

Item 6.

Post Exhibition - Outdoor Dining Guidelines Amendment

File No: S060627-02.023

Summary

This report seeks Council endorsement of an amendment to the Draft Outdoor Dining Guidelines (parks and green spaces), following public exhibition, as shown at Attachment A. This does not cover long term on-road dining which will be the subject of a separate report.

On 20 February 2023, Council resolved to review the Outdoor Dining Guidelines in relation to applications on or near green spaces to reflect the City's commitments to protect the equitable and accessible use of public parks and green spaces. The review was reported to Council in September 2023, recommending public exhibition of change to the Outdoor Dining Guidelines to provide more guidance for outdoor dining on pedestrianised lanes and streets and similar public spaces.

Outdoor dining supports strong local hospitality businesses, brings life to our high streets and neighbourhoods and fosters dining and shopping precincts as destinations. Council policies encourage outdoor dining in a way that provides a safe and comfortable experience for all users of footways and public spaces including people walking, dining and using public space for other purposes.

While the vast majority of outdoor dining is on footpaths there are some situations where outdoor dining can be located in other public spaces such as pedestrianised spaces, plazas and parks.

Well-managed public spaces and footways promote both equitable access and support local hospitality businesses by creating places and streets that are amenable and attractive to all visitors.

The public exhibition was carried out in November and December 2023. This report provides details of the public exhibition and the City's responses to feedback.

Submissions noted support for outdoor dining and the proposed provisions which will balance outdoor dining with community use and access to public space. Concerns were raised in relation to access and safety, noise, privatisation of public spaces, availability of open space, application processes and compliance.

As the issues raised are addressed by the draft guidelines, standard conditions of approval and review and renewal processes already in place, no further changes are recommended to the draft Guidelines.

It is recommended that Council adopt the draft Guidelines shown at Attachment A to the subject report.

Recommendation

It is resolved that:

- (A) Council note the findings from the public exhibition of the draft amendment to the Outdoor Dining Guidelines as described in Attachment B to the subject report, including the City's responses;
- (B) Council adopt the Outdoor Dining Guidelines as shown at Attachment A to the subject report; and
- (C) authority be delegated to the Chief Executive Officer to undertake minor editorial amendments for clarity or correction of drafting errors and finalise design, artwork and accessible formats for publication.

Attachments

Attachment A. Outdoor Dining Guidelines

Attachment B. Summary of submissions

Attachment C. Resolution of Council - 20 February 2023 - Item 13.14 - Equity and Access to Parks and Public Green Space

Background

1. On 20 February 2023, Council resolved via a Notice of Motion (Attachment C) to review the Outdoor Dining Guidelines in relation to applications on or near green spaces to reflect the City's commitments to protect the equitable and accessible use of public parks and green spaces.
2. The internal review was reported to Council in September 2023, recommending changes to the outdoor dining guidelines to provide more guidance for outdoor dining on pedestrianised spaces, parks and similar public spaces.
3. The proposed changes address:
 - (a) the clear path of travel, pedestrian connections and access to public seating;
 - (b) availability of space for the common activities undertaken in the public space;
 - (c) servicing of the outdoor dining through the public space;
 - (d) community events; and
 - (e) setbacks from lawns, gardens, walls and similar structures.
4. On 18 September 2023, Council approved for public exhibition the draft amendment to the Outdoor Dining Guidelines. The additional guidance was included at the end of Section 4 Outdoor Dining Areas of the Guidelines.
5. This report describes the feedback from public exhibition and recommends Council endorse the draft amendment to the Outdoor Dining Guidelines at Attachment A.

Public Exhibition

6. The draft amendment to the Outdoor Dining Guidelines was exhibited on the Sydney Your Say website. The website was open from 8 November to 6 December 2023. There were 535 unique page views and 184 downloads of the documents.
7. The following notifications were sent to stakeholders:
 - (a) letters were distributed to all addresses within a 25 metre radius of premises that currently operate outdoor dining on closed roads (nine properties in total) with 4,585 letters sent;
 - (b) a stakeholder email was sent to disability and inclusion stakeholder groups; and
 - (c) included in the November edition of Sydney Your Say eNews to 6,733 subscribers.

Submissions

8. During the exhibition period 47 submissions were received, including:
 - (a) eight by email;
 - (b) 38 by online feedback form; and
 - (c) one by phone call.
9. The submissions are summarised at Attachment B.
10. Some submissions covered more than one point of support or objection. As such, the key points of each submission have been summarised under common headings in the Summary of Submissions at Attachment B. One or more of the points may be contained in a single submission. The instances in which each point has been raised in submissions has been noted next to each point, and the City's response to submission topics is also provided.
11. The submissions had varying degrees of relevance to the amendment. Some submissions related to specific locations or typical footways not affected by the proposed provisions.

Submissions in support

12. Submission topics in support fell into two categories. The first group of supporting submissions mentioned support for outdoor dining generally. The second group related specifically to the draft guidelines.
13. There were 26 instances of submissions expressing support for outdoor dining. Both general and specific points were made. Specific reasons for supporting outdoor dining include:
 - (a) the weather in Sydney is so well suited to outdoor dining;
 - (b) mental and physical health benefits of being outside and social activity;
 - (c) lively neighbourhoods;
 - (d) generation of economic activity; and
 - (e) international precedents of outdoor dining.
14. There were 25 instances of support for the draft guidelines, and specific reasons for support include:
 - (a) balances outdoor dining with community use, public and private users sharing space;
 - (b) sensible and practical;
 - (c) wheelchair users are provided for;
 - (d) prioritises people over cars; and
 - (e) promotes walkability of the city.

Objections

15. There were 52 instances of points of objection in the submissions. Key concerns and responses are described below.

Accessibility and Safety (mentioned in 13 instances)

16. There was a frequent theme about the provision and enforcement of a clear path of travel for pedestrians, particularly the elderly and those with mobility issues. It was also pointed out that tables and chairs are sometimes moved so that they obstruct the minimum clear path of travel, accompanied by requests that more is done by business owners to keep furniture within the approved limits of their outdoor dining area to avoid obstructing paths of travel.
17. A number of submissions noted issues of electric bikes or food delivery cyclists occupying space on footpaths.

Response

18. The Guidelines, including the draft amendments, prioritise access and require a minimum two metre clear and consistent path of travel.

Noise and amenity (mentioned in three instances)

19. There were several general complaints about noise from cafes or pubs, including noise from patrons, their children and dogs. Also included was a comment regarding the untidy appearance of outdoor dining.

Response

20. The Guidelines currently include provisions about appropriate neighbourhood amenity including hours of operation and seating arrangements. These provisions also apply to outdoor dining areas on public spaces. Some noise from children, dogs and other recreational activities is common for public spaces and parks.

Privatisation of Public Space (mentioned in 11 instances)

21. Issues regarding commercial uses occupying public space were raised frequently across the submissions. Concern was expressed around the legal implications of establishing the additional revenue for a venue through additional seating areas for additional patrons, that it might become permanent and irreversible.

Response

22. The Roads Act 1993 limits outdoor dining approvals to seven years within road reserves. The City also includes conditions on approvals that typically limits them to one to five years as appropriate to the circumstances and allows the City to revoke or suspend approvals if needed.

Inadequate provision of open space in some local areas (nine instances)

23. Submissions expressed concern that there was inadequate open space in some local areas and that on this basis outdoor dining in public spaces should not be permitted, to preserve that space for the recreational use of residents. In some cases the guidelines were considered inadequate in protecting the existing open space provision.
24. Covid recovery as a reason for the permissibility of outdoor dining was mentioned in several submissions.

Response

25. The draft amendment to the Guideline proposes a provision to protect the public open space for recreation use by the community. It requires outdoor dining to not substantially encroach upon the area used for typical and common community activities in the space. Outdoor dining also supports and encourages people to use open and public spaces.

Regulation framework (mentioned in 12 instances)

26. Submissions raised the way the planning framework is structured regarding outdoor dining. Some submissions suggested that requirements for applicants should be less restrictive or more onerous.
27. A greater proportion suggested various ways of changing the framework to increase the regulation through requiring Development Applications or limiting the duration of outdoor dining approvals (mostly length of license).

Response

28. The proposed changes to the Guidelines do not address processes and application requirements. Requirements for submissions ensure sufficient information is available to make an assessment and determination. NSW Government planning rules make outdoor dining exempt from a development application to avoid duplication with approvals required under other legislation. Council cannot override these rules.

Compliance (mentioned in four instances)

29. Several submissions advised that some businesses were not keeping to the limits of their outdoor dining approvals, either in areas or time limits, and that there should be greater monitoring, and that lack of adherence to approvals should lead to withdrawal of the approval.

Response

30. A standard condition of approval requires all furniture to be kept within the boundaries of the area defined on the approved plans. An outdoor dining approval display notice is required to be displayed at the premises under the conditions of consent. The City investigates reports of non-compliance in accordance with compliance policies and compliance is considered when applications for renewal are received.

Response to submissions

31. The relevant issues raised through submissions are already addressed by the draft amendment to the Guidelines, standard conditions of approval and review and renewal processes already in place. No changes are recommended to the exhibited Guidelines.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

32. Sustainable Sydney 2030-2050 Continuing the Vision renews the community's 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 1 - Responsible governance and stewardship - the proposed amendment promotes transparency around commercial opportunities in public space and decision-making and seeks to protect the interests of the community.
 - (b) Direction 3 - Public places for all - the proposed amendment works to ensure that the public and private interests over public space are balanced in the best interests of the community.
 - (c) Direction 4 - Design excellence and sustainable development - the proposed amendment seeks to protect the quality and amenity of public space and support the sustainable use of public space.
 - (d) Direction 5 - A city for walking, cycling and public transport - the proposed outdoor dining guidelines ensure that footway uses are managed in a way that facilitates movement of people walking and cycling.
 - (e) Direction 6 - An equitable and inclusive city - the proposed provisions act to protect equitable access for all in public spaces.
 - (f) Direction 7 - Resilient and diverse communities - the proposed provisions support activation of public spaces, provide and protect opportunities for community interaction.

Social / Cultural / Community

33. The proposed provisions will assist in balancing the amenity of public spaces with the benefits of outdoor dining in activating the City's public spaces.

Economic

34. The proposed provisions provide clarity around opportunities for outdoor dining areas that will support local businesses.

Relevant Legislation

- 35. Roads Act 1993.
- 36. Local Government Act 1993.
- 37. Environmental Planning and Assessment Act 1979.

Public Consultation

38. The amended Outdoor Dining Guidelines, at Attachment A, were on public exhibition for a minimum of 28 days.
39. This report and the Summary of Submissions at Attachment B describe the public exhibition of the draft Outdoor Dining Guidelines.

GRAHAM JAHN AM

Chief Planner / Executive Director City Planning, Development and Transport

Amy Bendall, Senior Urban Designer