



## Explanation of Intended Effect

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Proposed amendment to the Codes SEPP to temporarily allow outdoor dining as exempt development for small bars, pubs and cultural venues in the City of Sydney

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## Executive Summary

The Minister for Planning and Public Spaces seeks feedback on a proposal to amend outdoor dining provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). The amendment will allow pubs and small bars, as well as cultural venues with a food or drink outlet, to operate outdoor dining for lawful premises as exempt development in the City of Sydney local government area for one year (Outdoor Dining Trial).

The amendment will facilitate the Outdoor Dining Trial, provided that the venues operate consistently with any existing approvals granted under the *Roads Act 1993* (Roads Act) and *Local Government Act 1993* (LG Act) and any conditions of licences under the *Liquor Act 2007* (Liquor Act). Under the proposal the City of Sydney Council (Council) will assess venues' applications for outdoor dining in accordance with their adopted policy and guidelines.

The Outdoor Dining Trial is proposed to run for a period of twelve months from 30 October 2020 to 31 October 2021.

The NSW planning system has an important role to play in the State's economic recovery from the COVID-19 pandemic. This measure forms part of broader plans to keep the economy moving, support our communities and business to operate safely and keep people in jobs, both now and in the months ahead. The Government is responding by adapting the planning system to ensure continued productivity, investment, community well-being and safety.

## Proposed amendment to the Codes SEPP

The Minister for Planning and Public Spaces will progress changes to the Codes SEPP to allow pubs, small bars and cultural venues with a food or drink outlet to participate in the Outdoor Dining Trial. The amendment will lift the restriction in the Codes SEPP that prevents small bars and pubs in the City of Sydney local government area (apart from The Rocks, which is subject to a separate proposal) operating outdoor dining as exempt development.

All other conditions of consent for venues will remain unchanged and will be enforceable during the 12-month period. The conditions that the Council has applied on any existing approvals under the Roads Act and LG Act will also be enforceable throughout the Outdoor Dining Trial.

## Reason for the change

The Council seeks to support economic recovery by realising an alfresco city combining outdoor dining, bars, culture and late-night trading. The Council has consulted the community to develop the *Community Recovery Plan* which aims to create a summer of outdoor dining and culture in new spaces. The Council and the NSW Government will improve processes to make it easier for businesses to operate outdoor dining and identify new opportunities for outdoor dining to provide more space for social distancing. The Council is working with L&GNSW to streamline amendments of existing liquor licenses for those businesses that are approved for outdoor dining.

The NSW Government's Outdoor Dining Taskforce supports this objective, and it is an action in Treasury's recently released [Sydney 24-hour Economy Strategy](#).

Currently, pubs and small bars need two approvals for outdoor dining, whereas restaurants, cafes and other food and drink premises only need one. The Council has advised that the assessment of outdoor dining applications is approximately 6 weeks. The Council has requested that the Minister amend the Codes SEPP to lift the current restriction on pubs and small bars from undertaking outdoor dining as exempt development, noting that this avenue is already available to cafes and restaurants. The proposed amendment will also allow cultural venues to use the exempt provisions. This will help venues to provide food and drink services, such as pre-theatre dining or

interval drinks, given these venues often have limited lobby space to provide social distancing. Cultural venues have been particularly hard hit during the COVID-19 pandemic and the Government is keen to support their recovery.

The proposed amendment will facilitate the Outdoor Dining Trial in time for summer and facilitate a streamlined approval process. It will also give venues time to seek approval for outdoor dining and prepare to change their operations.

## The Council's process to approve outdoor dining

The Council currently assesses all outdoor dining applications against its *Outdoor Dining Policy* and *Guidelines* (Policy). The Policy addresses public access, safety, size, hours of operation requirements, and the safe use of furniture. The Council also grants approvals under the Roads Act and LG Act with conditions related to the area for outdoor dining, hours of operation, furniture and other good management matters.

The proposed amendment to the Codes SEPP will temporarily give pubs, small bars and cultural venues with a food or drink outlet the same access to exempt provisions for outdoor dining as cafes and restaurants. It will remove the need for pubs, small bars and cultural venues to submit a development application to allow outdoor dining at their venues. The Council will assess applications under the Policy (as may be amended from time to time).

Public access, neighbourhood amenity, safety and potential environmental impacts caused by outdoor dining (such as noise) will continue to be managed and enforced under the conditions of any licences granted under the Liquor Act, and any approvals granted under the Roads Act or LG Act. Any impacts arising from the participating venues' operation will continue to be enforced under those venues' existing development consents.

The Council and other regulatory authorities will closely monitor the Outdoor Dining Trial to minimise any impacts to the community. The Council can issue approvals for outdoor dining subject to conditions that the approval can be withdrawn at any time, including if impacts are found to be unacceptable.

In addition, venues are required to adhere to the strict requirements of the COVID-19 Public Health Orders for hospitality venues throughout the year, or as long as they remain in place.

## Eligible venues and locations

The Council is working with local businesses to identify appropriate locations for new and temporary spaces to safely accommodate outdoor dining and drinking in the city.

The trial would be open to food and drink venues and cultural venues (such as a theatre, art gallery, cinema or library) with a food and drink outlet subject to approval by the Council and Liquor and Gaming NSW.

The Rocks area is excluded from the proposed amendment as a similar mechanism is being developed with Place Management NSW which is the organisation responsible for managing the area.

## What is a pub?

A pub is a licensed premises under the Liquor Act that involves 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.

## What is a small bar?

Small bar licences allow venues to hold a maximum of 120 patrons, without gaming machines or serving takeaway alcohol. The standard trading hours for small bars are from midday to midnight from Monday to Sunday, except for Good Friday and Christmas Day. These venues are considered to involve a lower risk of violence, nuisance and alcohol harm.

## How to get involved

This document is being exhibited in line with the Department's Community Participation Plan. To make a submission on the amendments proposed in this document please go to [www.planningportal.nsw.gov.au/draftplans/on-exhibition](http://www.planningportal.nsw.gov.au/draftplans/on-exhibition) and complete the submission form.

For more details on how your business can participate in the Outdoor Dining Trial, please contact the City of Sydney Council on 02 9265 9333.