

## 10.7. Outdoor Dining and Goods on Footpath Policy

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<b>ENDORSED BY</b>	Luke Harvey, Director Corporate Services
<b>ATTACHMENTS</b>	1. Outdoor Dining and Goods Display on Footpath Policy 2024 [10.7.1 - 7 pages]
<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 advise Council of the outcomes of the public exhibition for the proposed amendments to the *Outdoor Dining and Display of Goods on the Footpath Policy* and its accompanying *Guidelines*, and to seek adoption of the policy.

### EXECUTIVE SUMMARY:

- Council endorsed the amended *Outdoor Dining and Display of Goods on the Footpath Policy* and *Guidelines* at its meeting of 11 March 2024 and the public exhibition of the policy.
- The public exhibition of the policy has now been undertaken. This report summarises the public exhibition statistics and submissions from the public and seeks formal adoption of the policy.

### RECOMMENDATION:

**1. THAT** the Council adopt the amended *Outdoor Dining and Display of Goods on the Footpath Policy* and *Guidelines*.

## Background

The *Outdoor Dining and Goods on Footpath Policy* was originally adopted by Council on 12 May 2008 and was last amended on 25 June 2018. An amended *Outdoor Dining and Display of Goods on the Footpath Policy* and its accompanying *Guidelines* were endorsed at the Council meeting of 11 March 2024, subject to the public exhibition of the policy and this further report to Council, summarising the results of the public exhibition.

## Report

### Report Statistics

The policy was put on public exhibition on 14 June 2024 to 18 July 2024. The statistics from the public exhibition are as follows:

- total visits to the policy – 152
- document downloads – 40

More detailed participation statistics included:

- engaged participants (participated in surveys) – 2
- informed participants (visited multiple pages) – 37
- aware participants (visited at least one page) - 127

### Responses from the public

There were two public submission comments, neither of which are directly related to the policy. They shall be addressed directly by the appropriate Council officer. The two comments are as follows:

1. “Recycling and Food Organics and Garden Organics (FOGO) bins at all sites where food and drinks are consumed, e.g. footpath eating areas, plaza, sort fields etc”.
2. “I would like to see more food trucks allowed in the council areas (Not coffee carts as such) but areas where food trucks can set up and attract locals for dining experience. If local restaurants and cafes do not want to have nearby (I believe a mistake as it will draw more people into restaurant areas) but utilise some of our wonderful parks say near tennis courts at Primrose Park, or Tunks Park after 6 PM, near Green Park etc”.

### Amendment to organisational Responsibility/Accountability

There is one amendment to Section 4. Provisions. Clause 4.7 has been amended to reflect that *prior to Council undertaking any works in the CBD areas, Council will work with business owners to assist them in determining the need for any adjustment of use throughout construction periods and therefore adjustment of permit fees. Use will be determined based upon whether tables and chairs are placed on footpaths and available for use by customers.*

There is one amendment to Section 5. Responsibility/Accountability. Clause 5.1 states that, *Council's Open Space and Infrastructure Division is responsible for the provision and management of permits for Outdoor Dining.*

5.1 will be amended to reflect the changed responsibilities resulting from the restructure. The clause will now state that, *Council's Customer and Communications Service Unit is responsible for the provision and management of permits for Outdoor Dining.*

### **Consultation requirements**

Community engagement has occurred in accordance with Council's *Community Engagement Protocol*. The detail of this report provides the outcomes from the engagement for Council to consider prior to adoption.

The public exhibition has been undertaken and no further consultation is required.

### **Financial/Resource Implications**

There are no financial or resource implications related to this report.

### **Legislation**

The following legislation was previously considered for Council's endorsement of the policy prior to public exhibition:

- Environmental Planning and Assessment Act 1979 and accompanying Regulations 2021;
- Local Government Act 1993 and accompanying Regulations 2021; and
- Roads Act 1993 and accompanying Regulations 2018.



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**Policy Owner:** Director Open Space and Infrastructure

**Category:** 2. Our Built Infrastructure

## 1. STATEMENT OF INTENT

1.1 The purpose of this Policy is to:

- a) encourage outdoor dining in the North Sydney local government area;
- b) facilitate the appropriate use of footpaths, plazas and public areas for the purposes of outdoor dining areas and other footpath trading activities in the North Sydney local government area;
- c) manage the extent of commercial activities on footpaths such that priority is given to maintaining safe pedestrian movement;
- d) emphasise the need for high quality design while allowing for flexibility in design and appearance to better relate to the individual character of different localities and development;
- e) facilitate improvement to the street activation, vitality, amenity and economic viability of North Sydney's commercial areas;
- f) provide opportunities for business owners whilst balancing the need to provide adequate and safe pedestrian circulation;
- g) set a high standard for public safety and avoid disruption to pedestrian movement; and
- h) maintain a high quality Public Domain within the North Sydney local government area.

1.2 The objectives of this Policy are to ensure:

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

## 2. ELIGIBILITY

2.1 This Policy applies anywhere in the North Sydney local government area where "business premises", "office premises", or "retail premises" as defined under North Sydney Local Environmental Plan (NSLEP) 2013 are operating with

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development consent or are permissible with development consent under NSLEP 2013.

- 2.2 The definition of “retail premises” under NSLEP 2013 incorporates, but is not limited to, the following land use terms:
- “Food and drink premises”; which includes:
    - “restaurant or café”
    - “takeaway food premises”
    - “pub”
    - “small bar”
  - “neighbourhood shops”
  - “shops”

### 3. DEFINITIONS

- 3.1 **Footpaths and Public Places** - means any area such as a footpath, plaza, park or other space owned, operated or managed by Council and used for pedestrian movement or recreation by the community. It does not include carriageways or other thoroughfares intended predominantly for vehicular traffic or privately owned arcades or plazas.
- 3.2 **Outdoor Dining Area** - means an external area associated with a “food or drink premises” as defined under NSLEP 2013, which is located directly in front of the premises and on Council owned land where food is served.
- 3.3 **Outdoor Goods Display Area** – means an external area associated with a “business premises”, “office premises” or “retail premises” as defined under NSLEP 2013, which is located directly in front of the premises and on Council owned land where goods associated with the business is displayed.
- 3.4 **Permit Area** - means the site of the footpath/plaza/public area for which a permit and/or development consent for commercial activity has been granted.

### 4. PROVISIONS

- 4.1 This Policy controls the following activities:
- 4.1.1 Outdoor dining areas associated with an existing or approved “food or drink premises” (or a development application lodged concurrently for a “food and drink premises”, where such land uses are permissible with development consent) located on land owned by the Council or comprises a “road” to which the *Roads Act 1993* applies, or other land under the care control and management of the Council where an existing Plan of Management allows the proposed use.
- 4.1.2 Outdoor dining incorporates the serving of food and/or drink in the

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public domain and any associated furniture such as seating, tables, barriers, planters, umbrellas, heaters and the like. It does not include the preparation of food and or drink in the public domain.

- 4.1.3 Outdoor display of goods, on land comprising a “road” to which the *Roads Act 1993* applies.
- 4.1.4 Items and temporary structures, including umbrellas, protective blinds or coverings, heaters (fixed and portable), temporary or removable barriers (screens), safety railings, planters, paving, display racks, tables and chairs associated with either of the activities within clauses 4.1.1, 4.1.2 and 4.1.3 above.
- 4.1.5 Equipment and structures used for the preparation of food and/or beverages within the public domain are not permitted (e.g. food carts, coffee carts, hotdog carts and the like).
- 4.1.6 Use of “A-frame” or “sandwich boards” for advertising of commercial premises on public land is not permitted. An exemption to this requirement may be permitted, but only in relation to the advertising of a temporary event.
- 4.1.7 Other outdoor dining or goods display areas located on any land contiguous with a road or footpath such as within an adjacent colonnade, building undercroft or plaza area that relates to a public road or to other public space, whether or not a permit under the *Roads Act 1993* is required but where development consent may also be required.
- 4.1.8 Outdoor dining areas for licensed premises under the *Liquor Act 2007*. Where it is intended to serve alcohol, a license may also be required to be issued by the relevant authority under the *Liquor Act 2007*.
- 4.2 Application process - Council will use the associated Guidelines forming Appendix A to this Policy to assess all applications for the commercial use of footpath, plazas or public areas. Before applying, applicants must read the conditions within the Permit Application Form for an Outdoor Dining or Goods Display Area in a Public Place.

In determining whether to approve a Permit Application, the decision of Council is final. In some circumstances Council may grant a trial period for up to 12 months to help determine a location’s suitability for an outdoor dining or goods display permit. Following the trial period, Council may vary the design, operations and/or conditions of an approved permit on renewal (or revoke the permit if it is deemed by Council to be an unsuitable site).

- 4.3 Exempt development - where requests for outdoor dining or goods display are partly or fully on private land, then development consent is required
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unless the proposed use satisfies all of the requirements for “exempt development” under NSLEP 2013 or *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

- 4.4 Outdoor dining or goods display areas may not be appropriate in civic or ceremonial spaces. They will not be approved in potentially hazardous places such as the corners of street intersections or unprotected elevated locations. In elevated locations, eg. a change of level and at the edge of deep water, an outdoor dining permit is only appropriate in conjunction with a suitable safety rail, the design of which shall be subject to Council’s approval.
- 4.5 In assessing applications, the most important considerations are pedestrian and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity. The ground surface must be suitably constructed and sufficiently level to support a proper layout and safe use of the required furniture and associated circulation areas. To achieve this only minor structures or changes in the footpath will be permitted.
- 4.6 All applications for outdoor dining or goods display areas must show all the existing features and permanent elements of the streetscape and landscape such as planter boxes pavilions, trees, pedestrian lights, bollards etc. Whenever possible, an outdoor dining area should visually relate and compliment the surrounding public domain.
- 4.7 Prior to Council undertaking any works in the CBD areas, Council will work with business owners to assist them in determining the need for any adjustment of use throughout construction periods and therefore adjustment of permit fees. Use will be determined based upon whether tables and chairs are placed on footpaths and available for use by customers

**5. RESPONSIBILITY/ACCOUNTABILITY**

- 5.1 Council’s Open Space & Infrastructure Division is responsible for the provision and management of Permits for Outdoor Dining or Goods Display Areas in a Public Place, including the processing of applications.
- 5.2 Where applicable, Council’s Development Services Department is responsible for issuing a development consent for the use of outdoor dining and display of goods areas.
- 5.3 Council’s Ranger & Parking Services Department is responsible for enforcement of permits and development consents.

**6. RELATED POLICIES/DOCUMENTS/LEGISLATION**

This Policy should be read in conjunction with the following policies and documents

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(as amended from time to time):

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- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008;
  - North Sydney Local Environment Plan 2013;
  - North Sydney Development Control Plan 2013;
  - North Sydney Compliance and Enforcement Policy.

The Policy should be read in conjunction with the following documents/legislation:

- Roads Act, 1993;
- Environmental Planning and Assessment Act, 1979;
- Liquor Act, 2007;
- Local Government Act, 1993; and
- Building Code of Australia;

Version	Date Approved	Approved by	Resolution No.	Review Date
1	12 May 2008	Council	282	2008/09
2	16 February 2009	Council	61	2012/13
3	18 February 2013	Council	61	2016/17
4	25 June 2018	Council	214	2020/21
5	... 2023	Council	...	2024/2025

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**APPENDIX A**

**Outdoor Dining and Goods on Footpath Policy Guidelines**

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