

Extension of Temporary Use of Road Space for Outdoor Dining

File No: S060627-02

Summary

Since the start of the Covid-19 pandemic, the City has played an important role in supporting the community and the economy through actions such as grants, programs and fee waivers. The 'alfresco city' outdoor dining program supported businesses by introducing temporary rules to facilitate outdoor dining, fast tracking applications, waiving fees and reallocating road space for more outdoor dining in appropriate locations, with essential funding support from the NSW Government.

To continue its support for business recovery, Council resolved in November 2022 to include an extension of the outdoor dining fee waiver until June 2025 (in the forthcoming budget), review on-street outdoor dining approvals and determine locations where the footway can be permanently extended into road space for outdoor dining.

The review of current locations is underway. The temporary program of road space for on-street outdoor dining is due to conclude on 30 April 2023 according to the Outdoor Dining Guidelines to align with the planned removal of barriers under the NSW Government's funding arrangements for the concrete barriers and temporary approvals.

Given the limited time before the end of the on-street dining initiative ending on 30 April 2023 and the time required to determine and implement permanent, semi-permanent or other solutions such as kerb extensions, this report recommends updating the program's end date from 30 April 2023 to 31 December 2024 in the Outdoor Dining Guidelines.

To support the temporary continuation of existing approvals, a grace period is recommended for the lodgement, assessment and determination of new approvals. All on-street dining approval holders will be notified of the need to reapply prior to 30 April 2023 to potentially extend their approvals (subject to assessment). Applications will need to undergo a more rigorous planning assessment for permanent use compared with the temporary Covid circumstance.

This report also notes a separate review of the Guidelines will be undertaken to address Council's February 2023 resolution about applications on or near parks and other public spaces and ensuring equitable and accessible use of those spaces.

Recommendation

It is resolved that:

- (A) Council continue the temporary use of road space for existing on-street Outdoor Dining approvals until 31 December 2024;
- (B) authority be delegated to 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;
- (C) authority be delegated to the Chief Executive Officer to amend Appendix 1 of the Outdoor Dining Guidelines to replace the words '30 April 2023' with '31 December 2024';
- (D) the Chief Executive Officer include in the next draft budget to be submitted to Council for endorsement to go on public exhibition funding for the extension of the current program until 31 December 2024, at a cost of approximately \$3.8 million in expenses and revenue foregone as set out in this report;
- (E) Council note that these costs are in addition to the proposed extension of the fee waiver for outdoor dining permits to be included in the draft budget in accordance with Council's resolution of 21 November 2022; and
- (F) Council note a review of the Outdoor Dining Guidelines will be carried out in relation to applications on or near parks and other public spaces to ensure equitable and accessible use of parks and other public space spaces and that any amendments will be reported to Council for its consideration and public exhibition.

Attachments

Nil.

Background

1. Since the start of the Covid-19 pandemic the City has played an important role in supporting the community and the economy through actions such as grants, programs and fee waivers.
2. The 'alfresco city' outdoor dining program supported businesses by introducing temporary rules to facilitate outdoor dining, fast tracking applications, waiving fees and reallocating road space for more outdoor dining in appropriate locations. The NSW Government provided essential funding support for outdoor dining on reallocated road space.
3. The Outdoor Dining Guidelines were amended in November 2020 and again in July 2021 to enable the alfresco city program. Temporary provisions were introduced to help businesses when indoor dining was restricted due to health orders, to respond to City and NSW Government initiatives and legislative changes, and to respond to temporarily lower pedestrian and traffic volumes.
4. The changes encouraged business to temporarily take up outdoor dining, extend their existing outdoor dining if there's sufficient space and use reallocated road space in many locations. The opportunity to use the road space for outdoor dining was enabled by the NSW Government's changes to the Roads Act 1993 in 2020.
5. A new provision was inserted into the Guidelines to make clear that businesses may provide outdoor dining on road space that the City is able to reallocate from traffic or parking lanes. The provision requires the area to be protected with barriers suitable to the speed limit on the roadway. The provision also allows the business to extend its operations lengthways along the reallocated road space to provide additional outdoor dining opportunities. A food and drink business's outdoor dining cannot be in front of another food and drink business.
6. The City has supported over 500 businesses to trade on both footpaths and on roadways as part of the alfresco dining program, with over 4,460 square metres in footpath space approved for alfresco dining. A total of 148 approvals have been granted for temporary on-street dining since November 2020. A March 2022 survey showed that 91 per cent of participating businesses reported this program is crucial to their business, 74 per cent had employed additional staff, and 39 per cent had experienced up to a 20 per cent increase in turnover.
7. The current Outdoor Dining Guidelines were approved by Council in November 2022. They were updated following their periodic review, consideration of whether the temporary alfresco city provisions should be continued and comments from public exhibition. The current Guidelines retained the provisions related to outdoor dining in reallocated road space up until 30 April 2023 to coincide with the end of the NSW Government's funding of barriers.
8. Council resolved in November 2022 to review on-street outdoor dining approvals and investigate locations where the footway can be permanently extended into road space (parking areas) for outdoor dining.
9. Given the limited time before the end of the on-street dining initiative on 30 April 2023 and the time required to review the use of each location for permanent on street dining, it is recommended that existing on-street dining continue in its current form until 31 December 2024 using the existing barriers.

10. To extend the temporary on-street dining, the Guidelines need to be amended to remove the date at which the relevant provisions are planned to end. Also, existing on-street dining approval holders will need to reapply by 30 April 2023 to extend their approvals with a grace period provided for lodgement, reassessment and determination. Only existing approvals will be able to continue (subject to their re-approval). No applications for new on-street dining will be accepted from 30 April 2023 to 31 December 2024. All applications for renewal of on-street dining will be assessed in accordance with the criteria set out in the Guidelines.
11. Enabling the continuation of existing on-street dining until 31 December 2024 allows for the review to be finalised. This review considers traffic and parking impacts; precinct character and business mix; public domain and infrastructure impacts; hours and shared use; and operators willingness to continue.
12. Continuing existing on-street dining also allows for a long term approach to be developed for implementing permanent on-street dining in appropriate locations, which could have a range of solutions such as streetscape works and kerb extensions.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

13. 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 program is aligned with the following strategic directions and objectives:
 - (a) Direction 4 - Design excellence and sustainable development - more opportunities for outdoor dining in appropriate locations contributes to the liveability of neighbourhoods.
 - (b) Direction 9 - A transformed and innovative economy - outdoor dining provides economic opportunities, creates experiences that fuel the vitality of the city and contributes to thriving economic activity in unique local neighbourhoods.

Financial Implications

14. The NSW Treasury funding contract includes an agreement that barriers be removed by 30 April 2023, with funding for staffing costs to end 31 July 2023. There is adequate money in the Council's budget for 2023/24 to continue the program until 30 June 2023 without the allocation of additional funding.
15. Costs associated with continuing the use of the concrete barriers until 31 December 2024 are estimated to be \$3,078,100, which includes the continued hire of the concrete barriers (jersey kerbs) and the retention of four temporary Council staff positions associated with the program. The extension is also expected to bring about an additional \$726,990 in lost parking revenue based on a continuation of the existing amount of on-street approvals.

16. The Lord Mayor has written to the NSW Premier requesting funding for the ongoing hire of the concrete barriers and positions be extended. Subject to the NSW Government's response, the revised financial impact of the extension will be included in the draft 2023/24 Operating Budget and future year's forward estimates. It is noted that these expenses and lost revenue will be in addition to the estimated \$4 million in revenue foregone for outdoor dining permits that will be included in the draft budget in accordance with the Council Resolution of 21 November 2022.
17. The draft budget is subject to public exhibition and Council approval in June 2023.

Resolution of Council in relation to parks and other public spaces

18. Council's 20 February 2023 resolution requested advice about how the City's policies and procedures for outdoor dining can be clarified to include more specific provisions for applications on or near green spaces, which reflect the City's commitments to protect the equitable and accessible use of public parks and green spaces.
19. The Outdoor Dining Policy and Outdoor Dining Guidelines apply to parks and other public spaces. Access, amenity and location of dining areas are considered on merit against the policy and guidelines depending on the specific site and its context.
20. Where applications are submitted for use of parks or green space, staff consider the specific park context and surrounding uses and activities such as:
 - (a) the area proposed and impacts of the overall functioning of the park, the availability of green space area for general parks uses if the dining was to proceed;
 - (b) the extent of time for dining use applied for over the day/s or week and therefore the impacts and availability of the space for general park uses; and
 - (c) the potential impacts on the accessibility of the park and park facilities (benches, picnic tables, playground) for use by other park users.
21. The City is reviewing the Guideline in relation to the resolution and will report any changes to Council for its consideration and public exhibition.

Relevant Legislation

22. Roads Act 1993.
23. Local Government Act 1993.

Critical Dates / Time Frames

24. The current Outdoor Dining Guidelines enables on-street dining up to 30 April 2023. This report recommends the date in the Guidelines is changed to 31 December 2024 to enable the program to temporarily continue and applications for re-approval to be lodged.

GRAHAM JAHN AM

Director City Planning Development and Transport

Ben Pechey, Executive Manager Strategic Planning and Urban Design