

# Outdoor dining application

**FA/2023/136**

## Assessment report



V

The City of Sydney acknowledges  
the Gadigal of the Eora nation as the Traditional Custodians of our local area.

Green Global Connected

# Application summary

<b>Application number</b>	FA/2023/136
<b>Site address</b>	58 Cowper Street, GLEBE NSW 2037
<b>Proposal</b>	Use 11.2 sqm of Cowper Street for on-street outdoor dining in association with "Friends in Hand Hotel". Proposed hours of use are restricted to between 10.00am to 10.00pm, Monday to Saturday and 12.00pm to 10.00pm Sunday.
<b>Date of lodgement</b>	24 March 2023
<b>Applicant</b>	FRIEND IN HAND HOTEL
<b>Application type</b>	Renewal
<b>Legislation</b>	Sections 125-127 of the Roads Act 1993
<b>Notification</b>	5 April 2023 to 17 April 2023
<b>Submissions</b>	7
<b>Objections</b>	6
<b>Comments</b>	0
<b>Support</b>	1
<b>Recommendation</b>	Approval
<b>Officer</b>	Rose Koc

# Background

## The site and surrounding development

The site has a primary street frontage to Cowper Street and a secondary street frontage to Queen Street (one way lane), with an approximate size of 337.2 sqm in area, and is located close to the intersection of Broughton, Crown and Queen Streets. There are no classified roads in the vicinity.

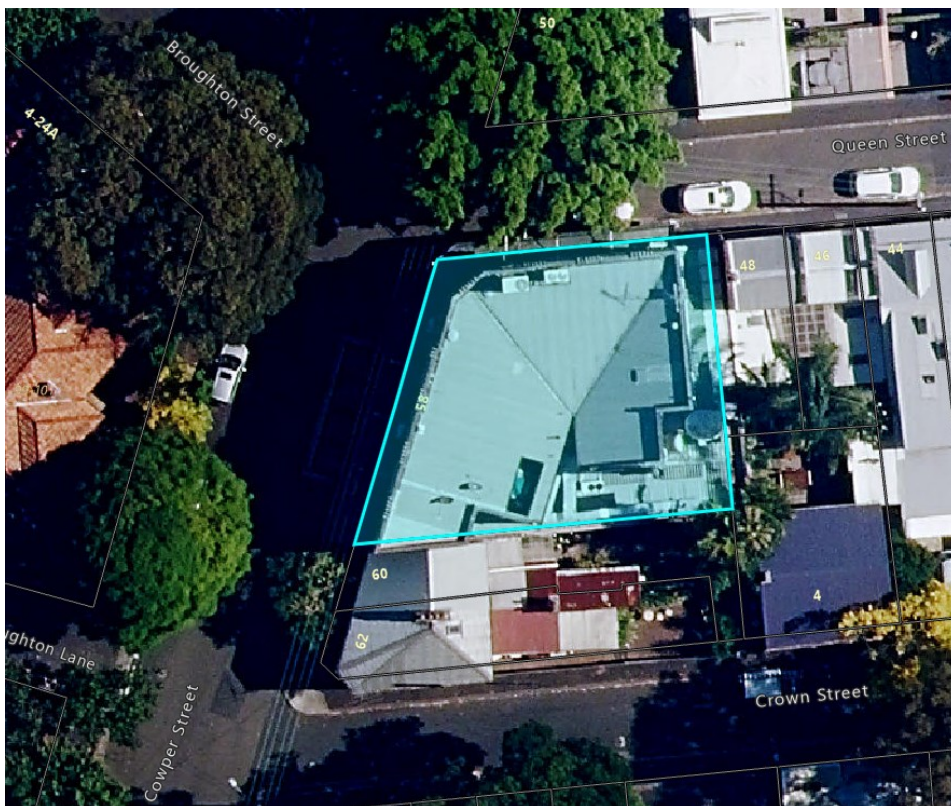
The site contains a two storey local heritage item. The premises is a licensed pub, split across both ground and first floor.

The surrounding area is characterised by predominantly residential uses, with adjoining southern and northeast boundary buildings being semidetached residential dwellings.

## Site visit

A site visit was carried out on 14 April 2023 as part of the assessment of outdoor dining application number FA/2023/136.

Photos of the site and surrounding area are provided below.



**Figure 1:** Aerial view of site and surrounding area





Figure 2: Street frontage of site viewed from Cowper Street.



Figure 3: Roadway dining area facing north.

# History and consents relevant to the application

## Development consent

The outdoor dining area is exempt and development consent is not required.

The proposed outdoor dining area is located beneath an existing awning, which appeared to be intact during a visual inspection of the site.

The exemption from development consent requires that the awning comply with BP1.1 and BP1.2 of Volume 1 of the Building Code of Australia, prior to any use of the outdoor dining area.

## Premises approval

Development consent for application number D/1999/928 (DA99/0928) was approved on 9 November 2000 for alterations and additions to the existing 'Friend in Hand Hotel' premise. The approved trading hours were Monday to Saturday 10:00am to 12:00 midnight, and Sunday 12:00 noon till 10pm.

The proposed outdoor dining area, including the trading hours, complies with this approval.

## Outdoor dining applications

The following applications are relevant to the current proposal:

FA/2023/118 is currently in assessment to use 6.8 sqm of the footway along Cowper Street for outdoor dining in association with the 'Friend in Hand' pub. The hours requested are between 10.00am to 10.00pm, Monday to Saturday, and 12 noon to 10.00pm, Sunday.

FA/2022/107 was approved on 14 July 2022, for 6.8 sqm on the footway of Cowper Street to be used for outdoor dining in association with the pub. Approved outdoor dining hours were between Monday to Saturday, 10:00am to 10:00pm and Sunday, 12:00pm to 10:00pm. This outdoor dining period is expected to lapse on 14 July 2023.

FA/2022/189 was approved on 29 September 2022, for 11.2 sqm of the roadway along Cowper Street to be used for outdoor dining in association with the pub. Approved outdoor dining hours are restricted to between Monday to Saturday, 10.00am to 10.00pm, and Sunday, 12pm to 10.00pm. This approval lapsed on 30 April 2023.

FA/2019/170 was approved on 15 October 2019, for 9 sqm of the footway along Cowper Street to be used for outdoor dining in association with the pub. Approved outdoor dining hours were restricted to between 9.00am and 10.00pm, Monday to Friday and 10.00am to 10.00pm, Saturday and Sundays. This approval was to lapse on 11 October 2024.

FA/2015/65 was approved on 12 May 2015, for 9 sqm of the footway along Cowper Street to be used for outdoor dining in association with the pub. Approved outdoor dining hours were restricted to between 8.00am and 10.00pm, Monday to Friday and 10.00am to 10.00pm, Saturday and Sunday. This approval lapsed on 12 May 2018.

FA/2013/99 was approved on 23 April 2013, for 7.2 sqm of the footway along Cowper Street to be used for outdoor dining in association with the pub. Approved outdoor dining hours were restricted to between 8.00am and 10.00pm, Monday to Sunday. This approval lapsed on 23 April 2015.

FA/2011/46 was approved on 2 May 2011, for 5.4 sqm of the footway along Cowper Street to be used for outdoor dining in association with the pub. Approved outdoor dining hours were restricted to between 8.00am and 10.00pm, Monday to Sunday. This approval lapsed on 2 May 2013.

D/1999/928 (DA99/0928) was approved on 9 November 2000, for alterations and additions to the existing 'Friend in Hand Hotel' premise. The conditions of consent also included hours of operation being Monday to Saturday 10:00am to 12:00 midnight, and Sunday 12:00 noon till 10.00pm.

On 26 September 2022, the Local Pedestrian, Cycling and Traffic Calming Committee (LPCTCC) granted an out-of-session endorsement for the reallocation of the kerb space on the eastern side of Cowper Street for the purpose of allowing a temporary outdoor dining area in association with the City of Sydney's Alfresco Dining Program. The temporary reallocation of this kerb space was effective until 30 June 2022.

## **Compliance action**

The site has previously been subject to compliance action where the outcome of each are now closed. They have been considered during the assessment of this application.

## **Proposal**

The application seeks consent to renew outdoor dining application number FA/2022/189 for the same outdoor dining area, hours, food and drink premises, seating layout, business operator and approval holder as previously approved, as summarised above.

## **Assessment**

### **Outdoor Dining Guidelines 2022**

The arrangement and layout of the outdoor dining area were deemed to be acceptable under the guidelines when originally approved. No changes are proposed to the size or layout of the outdoor dining area.

### **Sydney Development Control Plan 2012**

Section 3.15.4 of the SDCP 2012 outlines the permitted outdoor trading hours for the premises. The site is located in an unclassified 'all other' area. The outdoor dining area is associated with a restaurant which is defined as a Category A – High Impact premises.

The approved indoor hours of operation for the premises are between 10.00am and 10.00pm, Monday to Saturday and between 12.00 noon and 10.00pm, Sunday.

Table 3.7 of the SDCP 2012 permits base outdoor dining hours between 10.00am and 8.00pm.

Extended hours of outdoor dining are permitted between 10.00am and 10.00pm.

The proposed hours of operation are between 10.00am to 10.00pm, Monday to Saturday and 12.00 noon to 10.00pm, Sunday which is consistent with the approved indoor operating hours of the premises and the extended hours permissible under the SDCP 2012.

The outdoor dining approval will be issued on a time limited basis which will provide the Council with the flexibility to review and assess the ongoing management of the outdoor dining area and any further impact on neighbourhood amenity.

## Consultation

### Internal referrals

Unit	Response
City Rangers	Response received
Licensed Premises and Late Night Trading	No objection

Referral was made to the Leichhardt Local Area Command and no response was received.

### External referrals

#### NSW Police

The application was referred to NSW Police for comment. No response was received.

## Notification

The application was notified in accordance with the City of Sydney Community Engagement Strategy and Participation Plan.

## Submissions

7 submissions were received.

The issues raised and the City's response is summarised below:

Comment	Response
---------	----------

<p>Parking in the vicinity is already limited causing significant problems for road users.</p>	<p>The assessment of the continued use of the roadway for outdoor dining for the site has considered the competing demand for parking of private vehicles on public streets with the broader benefits of outdoor dining including increased activation of the public domain and supporting of businesses in the community. In this instance the proposed continued use of the roadway for outdoor dining is supported despite the loss of some on-street parking capacity.</p>
<p>The road reallocation renewal will continue to cause more noise and misbehaviour from patrons and affect the amenity of the local area.</p>	<p>The trading hours are within the approved indoor hours of the premises and recommended outdoor operating hours under the Sydney Development Control Plan 2012. The premises must comply with any development application conditions of consent, plan of management, acoustic report, outdoor dining terms of approval and relevant legislation related to noise and premises management.</p> <p>The premises has no outstanding compliance issues with the City relating to noise or management of the outdoor dining area. Council's Late Night Trading teams have attended the site on numerous occasion for breach investigation. These matters have been resolved.</p>
<p>The patrons regularly smoke in the outdoor dining area.</p>	<p>Smoking is not permitted within approved outdoor dining areas, within 4 metres of approved outdoor dining areas or within 4 metres of any pedestrian access points into a building. This is prescribed under the <i>Smoke-Free Environment Act 2000</i>.</p>
<p>The roadway is public land and should not be used for commercial purposes.</p>	<p>The <i>Roads Act 1993</i> permits outdoor dining on the road in association with an approved food and drink premises.</p>
<p>The operators are not removing their furniture and umbrellas within the reallocated roadway and leaving it out overnight.</p>	<p>Section 5.2 of the Outdoor Dining Guidelines specifies that furniture should be removed and stored safely within the premises beyond the outdoor dining trading hours. This applies to all operators.</p> <p>Under no circumstances are patrons to be using the furniture outside of the approved hours.</p>



Comment	Response
Patrons obstructing the footpath	<p>Obstruction of the footpath would be in breach of section 3 of the Outdoor Dining Guidelines. Clearance of 2 meters is necessary to allow the public to navigate the footpath. Where occurrences of this nature unfold, we advise that this be reported to Council's Compliance division for investigation.</p> <p>The City has communicated these concerns to the operators and have been advised to keep the footpath clear to ensure safe mobility for the community.</p>

The remaining submission was in support of the proposal.

## Delegation

The subject outdoor dining application is consistent with the City's delegations and can be determined under officer delegation by the Area Planning Coordinator or Area Planning Manager.

## Conclusion

The proposed outdoor dining application is consistent with the relevant controls and can be supported subject to conditions.

## Recommendation

The outdoor dining application is recommended for approval, subject to the conditions in the notice of determination.

The undersigned declare, to the best of their knowledge that they have no interest, pecuniary or otherwise, in this application or persons associated with it and have provided an impartial assessment.

**Prepared by:**



Rose Koc  
Cadet Planner

**Determined by:**



Pat Quinn  
Area Planning Manager

**Determination date:**

15 May 2023