



Ku-ring-gai Council

Outdoor Dining and Footpath Trading Policy

Version 3

[21 November 2022

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Outdoor Dining and Footpath Trading Policy

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Controlled Document Information

Authorisation Details

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Related Document Information, Standards & References

Related Legislation:	<ul style="list-style-type: none"> • <i>Roads Act 1993</i> • <i>Local Government Act 1993</i> • <i>State Environmental Planning Policy (Exempt & Complying Development Codes) 2008</i> • <i>Liquor Act 2007</i> • <i>Smoke-free Environment Act 2000</i> • <i>Companion Animals Act 1998</i> • <i>Disability Inclusion Act 2014</i> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Ku-ring-gai Local Environmental Plan 2015</i> 	<ul style="list-style-type: none"> • <i>Roads Act 1993</i> – Sections 125, 126, 127 Allows for Council to grant approval for outdoor dining on the footpath for restaurants. Where located on a Classified Road, Roads and Maritime Service concurrence is required. • <i>Local Government Act 1993</i> – Section 68 Allows for Council to grant approval to engage in trade or business on Community Land and for outdoor dining to be established on Community Classified Land i.e. parks or reserves. • <i>State Environmental Planning Policy (Exempt & Complying Development Codes) 2008</i> – Part 2.40A and 2.40B. Allows outdoor dining as exempt development, subject to satisfying the development standards. • <i>Environmental Planning and Assessment Act 1979, Ku-ring-gai Local Environmental Plan (Local Centres) 2012 and Ku-ring-gai Local Environmental Plan 2015</i> – where outdoor dining does not satisfy the exempt development provisions under the Codes SEPP 2008, a Development Application is to be assessed under the provisions of the EP&A Act 1979 and
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		<p>either the KLEP (Local Centres) 2012 or KLEP 2015.</p> <ul style="list-style-type: none"> • <i>Smoke Free Environment Act 2000</i> – Sections 4A, 6A, 9. Outlines that outdoor dining spaces – including commercial outdoor dining areas are smoke free. • <i>Companion Animals Act 1998</i> – Section 14A Outlines that dogs are not prohibited in outdoor dining areas in certain circumstances. • <i>Disability Inclusion Act 2014</i> – Section 23 requires that non-discriminatory access to premises which the public or a section of the public is entitled or allowed to use.
Related Policies (Council & Internal)	<ul style="list-style-type: none"> • <i>Community Strategic Plan 2038</i> • <i>Delivery Program 2022-2026 and Operational Plan 2022-2023</i> • <i>Access & Disability Inclusion Plan 2020-2024</i> • <i>Private Use of Road Reserves and Nature Strips Policy 2019</i> • <i>Town Centres Public Domain Plan 2010</i> • <i>Ku-ring-gai Development Control Plan and Local Centres Development Control Plan</i> 	<ul style="list-style-type: none"> • <i>Community Strategic Plan 2038</i> – outdoor dining contributes to the objectives under the theme of Spaces, Places and Infrastructure. • <i>Delivery Program 2022-2026 and Operational Plan 2022-2023</i>. Seeks to encourage vibrant local centres, including outdoor dining and activities, by reviewing Council policies and processes. • <i>Access & Disability Inclusion Plan 2020-2024</i>. Traders and restaurateurs provide clear paths of travel for all pedestrians using footpaths and walkways crossing business premises. • <i>Private Use of Road Reserves and Nature Strips Policy 2019</i>. This policy should be referred to when the applicant wishes to undertake streetscape works or works to the footpath to accommodate an outdoor dining area. • <i>Town Centres Public Domain Plan 2010</i>. Guides the design of streets and public spaces within and around town centres. • <i>Ku-ring-gai DCP and Local Centres DCP</i>. Where outdoor dining is required to be approved via a development application, it will be assessed against the relevant provisions contained in the DCP.
Related Documents - Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements	<ul style="list-style-type: none"> • Online Application for Outdoor Dining 	<p>Applications for approval for outdoor dining can be made on online, on Council's website – Ku-ring-gai Council's Online Application Form for Outdoor Dining</p>

Version History

Version Number	Version Start Date	Version End Date	Author	Details and Comments
1	9 September, 2005		Manager Urban and Heritage Planning	<p>This policy was originally in the format of a Draft Development Control Plan. Following public exhibition, the document was modified from a DCP, to a Policy, as it concerns activities undertaken within the Road Reserve – which is outside the scope of the DCP.</p> <p>The policy was developed to promote and control the use of Council owned footpaths, plazas and public areas that may be used for commercial purposes.</p>
2	25 July, 2022		Urban and Heritage Planning	<p>The following amendments have been made to the Policy:</p> <ul style="list-style-type: none"> • Removal of the guidelines from the Policy. The guidelines are now included in the <i>Ku-ring-gai Public Domain Plan Volume 3 – Technical Manual, 2022 (Technical Manual)*</i> • Legislation updates since 2005 • Addition of objectives relating to pedestrian and traffic safety, including the management of risks • Updated definitions list <p><i>*The Ku-ring-gai Public Domain Plan Volume 3 – Technical Manual, 2022, includes detailed controls such as location, setbacks and furniture requirements, for both outdoor dining and footpath trading.</i></p> <p><i>THIS VERSION WAS NEVER FORMALLY APPROVED AND ADOPTED AND ONLY REMAINED IN DRAFT UNTIL VERSION 3 WAS CREATED.</i></p>
3	13 December 2022		Urban Design Project Coordinator	<p>21 November 2022 – Version 3</p> <p>Post Public Exhibition – the following minor amendments have been made to the Policy in response to a submission received, concerning the safety of cyclists:</p> <p><i>Section 1.1 – Purpose & Objectives</i></p> <p>e) Ensure that pedestrian, <u>cyclist</u>, traffic safety and accessibility is not compromised by outdoor dining.</p> <p><i>Section 1.5 – Outdoor Dining Principles</i> (namely Safety section)</p> <p>The safety of all users – including pedestrians, <u>cyclists</u>, motorists and outdoor dining patrons – is a key consideration in the establishment of outdoor dining. Outdoor dining should not compromise the public safety, access and circulation or significantly reduce sightlines for motorists <u>or cyclists</u>.</p> <p><i>ADOPTED BY COUNCIL 13 DECEMBER 2022 RESOLUTION 282.</i></p>

Policy

1. Introduction

Ku-ring-gai Council encourages the use of footpaths for the purposes of outdoor dining as it provides a valuable contribution to the vitality, amenity and economic viability of streets and businesses in Ku-ring-gai. Outdoor dining also encourages visitation, provides passive surveillance and opportunities for social interaction.

Council has a focus on maintaining the safety, accessibility, convenience and appearance of its footpaths and has a commitment to balancing the needs of all users.

The primary function of the footpath is to provide access for pedestrians. Outdoor dining will be permitted where the location, size and layout will not compromise public access, circulation, safety of patrons, sightlines of motorists and other street activities.

1.1 Purpose and Objectives

The purpose of this policy is to set out Council's objectives and principles for the establishment of outdoor dining on public footpaths and public land.

The objectives of this policy are to:

- a) Encourage the establishment of outdoor dining.
- b) Ensure outdoor dining areas enhance the appearance and activation of the street.
- c) Ensure outdoor dining areas are compatible with other community uses of the public space.
- d) Provide outdoor dining areas that are safe and accessible for all users.
- e) Ensure that pedestrian, cyclist, traffic safety and accessibility is not compromised by outdoor dining.
- f) Effectively address and manage risks through the establishment of appropriate guidelines and controls.

1.2 Scope

This policy applies where a business proposes to establish outdoor dining on Council's footpaths and public areas. In particular, it applies to footpath areas adjacent to public roads situated within local and neighbourhood centres. Outdoor dining can only be established at lawfully approved food and drink premises.

Note:

- State Environmental Planning Policy (Exempt & Complying Development Codes) 2008 – Part 2, Subdivision 20A applies to all 'lawful food and drink premises';
- This Policy does not apply to outdoor dining areas or footpath trading activities that are carried out on privately owned land.

This Policy is to be read in conjunction with Council's *Ku-ring-gai Public Domain Plan Volume 3 – Technical Manual, 2022*.

1.3 Responsibilities

Council's Urban Planning and Heritage section is responsible for the preparation of the policy.

Council's Compliance Health and Building section is responsible for the provision and management of outdoor dining approvals, including processing applications in accordance with the Policy.

Council's Regulation section is responsible for the enforcement of outdoor dining approvals.

1.4 Relationship with other Plans and Policies

Council has adopted other plans and strategies which are relevant in considering the use of public footpaths for a business purpose such as outdoor dining, which include:

a) Community Strategic Plan 2038

Outdoor dining contributes to the following issues and objectives under the theme of 'Places, Spaces and Infrastructure':

- Issue - Revitalisation of our Centres.
- Long Term Objectives – Our centres offer a broad range of shops and services and contain lively urban village spaces and places where people can live, work, shop, meet and spend leisure time.

b) Delivery Program 2022-2026 and Operational Plan 2022-2023

The Delivery Program seeks to achieve P4.1.1 – Plans to revitalise local centres are being progressively implemented and achieve quality design and sustainability outcomes in collaboration with key agencies, landholders and the community.

The Operational Plan task *P4.1.1.2* – Progress public domain streetscape plans for key local centre precincts such as Lindfield, Gordon, Turramurra. And *P4.1.1.3* – Actively engage with residents, key agencies, landholders, businesses and other stakeholders to assist with the delivery of the streetscape projects.

c) Access and Disability Inclusion Plan 2020-2024

Seeks to direct Council in the provision of facilities and services that are equitable and dignified to all people. An outcome of this plan is to ensure that '*Traders and restaurateurs provide clear paths of travel for all pedestrians using footpaths and walkways crossing business premises.*'

d) Private Use of Road Reserves and Nature Strips Policy 2019

This policy controls the use of private works in the road reserve and nature strip. This policy should be referred to when the permit holder wishes to undertake works in Council's footpath to accommodate the outdoor dining area.

e) The Ku-ring-gai Public Domain Plan

Provides guidance on the planning, design and construction of streets, roads, parks, car parks and other public spaces. Its aim is to support the revitalisation of Ku-ring-gai's Local Centres so that they become more walkable, user friendly and attractive places and to ensure a coherent, well-coordinated rollout of the concept design and desired future character of the local centres.

Ku-ring-gai Public Domain Plan Volume 3 – Technical Manual, 2022 provides technical information and guidelines for materials and typical details for streetscape works. Typical footpath layouts for Outdoor Dining and Footpath Trading have been described in the Technical Manual and provides information such as minimum clearances, setbacks, and requirements for fixtures etc. Link to Technical Manual - <https://www.krg.nsw.gov.au/Planning-and-development/Planning-policies-and-guidelines/Strategies-and-management-plans/Public-domain-plan> .

Refer to the following sections of the Technical Manual:

- **Section 01.A.07** – Typical Footpath Layout – Outdoor Dining Areas; and
- **Section 01.A.08** – Typical Footpath Layout – Footpath Trading Areas.

f) Ku-ring-gai Development Control Plan

Where outdoor dining does not meet the requirements of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, it is required to be approved via a Development Application. The Development Application would be assessed against the relevant provisions contained in the Development Control Plan (DCP). The DCP contains the following objectives relating to outdoor dining in Section B – Urban Precincts:

- To encourage restaurants, cafes, outdoor dining and offices fronting onto rear lanes to contribute to increased activity and passive surveillance; and
- To facilitate opportunities for outdoor dining in quiet locations away from the main roads and highways.

1.5 Outdoor Dining Principles

Outdoor dining requires a business to be granted approval to make use of a footpath or public space to extend their trading activities. Whilst Council encourages outdoor dining, it is important to remember that outdoor dining areas are still public spaces, and that any activities and furniture that are introduced must balance the needs of all footpath users.

This section sets out some of the key considerations for the establishment of outdoor dining. While each business may have different preferences or requirements for outdoor dining, it is important to have a set of guiding principles in place.

Safety

The safety of all users – including pedestrians, cyclists, motorists and outdoor dining patrons – is a key consideration in the establishment of outdoor dining.

Outdoor dining should not compromise the public safety, access and circulation or

Accessibility	<p>significantly reduce sightlines for motorists or cyclists.</p> <p>The primary function of the footpath is to provide access to pedestrians. The footpath needs to be accessible for all pedestrians including those who are vision impaired or using mobility aids, prams or wheelchairs.</p> <p>A clear pedestrian path of travel needs to be maintained on all footpaths.</p> <p>Outdoor dining should not obstruct access into buildings.</p>
Character and Appearance	<p>Outdoor dining areas can have a strong influence on the appearance and character of a street. Therefore, it is important that these uses are presented and maintained in an attractive, clean and orderly manner.</p> <p>All furniture is to be of a high quality, durable and well maintained in order to enhance the character and appearance of its location.</p> <p>Outdoor dining furniture is to be removed from the public domain, outside of trading hours.</p>
Amenity	<p>Outdoor dining provides a valuable contribution to the vitality and vibrancy of streets and businesses in Ku-ring-gai.</p> <p>Care needs to be taken to ensure there are no adverse amenity impacts arising for the surrounding neighbourhood.</p> <p>Neighbourhood amenity is managed by minimising additional noise, light spill, visual clutter, footpath cleanliness and rubbish.</p>

2.0 Technical Manual

Ku-ring-gai Public Domain Plan Volume 3 – Technical Manual, 2022 provides technical information and guidelines for materials and typical details for streetscape works. Typical footpath layouts for Outdoor Dining and Footpath Trading have been described in the Technical Manual and provides information such as minimum clearances, setbacks, and requirements for fixtures etc.

Refer to the following sections of the Technical Manual:

- **Section 01.A.07** – Typical Footpath Layout – Outdoor Dining Areas; and
- **Section 01.A.08** – Typical Footpath Layout – Footpath Trading Areas.

The Technical Manual is to be read in conjunction with this Policy.

The *Ku-ring-gai Public Domain Plan Volume 3 – Technical Manual, 2022* Technical Manual is available on Council's website – <https://www.krg.nsw.gov.au/Planning-and-development/Planning-policies-and-guidelines/Strategies-and-management-plans/Public-domain-plan>

This Policy and the Technical Manual provide important information for applicants seeking to use the footpath and public spaces for outdoor dining. And provides guidance to Council in determining applications for the use of the footpath and other public spaces.

3.0 Definitions

Term	Definition
Clear Path of Travel	The area of the footway maintained for safe and equitable pedestrian circulation which is free from obstructions and assists in navigation.
Outdoor Dining	Use of a public footpath or other public space, for the purposes of consuming food and/or beverages purchased from an associated lawful food and drink premises. Outdoor dining typically includes elements such as tables, chairs, barrier screens & umbrellas.
Footpath Trading	<p>Footpath Trading is controlled by Council’s Local Approvals Policy.</p> <p>Footpath trading activities include:</p> <ul style="list-style-type: none"> • Placement of goods on the footpath • Placement of display stands on the footpath • Placement of brochure stands on the footpath • Hanging displays from the awning • Hanging goods from the awning <p>The type of goods can include – food, either fresh or packed, flowers, clothing, brochures, flyers, books, toys, plants or other stock consistent with the goods for sale within the premises.</p>
Footpath	Defined by the <i>Roads Act 1993</i> to mean - the part of the road that is set aside or formed as a path or way for pedestrian traffic.
Food and drink premises	<p>Defined in the <i>Roads Act 1993</i> - as a premises in which food is regularly supplied for sale to the public for consumption on the premises.</p> <p>Defined in the <i>Standard Instrument LEP</i> - premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—</p> <ol style="list-style-type: none"> (a) a restaurant or cafe, (b) take away food and drink premises, (c) a pub, (d) a small bar.
Exempt Development	Development which does not need development consent under the <i>Environmental Planning and Assessment Act 1979</i> but may still need some other form of approval.
Development Application	Application for consent to carry out a proposed development such as the use of land or building work.