

Footway Restaurant Policy

Detail of Policy

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COUNCIL POLICY

See over for details

WILLOUGHBY CITY COUNCIL
FOOTWAY RESTAURANT POLICY

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Introduction

Footway restaurants supply a street with vitality and are especially appropriate in a climate such as Sydney's. Footway restaurant areas provide an ideal space for social interaction and should be open and inviting.

Purpose of this policy

The purpose of this policy is to encourage, where appropriate, and control the establishment of footway restaurants. This policy sets out standards and guidelines for business owners to establish footway restaurant areas as an extension of their business whilst maintaining pedestrian amenity.

Area to which this policy applies

This policy applies to all footway areas within the City of Willoughby.

Location guidelines

It is essential that footway restaurants provide vitality to the streetscape and are not at odds with their physical environment. Pedestrian circulation, convenience and safety are important factors for consideration. It is also important that footway restaurant areas are located in a position which does not cause distraction to passing vehicular traffic.

Existing streetscape

The footway restaurant area should visually relate to and be physically aligned with the features of the streetscape. An application for a footway restaurant must take into consideration the existing streetscape elements, such as trees, planter boxes, street furniture, lighting, pedestrian crossings, traffic lights and signage, **together with the width of any awnings relative to the width of the footpath. A clear preference should be given to ensuring that pedestrians have shelter.**

Minimum area

A minimum area of two (2) square metres is required for a footway restaurant area. Council will not approve areas less than two square metres.

Suitable locations

Footway restaurants are permissible in most commercial centres provided that minimum footway width requirements are met and there is no disruption to pedestrian safety and circulation.

General Provisions

All food premises in commercial zones aligning footpaths over 3.5 metres in width **taking into consideration the existing street elements such as trees, planter boxes, street furniture, lighting, pedestrian crossings, traffic lights and their control cabinets and signage** may apply for a footway restaurant to be located directly outside the premises on the footpath.

Where the footway restaurant is to be located on a footway which is between 3.5 and 4.5 metres, the footway restaurant is to be located against the shop front.

A clear distance of 2 metres is to be maintained between the boundary of the footway restaurant area and the kerbline or any other street furniture on the footpath or plaza.

Where the food premises has a frontage to a footpath that has a minimum width of 4.5 metres, an application may be made for a footway restaurant to be located adjacent to the kerbline, subject to the following additional requirements:

- A minimum clearance of **0.9 metres** is to be maintained between the kerbline and footway restaurant furniture to ensure pedestrian safety and to allow the opening of doors and unloading of vehicles.
- At least 2 metres clearance is to be maintained between footway restaurant and property boundary to allow for pedestrian flow and circulation.
- For safety reasons, approval will not be granted for proposed footway restaurants adjacent to the kerbline if there are existing approved footway restaurants established in the vicinity of the proposal that are located adjacent to the building line.
Note: "In the vicinity" means with a frontage to the same street or plaza and in the same street block.
- Special provisions apply for Chatswood Mall and areas of Chatswood CBD.

Special provisions for Chatswood Mall

Chatswood Mall has special requirements in terms of the volume of pedestrians and access for emergency vehicles.

In order to ensure an adequate pedestrian width adjacent to the shopfront, there shall be a minimum separation of 4 metres between the footway restaurant and the shopfront.

In order to ensure that no obstacle is placed in the path of emergency vehicles, the footway restaurant must be established well clear of the emergency vehicle's path.

Special provisions for Victoria Avenue between Anderson Street and Bertram Street

Parts of Victoria Avenue have special requirements in terms of pedestrian volume. To ensure pedestrian flow is unimpeded, a minimum 4 metre clearance is required between the shop front and the footway restaurant area in Victoria Avenue between Anderson Street and Bertram Street.

Special provisions for Anderson Street, south of Victoria Avenue

Parts of Anderson Street have special requirements in terms of pedestrian volume. To ensure pedestrian flow is unimpeded, a minimum 3 metre clearance is required between the shop front and the footway restaurant area in Anderson Street, south of Victoria Avenue.

Special provisions for Westfield footway restaurant area in Anderson Street

Most general conditions in this policy do apply to the footway restaurant area established in Anderson Street between the entrance-ways of Westfield Shopping Centre. However provisions relating to shade structures, planters, enclosure screens and pedestrian circulation may be waived due to increased lighting and the provision of maintenance and security services to the area provided by the operators of Westfield Shopping Centre.

Location of footway restaurants outside adjoining premises

In some circumstances, footway restaurants may be permitted to extend beyond the boundary of a café premises to be located outside an adjoining shop. This can only occur where concurrence has been sought from the adjacent property owner and the business proprietor and is approved by Council.

In all cases, a letter of consent from both the adjacent business proprietor and the property owner must be submitted to Council at the time of making application for a footway restaurant. Letters of consent must also be provided to Council annually or at any time the business or property ownership changes to ensure continued consent. If, at any time, permission from the adjacent business proprietor or property owner is withdrawn or the premises becomes a food premises and the proprietor wishes to operate a footway restaurant, Council permission to use the area will be revoked and you will be required to operate the footway restaurant only in front of your own shop. The approved footway restaurant area will be reduced and the annual rental will be adjusted, however no compensation will be payable by Council for this reduction in area.

Council reserves the right to approve or not approve any application involving the extension of a footway restaurant beyond the boundary of the subject premises regardless of the consent of the adjoining property owner and business proprietor.

Corner locations

Where a shop is located on a street corner, the proprietor may apply to operate a footway restaurant on both streets, however consideration must be given to the pedestrian thoroughfare, especially in positions with traffic control signals and high pedestrian traffic flows. In all cases, Council reserves the right to restrict the footway restaurant area to one street or the other.

Unsuitable locations

It is important that footway restaurants are not established in inappropriate locations. They should not cause inconvenience or disruption to pedestrian circulation or to adjoining businesses or nearby residential areas.

Footway restaurants will not be permitted in areas where the footway is less than 3.5 metres in width **taking into consideration the existing street elements such as trees, planter boxes, street furniture, lighting, pedestrian crossings, traffic lights and their control cabinets and signage.**

Footway restaurants will not be permissible adjacent to or across from bus stops, taxi ranks, ATM machines or Australia Post boxes.

Footway restaurants will not be permissible in locations where casual general public seating is provided by Council and access and use of that seating would be restricted. Such seating includes fixed benches or seats or structures around planter boxes and the like.

Council reserves the right to refuse an application for a footway restaurant if it is deemed to be likely to reduce pedestrian amenity or is deemed to be in an unsuitable location.

Furniture guidelines

The purpose of this section is to ensure that the furniture used in conjunction with footway restaurants is of a high standard and is safe, strong and able to be maintained in an acceptable appearance.

All outdoor furniture, including tables, chairs, planters, umbrellas, barriers, bins etc., will be subject to approval by Council as part of the application assessment process and full details of proposed furniture must be submitted with the footway restaurant application. Furniture which has not been approved by Council is not permitted to be used in the footway restaurant area.

The following general provisions apply to footway restaurant furniture:

- All outdoor furniture shall be maintained at all times in a clean, physically sound and aesthetically acceptable condition to Council's satisfaction.
- The furniture should be weather resistant, strong, durable, robust, and be able to withstand the wear and tear of commercial use. Furniture should be designed for commercial outdoor use.
- In general, darker colours should be used for tables and chairs as they are less susceptible to the effects of dirt build-up and general wear and tear that occurs in outdoor environments. White furniture should be avoided. Bright metal furniture may be used but reflective surfaces should be avoided for motorist safety reasons.
- Tables and chairs may be plastic, timber, canvas, aluminium or powder-coated steel. The style of the furniture should fit with the surroundings and respect the streetscape.
- Grooved surfaces should be avoided due to the need to keep table surfaces free from dust and grit.
- All furniture is to be stored off the footpath when not in use. Furniture which is able to be stacked or folded is therefore the most appropriate. On wet days, when the footway restaurant area cannot be used, furniture may be stacked within the footway restaurant area.
- Public safety and comfort must be considered and particular care should be taken with moving parts (such as hinges) to ensure that they do not present a potential hazard to those using the furniture.
- Planters are acceptable only when pedestrian access is not impeded and they are located within the licensed area.
- The furniture is not to obstruct the view of advisory and regulatory signs and traffic controls.

Umbrellas

Umbrellas and shade structures provide necessary protection from the elements and should be included in footway restaurant areas which are open to the sky to provide sun protection for patrons. The following general provisions apply to footway restaurant umbrellas:

- Umbrellas and shade structures must be contained within the approved footway restaurant area and may not overhang the footway outside the approved area.
- Umbrellas will not generally be approved where the footway restaurant is contained under shop awnings.
- Umbrellas must be anchored securely in a manner acceptable to Council.

- Umbrella sockets may be fixed into the paving or sub-base only with the approval of Council. A road opening permit is required to install the appropriate footing and is subject to a separate application and payment of a fee. Where a socket or a footing is required to support any umbrella, this work may not be carried out without authorisation from Council and any application must be supported by an engineer's specification and certified by a civil engineer on completion.
- No umbrella may incorporate any roll-down or other screen, cover, or curtain unless expressly authorised by Council. Council will not consider opaque screens.
- Umbrellas must be removed when the footway restaurant area is not in use.
- Umbrellas are limited in size to maximum dimensions of 2.4 metres by 2.4 metres or equivalent.
- Umbrellas must be at least 2.2 metres in height **from the footpath to the underside of the umbrella.**
- Umbrella supports or poles must be able to withstand windy conditions and details of wind rating must be provided with the footway restaurant application.
- **Umbrellas which are not affixed to permanent bases must automatically fold/collapse in high winds.**
- Colours for umbrellas may be subject to Council approval. The most acceptable colours include natural canvas, dark green, dark grey and black.
- Advertising on umbrellas is to be strictly in accordance with the advertising requirements within this policy. Any proposal for advertising on umbrellas should be included in the application for footway restaurant.

Fixed shade structures

The use of fixed shade structures is generally not recommended, however permission may be granted where it can be demonstrated that there are no risks to public safety or amenity and where full insurance and indemnity for the shade structures is carried by the permit holder. Any works required to be carried out as a consequence of the installation of a fixed shade structure shall be the responsibility of the permit holder, including all repairs and removal. Council reserves the right to withdraw authorisation for a fixed shade structure if it is found to be unsafe or detract from pedestrian amenity when the footway restaurant area is not in use. Council will not provide any compensation where such authorisation is withdrawn and all costs associated with the removal of the structure will be the responsibility of the permit holder. Council also reserves the right to impose an additional security deposit where a fixed shade structure is to be installed.

Fixed shade structures may not incorporate any roll-down or other screen, cover, or curtain unless expressly authorised by Council. Council will not consider opaque screens.

Layout

The layout and orientation of furniture should be chosen according to the extent and shape of the available space.

For safety reasons, where a footway restaurant area is located kerbside, chairs should not be placed with their backs to the kerb.

The minimum practical depth of a footway restaurant area is one metre which will allow for one table and two chairs to be located parallel to the shop.

Tables, chairs, planters and other furniture must be kept clear of all required fire exits of the premises or of adjoining premises.

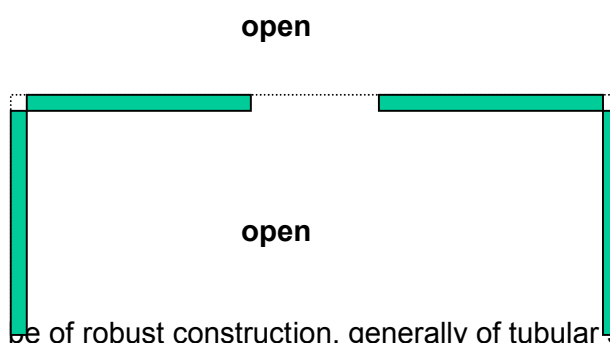
Enclosure

Full height screens and any type of enclosure, including plastic screens and roll-down screens are not generally permitted for use in footway restaurant areas.

Café barriers

Café barriers may be used to provide a feeling of protection from passing traffic or to identify a footway restaurant area. However it is important that barriers do not completely alienate the footway restaurant from the public domain.

Café barriers are to be located at corners of footway restaurant areas only. Barriers may not be used to completely enclose a footway restaurant except where required as a condition of a liquor licence or where otherwise approved by Council. The following is a sample layout design for the use of café barriers:



Café barriers shall be of robust construction, generally of tubular steel with laced fabric panels, 900mm in height and in the range of 1800mm to 2400mm in length **except for small leased areas where smaller barriers may be required.** Barriers of shorter and/or longer length and/or of a height other than 900mm are not to be used unless otherwise permitted by Council. Barriers shall have feet supports preventing overturning and preventing tripping and shall be fully contained within the approved footway restaurant area.

The size, colour and design of café barriers will be subject to Council consent and details of any proposed barriers must be included in the application, including a colour photograph or full colour artwork. Steel tubing should be coloured black or silver/chrome. Fabric panels should be co-ordinated with other footway restaurant furniture. Café barriers may contain corporate advertising, however all advertising on barriers must comply with the advertising provisions of this policy.

Heating devices

The use of heating devices within footway restaurants may be considered. Where the use of a heating device is proposed, details of the type, location and design must be included in the application, together with a full colour photograph or brochure. Heating devices should be safely positioned within the footway restaurant and must be removed from the footway restaurant and stored appropriately when not in use. Connection to an energy source must be provided by the permit holder and all running costs met by the permit holder. Heating devices may not be incorporated without permission from Council.

Management issues

Hours of operation

The hours of operation of the footway restaurant are restricted to the normal business hours of the shop as approved by development consent.

General operating requirements

The permit holder may not use the footway restaurant area for purposes other than a footway restaurant.

The permit holder may not cook or prepare food in the footway restaurant area.

The permit holder shall take all reasonable precautions to ensure the good conduct of employees and patrons in the footway restaurant area and ensure that they are civil, sober and properly clad.

The permit holder shall not allow amplified music to be played within the footway restaurant area. The use of the footway restaurant area shall not give rise to a nuisance or an offensive noise as defined in the Noise Control Act, 1975 to adjoining properties or the public.

No entertainment shall be permitted within the footway restaurant area without the consent of the Council.

The management is responsible for ensuring that patrons maintain the furniture within the boundary of the approved footway restaurant area at all times.

Permit holder should note that Council will issue fines if conditions of footway restaurant policy not complied with and continual breaches will result in licence being revoked.

Maintenance and cleaning

The permit holder shall maintain the footway restaurant area **and adjacent gutter** in a clean and tidy condition, free from any litter, rubbish or disfigurement.

Table service

Where patrons of the footway restaurant are provided with table service, the food should be protected from possible contamination.

Take-away food/beverage

The use of take-away food containers within footway restaurant areas is discouraged. However if take-away food and/or beverages are to be served, the permit holder must provide adequate rubbish disposal facilities within the shop (not within the footway restaurant area) and must carry out regular (at least hourly) litter patrols. All rubbish generated from the footway restaurant area must be disposed of within the shop premises, not public waste bins.

Liquor

The permit holder must not serve alcohol or allow alcohol to be consumed in the footway restaurant unless specific consent has been granted by Council.

A copy of the liquor licence must be submitted to Council with the footway restaurant application.

Marking of area

If the application for a footway restaurant area is successful, Council officers will mark the footway at the corner boundaries of the footway restaurant area. All footway restaurant furniture, including barriers and umbrellas, is to be contained within the marked area.

Council will regularly define the area to ensure licensed area is not being breached.

Footway reconstruction and nearby works

In the event that Council requires access to the footway for redesign or reconstruction at any time during the period of this permit, the Permit Holder shall provide Council with free access to the footway.

Council will undertake to provide the Permit Holder with three (3) months notice in writing of any planned footway redesign or reconstruction works which will require access to the permit area. Council will also undertake to provide the Permit Holder with the expected time frame of any planned footway redesign or reconstruction works.

A reduction in the permit fee will be granted on a pro-rata basis during any planned period of redesign or reconstruction work undertaken by Council.

Should nearby works impact on the operation of the footway restaurant area, the permit holder may suspend the use of the footway restaurant area and apply to Council for a reduction in the permit fee for the period of suspension.

Inclement weather

On days of inclement weather, most footway restaurant areas will not be able to be used. This is a risk that is taken when applying for the use of an outdoor area for café dining.

Where the footway restaurant is located in an area exposed to the elements, either kerb-side or away from the shop front, Council does not permit the use of the areas under shop awnings for the purpose of footway restaurant. Under-awning areas are to be maintained clear of obstruction to ensure unimpeded pedestrian circulation.

Council does not provide compensation where the footway restaurant cannot be used due to inclement weather.

Advertising and signage

Advertising on umbrellas, barriers, etc. will only be permitted subject to approval. Advertising to barriers shall be restricted to the name of the business only. and shall be restrained in size and colour. Proprietary logos will not be permitted unless approved.

Advertising on umbrellas shall be restrained in size and colour. Logos other than text will not be permitted, unless the logo is no more than 300mm in size. The text shall be restricted to the name of the business, or with approval, the name of a supplier.

No advertising may be incorporated into tables, signs, chairs, bins or any other item.

Application requirements

An application for a footway restaurant permit must be made on the appropriate footway restaurant permit application form and an application fee must be paid.

Required documents

An application for a footway restaurant area must be supported by the following documents:

- Full colour photograph of shop frontage and proposed area to be used as footway restaurant area
- A site plan drawn to a scale of 1:50 (A4 size) showing the following details:
 - From the edge of the kerb, the full width of the footpath to your shop boundary and extending at least 2 metres to either side of your shop
 - The use of the adjoining buildings/premises and names of those shops
 - The access points of your shop (and of the adjoining premises if the footway restaurant area is to extend past your boundary)
 - The area (including dimensions) proposed to be used for the footway restaurant area
 - The proposed layout and positioning of all furniture, screens, umbrellas, etc
 - Any trees, planter boxes, post boxes, bus stops, sign posts, rubbish bins, telegraph poles, traffic signal boxes, fixed seating and any other obstructions
- Colour photographs (or colour brochure) showing details of ALL furniture and equipment to be used in the footway restaurant area
- Colour photograph or artwork showing detail of proposed advertising logos to be used within the footway restaurant area, including dimensions and positioning
- A letter/s of consent from the adjacent tenant and landlord if you wish to operate in front of the adjacent property. This permission must be provided to Council annually or at any time the business or property ownership changes. If at any time permission from the adjacent proprietor or property owner is withdrawn or the premises becomes a food premises and the proprietor wishes to operate a footway restaurant, Council permission for your use of the area will be revoked and you will be required to operate only in front of your own shop. Rental will be adjusted, however no compensation is payable for this reduction.
- Certificate of currency for public liability insurance (minimum \$10,000,000)
- Liquor licence (if applicable)
- Direct debit authority form

Notification and approval

Council will assess your application. The assessment process should take not more than six weeks from the time of application.

Council will notify neighbouring properties of the application and invite comments from those persons occupying the neighbouring premises. The notification period is seven (7) days.

Council will take into consideration any town planning issues and engineering issues when assessing footway restaurant applications.

Approval for a footway restaurant permit is at Council's sole discretion.

Conditions of approval

A footway restaurant permit will include a set of standard conditions based on the footway restaurant policy.

Council reserves the right to apply additional conditions (other than the standard conditions) when issuing a footway restaurant permit.

Fees

All fees associated with footway restaurant areas will be identified in Council's adopted Schedule of Fees and Charges and will be reviewed annually.

Application fees

An application fee must be paid at the time of application and submitted with an application form. Applications will not be accepted unless the required application fee is paid.

If the footway restaurant application is not approved, the application fee is not refundable.

The application fee is a separate payment from the rent and security deposit and does not form part of, or contribute to, the rent or security deposit.

Rent

Rent for the use of the footway will be charged in line with the schedule of rental for footway restaurants in Council's adopted Schedule of Fees and Charges. Rent is adjusted annually in line with the adopted Schedule of Fees and Charges.

The adopted Schedule of Fees and Charges is publicly available and Council will not necessarily provide footway restaurant permit holders with the annual schedule of fees. It is the responsibility of the footway restaurant permit holder to obtain a copy of the adopted Schedule of Fees and Charges which apply to footway restaurant areas.

Rental for the use of the footway is payable annually in advance and by direct debit. It is the responsibility of the permit holder to ensure that sufficient cleared funds are available in the nominated account each month to meet the rental obligations. If there are insufficient clear funds in the nominated account to make a direct debit payment, a fee may be charged a fee by the permit holder's financial institution. An administration fee may also be charged by Council in line with Council's adopted Schedule of Fees and Charges plus any fee charged by Council's financial institution.

Council acknowledges that account details are private and confidential. Council will make all reasonable efforts to keep any information (including account details) secure and confidential and to ensure that any employees or agents who have access to this information do not make unauthorised use, modification, reproduction or disclosure of that information.

Council's financial institution may require such information to be provided in connection with a claim made on it relating to an alleged incorrect or wrongful debit.

Security deposit

In addition to rent, a security deposit equivalent to two month's GST-inclusive rent or \$100 (whichever is the greater) is payable. This is to be paid to Council on approval of the footway restaurant area, at the time of signing the permit documents. An invoice will be issued for this payment.

Display of permit

A footway restaurant permit need not be displayed on the site, but must always be available at the shop for inspection by Council officers on request. Prior notice will not be given for an inspection of the footway restaurant permit.

Period of permit

A maximum term of seven years is available for footway restaurant permits. Permits will generally be issued for seven years.

A permit may be issued for a shorter period of time on request.

A permit may be issued for a shorter period when it is known that the use of the footway will not be available for seven years.

Variation of permit conditions

Should the permit holder require a variation to any of the conditions of the footway restaurant permit, an application should be made to Council on the required footway restaurant application form and an application fee paid. If the application is successful, the footway restaurant permit will be varied and any fees will be charged on a pro-rata basis.

Termination of permit/withdrawal of approval

Council reserves the right to terminate a footway restaurant permit or withdraw approval for a footway restaurant area.

Reasons for terminating a permit or withdrawing approval for a footway restaurant area may include (but not be limited to) the following:

Where the fees payable are in arrears for a period greater than twenty-eight (28) days after they become payable

Where the Permit holder neglects or fails to perform and observe any of the terms and conditions of the Permit

In the event that the Permit holder ceases to be the lessee or owner of the shop for any reason whatsoever, the footway restaurant Permit is automatically terminated.

Where the footway restaurant area is found to cause undue inconvenience to pedestrian safety and/or amenity

Where Council receives repeated complaints about a footway restaurant which cannot be resolved

Previous approvals

Footway restaurants approved under previous policies, codes and understandings will be subject to compliance with this policy on expiration of the agreements made, or if any variations to the agreements are sought from Council. This may involve a reduction of footway restaurant area, the requirement to change furniture or the requirement to remove fixtures from the footway. Each case will be assessed by Council on its merits at the time of renewal or variation.

Any change of ownership of a shop operating a footway restaurant area will require a new application and will be subject to the requirements of this policy.

A previous approval for a footway restaurant is not necessarily a guarantee that a subsequent approval will be granted.