



Outdoor Dining Policy

POLICY OBJECTIVE

The purpose of this policy is to set out the circumstances and conditions under which Council will issue approvals for outdoor dining on the public footway and other similar public domain areas in the Goulburn Mulwaree local government area.

LEGISLATIVE PROVISIONS

Crown Lands Management Act 2016
Disability Discrimination Act 1992 (Cth)
Environmental Planning and Assessment Act 1979
Local Government Act 1993 (LGA Act)
Roads Act 1993
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

BACKGROUND

A well-managed footway promotes both equitable access and supports local businesses by creating places and streets that are amenable and attractive to all visitors.

Council has developed policies and strategies to encourage businesses, create great retail experiences for all residents and visitors, and encourage social, cultural and economic amenity and vitality.

Council must manage the footway and other public spaces to provide safe and equal access for all people. This includes pedestrians with a pram or mobility aid, or who are blind, have low vision or use a wheel chair and require a clear path of travel to be maintained at all times. Council recognises that a clear path of travel is a necessity. Stakeholders who are blind or have low vision prefer that the location for the clear path of travel is along the building side of the footway to allow for best-practice in safe and dignified way finding. This policy reinforces the requirement that a clear path of travel be maintained at all times, while also allowing opportunities for beneficial uses on the public footway.

DEFINITIONS

Term	Meaning
Clear path of travel	<p>The area of the footway maintained for safe and equitable pedestrian circulation which is free from obstructions and assists in way finding and navigation. Also referred to as the continuous accessible path of travel, which is defined by the Australian Human Rights Commission as:</p> <p>An uninterrupted route to and within an area providing access to all features, services and facilities. It should not incorporate any step, stairway, turnstile, revolving door, escalator, hazard or other obstacle or impediment which would prevent it from being safely negotiated by people with disability.</p>
Exempt development	<p>Exempt Provisions- Footpaths Development which does not need development consent under the</p>

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	<p><i>Environmental Planning and Assessment Act 1979</i>, but which may still need some other approval (i.e. Roads Act). At the time of adoption, <i>State Environmental Planning Policy (Exempt and Complying Codes) 2008</i> makes footway dining exempt development if it is:</p> <ul style="list-style-type: none"> • associated with a lawful food and drink premises, and • Carried out in accordance with an approval granted under section 125 of the Roads Act, and • Carried out in accordance with any approval granted under section 68 of the Local Government Act, and • Not be under an awning unless the awning complies with the requirements set out in BP1.1 and BP1.2 of Volume 1 of the Building Code of Australia. <p>Exempt Provisions – General – note at the time of writing, this provision is to be repealed at the end of 31 December, 2023.</p> <p>(1) The use of the following land as an outdoor dining area is exempt if—</p> <ul style="list-style-type: none"> (a) private land, if the use is associated with lawful food and drink premises, (b) public land. <p>(2) To be exempt development, the development must not—</p> <ul style="list-style-type: none"> (a) be carried out on land— <ul style="list-style-type: none"> (i) in an environmental zone, or (ii) in a place of Aboriginal heritage significance identified in a local environmental plan, or (b) be associated with a registered club. <p>(3) This provision does not apply to footpaths as above.</p> <p>(4) In this clause—</p> <p>public land has the same meaning as in the LGA Act and includes Crown land within the meaning of the <i>Crown Land Management Act 2016</i>.</p> <p>The standards specified for the development are—</p> <ul style="list-style-type: none"> (a) the development— <ul style="list-style-type: none"> (i) must be located at ground level (existing), and (ii) must not cause offensive noise, within the meaning of the <i>Protection of the Environment (Operations) Act 1997</i>, or other nuisance that affects adjoining owners, and (iii) must not restrict any vehicular or pedestrian access to or from, or entry to a building on, the land on which the development is located, and (iv) for development associated with lawful food and drink

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	<p>premises—must not contravene an existing condition of the most recent development consent, other than a complying development certificate, that applies to the existing food and drink premises relating to hours of operation, maximum capacity of patrons, waste management, food safety and pollution control, and</p> <p>(b) at the end of the use the land must, as far as practicable, be restored to the condition in which it was before the commencement of the use.</p> <p>Note— Other legal requirements for the consent of the owner of the land and for approvals, licences, permits and authorities still apply. This includes, for example, a requirement for an approval under the LGA Act, section 68.</p> <p>Exempt Provisions – (Registered Clubs) – note at the time of writing, this provision is to be repealed at the end of 31 December, 2023.</p> <p>(1) The use of the premises of a registered club as an outdoor dining area associated with lawful food and drink premises is development specified for this code if the premises are located on—</p> <p>(a) community land within the meaning of the Local Government Act 1993, or (b) private land.</p> <p>(2) To be exempt development, the development must not be carried out on land—</p> <p>(a) in an environmental zone, or (b) in a place of Aboriginal heritage significance identified in a local environmental plan.</p> <p>The standards specified for the development are—</p> <p>(a) the development—</p> <p>(i) must not cause offensive noise, within the meaning of the Protection of the Environment (Operations) Act 1997, or other nuisance that affects adjoining owners, and (ii) must not be carried out on more than 50% of the outdoor area of the registered club, and (iii) if carried out on land otherwise used for the purposes of a car park—must be designed to ensure pedestrian and patron safety, and (iv) must not reduce the existing access to the registered club for people with a disability, and (v) must not contravene an existing condition of the most recent development consent, other than a complying development certificate, that applies to the registered club or the food and drink premises, other than in relation to car parking spaces, and</p> <p>(b) at the end of the use the land must, as far as practicable, be</p>

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	<p>restored to the condition in which it was before the commencement of the use.</p> <p>Note— Other legal requirements for the consent of the owner of the land and for approvals, licences, permits and authorities still apply. This includes, for example, a requirement for an approval under the Local Government Act 1993, section 68.</p>
Outdoor dining	Dining on the public footway, associated with an approved food and drink premises. Also sometimes referred to as footway dining or a footway restaurant.
Public footway	That part of a road that is set aside or formed as a path or way for pedestrian traffic, whether or not it may also be used by bicycle traffic.
Food and Drink Premises	<p>Food and Drink Premises are defined in the <i>Goulburn Mulwaree Local Environmental Plan (LEP) 2009</i> as follows:</p> <p><i>food and drink premises means 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—</i></p> <ul style="list-style-type: none"> (a) a restaurant or cafe, (b) take away food and drink premises, (c) a pub, (d) a small bar. <p>Note- Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.</p> <p>the definitions of (a)-(d) are below (extracted from the <i>Goulburn Mulwaree Local Environmental Plan (LEP) 2009</i>):</p> <p>pub means licensed premises under the <i>Liquor Act 2007</i> the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.</p> <p>restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.</p> <p>small bar means a small bar within the meaning of the <i>Liquor Act 2007</i>.</p> <p>take away food and drink premises means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.</p>

POLICY STATEMENT

To promote public access and well managed outdoor dining on the footway, Council will:

- value the contribution that well-managed businesses make to the character of Goulburn Mulwaree;
- 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;
- continue to work with all stakeholders towards best practice way finding on footways;
- manage neighbourhood amenity through minimising additional noise, visual, and other impacts;
- consider the appropriateness of applications for approval against Council's adopted guidelines;
- monitor compliance with approvals, and undertake enforcement action when appropriate;
- may grant approvals for up to a maximum of 3 years under the *Roads Act 1993*;
- revoke approvals where there are continuing unresolved substantiated breaches of the approval; and
- charge a fee for footway approval applications, including subsequent renewals, as set out in Council's Fees and Charges.

APPROVAL REQUIREMENTS

State Environmental Planning Policy

NSW planning policy contains exemptions from requiring a Development Application (DA) to Council subject to meeting the exemptions for outdoor dining within the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Refer to the NSW Legislation website for current information.

If one or more of the exemptions cannot be met, then the development proponent is required to seek Development Consent from Council.

Additionally, *Schedule 2 Exempt Development* under the *Goulburn Mulwaree Local Environmental Plan (LEP) 2009* provides some exemptions for community events on Council land and the display of goods on the footpath. Where outdoor dining is a part of a temporary community event (as set out in Schedule 2 of the LEP), including associated food stalls, markets etc then separate development consent will not be required for outdoor dining.

Exemptions for development consent under the planning policy does not remove the need for approval under separate legislation such as the NSW Roads Act of NSW local Government Act.

Roads Act

In addition to NSW planning policy, section 125 of the *Roads Act 1993* requires development proponents, who operate food or drink premises adjacent to a public road (i.e. footpath), to seek the road authorities' approval to use part of that road for the purposes of food or drink premises.

Section 126 enables development proponents to erect/place or maintain structures, furniture or other things in, on or over any part of the road, the subject of an approval.

If a Development application (DA) is required concurrent approval under the *Roads Act* can also be applied for within the same application.

In order to encourage development proponents to offer outdoor dining as part of a lawful food and drink premises, Council has introduced a list of exemptions whereby a development proponent will be able to offer outdoor dining on the footpath, subject to complying with each exemption. If compliance is demonstrated with each requirement, no prior approval will be required.

If one or more of the exemptions cannot be complied with, the proponent will be required to seek approval under section 125 and 126 of the Roads Act.

Development proponents will be required to complete a form and submit to Council for its records.

Local Government Act

In addition to NSW planning policy, section 68 of the Local Government Act 1993 requires development proponents who operate food or drink premises on community land (i.e. engage in a trade or business) to seek Council’s approval to engage in such business or trade.

If each requirement cannot be met, then the development proponent must seek approval under section 68 of the *Local Government Act*?

If Development Consent, and approval under the *Roads Act* and *Local Government Act* is required, these can be sought concurrently.

Crown Land Management Act

In relation to public land which is Crown Land (i.e. a Crown Reserve), and not managed by the Council, an approval under the Crown Land Management Act 2016 (CLM Act 2016) may be required (i.e. an Enclosure Permit or Licence from NSW Department of Planning and Environment – Crown Lands).

Version	Council Meeting Date	Resolution	Adoption Date	Effective From
1	4 April 2017	17/099	Further review	
2	6 June 2017	17/184	Submissions received	
3	8 November 2017	2017/459	8 November 2017	8 November 2017
4	6 September 2022	2022/313	6 September 2022	4 October 2022
All policies can be reviewed or revoked by resolution of Council at anytime.				

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