



## 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 and pubs

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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 to undertake outdoor dining as exempt development from 1 December 2020 to 31 October 2021 in all NSW local government areas (**NSW Outdoor Dining Trial**).

The amendment does not include the City of Sydney local government area and The Rocks, which have been subject to separate arrangements. From 1 November 2021, the amendment to the Codes SEPP will be switched off, and small bars and pubs across NSW will no longer be able to undertake or operate outdoor dining as exempt development.

The amendment will facilitate streamlined approvals for outdoor dining in appropriate locations, 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 licence conditions under the *Liquor Act 2007 (Liquor Act)*. Under the proposal councils will assess venues' applications for outdoor dining in accordance with their adopted policies and guidelines.

The amendments are proposed to run for a fixed period until 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 proposes to progress changes to the Codes SEPP to allow the NSW Outdoor Dining Trial. This means that businesses would not be required to submit development applications for outdoor dining. Instead they would seek approvals from their local councils to operate on the footpath, managed through approvals that councils' issue under the Roads Act and LG Act. The amendment will lift the restriction in the Codes SEPP that currently prevents small bars and pubs operating outdoor dining as exempt development.

All other conditions of consent for venues will remain unchanged and will be enforceable during the trial period. The conditions of any existing approvals under the Roads Act and LG Act will also be enforceable throughout the trial period.

## Reason for the change

The NSW Government's Outdoor Dining Taskforce supported the City of Sydney Council's proposal to increase opportunities for outdoor dining in the CBD. This measure aims to contribute to economic recovery outlined in the City of Sydney Council's *Community Recovery Plan*. The measure aims to support local economic recovery by creating an alfresco city that combines outdoor dining, bars, culture and late-night trading.

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](#). The Outdoor Dining Taskforce proposes to extend this opportunity across the state recognising that other communities and businesses could also benefit. Many businesses have suffered over the past 12 months due to drought, bushfire and COVID-19. Increased levels of domestic tourism and more activity in neighbourhoods provides the opportunity to help business recover from recent losses and provides additional outdoor space for safer social distancing.

The proposed amendments will allow councils and the NSW Government to improve processes and make it easier for businesses to operate outdoor dining. Councils will be able to work with Liquor & Gaming NSW to streamline amendments of existing liquor licenses for those businesses that are approved for outdoor dining.

Currently, pubs and small bars need two approvals for outdoor dining, whereas restaurants, cafes and other food and drink premises only need one. The NSW Government has been advised that the assessment of outdoor dining applications can take councils up to 6 weeks. The proposed amendment to the Codes SEPP will temporarily lift the current restriction on pubs and small bars from undertaking outdoor dining as exempt development, which is already available to cafes and restaurants.

The proposed amendment will facilitate councils to test the expansion of outdoor dining in their local areas 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.

## Toolkit for councils to develop outdoor dining policies

The NSW Small Business Commissioner has been working with councils to develop an outdoor dining toolkit to make it easier for more food business owners to offer outdoor dining and to streamline and simplify the application process. The Commissioner's *NSW Outdoor Dining Policy 2019* provides practical guidance and requires businesses to meet local amenity criteria, address public liability and manage risks, and ensure compliance with state legislation including liquor laws.

The policy toolkit has been trialled with 6 regional councils which enabled businesses to self-assess suitability and apply via the Service NSW website for a streamlined application process.

The Government is looking into ways to support councils to implement the measures if they do not have existing policies in place.

The existing documents are available on the Small Business Commissioner's website at [www.smallbusiness.nsw.gov.au/what-we-do/our-work/nsw-outdoor-dining](http://www.smallbusiness.nsw.gov.au/what-we-do/our-work/nsw-outdoor-dining).

## The process for councils to approve outdoor dining

Councils currently assess development applications for outdoor dining against their own outdoor dining policies and guidelines. Councils also grant 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.

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.

The proposed amendment to the Codes SEPP will temporarily give pubs and small bars the same access to exempt provisions for outdoor dining as cafes and restaurants. It will remove the need for pubs and small bars to seek development consent for outdoor dining. Instead, the council will assess applications against their Outdoor Dining Policy. Where a council does not have these policies and guidelines in place, they can use the toolkit provided by the Small Business Commissioner.

Councils and other regulatory authorities will monitor any expansion of outdoor dining to minimise any impacts to the community. Councils can grant 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

NSW Councils will work with businesses in their local areas to identify appropriate locations for new and temporary spaces to safely accommodate outdoor dining.

Any expansion of outdoor dining would be open to food and drink venues subject to approval by the local council and Liquor & Gaming NSW.

## What is a pub?

A pub is a licensed premise 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 your local council.