October 2021, but this was postponed, and temporary provisions were implemented as part of the Alfresco City response to Covid-19. These temporary provisions included fee waivers and the reallocation of road space for outdoor dining.

The review of the Policy, Guidelines and Local Approvals Policy incorporated changes to state legislation that affected outdoor dining, temporary provisions for George Street and minor amendments to ensure they are up to date.

The draft Policy, Guidelines and Local Approvals Policy were exhibited from 29 June to 16 August 2022 and 18 submissions were received. In addition, comments from the City's Inclusion (Disability) Advisory Panel and correspondence from two business owners with comments considered pertinent to the Policy and Guidelines were included as submissions.

Generally, submissions supported the City's overall approach to outdoor dining and goods displays.

Based on feedback from Guide Dogs NSW/ACT and the City's Inclusion (Disability) Advisory Panel, the policies have been amended to improve accessibility for people with disability or visual impairment. This includes providing clearances from tactile ground surface indicators, improving luminance contrast of furniture and requiring goods displays have a minimum height so they are easier to detect and do not have protruding objects or emit noises.

Guide Dogs NSW/ACT expressed concern regarding the placement of outdoor dining areas and goods displays along the building line, preferring them to only be on the kerbside. The draft Policy, Guidelines and Local Approvals Policy maintains the City's current approach of requiring a consistent and clear path of travel along an entire street block as many of the City's footways cannot easily accommodate kerbside outdoor dining. Additionally, in new and upgraded streets such as George Street, space for outdoor dining away from the building line is designed into the street.

The City does not support submissions that businesses should be allowed to place permanent dining furniture (such as tables and chairs) and weather protection furniture (such as sails and plastic shelters). Such furniture physically encloses space, creates the perception of a privatised footway, and represents a substantial obstacle for access and visibility.

This report summarises the themes and topics covered in submissions received during public exhibition, details amendments made to the policies in response to submissions, and recommends Council adopt the amended draft Policy, Guidelines and Local Approvals Policy for implementation.

If adopted by Council, the draft Policy will come into force immediately and the draft Guidelines will come into force for new and renewing applications from 1 January 2023, noting that current approvals issued under the temporary Guidelines will continue until their expiration on 30 June 2023.

If endorsed by Council, the City will send the draft Local Approvals Policy to the Office of Local Government for their approval with the intention of implementation before the current policy's expiration on 22 December 2022.

Recommendation

It is resolved that:

- (A) Council note the matters raised in response to the public exhibition of the draft Outdoor Dining Policy, draft Outdoor Dining Guidelines and draft Display of Goods on the Footway Local Approvals Policy, as shown in the Summary of Submissions at Attachment A to the subject report;
- (B) Council adopt the Outdoor Dining Policy and Outdoor Dining Guidelines, as shown at Attachments B and C to the subject report;
- (C) Council endorse the Display of Goods on the Footway Local Approvals Policy, as shown at Attachment D to the subject report, 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;
- (D) authority be delegated to the Chief Executive Officer to adopt the Display of Goods on the Footway Local Approvals Policy, as shown at Attachment D subject to consent of the Departmental Chief Executive under section 162 of the Local Government Act 1993; and
- (E) authority be delegated to the Chief Executive Officer to make minor variations to the draft Outdoor Dining Policy, draft Outdoor Dining Guidelines, and draft Display of Goods on the Footway Local Approvals Policy to correct any minor errors prior to finalisation or address requirements of the Office of Local Government in granting their consent under section 162 of the Local Government Act 1993.

Attachments

- Attachment A.** Summary of Submissions
- Attachment B.** Outdoor Dining Policy
- Attachment C.** Outdoor Dining Guidelines
- Attachment D.** Display of Goods on the Footway Local Approvals Policy

Background

1. Outdoor dining and the display of goods support strong local businesses, bring life to our high streets and foster dining and shopping precincts as destinations. The City can encourage these activities by providing a safe and comfortable experience for diners and all other users of public places. The Outdoor Dining Policy, Outdoor Dining Guidelines and Display of Goods on the Footway Local Approvals Policy manage the use of public space, making it available for business use while maintaining equitable access.
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. However, the review was postponed allowing time for the City to understand the longer-term implications of the Covid-19 pandemic on businesses and the use of public space. Instead, temporary outdoor dining provisions were implemented as part of the Alfresco City package to support businesses during the pandemic.
3. As part of this review the Policy and Guidelines were amended to reflect changes to state legislation. These changes included:
 - (a) Permitting all food and drink premises, including take away premises, to have outdoor dining. Previously this was limited to restaurants with indoor seating.
 - (b) Recognising that outdoor dining for pubs and small bars is 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.
 - (c) Allowing use of the road space for outdoor dining. Previously this was only allowed on the footway.
4. The review also incorporated the 'George Street South Outdoor Dining Plan', which was developed in response to the recent pedestrianisation of George Street South and the Alfresco City policy, into the Guidelines.
5. The Display of Goods on the Footway Local Approvals Policy (LAP) came into force in November 2020. Under section 165 (4) of the Local Government Act 1993, a local policy (other than a local policy adopted since the last general election) is automatically revoked at the expiration of 12 months after the declaration of the poll for that election. Therefore, the existing Display of Goods Local Approvals Policy will be automatically revoked on 22 December 2022.
6. Other minor amendments to the Policy, Guidelines, and Local Approvals Policy were undertaken to correct errors, improve clarity, and ensure closer alignment with relevant strategies and standards.
7. The draft Policy, Guidelines and Local Approvals Policy were placed on public exhibition from 29 June to 16 August, with a total of 18 submissions received. This report summarises the submissions, highlights any subsequent amendments, and recommends Council adopt the amended draft Policy, Guidelines and Local Approvals Policy. In the amended draft Guidelines and Local Approvals Policy, exhibited amendments are shown in black underline and strikethrough, and amendments made in response to submissions are shown in red underline and strikethrough.

Public Consultation

8. The draft Policy, Guidelines and Local Approvals Policy were endorsed by Council for public exhibition on 27 June 2022 and were exhibited from 29 June to 16 August 2022. Eighteen (18) submissions were received. The submissions are overwhelmingly supportive.
9. The City's Inclusion (Disability) Advisory Panel was briefed on the draft Policy, Guidelines and Local Approvals Policy on 17 August 2022. Comments from the panel have been incorporated as submissions.
10. The City received correspondence from two business owners during exhibition and shortly after exhibition closed. Their comments were pertinent to the draft Policy and Guidelines so have been incorporated as submissions.

The policies have been amended to improve accessibility

11. In their submission, Guide Dogs NSW/ACT reiterated the importance of a safe and hazard free footpath for people who are blind or have low vision. The draft Policy, Guidelines and Local Approvals Policy have been amended to address the following concerns:
 - (a) Guide Dogs NSW/ACT asked that outdoor dining and goods displays should be kept away from tactile ground surface indicators (TGSIs). TGSIs are raised dots or raised parallel lines installed on the ground or floor surface to provide pedestrians who are blind or have low vision with warning or directional orientation information. They can be discerned underfoot, by cane tip, or by their contrasting colour. The draft Guidelines have been amended to require that seating areas maintain a 500mm clearance from any TGSIs.
 - (b) The existing Guidelines include a provision recommending that street furniture have a luminance contrast of 30 per cent with the street or ground, to allow them to be identified by pedestrians with low vision. Guide Dogs NSW/ACT stated that a luminance contrast greater than 30 per cent is preferable as it offers greater visual detectability. This provision has been strengthened to make such a contrast a minimum requirement, aligning with Australian Standards (AS 1428.2-1992). The draft Local Approvals Policy has also been amended to apply this requirement to the lowest 60mm of any goods display on the footway.
 - (c) The existing Local Approvals Policy does not include a minimum height when defining the dimensions of any goods display on the footway. Guide Dogs NSW/ACT raised concerns regarding the use of a long cane, and the danger of colliding with an unexpected obstacle on the building line, which would compromise a person's ability to maintain their balance and increase their risk of falling. To avoid small goods displays which could pose a tripping hazard the draft Local Approvals Policy has been amended to set a minimum height for goods displays of 500mm.
 - (d) Guide Dogs NSW/ACT noted that displays could be an obstacle where items hung over the sides of the display and protrude into the footway. The draft Local Approvals Policy has been amended to include a requirement that the display structure is to contain no objects hanging or protruding into the footway, to ensure it is free of obstructions.

12. Based on feedback from the City's Inclusion (Disability) Advisory Panel, the draft Local Approvals Policy has been amended to include a requirement that any goods on display do not emit noise or vibration that could cause annoyance or sensory overload for neurodiverse people, for example radios or electronic toys.

Request for all outdoor dining and goods displays located on the kerb side of the footway

13. In their submission Guide Dogs NSW/ACT strongly advocate for a clear and predictable line of travel along the building line, with all outdoor dining and goods displays located on the kerb side of the footway. For pedestrians who are blind or have low vision and where a building line is available, a clear building line provides the best opportunity for wayfinding and navigation along footways. The building line is easily detectable with a cane, and the solid bulk of a building wall helps by providing substantial colour and luminance contrast to the ground.
14. In Australia and internationally, there are a wide variety of approaches to this issue. In the City of Sydney, the established practice is for a flexible location of the outdoor dining area, with the historical practice for locating outdoor dining being along the building line. The City's footways are generally narrow with high pedestrian volumes. The location of permanent street furniture at the kerbside (for example trees, bike rings, bus stops, bins and lights), the need for clearance from the kerb to allow access to parked cars, and the exposure to sun and rain without the protection of awnings, are all factors that minimise the opportunities for kerbside dining. Streets with clearways and bus lanes cannot have dining areas located kerbside due to safety concerns. This means that some of Sydney's most popular high streets would not be able to accommodate any outdoor dining if it could not be placed along the building line. A loss of outdoor dining would have a negative effect on essential aspects of Sydney's public character, including social interaction, visitation, passive surveillance and interest and activity on the street.
15. The draft Policy and Guidelines continue to require that a clear path of travel is provided and maintained, to allow for safe, dignified and equitable access to the footway for all users. They also stipulate that the clear path of travel must be in a consistent location for each street block and be predictable to allow for planning of journeys. Kerbside dining is supported where the width of the footway and the street environment allow it.
16. In new and upgraded streets, such as George Street, space for outdoor dining is provided on the kerbside and/or away from the building line.

The policies should not limit privatisation of the footway

17. In their submission, the Australian Hotels Association (AHA) NSW proposed that certain outdoor furniture, such as tables, chairs, heaters, and fans be allowed to be fixed to the footpath and kept in place when the venue is closed. This would relieve venue staff and cleaning staff of the need to constantly move outdoor furniture in and out of the venue, improve the internal presentation of venues by not requiring space for furniture storage, and be safer in high wind and inclement weather. The Australian Hotels Association also submitted that weather protection structures such as sails and roll-down plastic shelters should not be prohibited under the Guidelines, as they provide more stable and reliable weather protection.

18. The City recognises that business use of the footway for outdoor dining 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, the public nature of footways must be maintained, and business use should not dominate or overwhelm the space. The City manages these public spaces on behalf of all residents and visitors and must balance competing demands for its use. The permanent installation of outdoor dining furniture could create a perception of privatised space and could damage paving and other City-owned infrastructure while increasing the cost of maintenance and cleaning. Maintaining a clear footway outside of business hours allows for use of the space for pedestrian movements and other public gatherings. The permanent installation of outdoor dining furniture on public land is not supported.
19. The request to consider fixed weather protection, such as sails and roll-down plastic shelters, is also not supported. The installation of fixed weather protection could increase the perception of the privatisation of public space. This is because such furniture physically encloses space and prevents anyone who is not a customer from accessing it. In addition to concerns regarding the privatisation of public space, sails, shelters and installed furniture introduce significant additional impacts to access and visibility.
20. The Australian Hotels Association also requested that consideration be given to allowing venues to use their vertical outdoor spaces (i.e. rooftops and balconies) to increase floor space, improve ventilated options for patrons. While using such spaces would likely involve dining outdoors, the draft Policy and Guidelines are specific to guiding the use of public land for the purpose. Business operators can use the development application process to apply for outdoor trading on private land.
21. A business owner requested the ability to build a raised structure on a public footway to facilitate outdoor dining where the slope or other features of the street environment would normally make it impractical. The purpose of the draft Policy and Guidelines is to balance the benefits of outdoor dining with the challenges of access, visibility and the privatisation of public space. Building a permanent structure on public land represents a high level of privatisation of public space, is a substantial obstacle for access and visibility, and is not supported.

The City will continue to balance the competing needs for pedestrian safety, accessibility and business uses on George Street

22. In their submission, Guide Dogs NSW/ACT raised concerns about the installation of bollards on George Street, in particular their placement within the 3.6 metre clear path of travel from the building line. Their concerns refer to the potential of the bollards to create dangerous hazards for people who are blind or have low vision, the access needs of people with disability, and the lack of design or placement provisions for bollards in the draft Guidelines.
23. Bollards have been installed along George Street as a pedestrian safety measure. George Street has been designed with a vehicle impedance strategy which relies on the establishment of compartments in footpath areas to limit vehicle access and reduce speed. Perpendicular lines of bollards at approximately 30-metre intervals create compartments in the pedestrian zone so that should a hostile vehicle cross over, it cannot achieve speeds greater than 40km/h. This speed substantially reduces the chance for pedestrian injury from vehicles.

24. The placement of the bollards is not part of the draft Guidelines. The City notes, however, that while the bollards must be placed in the clear path of travel to provide protection, individual bollards must be placed a minimum of 1.2m apart, aligning with Australian Standards (AS 1428.2-1992), which provides sufficient space for people to pass through.

A-frames and sandwich boards will continue to be prohibited

25. A business owner requested that A-frames, also called sandwich boards, be permitted in outdoor dining areas. A-frames may be desired by business owners as a form of signage and advertising, but they are not compatible with a balanced approach to business use of public space. As with all street furniture, they are placed on public land, add visual clutter to the streetscape, and present a possible hazard to pedestrians. However, unlike café seating, umbrellas, or goods displays, they do not provide any amenity or public benefit. The draft Guidelines continue to prohibit A-frames and similar structures in outdoor dining areas.

Live performances and amplified music on the footway will be prohibited under the draft Guidelines

26. Submissions were received both supporting and opposing live performances and amplified music in outdoor dining areas. The City of Sydney introduced temporary guidelines for the use of outdoor areas for live performance space as part of the Alfresco City policy in July 2021. This was in response to the Covid-19 pandemic and the impact of associated public health orders on indoor venues. This policy was always intended as a short-term measure due to the potential impact on amenity for nearby businesses and residents. Monitoring of the policy over the past two years has shown a limited uptake of this measure. Indoor performances spaces are better placed to manage amenity impacts to neighbours and there is no longer any public health orders restricting indoor capacities and performances. It is not recommended that the Guidelines be amended in response to this submission.

Submissions supported the use of parking spaces for outdoor dining and other community purposes

27. Some submissions expressed support for the continued use of on-street parking spaces for outdoor dining. The use of road space for outdoor dining was enabled by a NSW Government co-funded program which is due to expire on 30 April 2023. Another submission requested a process of community input into reallocation of on-street parking for different community uses such as parklets and public seating, reflecting community needs and priorities.
28. Demand for on-street parking is increasing as activity increases and there are no health orders restricting indoor capacities as the City moves into a post-pandemic phase with less opportunity to re-allocate parking spaces for outdoor dining or other community uses. Opportunities to maximise outdoor dining or other community uses will be prioritised through future public domain works and development projects.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

29. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. 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 3 - Public places for all - the Policy, Guideline and Local Approvals Policy support Objective 3.2, helping to create and maintain welcoming, inclusive and connective streets and public spaces.
 - (b) Direction 4 - Design excellence and sustainable development - the Policy, Guideline and Local Approvals Policy support Objective 4.2, in pursuit of productivity supported by planning for jobs, innovation and enterprise activities.
 - (c) Direction 5 - A city for walking, cycling and public transport - the Policy, Guideline and Local Approvals Policy support Objective 5.3, encouraging more people to walk more, because walking is the most attractive and convenient choice for short trips in the local area.
 - (d) Direction 9 - A transformed and innovative economy - the Policy, Guideline and Local Approvals Policy support Objective 9.4, facilitating creativity and great experiences which fuel the vitality of the city.

Risks

30. 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 draft Guidelines come into force, and for goods displays a public liability insurance policy of at least \$20 million must be held.

Social / Cultural / Community

31. Footway uses have the potential to impede movement of people with disability and people who are blind or have low vision. The draft Guidelines reintroduce, and the draft Local Approvals Policy continues, a minimum two-metre clear path of travel that is predictable and consistent along the length of the street block. The draft Local Approvals Policy also includes new requirements for shelving to have a solid base of a contrasting colour for people who are blind or have low vision.

Economic

32. 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

33. Local Government Act 1993.
34. Roads Act 1993.
35. Liquor Act 2007.
36. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Critical Dates / Time Frames

37. The Display of Goods on the Footway Local Approvals Policy will be automatically revoked on 22 December 2022. The draft Local Approvals Policy needs to be in place by that date for displays to be permissible. Because the draft Local Approvals Policy 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 concurrent consent. The consent will be sought once Council has endorsed the draft Local Approvals Policy.

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