



# DRAFT

## Footway Dining Policy

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Council meeting resolution - 13 May 2019:	<p>For the addition of the following options for public exhibition:</p> <p><b>Option 1:</b> <i>'Where a Business Operator has an appropriate liquor licence the service of alcohol is permitted on the footway without the service of a meal up to 10pm'</i>. These words should be placed under the heading 'Objectives' on page 3 of the Policy and included in the Policy Statement on page 2.</p> <p><b>Option 2:</b> <i>'Where a Business Operator has an appropriate liquor licence the service of alcohol is permitted on the footway without the service of a meal at any time during the trading hours of the Footway Dining Approval'</i>. These words should appear after the words <i>'The primary purpose of the outdoor dining are for Restaurant purposes'</i> on page 3 of the Guidelines.</p>
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Responsible Officer:	Manager – Property & Projects
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## 1 Policy Statement

Woollahra Council is a Roads Authority under the Roads Act 1993 (NSW) and is the owner of the majority of roads within its Local Government Area ('LGA'). Council is authorised to issue approvals for outdoor dining under section 125 of the Roads Act. These are called Footway Dining Approvals.

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 LGA for over 40 years and enhances the enjoyment of the area for residents and visitors alike.

Footway dining also impacts on the public amenity and access on footways. It is for this reason that certain controls need to be applied to Footway Dining Approvals. Council has created this Footway Dining Policy and Footway Dining Guidelines ('Guidelines') as a clear and transparent control to be applied to Footway Dining Approvals in the Woollahra LGA.

**Option 1: Where a business Operator has an appropriate liquor licence the service of alcohol is permitted on the footway without the service of a meal up to 10pm.**

## 2 Application

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

- encourage and support well-managed businesses contributing to the character of footways and our commercial precincts
- ensure the area is used for restaurant purposes only
- maintain the pedestrian thoroughfare as the primary purpose of the footway
- promote accessibility on the footway by maintaining a consistent and predictable clear path of travel for all users
- manage neighbourhood amenity through minimising additional noise, visual and other impacts
- enforce compliance with the hours of operation to which the Footway Dining Approval is subject
- consider the appropriateness of applications against Council's adopted Footway Dining Guidelines
- ensure that the footway dining area is attractive when viewed in conjunction with the streetscape

- ensure that trees, signs and light poles and other existing or proposed obstructions are taken into account in calculating the unobstructed pedestrian route
- work with business operators and other authorities to ensure the health and safety of users of footway
- monitor and enforce compliance with Footway Dining Approvals
- revoke a Footway Dining Approval where there are continuing breaches of the Footway Dining Approval
- charge a fee for use of the footway as set out in Council's Fees and Charges.

## Objectives

The objectives of this Policy are to ensure that footway dining activity:

- complies with the law, this Policy and the accompanying Guidelines
- contributes positively to the streetscape and the social activity of the business centre or area
- provides attractive and safe surroundings in which people may enjoy food and refreshments
- is for restaurant purposes only
- does not adversely affect the amenity of the surrounding area
- does not obstruct pedestrian traffic.

**(Option 1) Where a Business Operator has an appropriate liquor licence the service of alcohol is permitted on the footway without the service of a meal up to 10pm.**

**(Option 2) The primary purpose of the outdoor dining area is for Restaurant purposes where a Business Operator has an appropriate liquor licence the service of alcohol is permitted on the footway without the service of a meal at any time during the trading hours of the Footway Dining Approval.**

## Scope

This Policy applies to the business use for dining on all of the footways within the Woollahra LGA including Council and RMS roads.

### 3 Definitions

Term	Meaning
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.
Approval Notice	A notice issued by Council granting a Footway Dining Approval to a Business Operator.
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.
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 or Approval	A footway dining approval under section 125 of the Roads Act, granted by Council.
Restaurant	Premises in which food is regularly supplied on sale to the public for consumption on the premises.
Public Road	Means: (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.

## 4 Roads Act Provisions

### 4.1 Roads Act 1993 (NSW)

A Footway Dining Approval is 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.”

The maximum term permitted for a Footway Dining Approval is seven (7) years.

### 4.2 Structures

Under section 126 of the Roads Act, a Council may authorise the holder of a Footway Dining Approval to erect and maintain structures on or over the area the subject of the Footway Dining Approval. Detailed drawings of the proposed structures must be submitted with the application.

### 4.3 Classified roads

Classified roads are major arterial roads controlled by the Roads and Maritime Services (RMS) on behalf of the State Government of NSW. The consent of the RMS is required for a Footway Dining Approval on one of these roads.

## 5 General Considerations

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

- conflict with existing businesses and/or approvals
- enhance the look, safety and vitality of the area
- be attractive when viewed in conjunction with the streetscape.

Council will:

- ensure that trees, signs and light poles and other existing or proposed obstructions are taken into account in calculating the unobstructed pedestrian route
- work with Business Operators and other authorities to ensure the health and safety of users of footway dining areas and the general public
- monitor and enforce compliance with Footway Dining Approvals
- revoke a Footway Dining Approval where there are continuing unresolved breaches of the Footway Dining Approval.

## 6 Footway Dining Areas Near Residences

Council is responsible for and seeks to manage neighbourhood amenity through minimising additional noise, visual and other impacts. The very nature of outdoor dining means that noise levels emanating from the footway will be increased by the activity. Where the outdoor dining occurs in close proximity to residential areas, consideration needs to be given to adjoining residents by Business Operators and Council alike.

In areas close to residences, Council may limit a Footway Dining Approval by:

- specifying a smaller size for an outdoor dining area
- limiting the number and type of tables and chairs in an outdoor dining area
- limiting the hours of operation.

## 7 Footway Dining Approvals

### Footway Dining Application

A Business Operator of a Restaurant adjoining a public road and wishing to occupy the footway must apply to Council for a Footway Dining Approval. The Footway Dining Approval will be subject to this Policy and the Guidelines and may be granted by the Council on such conditions as determined by the Council.

### Development Approval

A Footway Dining Approval is an exempt development, however the adjoining Restaurant must have a current development approval from Council (a Business Operator cannot rely on existing use rights) to operate as a Restaurant.

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 makes footway dining an exempt development if it is:

- (a) not associated with a pub or a small bar, and
- (b) carried out in accordance with a Footway Dining Approval granted under section 125 of the Roads Act.

A development approval is required for all pubs and small bars.

## 8 Footway Trading Hours

The trading hours for each Footway Dining Approval's will be determined by Council at the time of reviewing each application, but they will be no greater than as outlined below.

The trading hours for Footway Dining Approvals **without a liquor licence** will be within the following times:

- 7am to 12am                      Monday to Saturday
- 7am to 10pm                     Sunday

### Footway trading hours subject to DCP

The trading hours for all Footway Dining Approval's connected to **licensed restaurants, pubs or small bars** will be subject to the Woollahra Council DCP, Chapter F3 Licensed Premises Control C2 as amended from time to time.

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

An Approved Area must be cleared of all items belonging to the Business Operator outside of approved trading hours.

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 of the adjoining business, the tables and chairs must be stacked against the wall of the Restaurant, pub or small bar until the close of business when the tables and chairs must be removed from the Approved Area.

## 9 Liquor Licences

A pub or small bar must have a **development approval** for the use of the footway and will also require a Footway Dining Approval under section 125 of the Roads Act.

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.

All Footway Dining Approvals allowing for the service of alcohol on the footway will require the service of a meal with any alcohol served to seated patrons.

## 10 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

## 11 Related Policies and Procedures

	HPECM Reference
Footway Dining Guidelines	19/98604
Double Bay Centre Public Domain Strategy 2016	19/63340
Night Time Economy Policy	19/101042

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