



Footway Dining Guidelines

Adoption Date:	9 December 2019
Review Date:	9 December 2021
Version:	1
Division/Department:	Technical Services/Property & Projects
Responsible Officer:	Manager – Property & Projects
HPE CM Record Number:	19/208284

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1 Introduction

Woollahra Council supports and encourages footway dining as a means of creating a vibrant community and creating opportunities for businesses to grow and prosper. Council aims to create a flourishing and enjoyable footway dining experience for business operators, patrons, residents and visitors alike.

Council promotes and encourages footway dining, allowing food and drink premises such as restaurants, cafés, take away food venues, small bars and pubs to use part of the footway space outside their premises. Council also has a focus on maintaining the safety, accessibility, convenience and appearance of its footways and has a commitment to balancing the needs of all users.

Council's Footway Dining Policy and these Footway Dining Guidelines (Guidelines) apply to the business use of footways for Restaurant purposes on all of the footways including Council and RMS roads in the Woollahra Council Local Government Area (LGA).

2 Objectives

Footway dining is supplementary to the Restaurant's internal trade and seating. The Footway Dining Policy sets out Council's broad policy in relation to footpath dining including its approach to service of alcohol on footpaths and maximum trading hours.

To support and implement the Policy, these Footway Dining Guidelines establish the detailed requirements including those that address pedestrian accessibility, safety, amenity and trading hours. The Guidelines must be read in conjunction with the Policy.

These Guidelines have also been developed to assist businesses to make an Application for an Approval and help streamline the application process by providing applicants with the necessary information before an application is made.

Council is committed to activation of the business centres in the municipality and supports the individual expression of each business to help develop a sense of place. Each application will be considered with reference to its context, taking into consideration the suburb and street the business is located in, vehicle traffic, pedestrian flow and other relevant factors.

Approvals are issued with consideration given to balancing the needs of residents, businesses and all footway users.

3 How to Use these Guidelines

Before making an application, applicants must read Council's Footway Dining Policy and these Guidelines. These Guidelines:

- provide rules for applicants seeking to use the footway for Restaurant purposes
- provide guidance for Council in determining applications for use of the footway
- form part of the Approval if granted by Council.

4 Definitions

Term	Meaning
Approved Area	The approved footway dining area that the Business Operator's Tables, Chairs and equipment must be placed in, as shown in the Plan included in the Approval Notice and where possible as indicated by the placement of metal studs by Council on the perimeter of the Approved Area.
Approval Notice	A notice issued by Council granting an Approval to a Business Operator for the Approved Area.
Business Operator	A business/person applying for or in receipt of an Approval.
Classified Roads	Major arterial roads controlled by the Roads and Maritime Services (RMS) on behalf of the State Government of NSW. A schedule of all classified roads is available on the RMS website.
DCP	Means the Woollahra Development Control Plan 2015
Development Application	As defined in the EP&A Act means an application for consent under Part 4 to carry out development but does not include an application for a complying development certificate.
Development Consent	As defined in the EP&A Act means consent under Part 4 to carry out development and includes, unless expressly excluded, a complying development certificate.
Footway	Means that part of a road as is set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic).
Footway Dining	The use of the public footway by a Business Operator for the purpose of extending the seating space of a Restaurant in which food is regularly supplied on sale to the public for consumption on the premises
Footway Dining Approval (Approval)	A footway dining approval under section 125 of the <i>Roads Act 1993</i> , granted by Council in accordance with the Council's Footway Dining Policy and these Guidelines.
Premises	A property with an appropriate Development Consent to operate as a Restaurant, that is adjacent to the road where the Approval will be located.
Restaurant	Premises in which food is regularly supplied on sale to the public for consumption on the Premises, as defined under the <i>Roads Act 1993</i> , and for the purposes of this Policy and Guidelines includes food and drinks premises such as, a café, take away food and drink premises, pub and small bar.
Public Road	Means: <ul style="list-style-type: none"> (a) any road that is opened or dedicated as a public road, whether under the roads Act or any other Act or law, and (b) any road that is declared to be a public road for the purposes of the Roads Act.

5 Footway Dining Approval

The Business Operator of a Restaurant wishing to occupy the footway adjacent to the Premises must apply to Council for an Approval under the *Roads Act 1993*.

Before an application is made for an Approval the Business Operator must ensure that the operation of the Premises has an appropriate Development Consent.

5.1 Development Exemptions and Requirements

The use of a footway for outdoor dining associated with a lawful food and drink premises is exempt development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* if the use is not associated with a pub or a small bar.

Exempt development does not require planning approval. However:

- the adjoining Restaurant must have a current Development Approval from Council to operate as a Restaurant, and
- a Business Operator cannot rely on existing use rights under the current Development Approval to operate footway dining.

The use of the footway associated with a pub or a small bar requires development consent under the EP&A Act.

5.2 Roads Act 1993 (NSW)

An Approval is issued by Council under section 125 of the Roads Act.

An Approval allows a person who conducts a Restaurant adjacent to the footway of a public road:

- to use part of the footway for the purposes of a Restaurant
- on conditions (including conditions as to payments in the nature of rent) as determined by Council
- for a term not exceeding seven (7) years.

5.3 Footway trading hours

1. The trading hours for each Approval will be determined by Council in its absolute discretion at the time of assessing each application, but will be no greater than the maximum trading hours' shown below.
2. Maximum trading hours:
 - Cafes, unlicensed, licensed restaurants, pubs and small bars;
7am to 10pm Sunday to Thursday
7am to 11pm on Friday and Saturday

5.4 Liquor Licences

A pub or small bar must have a Development Consent (DC), and will also require an Approval to use the footway for dining purposes. The Approval may be subject to different conditions than those specified in the DC.

Restaurants that do not have a liquor licence may not make an application for the issue of a liquor licence for an Approved Area without prior written consent of Council in its capacity as land owner.

Restaurants wishing to sell liquor must have an appropriate liquor licence which includes the Approved Area and must comply with the terms of their liquor licence and the Liquor Act 2007 (NSW).

The service of alcohol in the Approved Area is restricted to seated patrons.

Failure to comply with the liquor licence or Liquor Act may result in termination of an Approval.

5.5 Compliance with Footway Dining Approval

Council will issue an Approval in the form of an Approval Notice. Business Operators must display the Approval Notice in a prominent position on their Premises, and make it available to any authorised Council officer on request. In addition to their other statutory powers, Authorised Council officers may order the removal of any items on the footway that are not:

- part of the Approval;
- in the Approved Area; or
- otherwise permitted under another approval or policy of Council.

5.6 Revoking, suspending, or amending a Footway Dining Approval

As footway dining is an activity occurring on a public road, Council may as a Roads Authority revoke, suspend or amend an Approval at any time and for any reason.

Specific circumstances where Council may revoke, suspend or amend an Approval include but are not limited to:

- the conditions of the Approval are breached (including the non-payment of rent);
- the conditions of a liquor licence or the Liquor Act are breached;
- the use of the footway for the purposes of the Approval is causing public safety and or public access to be compromised;
- the use of the footway is causing disturbance to the amenity of the neighbourhood;
- the Approved Area is needed for public works;
- the Approved Area is needed for a special event; or
- the Approved Area is needed to manage an increase in pedestrian or vehicle traffic.

Repeated and/or continuous failure to comply with an existing Approval and/or the reasonable directions of Council officers may result in the termination of an Approval, and will be considered where any subsequent applications are made by the offending party and or their associated companies or businesses.

5.7 An Approval can't be sold, reassigned or transferred

The Approval applies to the Business Operator that applied for and received the Approval.

The Approval cannot be sold, reassigned or transferred.

If the business is sold or leased to another person or entity the new owner/tenant will need to make an application for a new Approval.

6 Public Amenity and Responsibilities

This section of the Guidelines sets out the requirements for footway dining so that the activity contributes to public amenity and a well-managed vibrant environment.

6.1 Cultivate a positive relationship between the private and public realms

1. No footway dining is permitted to occur other than as approved by Council.
2. Footway dining is intended to be outdoors, and should look and feel as such. Environmental and weather conditions should be accommodated without the addition of excessive infrastructure that encloses the space.
3. Patrons must be seated in the Approved Area as identified in the Approval.

6.2 Footway Dining Area to be cleared of all items outside of trading hours

Due to the public and open environment of a footway, Council needs to ensure that footway dining does not unreasonably obstruct the other uses of the footway by residents, surrounding businesses and visitors:

1. An Approved Area must be cleared of all items belonging to the Business Operator outside of approved trading hours.
2. Where tables and chairs cannot be removed from the Approved Area at the close of Trading Hours for the Approved Area due to the ongoing operation in the adjoining Premises, the tables and chairs must be stacked against the wall of the Premises in the Approved Area until the close of trade of the Premises when the tables and chairs must be removed from the Approved Area.

6.3 Smoking including e-cigarettes is prohibited

1. Smoking, including e-cigarettes is prohibited in the Approved Area and within 4 metres of entry doors.
2. The Business Operator must ensure that smoking is not permitted by any person, at any time, in and around the Approved Area and shall display signage to this effect.

6.4 Music

Entertainment and amplified music are not permitted in the Approved Area.

6.5 Lighting

Lighting must comply with relevant Australian Standards, and be:

- safe
- non-invasive to adjoining businesses and or residences, and
- located in the Approved Area.

6.6 Structures

1. Approvals are granted as a weather dependent activity and do not include a 365 day guarantee. In most instances structures will not be approved. Structures will not be approved on Classified Roads.
2. Under section 126 of the Roads Act, a Council may authorise the holder of an Approval to erect and maintain structures on or over the Approved Area.
3. When considering an application under section 126 for the installation of structures, Council will:
 - take into account whether the structure is consistent with and enhances the footway area
 - ensure that structures will only be approved where they can be installed without disruption to pedestrian circulation or access to any public works or services
 - require an application under section 126 to include detailed drawings of the proposed structure
 - ensure structures can be removed and the footway re-instated when the structures are no longer in use.
4. All costs and risk associated with the approval, erection, maintenance and removal of the structure are to be paid and or borne by the Business Operator of an Approved Area.

6.7 Maintenance and cleaning

Business Operators using an Approved Area must maintain the area by regular cleaning throughout the day and at the close of trade each day.

1. Waste and litter must be removed promptly from the Approved Area and disposed of properly.
2. Public bins are not to be used for the disposal of waste by the Business Operator.
3. Business Operators must not use disposable tableware in the Approved Area.
4. Approved Areas should be dry swept and solid waste disposed of appropriately.
5. Washing down of the Approved Area must only be done in compliance with Sydney Water rules and regulations. Wet cleaning should be done with a mop/cloth and bucket of water and waste water must be disposed of responsibly.
6. Commercial contractors can be engaged by the Business Operator to steam clean paved surfaces.

7 Plan of Footway Dining Area

In considering the suitability of a footway for Restaurant purposes, the applicant needs to consider the width of the footway and clearances for pedestrian activity. In particular, the applicant will need to demonstrate that the new activity can be undertaken while:

- maintaining the pedestrian thoroughfare as the primary purpose of the footway, and
- maintaining a consistent and predictable clear path of travel for all users taking into account any trees, signs and light poles and other existing or potential obstructions.

A plan must be submitted with a footway dining application and the plan must comply with these Guidelines.

The plan should relate to the footway area directly adjacent to the premises. If the application proposes to include any part of the footway adjacent to a neighbouring property the Applicant will need the written consent of the adjoining business operator consenting to the use by the applicant of the footway in front of the adjoining business.

An approved plan will need to be displayed at the Premises adjoining the Approved Area.

7.1 What the plan must show

A plan for an Approved Area must be drawn to scale with clear dimensions and must clearly show:

- accurate and to scale measurements of the total requested Approved Area
- the width of the footway where the proposed footway dining area is to be located
- the location of the proposed footway dining area showing clearly neighbouring businesses and existing fixed poles or structures in the area (if any)
- the location of all doorways and service openings
- the layout of the proposed area, showing seating, tables and any other equipment
- the location of transport stops, taxi ranks, parking areas, loading zones, pedestrian crossings and street intersections (if any)
- the pedestrian thoroughfare along the footway
- the minimum widths and distances consistent with 7.2 below.

7.2 Minimum clearance widths and distances

Pedestrians should not be forced on to the road carriageway by the proposed footway dining area.

AUSTROADS sets out an absolute minimum clear width of 1.2 metres for people who use a wheelchair to manoeuvre around obstructions, and 1.8 metres desirable minimum clear width, which allows two wheelchairs to comfortably pass. For high pedestrian activity areas, such as footways fronting bus stops, train stations and shopping centres, additional widths may be required, allowing for up to 2.4 metre clearance.

1. The minimum width to be available for pedestrian traffic on the footway is to be:
 - 1.8 metres where the pavement is over 3.6 metres wide
 - 1.5 metres where the pavement is narrower than 3.6 metres and or the pedestrian traffic is light, and it can be shown that pedestrian safety will not be compromised
 - 1.2 metres in any other circumstance, at the absolute discretion of Council.
2. The minimum width must be maintained around existing fixed items in the footway and result in clear pedestrian paths (see examples in the Sample plans in section 7.4).
3. If locating the Approved Area towards the kerbside of the footway, the following minimum distances must be maintained from the kerb:
 - 0.6 metre when normal parking conditions, or next to traffic moving at 20km/hour or less
 - 0.9 metre when next to a loading zone
 - 1.5 metre when next to an accessible parking spot, and
 - 2 metres or as required when next to an RMS road or traffic moving at 20km/hour or more.
4. The footway dining shall not obstruct motorists' line of sight to traffic control signals, signage, driveways and other critical road infrastructure.
5. The footway dining area and associated barriers must not restrict motorists' line of sight to pedestrians, and vice-versa, accessing pedestrian crossings.

7.3 Roads and Maritime Services (RMS) and Transport for NSW (TfNSW) additional requirements on Classified Roads

1. All footway dining improvements are not to be fixed structures and are to be stored away at the close of trade.
2. Approval may be revoked or suspended at any time during the approval period if RMS, TfNSW, or their contractors:
 - a) undertake or propose to undertake works in the approved footway area; or
 - b) undertake or propose to undertake works or an event that otherwise impacts access to adjoining footways, roadways, transport infrastructure, parks or public places.
3. Footway dining must not cover or impede access to public utilities and drainage pits. Access is to be made available at any time and at no cost to RMS and/or TfNSW if required.
4. All costs associated with the footway dining, including removal, are to be at no cost to RMS and/or TfNSW.

Public liability insurance

5. In addition to the requirement to include Council as an interested party an applicant's Public Liability insurance they must also note the interests of RMS.
6. The Public Liability insurance must be held for the full duration that the footway dining permit is issued or that the Business Operator's approved furniture and other items occupy the footway.

Minimum clearance widths and distances

Pedestrian clear width requirements:

7. RMS requires that footway dining occupying a footway of a Classified Road maintain clearance for pedestrians in accordance with AUSTRROADS Guide to Road Design Part 6A: Paths for Walking and Cycling (Section 5 Design Criteria) with additional allowance made for transverse movements by customers and staff. The clearance widths must take into consideration any existing or proposed landscaping, vegetation or proposed street furniture, which may impact on the clearance.

Kerbside clear zone:

8. For footway dining adjoining classified roads, RMS requires footway dining to be set back from trafficable lanes to comply with minimum kerbside clear zones to protect diners from an errant vehicle and provide a more forgiving roadside environment.

In this regard, AUSTRROADS Guide to Road Design – Part 6: Roadside Design, Safety and Barriers specifies that:

- (a) the minimum clear zone for a low speed (60km/hr or less) urban road ranges from 3 metres to 5.5 metres depending on the average daily traffic and other geometric factors
 - (b) If this clear zone is not possible due to site constraints, then an absolute minimum clear zone of 2.5 metres for a low speed (60km/hr or less) urban road.
9. If all-day parking is permitted in the kerbside lane of the road directly in front of the proposed footway dining, the kerbside parking lane can be included as part of the minimum clear zone. In this case, the table and chairs are to be setback a minimum of one metre from the face of kerb to allow car doors to open.

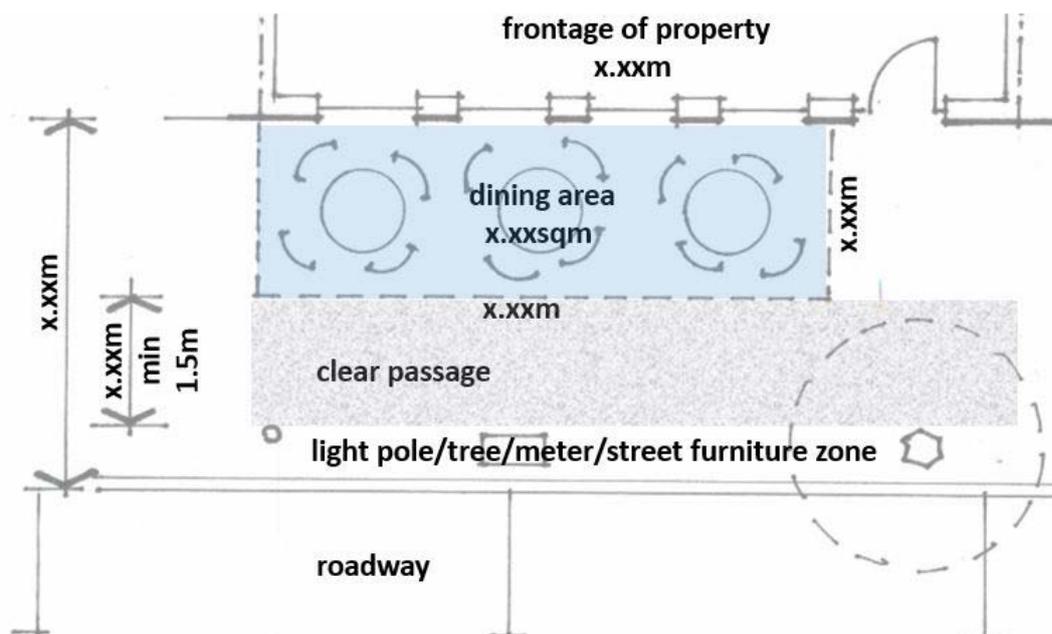
Sight lines:

10. The footway dining shall not obstruct motorists' line of sight to traffic control signals, signage, driveways and other critical road infrastructure.
11. The footway dining area and associated barriers must not restrict motorists' line of sight to pedestrians, and vice-versa, accessing pedestrian crossings.

7.4 Sample plans

Diagram 1

Example of detail and quality of the plan to be submitted with an application for a Footway Dining Approval.



- 1 Maintain a clear pedestrian pathway adjacent to the Approved Area.
- 2 The Approved Area may be limited by existing trees, poles or structures.
- 3 Ensure that you allow enough room for patrons and staff to move in the Approved Area so that your patrons, staff and tables and chairs remain entirely in the Approved Area.

Diagram 2

Footway Dining Area on a Pedestrian Street, 1.8 metre wide path. Seating abutting the wall of the Premises.

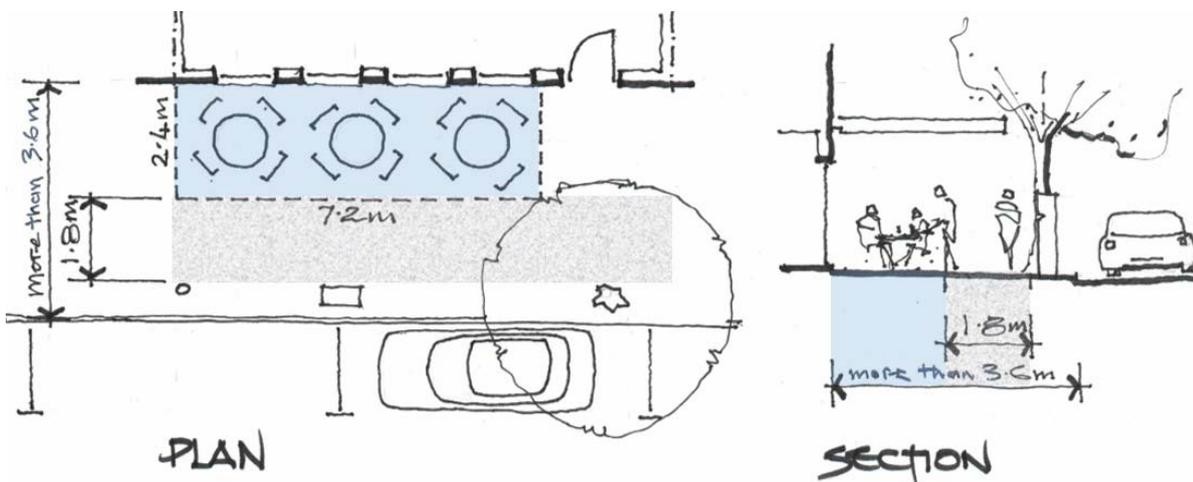
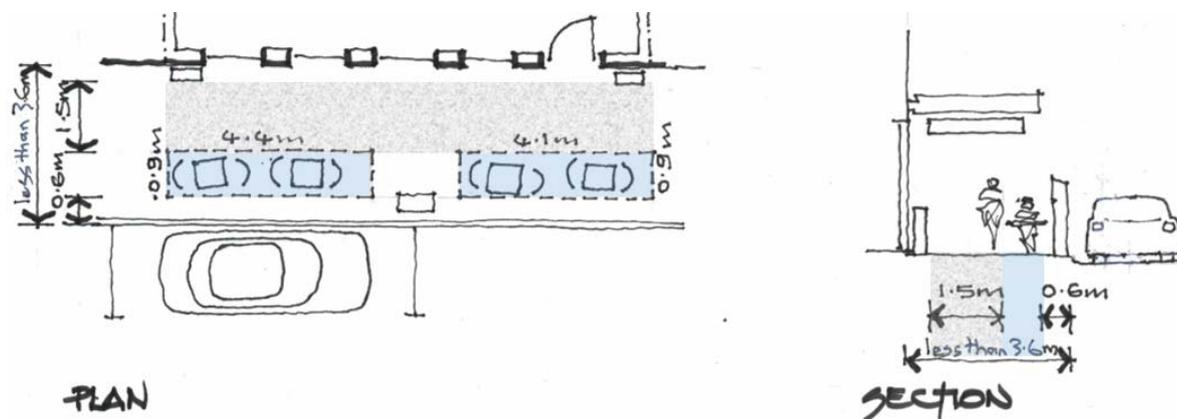


Diagram 3

Footway Dining Area on a Pedestrian Street - dining (adjacent to Kerb).



Note: This is a narrower footway (1.5 m wide), this plan can also apply to a 1.8m wide footway space.

8 Furniture and accessories

8.1 Outdoor furniture

Well selected outdoor furniture provides more than just comfortable seating for patrons, it helps inform diners of the style of dining on offer, allows establishments to differentiate themselves and contributes positively to the interesting streetscape. Council encourages the use of diverse, high quality, removable outdoor furniture in styles that enhance the identity of the business and the quality of the streetscape

Footway dining furniture must:

- be located and kept in the Approved Area when in use
- be loose furniture that is removed from the footway out of trading hours
- not include extraneous windbreaks, A frames, and unnecessary items
- be safe for patrons and pedestrians by avoiding sharp edges, hinges and moving parts
- be accessible for all users
- be strong, durable, weather resistant and designed for outdoor use
- not cause damage to the footway
- have rubber and or noise reducing bases on tables and chairs
- reflect the character of the business, the building and the surrounding area
- have an open appearance, and not be cluttered.

8.2 Barriers

- Barriers should only be used to separate an Approved Area from traffic and or parked cars or otherwise on the side of an Approved Area to separate it from the adjoining businesses and must not be a rope or chain.
- Barriers must be used where required by the Approval.
- Council may install studs in the footway marking the borders of the Approved Area.

8.3 Umbrellas

- Umbrellas must have a minimum height clearance of 2 metres from the ground, should be of a fabric or matte-finish with a safe, simple, solid and compact base that does not cause a trip hazard.
- Umbrella stands must be placed in the Approved Area and overhang beyond the Approved Area must not extend on to the roadway.
- If more than one umbrella is used, they must be the same type and not connected in any way.
- Side panels coming down from the umbrellas will not be permitted. Umbrellas must be closed and removed from the footway during periods of strong wind.

8.4 Outdoor Heaters

Outdoor heaters must:

- only be located in the Approved Area
- comply with relevant Australian Standards
- turn off automatically if and when they fall over
- only be turned on when the Approved Area is being used by customers
- be turned off and safely stored inside the Premises when not being used.

8.5 Signage and Branding

Signage and branding must be limited to the business name/logo of the Restaurant and/or one product type sold by the Business Operator, excluding liquor or tobacco.

9 How to Make an Application

The Applicant must provide the following:

- 1 A completed application form – the application form can be found on Council’s website at: <https://www.woollahra.nsw.gov.au/>
- 2 Payment for the application fee.
- 3 Proof of Development Consent to conduct a Restaurant on the Premises.
- 4 Evidence that the applicant is the Business Operator of the adjoining Premises, such as a copy of a lease, business registration and or other evidence requested by Council upon receipt of application.
- 5 If applying under a company name, a copy of an ASIC report showing the name of the company, the ACN, ABN and company directors names.
- 6 Food Premises Registration number.
- 7 If proposing to serve liquor in the Approved Area, evidence of the following must be submitted:
 - Development Consent approving the use of the footway; and
 - Copy of liquor licence.
- 8 Requested trading hours for the proposed footway dining area, which will be subject to the maximums as outlined in the Footway Dining Policy, these Guidelines and the DCP where applicable.
- 9 A plan of the proposed footway dining area and surrounds consistent with the requirements in section 7 of these Guidelines.
- 10 Colour photos of the proposed site from different angles, including showing the condition of the footway and if the land is sloping.
- 11 Details and images of any items (e.g. seats, tables and umbrellas) proposed to be used in the footway dining area.
- 12 If seeking to use the footway in front of an adjoining business, the written consent of the adjoining business owner allowing the Applicant to use the footway.

NOTE: After Council has received the application and prior to the issuing of an Approval, the Business Operator will also be required to provide the following:

- Public liability Insurance for a minimum value of \$20,000,000.00 for any single incident (or other amount as required by Council from time to time) noting the interests of the Council. A certificate of currency must be provided to Council before the Business Operator can use and footway, and annually thereafter; and
- A security deposit equivalent to 3 months of the commencing rent for the Approved Area. The security deposit may be used by Council as payment of any outstanding rent at the termination of the Approval or to repair damage caused by the Business Operator to the road or Council property and or the removal of any items fixed or otherwise left by the Business Operator.

10 Fees

The Approval is subject to the following fees:

- application fee as amended from time to time in Council's Fees and Charges
- fee payments in the form of rent as amended from time to time in Council's Fees and Charges.

Note: **GST is not applicable** to either the application fee or the fee in the form of rent.

11 Relevant Legislation

Crown Land Management Act 2016

Disability Discrimination Act 1992 (Clth)

Disability Inclusion Act 2014

Environmental Planning and Assessment Act 1979

Liquor Act 2007

Local Government Act 1993

Roads Act 1993

State Environmental Planning Policy (Exempt and Complying Codes) 2008

12 Documentation/References

City of Sydney – Outdoor Dining Guidelines

City of Adelaide – Outdoor Dining Guidelines 2018

NSW Government Interim Outdoor Dining User Guide 2017-18

Outdoor Eating Areas Sutherland Shire Environmental Specification 2007

Wollongong City Council – Guideline for Outdoor Restaurants on Public Roads

13 Related Policies and Procedures

	HPECM Reference
Footway Dining Policy	19/157728
Double Bay Centre Public Domain Strategy	19/63340
Night Time Economy Policy	19/161681

These Guidelines have been prepared to implement the policy objectives of Council's Footway Dining Approval Policy and Night Time Economy Policy.

Policy Amendments

Date	Responsible Officer	Description
18/12/2019	Senior Property Officer	Amended trading hours – Clause 5.3 as per Council resolution.
18/12/2019	Senior Property Officer	Amended service of liquor – Clause 5.4, as per Council resolution.
18/12/2019	Senior Property Officer	Amended definitions – “Approval” removed as duplication see “Footway Dining Approval” in definition.