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Footway Dining Guidelines

Council meeting resolution - 13 May 2019:	<p>See page 3 for the addition of the following options being publicly exhibited. These words should appear after the words, 'The primary purpose of outdoor dining is for restaurant purposes':</p> <p>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'</p> <p>Option 2: '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'</p>
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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, diners, residents and visitors alike.

Council promotes and encourages footway dining, allowing restaurants, cafés, delicatessens and licensed venues to use part of the footway space directly 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 for outdoor dining on all of the footways including Council and RMS roads within the Woollahra Council Local Government Area ('LGA').

2 Objectives

These Guidelines have been developed to assist businesses to make an Application for a Footway Dining Approval; highlighting key considerations including safety, accessibility and amenity. These Guidelines help streamline the application process by providing applicants with the necessary information before an application is made.

Council is also committed to activation of the municipality and supports the individual expression of each business to help develop a sense of place. As such, 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.

(Current) **The primary purpose of the outdoor dining area is for Restaurant purposes.**

(Option 1) **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 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.**

Footway Dining Approvals are issued with the intent of balancing the needs of all footway users. Footway dining is supplementary to the business' internal trade and seating.

3 How to Use these Guidelines

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

- provide information for applicants seeking to use the footway for dining
- provide guidance for Council in determining applications for use of the footway for dining
- form part of the Footway Dining 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 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.
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.

5 Footway Dining Approval

The Business Operator of a restaurant adjoining a public road and wishing to occupy the footway must apply to Council for a Footway Dining Approval.

5.1 Roads Act 1993 (NSW)

A Footway Dining Approval is issued by Council under section 125 of the Roads Act.

A Footway Dining Approval allows a person who conducts a Restaurant adjoining 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.

5.2 Development Requirements

The use of a footway as an outdoor dining area associated with lawful food and drink premises is an exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

To be an exempt development, the footway dining development must not be associated with a pub or a small bar, and must be carried out in accordance with an approval granted under section 125 of the Roads Act, including in accordance with any hours of operation to which the Footway Dining Approval is subject.

An 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.

A Footway Dining Approval is required for this purpose.

5.3 Liquor Licences

A pub or small bar must have a development approval, and will also require a Footway Dining Approval. The Footway Dining Approval may be subject to different conditions than specified in the development approval.

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.

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

5.4 Smoking Prohibited

Smoking is prohibited in the Approved Area and within 4 metres of entry doors.

The Business Operator must ensure that smoking is not permitted by any person, at any time, within and around the Approved Area and shall display signage to this effect.

5.5 Structures

Footway Dining Approvals are granted as a weather dependent activity and do not include a 365 day guarantee, therefore in most instances permanent structures will not be approved.

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 Approved Area.

When considering an application under section 126 for the installation of permanent structures, Council will take into account whether the structure is consistent with and enhances the footway area. Council will ensure that permanent structures will only be approved where they can be installed without disruption to pedestrian circulation. Council will require an application under section 126 to include detailed drawings of the proposed structure.

All costs associated with the approval, erection, maintenance and removal of the structure are to be paid by the Business Operator of an Approved Area.

5.6 Compliance with Footway Dining Approval

Business Operators must display the Approval Notice for an Approved Area in a prominent position, 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 Footway Dining Approval,

- within the Approved Area, or
- otherwise permitted under another approval or policy of Council.

5.7 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 a Footway Dining Approval at any time.

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

- the conditions of the Footway Dining 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 Footway Dining Approval is causing public safety 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 traffic.

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

6 Public Amenity and Responsibilities

Cultivate a positive relationship between the private and public realms

Outdoor 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.

Patrons must be seated in an Approved Area of a Restaurant.

Footway 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 visitors, surrounding businesses and residents. No footway dining is permitted to occur other than as approved by Council.

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.

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

- 7am to 12am Mon to Sat
- 7am to 10pm Sunday

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.

Maintenance and cleaning

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

- Waste and litter must be removed promptly from the Approved Area and disposed of properly.
- Public bins are not to be used for the disposal of waste from the Business Operator.

- Business Operators must not use disposable tableware in the Approved Area.

Water from washing down outdoor dining areas should not be discharged into the storm water system. Approved Areas should be dry swept and solid waste disposed of appropriately. Wet cleaning should be done with a mop/cloth and bucket of water which is discharged into the sewer system. Commercial contractors can be engaged by the Business Operator to steam clean paved surfaces and will dispose of waste water responsibly.

Plan of Footway Dining Area

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

An approved plan will need to be displayed on site at the Restaurant adjoining the Approved Area as part of the Approval Notice. (Sample plans are shown below.)

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 Approved Area is to be located
- the location of the proposed Approved 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 pedestrian thoroughfare along the footway
- the location of transport stops, taxi ranks, parking areas, loading zones, pedestrian crossings and street intersections (if any)
- the minimum width to be available for pedestrian traffic on the footway which 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.

The minimum width must be maintained around existing fixed items in the footway and result in clear pedestrian paths (as shown in diagrams in these Guidelines).

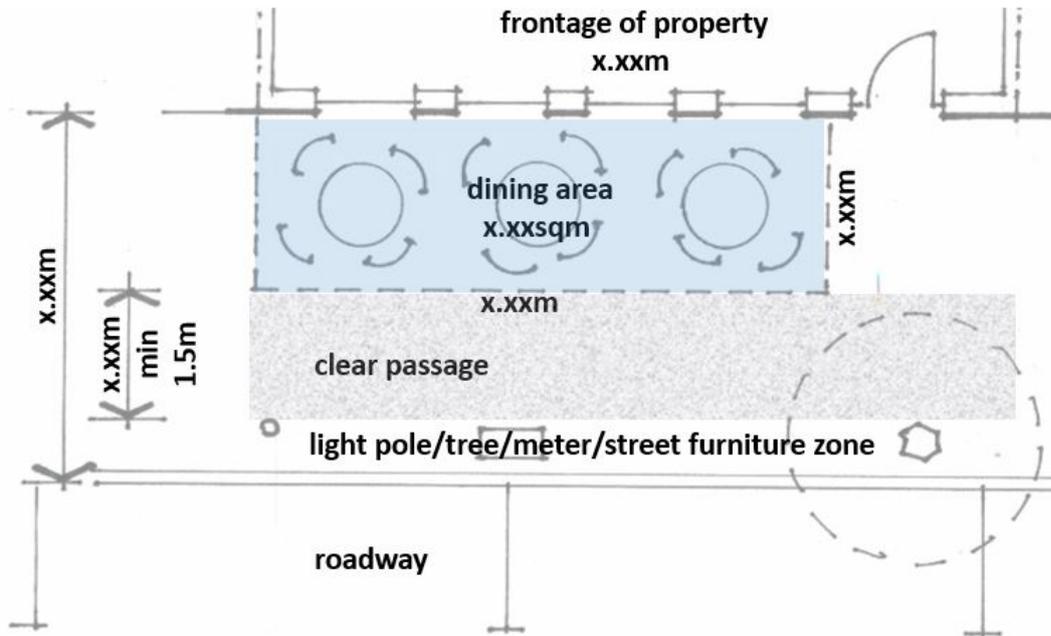
If locating the Approved Area towards the kerbside of the footway, the following minimum distances must be maintained from the kerb:

- 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.

Where a property is located on the corner of intersecting streets/roads, sight lines also need to be maintained for both pedestrians and automobiles.

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 within the Approved Area.

Diagram 2

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

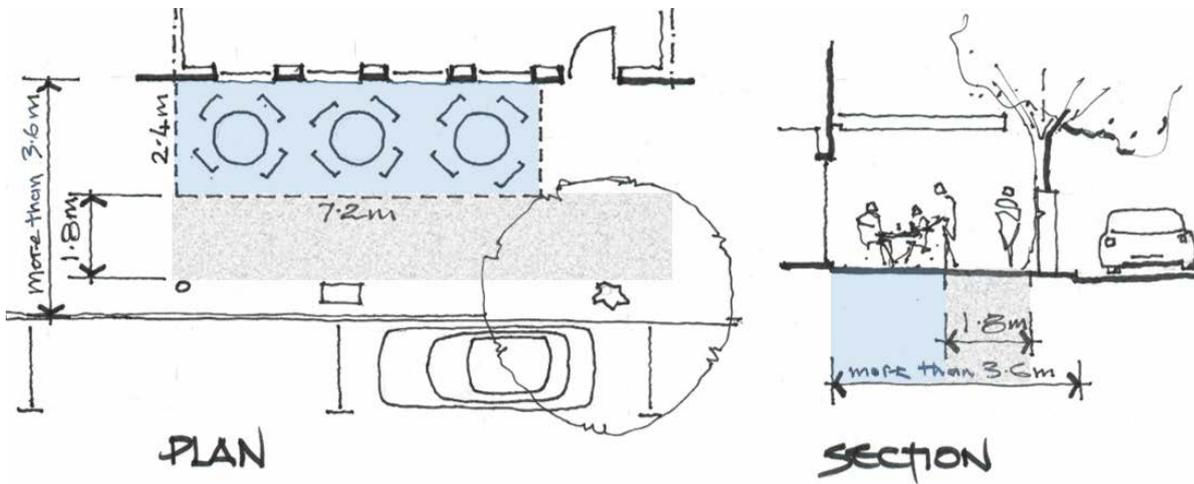
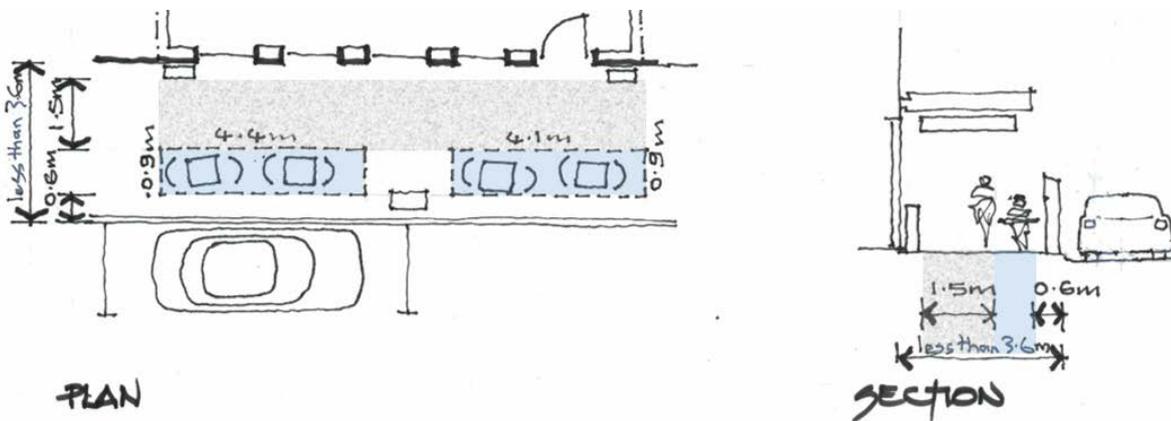


Diagram 3

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.

7 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 within 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.

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 outdoor areas and must not be a rope or chain. Barriers must be used where required by the Footway Dining Approval.

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 within 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.

Outdoor Heaters

Any outdoor heaters must:

- only be located within 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

must be turned off and safely stored inside the adjoining Restaurant when not being used.

Signage and Branding

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

Music

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

Lighting

Must comply with relevant Australian Standards, and be:

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

Footway studs

Council may install studs in the footway marking the borders of the Approved Area.

8 How to Make an Application

You 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 Application fee
- 3 Requested trading hours for proposed footway dining area. The hours will be subject to the Woollahra Council DCP, Chapter F3 Licensed Premises Control C2 as amended from time to time
- 4 Colour photos of the proposed site from different angles, including showing the condition of the footway and if the land is sloping
- 5 Details and images of any items (e.g. Seats, tables and umbrellas) proposed to be used in the footway dining area
- 6 Proof of entitlement to conduct a restaurant in the adjoining property. Where entitlement is not as owner of the adjoining property or the lessee pursuant to a lease of the adjoining property, the applicant will be required to produce evidence to the satisfaction of the Council that it is entitled to conduct a restaurant in the adjoining property. Where the applicant is the owner of the adjoining property, a title search must be supplied. Where the applicant is the lessee of the adjoining property, a copy of the front page of the lease must be supplied.
- 7 If applying under a company name, a copy of an ASIC report showing the name of the company, the ACN, ABN and company directors
- 8 A plan of the proposed site (See details about plan pages 8-11)
- 9 If you intend serving liquor in the Approved Area you will also be required to provide:
 - Development Approval
 - A copy of your liquor licence.

NOTE: After Council has received your application and prior to the issuing of a Footway Dining Approval, you 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 Footway Dining 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.

9 Fees

The Footway Dining Approval is subject to the following fees:

- An 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.

10 Frequently Asked Questions (FAQ)

10.1 Can I sell, assign or transfer my Footway Dining Approval if I sell my business/property?

No. A new owner/tenant will need to make an application for a new Footway Dining Approval.

10.2 Can I get a Footway Dining Approval in front of the neighbouring property?

No. A Business Operator will need the written consent of the adjoining business allowing them to use the footway in front of the adjoining business.

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	19/98606
Double Bay Centre Public Domain Strategy	19/63340
Night Time Economy Policy	19/101042

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