

# **[DRAFT] COMMERCIAL USE OF FOOTWAYS POLICY**

## **1.0 PURPOSE**

The Commercial Use of Footways Policy outlines Canterbury- Bankstown Council's (Council) management principles for the commercial use of footways under the care and control of Council.

## **2.0 SCOPE**

This Policy applies to the management and licensing of the commercial use of footways on land under the care and control of Council in the Canterbury- Bankstown Local Government Area (LGA). Commercial use of footways includes but is not limited to activities such as outdoor dining, merchandise display and advertising through the use of freestanding and moveable furniture which is managed by licence permit or lease agreement under the *Roads Act 1993*.

Any proposal for the installation of permanent or semi-permanent infrastructure attached to the existing building or locations other than the footway directly adjacent to the business frontage must submit an exempt or complying development application or a Development Application for assessment prior to the licensing process.

Any proposal for the relocation or removal of existing infrastructure must submit a Work Permit Application for assessment separate to the licensing process and, if approved, would be carried out at the applicant's expense.

This Policy is to be read in conjunction with the Commercial Use of Footways Guidelines and the associated documents listed in Section 4.2 which outline the requirements and conditions for outdoor dining, merchandise displays, advertising and signage.

## **3.0 POLICY STATEMENT**

Canterbury-Bankstown Council is committed to providing residents, businesses and visitors with an inclusive, engaging and vibrant city in a manner that responsibly manages the shared use of its public spaces. This Policy and the associated guidelines aim to achieve a balance between public and commercial uses through the provision of specifications that promote an integrated approach to design, positioning and layout of the street environment and the commercial uses allowed within.

### 3.1 Principles

Council will manage the commercial use of footways in order to;

- *Maintain public safety*
- *Ensure equitable access*
- *Develop vibrant, open and multifaceted street life*
- *Provide an attractive city in keeping with the local character*
- *Support economic vitality and local commercial development*
- *Balance the use of the public space*
- *Maintain effective footways management*
- *Ensure the protection of infrastructure*

### 3.2 'Commercial Use of Footways' license conditions

Council is responsible for the overall management of Council owned land and public space. All commercial use of Council owned outdoor space requires approval to use public land. In the Canterbury- Bankstown LGA this is granted through a "Commercial Use of Footways" licence. Council will consider license applications and renewals on an individual case-by-case basis.

These applications are processed as "exempt development" licence applications and will need to comply with the provisions of this Policy, the associated Council Guidelines and documents and relevant legislation, including the *Liquor Act 2007 (NSW)* and *Smoke Free Environment Act 2000 (NSW)*.

The Guidelines provide;

- The framework, requirements, criteria and conditions for the commercial use of footways;
- The requirements for applications;
- Guidance as to the application process.

Applications for commercial use of the Councils footway must be submitted by the business owner. The applicant is responsible for providing the required information to Council as set out in the Commercial Use of Footways Guidelines to allow for the reasonable assessment of the proposed use. Council will only enter into a Licence Agreement where the commercial business (to which the licence relates) is operating in accordance with the terms of any development consent or similar approval that regulates the use of the premises.

The applicant must provide evidence of Public Liability Insurance with an Australian-based insurance company for a sum not less than 20 million dollars (\$20,000,000). The Certificate of Currency must jointly acknowledge the applicant and Canterbury- Bankstown Council in the details of the cover.

Once Council has entered into a license agreement, the licensee (the associated business owner who has been granted permission) is responsible for complying with all conditions applicable to the licence agreement.

A failure to do so may result in Council taking action under the Licence Agreement or any applicable law and may result in termination of a Licence Agreement.

The license fees are to be paid annually at the beginning of each financial year. A full list of the relevant fees is listed in Council's Schedule of Fees and Charges. Failure to pay the licence fees or provide evidence of current Public Liability Insurance may result in termination of a Licence Agreement.

A licence will cease upon change of use or change of business of the associated premises and a new licence application will be required.

A change of owner of the associated business must be registered with Council along with documentation of current valid insurances and the licence transferred to the new owner.

Council reserves the right to revoke or vary the license at any time if it is in the public interest, notwithstanding any associated development consent that applies. Council will provide reasonable notice however the business will bear the costs associated with the revocation or variation.

Any outdoor dining area where it is intended to serve alcohol requires a separate licence under *the Liquor Act 2007 (NSW)*. Further information can be obtained from the NSW Office of Liquor and Gaming.

Smoking (including water-pipes) is banned within all commercial outdoor dining areas under the *Smoke Free Environment Act 2000 (NSW)*. Owners and occupiers must ensure that adequate "No Smoking" signs are displayed. This is enforced by NSW Health Authorised Inspectors. Further information can be obtained from the NSW Department of Health.

Any proposal for the relocation or removal of existing infrastructure must submit a Work Permit Application for assessment prior to the licensing process and, if approved, would be carried out at the applicant's expense.

Any proposal for the installation of permanent or semi-permanent infrastructure attached to the existing building, or locations other than the footway directly adjacent to the business frontage must submit an exempt or complying development application or a Development Application for assessment prior to the licensing process.

## 4.0 RELATED RESOURCES

### 4.1 Legislation

- *Local Government Act 1993*
- *Environmental Planning and Assessment Act 1979*
- *Food Act 2003*
- *Food Regulation 2015*
- *Liquor Act 2007*
- *Public Health Act 2010*
- *Roads Act 1993*
- *NSW SEPP (Exempt and Complying Codes) 2008*
- *Smoke Free Environment Act 2000*
- *Work Health and Safety Act 2011*
- *Disability Discrimination Act 1992*

### 4.2 Associated Documents

- Commercial Use of Footways Guidelines
- Commercial Use of Footways Application Form
- Bankstown Local Environment Plan 2001
- Canterbury Local Environment Plan 2012
- Schedule of Fees and Charges
- Bankstown Development Control Plan 2012
- Canterbury Development Control Plan 2012
- Advertising & Signage DCP 2005
- Alcohol Free Zones and Alcohol Prohibited Areas Policy
- Australia New Zealand Food Standards Code
- *NSW Outdoor Dining Policy 2018 (TBA)*
- *NSW Outdoor Dining Guide 2018 (TBA)*

#### 4.3 Definitions

<b><i>Applicant</i></b>	The person who applies for the licence agreement and must be the owner of the associated business.
<b><i>Development Application</i></b>	An application made under the <i>Environmental Planning and Assessment Act 1979</i> for the use and development of privately owned land and/or adjacent Council owned outdoor space.
<b><i>Development Consent</i></b>	The Council approval of a Development Application.
<b><i>Exempt development</i></b>	Development that does not need development consent under the Environmental planning and Assessment Act 1979 but which may need other approvals
<b><i>Licence</i></b>	Permission to use Council property for a particular purpose, or conduct business or occupation under a particular agreement with Council. Most commercial use of footways occupancies fall into this category.
<b><i>Licence Agreement</i></b>	Certificate that proves such granted authority under governmental licence has been given.
<b><i>Licensee</i></b>	Person(s) with whom Council has entered into a licence agreement and must be the associated business owner.
<b><i>Logical path of travel</i></b>	A pedestrian path of travel that follows the same part of the footway (either adjacent to the kerb or adjacent to the building) for its full length until the footway changes direction or ends.
<b><i>Merchandise Display</i></b>	Items and goods normally sold from the subject premises placed outside the shop.
<b><i>Outdoor Trading</i></b>	Overarching term used to describe the commercial use of footways.
<b><i>Outdoor Dining</i></b>	The arrangement of tables, chairs and related furniture and fittings for outdoor café, restaurant or dining purposes placed on Council owned or controlled land.
<b><i>Owners and Occupiers</i></b>	Land owner, business owner, business manager or business operator.
<b><i>Permanent Infrastructure</i></b>	Any built or fixed element that remains in place outside the approved hours of operation of the commercial use of footways licence such as awnings, blinds, footings and umbrella footings.
<b><i>Premises</i></b>	The land on which the commercial business is approved to operate.
<b><i>Semi-permanent infrastructure</i></b>	Any adjustable or moveable element that remains in place outside the approved hours of operation of the commercial use of footways licence such as retractable awnings.

## **5.0 POLICY OWNER**

Manager City Design

## **6.0 AUTHORISATION**

Adopted by Canterbury-Bankstown Council on [INSERT DATE].