

October 2020

The exhibition of an amendment to the Codes SEPP to enable outdoor dining for pubs and small bars

This document answers frequently asked questions regarding the proposed amendment for outdoor dining.

What is this exhibition about?

The Department of Planning, Industry and Environment is exhibiting an Explanation of Intended Effect (EIE) for public comment that proposes a temporary amendment to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) to remove existing restrictions for small bars and pubs to allow outdoor dining as exempt development. It provides an opportunity for all NSW councils to streamline the approval pathway for the operation of outdoor dining in their local government area.

Why do we need the amendment?

The City of Sydney Council and Place Management NSW proposed the outdoor dining initiative in the Sydney CBD to create an alfresco city that combines outdoor dining, bars, cultural and late-night trading. This objective was supported by the NSW Government's Outdoor Dining Taskforce. The Government is proposing to extend this opportunity across the State recognising that other communities and businesses could benefit from these measures to help businesses to recover from the impacts of the bushfire, drought and Covid-19 pandemic. Additional outdoor dining will support increased levels of domestic tourism. It allows businesses to provide space for social distancing and for the public to safely enjoy a range of dining experiences during the summer and beyond.

What is the proposed amendment?

This proposed amendment would enable owners of small bars and pubs to access the exempt development provisions in the Codes SEPP for outdoor dining on a temporary basis. Venues would not be required to submit a development application to operate outdoor dining during the trial period. However, approval would still be required from councils under the *Roads Act 1993* (Roads Act) and *Local Government Act 1993* (LG Act). Venues would also need to have their licences amended under the *Liquor Act 2007* (Liquor Act). Business owners would apply directly to councils for approval to use footpaths for outdoor dining and be assessed against councils' existing outdoor dining policy and guidelines.

The proposed amendment will temporarily lift the current restriction in the planning framework on outdoor dining for lawfully operating pubs and small bars. This amendment will temporarily align the exempt development provision for pubs and small bars with those for cafes and restaurants.

How long will the Codes SEPP amendment last?

The amendment will run for 11 months from 1 December 2020 to 31 October 2021.

The existing provisions for outdoor dining will recommence on 1 November 2021, when venues will need to submit a development application.

What support is there for councils?

The NSW Small Business Commissioner (SBC) has been working with councils to develop an outdoor dining toolkit. This material will be made available to councils that may not have existing outdoor dining policies or guidelines. The toolkit 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. Councils can revise the material to suit local conditions and advise local businesses. The current documents are available on the SBC website at www.smallbusiness.nsw.gov.au/what-we-do/our-work/nsw-outdoor-dining.

What is council's role during the period?

Although the temporary provisions would apply to the State, councils will assess these applications against their outdoor dining and local policies and continue to grant approvals under the Roads Act and the LG Act. Approvals would also be aligned with licence conditions under the Liquor Act. This ensures that matters such as public access, safety, noise, cleanliness, hours of operation, the safe use of furniture and other matters are appropriately managed.

Councils and other regulatory authorities will closely monitor outdoor dining to minimise any impacts on the community. Councils 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.

How can venues apply?

The proposed amendment does not automatically mean that venues can trade outside or on the footpath. Venues must seek council's approval in line with the council's outdoor dining policies and guidelines, other approvals needed under the Roads Act, the LG Act and any changes to liquor licences issued under the Liquor Act.

When will the exhibition close?

The EIE is on exhibition for two weeks until 8 November 2020.

Who can I contact if I have questions about outdoor dining?

If you have any questions about outdoor dining or how your business can apply, please contact your local council for details of their requirements.

For more information on the exhibition of the EIE, please call our information centre on 1300 305 695. If English isn't your first language and you prefer an interpreter, please call 131 450. Ask for an interpreter in your language and then request to be connected to our information centre.

© State of New South Wales through the Department of Planning, Industry and Environment October 2020. The information contained in this publication is based on knowledge and understanding at the time of writing (October 2020). However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Planning, Industry and Environment or the user's independent adviser.