

## 10.5. Small Coffee Carts in Outdoor Dining Spaces - Response to Council Resolution

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<b>ATTACHMENTS</b>	Nil
<b>CSP LINK</b>	2. Our Built Infrastructure 2.1 Infrastructure and assets meet diverse community needs

### PURPOSE:

The purpose of this report is to provide a response to Council's Resolution of 30 January 2023, addressing the prospect of allowing small coffee carts in Council-controlled outdoor dining spaces.

### EXECUTIVE SUMMARY:

- Local businesses appreciate the opportunity to operate outdoor dining as it creates an expanded activation of the business with more consumers able to enjoy the atmosphere and experience, thereby attracting additional trade.
- Recent studies have demonstrated community satisfaction with alfresco/outdoor dining offerings across Sydney.
- At its meeting of 30 January 2023, Council resolved:

*THAT a short report be prepared on the prospect of allowing small coffee carts in Council controlled Outdoor Dining Spaces.*

- A review has been undertaken in response to the above resolution and has considered:
  1. the purpose and objectives of Council's current *Outdoor Dining and Goods on Footpath Policy*;
  2. the increased benefit to local businesses;
  3. infrastructure and services implications associated with food/beverage production facilities operating on public land;
  4. equitable access to public land – potential conflict between the business community
  5. equitable access to public land – potential conflict between businesses and residents
  6. industry norms in relation to the use of public land to support local businesses by way of footpath dining;
  7. licensing fees should business use of public land be intensified.

- There is no doubt that allowing businesses to produce food and/or beverages on public land would provide economic benefit to the business, however, in balancing the public interest and risks associated with infrastructure and service requirements, intensifying the use of outdoor dining areas is not recommended.
- A review of neighboring Councils shows support for outdoor dining only and not for operation of food/beverage production such as coffee cart operation on public land.

**RECOMMENDATION:**

- 1. THAT** Council does not approve the use of coffee carts or any other food/beverage production on footpath areas within the public domain.
- 2. THAT** Council update the Policy and Guidelines to make it explicit that food/beverage production is not permissible in Outdoor Dining areas.

## **Background - Council's existing Outdoor Dining & Goods on Footpath Policy**

The policy was prepared in accordance with Section 125 of the Roads Act 1993.

The purpose of the policy includes encouraging outdoor dining, providing opportunities for shop owners and residents to benefit from pedestrian circulation, and to set a high standard for public safety and avoid disruption to pedestrian movement.

The 'Objectives' of the Policy are:

- 1.2(a) The appropriate use of footpaths, plazas and public areas for outdoor dining and footpath trading activities;*
- (b) Outdoor dining areas and footpath trading activities must positively contribute to the streetscape character;*
- (c) Outdoor dining areas and footpath trading activities must be compatible with other community uses of the public space; and*
- (d) Outdoor dining and footpath trading areas must be safe and accessible for all users.*

The provisions of the policy allow:

- Outdoor dining which incorporates the serving of food and or drink in the public domain and any associated furniture such as seating, tables, barriers, planters, umbrellas, heaters and the like. Other trading activities includes outdoor display of goods.
- Items and temporary structures, including umbrellas, protective blinds or coverings, heaters, temporary or removable barriers, safety railings, planters, paving, display racks, tables and chairs associated with outdoor dining or outdoor display of goods.

The policy does not allow for the installation of coffee carts nor other intensive goods production equipment such as cooking facilities.

Council would therefore have to amend its policy to allow the production of food/goods on public land should it wish to allow coffee carts on footpath areas.

## **Report**

Local businesses appreciate the opportunity to operate outdoor dining as it creates an expanded activation of the business with more consumers able to enjoy the atmosphere and experience created by the business, thereby attracting additional trade. Recent studies have demonstrated the increased resident satisfaction with alfresco/outdoor dining offerings.

In considering the prospect of allowing small coffee carts on Council controlled outdoor dining spaces, consideration should be given to the following:

1. the purpose and objectives of Councils current Outdoor Dining and Goods on Footpath Policy;
2. the increased benefit to local businesses;

3. infrastructure and services implications associated with food/beverage production facilities operating on public land;
4. equitable access to public land – potential conflict between the business community
5. equitable access to public land – potential conflict between businesses and residents
6. industry norms in relation to the use of public land to support local businesses by way of footpath dining;
7. licensing fees should business use of public land be intensified.

### **The purpose and objectives of Council's current Policy**

As discussed in the background to this report, Council's current policy was not designed to allow for intensification of business use of public spaces such as the production of food/beverage/goods.

The purpose of the policy centres around passive use for the purposes of activation of public spaces, striking a balance of supporting businesses while providing amenity for residents.

Should Council wish to include food/beverage/goods production (an active use) as approved uses within its policy, this would be a shift away from the current purpose and objectives of the Policy.

Currently licencing and control for outdoor dining is limited to the placement of seating and related furniture items. Should food preparation be allowed, greater controls would need to be included in the policy to acknowledge the changed use including food safety standards and design requirements.

### **The increased benefit to local businesses**

There is a clear benefit to local businesses should Council extend the use of public land to food/beverage production. The opportunity to increase revenue is significant when compared to using the space for tables and chairs.

Council has received numerous requests over the years from businesses wishing to trade from public places, including village centres and parks. These requests have been refused.

While the subject of Council's resolution was small coffee carts, introducing a policy clause to allow food/beverage production on public land would create a precedent argument for business use of public land for a range of business opportunities. For cafes and restaurants, that may include cooking facilities, washing facilities, gelato bars, etc. These uses would also provide benefits to local businesses.

To date, there have been no approvals for food/beverage production within North Sydney outdoor dining areas. Council is presently only aware of one unauthorised use of outdoor dining for food/or beverage production. A recent compliance review has found other licensees operating within the bounds of outdoor dining only.

## **Infrastructure and services in relation to coffee carts**

To operate food beverage production equipment such as a commercial coffee cart, power, water, and other services are required.

Such infrastructure and services require oversight and management at both installation and operation phases, and present risks to the public domain.

These risks include:

- hazards associated with installation of electrical cables, pipework, trade waste underneath Council footpaths, conflict with existing underground services, safety risks, and operational risks such as a water pipe leak under the road reserve;
- connections needing to be assigned to a business owners' account, and requiring management as business tenancy changes;
- redundant services/utility infrastructure points within the road reserve as business tenancy changes; and
- any temporary or exposed electrical cables and pipework would creating trip hazards and reduced accessibility for pedestrians using the footpaths.

To ensure the safety of pedestrians and management of Council assets, a permit is required for all road/footpath openings. Councils across metropolitan Sydney have been challenged with utilities installations and short-term patches undertaken in the public domain to make safe installations while awaiting make good. This issue would be relevant to business installations of utilities under public footpaths.

In summary, the installation of infrastructure for services to support food/beverage production is not considered acceptable for what is a temporary licenced use of public land and under the current policy installation of utility services would not be provided a permit.

## **Equitable access to public land – potential conflict between the business community**

While enhancing the advantages for businesses authorised to operate food and beverage services on public property, it is expected that this benefit would generate tension within the business community.

The existing policy necessitates a connection between a neighbouring business and an outdoor dining area. If the Council contemplates using public spaces for local businesses, adjustments to the policy would need to be considered to recognise the diminished entitlements of an adjacent shopfront. It may be challenging to explain why certain businesses are allowed to produce goods on public land while others are not.

This is likely to result in an increase in the number of requests and strengthen the argument for business enterprises that occasionally seek permission to operate on public land.

Conflicts may arise if businesses without existing shopfronts apply for licenses to operate on public land, competing with businesses that have physical premises.

Moreover, conflict may arise if the Council introduces a policy benefit exclusively for businesses with neighbouring tenancies, as it would appear to be an unfair utilisation of public land.

### **Equitable access to public land – potential conflict between business and residents**

Preserving the integrity and accessibility of public land and footpaths is important for maintaining a vibrant, inclusive, and sustainable community. While recognising the importance of supporting local businesses, it is essential to strike a balance between commercial interests and the public's right to enjoy and utilise these spaces.

By carefully regulating and restricting business use of public land and footpaths, we can ensure the preservation of community spaces for the benefit and enjoyment of all. The utilisation of footpath areas for seating strikes the balance. Using footpath areas for food production reduces the space available for community enjoyment and may create conflict.

### **Industry norms**

Surrounding Councils, and some others in NSW, were contacted to ascertain their position on mobile coffee carts in outdoor dining areas. Information provided is as follows:

#### City of Sydney

The City of Sydney has a Mobile Food Vehicle Policy which does not include the use of Coffee Carts. Their Outdoor Dining Policy is silent in relation to coffee carts in Outdoor Dining Spaces; however, the Sydney Business & Safety Manager has confirmed verbally that they are not permitted.

#### Lane Cove Council

Lane Cove Council does not allow coffee carts on footpaths because they would obstruct safe pedestrian passage. Their Commercial Operations Manager has advised that they have allowed kiosks in parks to sell coffee under a licence agreement – but these are fixed building structures, not mobile coffee carts.

#### Mosman Council

The Property Officer at Mosman Council has advised that they do not allow coffee carts on footpaths in their LGA. Their Outdoor Dining Policy does not specifically mention coffee carts.

#### Camden Council

Camden Council's Property Services Co-Ordinator advised that there is a coffee cart in one of their new libraries, but commercial coffee carts are not allowed on footpaths.

### Willoughby Council

The Property Manager at Willoughby Council has advised that they do not have any coffee carts in Outdoor Dining areas. Operators would need to lodge a DA and require consent for a coffee cart proposal.

### Northern Beaches Councils

Northern Beaches Council does not permit the operation of coffee carts in Outdoor Dining Spaces.

In summary, none of the Councils listed above allow coffee carts to operate in their Outdoor Dining areas.

### **Licencing fees**

Licencing fees for outdoor dining are currently set at rates that reflect passive use of footpaths for the purpose of outdoor dining.

Should Council consider allowing food/beverage production on public land (an active use), appropriate market value licence fees should be set and applied as part of this change.

### **Options**

Council has the following options in relation to this matter:

1. Take no action, continue with current policy position
2. Allow business food/beverage operations within the public domain

These options are assessed in the table below.

<b>Option</b>	<b>Finance/Resourcing</b>	<b>Risk/Opportunity</b>	<b>Consultation</b>
1.	No implications	No change	No consultation required
2.	<ul style="list-style-type: none"><li>- Consideration must be given to costs associated with administering permits etc.</li><li>- Increased resources would be required in relation to compliance activities.</li><li>- All costs should be covered by increased levels of fees for operational use of public land.</li><li>- Outdoor Dining fees will apply as per</li></ul>	<ul style="list-style-type: none"><li>- Businesses would benefit from the opportunity to increase revenue, with income from operational activities considerably higher than passive outdoor dining.</li><li>- Reduced public amenity for the enjoyment of residents due to increased commercialisation.</li><li>- Council may set precedence in relation to commercialisation of</li></ul>	Consultation will be required in accordance with Council Engagement Policy.

Option	Finance/Resourcing	Risk/Opportunity	Consultation
	Financial / Resource Implications section of the Report.	public land and be subject to wide ranging requests. <ul style="list-style-type: none"> <li>- Public domain risks in relation to installation of services such as water and electricity under Council footpaths.</li> <li>- Risk associated with change in tenancy and permanent installations on public land.</li> <li>- Accessibility on footpaths may be affected if business use increases.</li> </ul>	

Option 1 is recommended.

#### **Consultation requirements**

Community engagement is not required as there is no recommended change to the Policy.

#### **Financial/Resource Implications**

There are no financial implications resulting from the recommendation of this report.

#### **Legislation**

Section 68 of Local Government Act 1993 and Section 125 of Roads Act 1993 are the relevant legislative provisions.