

**POLICY NAME**

Outdoor Dining Policy

**DATE ADOPTED**

24 June 2019

**ECM NUMBER**

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**REVIEW DATE**

June 2021

**RELATED DOCUMENTS**

Outdoor Dining Guidelines

**POLICY NUMBER**

PD 002

**COUNCIL MINUTE NUMBER**

110

**POLICY TYPE**

Council

**RESPONSIBLE DEPARTMENT**

Property Development

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**Purpose**

This Policy is to establish a framework under which Council can issue approvals for outdoor dining and intends to simplify the process for restaurants to expand their existing dining activities outdoors onto the public footpath or within a public space or park adjoining an existing business, where it is safe and appropriate.

**Policy Statement**

Penrith City Council encourages the use of public places for outdoor dining as a way to stimulate business growth and create vibrant local communities.

**Scope**

The Policy applies to all land within the Penrith City Council Local Government Area used as a public footpath, space or park.

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

The aim of the policy is to provide a framework for determining the suitability of a site and meeting the ongoing operational requirements.

The objectives of the policy are to:

- facilitate the appropriate use of outdoor dining on footways or within public spaces or parks while maintaining an equitable and safe thoroughfare around outdoor dining areas for all users.
- ensure the design of the outdoor dining space, furniture, fixtures and day-to-day requirements facilitate improvement to the local character, street vitality, amenity and economic viability.
- ensure outdoor dining activities avoid nuisance, endangerment or inconvenience and residents can continue to enjoy the amenity of their neighbourhood.

- ensure compliance with relevant legislation, Council's Policy and Guidelines and insurance requirements.

## **Part 1**

### **Approvals**

NSW legislation sets out the following approvals required for a premise to have outdoor dining:

- 1) outdoor dining on the public footway requires an approval under the Roads Act 1993
- 2) outdoor dining on community land, such as a park or reserve requires approval under the Local Government Act 1993
- 3) outdoor dining that is on Crown land requires an approval under the Crown Land Management Act 2016, and
- 4) outdoor dining on land that is not exempt development under the State Environmental Planning Policy 2008 requires development consent under the Environmental Planning and Assessment Act 1979.

Under Section 50 of the Transport Administration Act 1988, Roads and Maritime Services delegated the function of determining whether to concur with an approval to use part of a footway for the purpose of a restaurant under Sec 125 of the Roads Act 1993 to Council (within the meaning of the Local Government Act 1993) of the local government area within which the restaurant is located.

### **Compliance with legislation and regulations**

The State Environment Planning Policy (Exempt and Complying Codes) 2008 Subdivision 20A Footpaths – Outdoor Dining makes footway dining an exempt development if it is:

- a) not associated with a pub or a small bar, and
- b) carried out in accordance with an approval granted under section 125 of the Roads Act 1993, including in accordance with any hours of operation to which the approval is subject, and
- c) carried out in accordance with any approval granted under section 68 of the Local Government Act 1993.

Section 125 of the Roads Act 1993 states that:

- 1) A council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road (being a public road that is vested in fee simple in the council) to use part of the footway for the purposes of the restaurant.
- 2) An approval may be granted on such conditions (including conditions as to payments in the nature of rent) as the council determines.
- 3) An approval may not be granted in respect of a footway of a classified road except with the concurrence of RMS.
- 4) The term of an approval is to be such period (not exceeding 7 years) as is specified in the approval.
- 5) An approval lapses at the end of its term or, if the part of the footway the subject of the approval ceases to be used for the purposes of a restaurant, when that use ceases.

The policy is to be adopted as an approved local policy under section 161 of the Local Government Act 1993. In doing so, it will allow outdoor dining to be carried out on community land adjoining an existing business, as well as the footway.

## **Part 2**

### **Approval Requirements**

Outdoor Dining Applications will be assessed against four (4) permit requirements detailed in the supporting guidelines. Applications must demonstrate and meet all four (4) permit requirements before approval will be granted.

The four (4) permit requirements consist of:

1. Location
2. Design and functionality
3. Neighbourhood amenity
4. Legal and Compliance

Council has absolute discretion to approve or refuse outdoor dining permits on land owned or controlled by Council.

## **Part 3**

### **Guidelines**

Guidelines for outdoor dining have been prepared to implement the policy objectives.

Council has absolute discretion to approve or refuse outdoor dining permits/ licences on land owned or controlled by Council.

### **Variations to the guidelines**

The Outdoor Dining Guidelines will be reviewed biennial, and variations will be at the Property Development Manager's discretion.

### **Responsibility/Accountability**

- Council's Property Development Department is responsible for the provision and management of Outdoor Dining Permits on a road or within a public space, including processing applications.
- Council's Environmental Health and Compliance Department (Rangers) are responsible for the enforcement of outdoor dining permits.

### **Consultation and notification**

All Outdoor Dining applications made for the use of Community Land will be notified and exhibited as per section 47A of the Local Government Act 1993.

### **Consultation**

The policy has been developed following consultation with:

- Liquor & Gaming NSW

- Vision Australia and Guide Dogs NSW
- Roads and Maritime Services (RMS)
- St Marys Town Centre and Penrith CBD Corporation
- Council's Access Committee

### **Related Documents and Legislation**

- Local Government Act 1993
- Roads Act 1993
- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2014
- Disability Discrimination Act 1992
- Australian Standards
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Penrith City Council's Smoke Free Outdoor Areas Policy

### **References and acknowledgments**

The following documents were reviewed in preparing the policy and attached guidelines:

- North Sydney Council Outdoor Dining and Goods Display Policy 2008 and Outdoor Dining and Goods on Footpath Policy 2013
- City of Parramatta Outdoor Dining Policy 2012
- Blacktown City Council Outdoor Dining Policy 2016
- City of Sydney Outdoor Dining Guidelines and Outdoor Dining Policy 2016
- NSW Government Interim Outdoor Dining User Guide and Interim Outdoor Dining Policy 2017-18.