

# Outdoor Dining

To use the exempt pathway for the outdoor dining area, the venue must meet both:

- the Code SEPP's general requirements to be considered exempt development, and
- the specific development standards relevant to the location of the venue's outdoor dining area – footpath and roads, private land or registered clubs.

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## What is exempt development?

A range of minor and low-impact developments can be done to residential, commercial and industrial properties without needing development approval from a council or private certifier. This is called exempt development. As long as the project meets specific standards and land requirements (as defined in the policy), no planning or building approval is needed.

How you will know if the project is exempt development

The Exempt and Complying Development Codes SEPP sets out the development standards that a building project must meet to be exempt development. To be exempt development, the project must comply with all of the relevant development standards. If the proposed outdoor dining area doesn't meet all of the development standards, the business will need approval from council.

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## General requirements to qualify as exempt development:

General requirements for exempt development: Division 2, Section 1.16 of the Codes SEPP

Exempt development must have minimal environmental impact and cannot be carried out on land that is a:

- Declared area of outstanding biodiversity value under the Biodiversity Conservation Act 2016 or declared critical habitat under Part 7A of the Fisheries Management Act 1994
- Wilderness area under the Wilderness Act 1987
- State heritage item listed on the State Heritage Register, or an interim heritage item under the Heritage Act 1977.

If the heritage designation applies to only part of the lot, you may be able to carry out exempt development on the part of the land that is not affected by the heritage listing.

To be exempt development under the Codes SEPP, the proposed development must:

- comply with relevant provisions of the Building Code of Australia. If no relevant provisions exist, the works must be structurally adequate
- not cause an existing building to contravene the Building Code of Australia

- be installed in accordance with the manufacturer's specifications (if relevant)
- have a current fire safety certificate or fire safety statement for the existing building
- not involve the removal or pruning of a tree or other vegetation that requires a permit, approval or development consent, unless the removal or pruning is carried out in accordance with the permit, approval or development consent.

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## Outdoor dining on footpaths and roads

Subdivision 20A of the Codes SEPP allows outdoor dining on a footway or public open space within the meaning of the *Roads Act 1993*.

The outdoor dining area must:

- be associated with a lawful 'food and drink premises' – ie the venue has approved use, and
- be carried out in accordance with an approval granted by the local council to use the space under section 125 of the *Roads Act 1993*, including in accordance with any hours of operation to which the approval is subject, and
- be carried out in accordance with any approval granted by the local council under section 68 of the *Local Government Act 1993*, and
- not be under an awning, unless the awning complies with the requirements set out in the *Building Code of Australia*, Volume 1, B1P1 and B1P2.

The local council will issue venues with a permit to use a specific space. Venues must comply with council's policy for outdoor dining and matters addressed in the permit. This exempt pathway is permanently available for food and drink premises such as cafes, restaurants, pubs and small bars.

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## Outdoor dining on private land

Subdivision 20B of the Codes SEPP allows outdoor dining areas on private land, if the use is associated with either a lawful 'food and drink premises' or 'artisan food and drink industry'.

The outdoor dining area must not be:

- in an environmental zone or the E5 Heavy Industrial zone, or
- in a place of Aboriginal heritage significance identified in a local environmental plan, or
- be associated with a registered club.

This information can be found from the local council or on the NSW planning portal.

The outdoor dining area:

- must not be located on a roof top, and

- must not cause offensive noise, within the meaning of the *Protection of the Environment Operations Act 1997*, or other nuisance that affects adjoining owners, and
- must not contravene an existing condition of the most recent development consent, other than a complying development certificate, for the premises' hours of operation, maximum capacity of patrons, waste management, food safety and pollution control, and
- must not restrict any vehicular or pedestrian access to or from, or entry to a building on the land on which the outdoor dining area is located, and
- must not reduce the existing access or car parking spaces for people with a disability, and
- must be designed to ensure pedestrian and patron safety if in a car park, and
- must provide a direct exit from the outdoor dining area to open space or a road if located at ground level (not be an enclosed courtyard), and
- must not be under an awning, unless the awning complies with the requirements set out in the *Building Code of Australia*, Volume 1, B1P1 and B1P2.
- must restore the land to the original condition at the end of the use.

This permanent exempt pathway commences on 1 January 2024.

Other legal requirements still apply including having landowner's consent to use the land, and for approvals, licences, permits and authorities eg approval under the *Local Government Act 1993*, section 68.

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## Outdoor dining at registered clubs

Subdivision 20C of the Codes SEPP allows outdoor dining areas at a registered club, if the use is associated with lawful food and drink premises and community land meaning as in the *Local Government Act 1993* and private land. This means that the club must be approved to contain a food and drink premises such as a café, bar or restaurant.

The outdoor dining area must not be:

- in an environmental zone, or
- in a place of Aboriginal heritage significance identified in a local environmental plan.

This information can be found from the local council or on the NSW planning portal.

The outdoor dining area:

- must not be located on a roof top, and
- must not cause offensive noise, within the meaning of the *Protection of the Environment Operations Act 1997*, or other nuisance that affects adjoining owners, and

- must not contravene an existing condition of the most recent development consent, other than a complying development certificate, that applies to the registered club or the food and drink premises, other than in relation to car parking spaces, and
- must not restrict any vehicular or pedestrian access to or from, or entry to a building on the land on which the outdoor dining area is located, and
- must not reduce the existing access or car parking spaces to the registered club for people with a disability, and
- must be designed to ensure pedestrian and patron safety if carried out on land otherwise used as a car park, and
- must provide a direct exit from the outdoor dining area to open space or a road if located at ground level (not be an enclosed area), and
- not be under an awning, unless the awning complies with the requirements set out in the *Building Code of Australia*, Volume 1, B1P1 and B1P2, and
- must restore the land to its original condition at the end of the use.

Other legal requirements still apply including having landowner's consent to use the land, and for approvals, licences, permits and authorities eg approval under the [Local Government Act 1993](#), section 68.

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## For more help

Venues should contact their local council to discuss any limits on their existing approval and to get a permit to use the road or footpath.

See also OLG's Outdoor Dining Guideline for Councils [www.olg.nsw.gov.au/wp-content/uploads/2020/12/OutdoorDiningGuidelines.pdf](http://www.olg.nsw.gov.au/wp-content/uploads/2020/12/OutdoorDiningGuidelines.pdf)

### Contact the Codes Team

Visit the [outdoor dining web page](#), or call the Department's Codes Team on 02 8289 6600 or email [codes@planning.nsw.gov.au](mailto:codes@planning.nsw.gov.au).