



Footway Dining Policy

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1 Policy Statement

Council supports and encourages footway dining as a means of creating a vibrant community and creating opportunities for businesses to grow and prosper. Footway dining has been a feature in the Woollahra Council Local Government Area (LGA) for over 40 years and enhances the enjoyment of the area for residents and visitors alike.

Woollahra Council is a Roads Authority under the *Roads Act 1993* (NSW) and is the owner of the majority of roads in its LGA. Council is authorised to issue approvals for outdoor dining under section 125 of the Roads Act, and is responsible for the regulation and control of footway dining including but not limited to:

- maintaining the public amenity and access on footways
- determining suitable trading hours; and
- the requirements affecting the service of liquor in a footway dining area.

The approvals granted by Council for these purposes are referred to in this policy as Footway Dining Approvals (Approval). Council has adopted this Footway Dining Policy and supporting Footway Dining Guidelines (Guidelines) as a clear and transparent control framework for assessing and approving footway dining applications across the Woollahra LGA.

2 Application

This Policy applies to the business use of footways for Restaurant purposes in the Woollahra LGA including Council roads and Classified Roads.

3 Objectives

Council aims to create a flourishing and enjoyable footway dining experience for, residents, visitors to the area and business operators. Council will:

- encourage and support well-managed businesses contributing to the character of footways and commercial precincts in the Woollahra LGA
- maintain the pedestrian thoroughfare as the primary purpose of the footway
- ensure the area is used for Restaurant purposes including allowing for the service of alcohol on the footway without the service of a meal where the premises has the appropriate liquor licence and the service of alcohol is restricted to seated patrons
- manage neighbourhood amenity through minimising additional noise, visual and other impacts
- establish consistent trading hours for footway dining
- consider the appropriateness of applications against this Policy and Footway Dining Guidelines
- charge a fee for use of the footway as set out in Council's Fees and Charges.
- monitor and enforce compliance with Approvals
- revoke Approvals where there are continuing unresolved breaches of the Approval

4 Definitions

Term	Meaning
Approval Notice	A notice issued by Council granting a Footway Dining Approval to a Business Operator.
Approved Area	The approved footway dining area that the Business Operator's tables, chairs and equipment must be placed on, 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.
Business Operator	A business/person applying for or in receipt of a Footway Dining 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 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 Approved Area 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 Legal requirements

5.1 Roads Act 1993 (NSW)

1. An Approval may be issued by Council under section 125 of the Roads Act:

“(1) A council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road (being a public road that is vested in fee simple in the council) to use part of the footway for the purposes of the restaurant.”

2. The maximum term permitted for an Approval is seven (7) years.

Structures

3. 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 area the subject of the Approval. Detailed drawings of the proposed structures must be submitted with the application.

Classified Roads

4. Classified Roads are listed major arterial roads controlled by the Roads and Maritime Services (RMS) on behalf of the State Government of NSW. The RMS has delegated its power to issue Approvals on Classified Roads to Council.

When considering an application on these roads, Council will apply the rules and guidelines provided by the RMS to these applications. The RMS rules and guidelines are included in the Footway Dining Guidelines.

Other requirements

5. The Approval will be subject to this Policy, Council’s Guidelines and may be granted by the Council on such conditions as determined by the Council.

5.2 Development Consent under the EP&A Act

1. 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 (Codes SEPP)* if the Restaurant adjoining the footway is:

- not associated with a pub or a small bar; and
- is carried out in accordance with an Approval granted under section 125 of the Roads Act

2. An applicant can't rely on existing use rights and must have a current Development Consent for the adjoining Premises to operate as a food and drink premises.
3. If the Premises is a pub or small bar, a Development Application will need to be lodged and a Development Consent issued for the use of the footway before an application is made under section 125 of the Roads Act NSW.

6 General Considerations

Council will give consideration to how the proposed Approval will impact on or benefit the amenity of the surrounding area. Council will have consideration of matters raised in this Policy and the Guidelines, and whether the proposed new footway dining area will:

- ensure that a consistent and predictable clear path of travel for all users is maintained on the footway
- ensure that trees, signs, light poles and other existing or proposed obstructions are taken into account in calculating the unobstructed pedestrian route
- ensure that the footway dining area is attractive when viewed in conjunction with the streetscape and provides an attractive and safe surrounding in which people may enjoy food and refreshments
- contributes positively to the social activity of the business centre or area
- not conflict with existing businesses.

7 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 in this Policy and the Footway Dining Guidelines.

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

8 Liquor Licences

Restaurants wishing to sell liquor must have an appropriate liquor licence which extends to the Approved Area and must comply with the terms of the liquor licence and the *Liquor Act 2007*.

Restaurants that do not have a liquor licence may not make an application for the issue of an On Licence/Restaurant Permit (under the Liquor Act) for an approved footway dining area without prior written consent of Council.

8.1 Service of alcohol on the footway

The type of licence issued under the Liquor Act will determine requirements in relation to service of alcohol and food. For example:

- For a restaurant with an on-premises license, under the conditions of that liquor licence, liquor may only be sold or supplied for consumption with, or ancillary to, another product or service that is sold, supplied or provided unless the business also has a primary service authorisation (PSA).
- A PSA allows the sale and supply of liquor to customers without meals. When a PSA is in place, a restaurant must still continue to meet the primary purpose test and operate as a restaurant at all times of day or night, where serving meals is always the main business focus.
- For a small bar licence or a hotel licence, under the conditions of that licence food must be made available to patrons whenever alcohol is sold but it is not compulsory for food to be served with alcohol.

9 Relevant Legislation

Crown Land Management Act 2016

Disability Discrimination Act 1992 (Cth)

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

10 Related Policies and Procedures

	HPECM Reference
Footway Dining Guidelines	19/160777
Double Bay Centre Public Domain Strategy 2016	19/63340
Night Time Economy Policy	19/161681

This Policy will be reviewed every five years or as required in the event of legislative changes. This Policy may also be changed as a result of other amendments that are to the advantage of Council and in the spirit of this Policy.

Any amendment to this Policy must be by way of a Council Resolution.

Policy Amendments

Date	Responsible Officer	Description
18/12/2019	Senior Property Officer	Amended trading hours – Clause 7 as per Council resolution.
18/12/2019	Senior Property Officer	Amended service of liquor – Clause 3, bullet point 3 as per Council resolution.
18/12/2019	Senior Property Officer	Amended definitions – “Approval” removed as duplication see “Footway Dining Approval” in definition.