

Department of Planning and Environment

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Frequently asked questions about outdoor dining and live music venues

Proposed changes to the planning system to support outdoor dining and live music venues

October 2023





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Frequently asked questions

This document answers frequently asked questions about changes to the planning system that will support outdoor dining and live music venues.

We are proposing changes to the:

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, also known as the Codes SEPP
- Standard Instrument – Principal Local Environmental Plan 2006.

The changes will allow outdoor dining on private land and at registered clubs using the Codes SEPP's complying development pathway. The changes to the Standard Instrument – Principal Local Environmental Plan 2006 will introduce an optional floor space and height bonus for new developments to encourage investment in music venues.

The proposed outdoor dining changes do not apply to businesses using the footpath or public open space as exempt development.

Have your say

The NSW Department of Planning and Environment is publicly exhibiting the proposed changes to the Codes SEPP and Standard Instrument until **Thursday 16 November 2023**. You can give feedback by making a formal submission to the department.

More information

- Visit the [NSW Planning Portal](#) or the department's website [Outdoor dining | Planning \(nsw.gov.au\)](#)
- Email codes.submissions@planning.nsw.gov.au
- Call the department on 1300 420 596.
- If you would like help from an interpreter, please call 131 450. Ask for an interpreter in your language. Then ask the operator to connect you to our Information Centre on 1300 305 695.

Outdoor dining as complying development

The NSW Government committed to support outdoor dining at registered clubs and on private land. We would like your feedback on proposals to do this using **complying development**, which is explained below.

Complying development

Complying development is a fast-tracked approval process for straightforward development where an accredited certifier can sign off planning and building standards. Councils or private, accredited certifiers can issue complying development certificates in around 20 days.

Such development must comply with all relevant development standards and conditions in the Codes SEPP. The standards aim to lessen any impacts and ensure the development will not significantly affect surrounding properties and residents.

Codes SEPP

This is an environmental planning instrument (legal document) that applies statewide, except for excluded areas. It specifies the various forms of development that can be carried out as exempt or complying development.

What is the current temporary exemption for outdoor dining?

Outdoor dining is currently allowed:

- on private land at food and drink premises, such as cafes, restaurants, pubs and small bars
- at registered clubs without the need for a planning approval.

This is possible under a temporary measure in Part 2 Exempt Development Codes, of the Codes SEPP.

Food and drink premises

These are a type of retail premises that prepares and sells food and/or drinks for people to eat or drink at once, on or off the premises. These premises range from restaurants and cafes to small bars, pubs and takeaway premises.

Registered club

A registered club holds a club licence under the Liquor Act 2007. Registered clubs can include premises such as bowling, returned services leagues and golf clubs. A club licence allows the club to sell liquor by retail on the premises to a member of the club (or a member's guest) for drinking on or off the premises. A registered club may also operate gaming machines.

Why is the NSW Government changing the planning system?

During the COVID-19 pandemic, the NSW Government introduced temporary, statewide exemptions for outdoor dining on private land and at registered clubs. This allowed people to dine outdoors without the need for businesses to get additional planning approval. The exemptions allowed existing businesses to set up outdoor dining areas swiftly and keep trading while COVID-19 safety measures were limiting the number of people allowed inside venues.

These exempt planning pathways were originally meant to be a temporary measure during the pandemic. The exemptions are due to end on 31 December 2023.

Outdoor dining has become popular with communities around NSW. It has helped businesses to offer unique experiences, breathed new life into under-used spaces, and attracted more visitors to various neighbourhoods.

The NSW Government will continue supporting businesses in providing outdoor dining options. To achieve this, we are proposing changes to the Codes SEPP. The changes will establish a permanent approval process that allows businesses to operate outdoor dining on private land and at registered clubs.

What is the proposed new pathway for outdoor dining?

We propose to amend the Codes SEPP to create a new fast-track approval pathway for outdoor dining on private land and at registered clubs.

The Codes SEPP will include development standards to allow outdoor dining areas as complying development. To get a **Complying Development Certificate**, a business must show that it complies with all the relevant development standards in the Codes SEPP. Conditions of approval included in the complying development certificate will apply to the ongoing operation of the outdoor dining area.

Where will the complying development pathway apply?

This development pathway will be available for any lawful food and drink premises across NSW, such as a:

- restaurant or café
- a pub or small bar
- a registered club
- takeaway food and drink premises
- artisan food and drink industries

if the development is permissible (allowed) with consent in the zone. The relevant council's Local Environmental Plan (LEP) sets out what uses are permitted in each zone.

Artisan food and drink industries

This means a building or place that is primarily for making or manufacturing boutique, artisanal or craft food or drink products only. It must also include at least one of the following:

- a. a retail area for the sale of the products
- b. the preparation and serving of retail food and drink for people to eat or drink on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided
- c. facilities for holding tastings, tours or workshops.

Where can't the complying development pathway be used?

Premises in the E5 Heavy Industrial zone will **not** be able to use the complying pathway for outdoor dining on private land. The E5 zone provides areas for industries that need to be separated from other land uses for their operations and to minimise any harmful effect industry may have on other land uses. Because heavy industry could potentially threaten public safety, a council should assess if an outdoor dining area is acceptable in the E5 zone.

The Codes SEPP does **not** allow complying development on certain types of land. These include, but are not limited to:

- State or locally listed heritage items
- heritage conservation areas
- land reserved for public purposes
- land comprising Class 1 or Class 2 Acid Sulfate Soils Map
- significantly contaminated land
- land in a foreshore area
- unsewered land in the Sydney Drinking Water Catchment and any other drinking water catchment
- environmentally sensitive land (critical habitat, wilderness or threatened species areas) and areas excluded by councils based on local circumstances.

To view the land exemptions for complying development, visit the relevant sections of the Codes SEPP:

- <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2008-0572#sec.1.17A>
- <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2008-0572#sec.1.18>
- <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2008-0572#sec.1.19>

What size can the outdoor dining area be?

The proposed changes to the Codes SEPP include development standards that specify the maximum areas for outdoor dining.

The size of outdoor dining areas allowed is based on 2 criteria:

- the size of the inside of the existing venue
- what zone the existing venue is located in.

Table 1 outlines the proposed areas for outdoor dining in each land-use zone.

Table 1. Allowable floor area for outdoor dining

Land-use zone	Size of outdoor dining area
<ul style="list-style-type: none"> • E3 Productivity Support • E4 General Industrial • SP3 Tourist • SP5 Metropolitan Centre • RE2 Private Recreation zone 	The outdoor dining area can be up to 100% of the internal gross floor area of the venue
<ul style="list-style-type: none"> • E1 Local Centre • E2 Commercial Centre 	The outdoor dining area can be up to 50% of the internal gross floor area of the venue
<ul style="list-style-type: none"> • MU1 Mixed Use • Any other zone 	The outdoor dining area can be up to 25% of the internal gross floor area of the venue
<ul style="list-style-type: none"> • E5 Heavy Industrial 	Not permitted as complying development

For example, if a venue is in the land-use zone E1 Local Centre, the outdoor dining area can be up to half the size of the inside gross floor area. So, if the inside floor area is 120m² (square metres), the outdoor area can be up to 60m² (square metres).

What does this mean for my business?

Under the proposed changes, if your business wants to use private land or registered clubs for your outdoor dining, you will submit a simple complying development application to your local council or a private certifier. This means that if you run a business that has already been approved, such as a restaurant or café, you will be able to add an outdoor dining area without submitting a new development application or a modification.

Councils or private certifiers can issue complying development certificates in about 20 days, providing a fast and lower-cost option for businesses. This ensures there is no delay in getting approval for your outdoor dining area.

A permanent approval pathway gives businesses greater certainty and assures surrounding properties that the venue's outdoor dining area has been assessed as suitable.

There is no change to the Codes SEPP's exempt process for businesses using the footpath, road or public open space. These businesses will continue to obtain a permit through their local council.

How do I apply for a complying development certificate?

To start the process, contact a certifier. Visit [Building Certifiers Public Register \(nsw.gov.au\)](https://www.nsw.gov.au/building-certifiers-public-register) to access the public register of building certifiers.

Businesses will be able to choose a council or private certifier to assess the application and issue the complying development certificate. The certifier will be able to tell you what documents you will need to provide and how to lodge your application through the [NSW Planning Portal](#).

Visit the [Complying Development | Planning Portal - Department of Planning and Environment \(nsw.gov.au\)](#) for more information about the process.

How long do I have to get a new approval?

The NSW Government is committed to supporting businesses and the economy, which is why we are proposing a permanent approval pathway for outdoor dining areas. We will issue guidance to businesses after the exhibition when we finalise the proposals.

What should I do if my outdoor area is larger than that allowed under complying development?

Please contact your local council to discuss a development application or modification to your current development approval.

Will these changes increase the number of patrons at a premises?

The proposed changes allow the number of patrons at a venue to increase if it still complies with the other standards in the Codes SEPP.

For development to qualify as complying development under the Codes SEPP, it must meet the provisions (legal conditions) of the Building Code of Australia. The Building Code of Australia establishes guidelines and requirements for such things as sanitary facilities (bathroom facilities), emergency exits, and ensuring the structural stability of a building.

If your business is proposing an outdoor dining area under the complying development pathway, you will need to make sure that the building meets the requirements of the Building Code of Australia. The requirements of the code may limit the number of people allowed at a venue.

Contact your certifier for advice on how to comply.

Will outdoor dining areas be allowed in car parks?

No. The proposed changes permit outdoor dining only in designated areas. This is to ensure there is enough parking for staff, patrons, deliveries and performers without increasing parking demand on surrounding streets. Councils often specify the number of parking spaces that are required in a venue's development consent and we do not intend to change this.

Not using parking spaces also aims to ensure patron safety and amenity, and retaining accessible paths of travel and parking.

What should I do if I want to keep using my parking spaces for outdoor dining?

There may be certain cases where converting car parking spaces into outdoor dining areas could be appropriate. For example, this may work in metropolitan areas that have good public transport or at registered clubs with large car parking areas.

If your business wants to use its car parking spaces for outdoor dining, you can ask the council to modify your approval through the development application process.

How do I get a licence to serve alcohol?

Please contact the [Hospitality Concierge](#) at Liquor & Gaming NSW (L&GNSW) to discuss options for your business.

Visit [Liquor licences - Liquor & Gaming NSW](#) for information on applying for a liquor licence.

Will the temporary liquor licence boundary approvals be extended?

Currently, Liquor & Gaming NSW can issue temporary approvals for a liquor licence boundary for outdoor dining at existing licensed premises. This temporary, streamlined approval pathway is due to expire on 31 December 2023. Liquor & Gaming NSW proposes to make this streamlined pathway permanent. This would be consistent with the complying development pathway we are proposing for outdoor dining under the Codes SEPP.

How will the changes protect the amenity of neighbouring properties?

The proposed complying development pathway supports businesses to continue providing outdoor dining areas at approved venues in suitable locations. Venues must continue to operate in line with their development consent and their liquor licence.

However, it is important to balance the needs of businesses with neighbouring land uses. Instead of creating more controls, we will manage potential effects on amenity under existing approvals and legislation, such as the *Protection of the Environment Operations Act 1997*.

Will I be notified if new outdoor dining areas are proposed next to my home or in my neighbourhood?

Businesses will not have to notify neighbours if they receive approval for outdoor dining areas as complying development. This is in keeping with the notice requirements for complying development under the Environmental Planning and Assessment Regulation 2021. We encourage businesses to speak with their neighbours about any new proposal for outdoor dining.

Will the outdoor dining area have to comply with council requirements?

The proposed changes to the Codes SEPP include development standards for outdoor dining areas done as complying development. While development does not have to address council controls as part of the complying development certificate process, such as specifying the type of tables used, conditions of consent for the existing premises will continue to apply.

Floor space bonus to create more music venues

What is changing?

We are proposing to insert a new, optional floor space or density bonus clause in the Standard Instrument – Principal Local Environmental Plan 2006. The clause will allow councils to identify a floor space and/or height bonus that can be used in new developments that contain music venues.

Standard Instrument – Principal Local Environmental Plan 2006

Local environmental plans guide planning decisions across NSW. Councils develop their own local environmental plans, which set out planning controls for their local government area.

The Standard Instrument – Principal Local Environmental Plan 2006 or Standard Instrument LEP prescribes the form and content local environmental plans must follow. It also mandates permitted and prohibited uses for each land-use zone.

The Standard Instrument LEP has both compulsory and optional clauses for councils to adopt in their own plans. The compulsory clauses cannot be varied, but councils can update optional clauses with specific local and numerical standards after strategic planning investigations.

Why is the government proposing changes?

The music and arts industry in NSW needs better support and more venues to thrive. A lack of suitable spaces limits opportunities for local artists and musicians, as well as overseas acts and regional tours. This hampers the state's ability to attract performers and events, affecting tourism and supporting businesses.

The government has made several election commitments to encourage vibrant and diverse night-time activities and to support live music. Some recent changes include extended trading hours for venues and lower liquor licence fees.

The proposed floor space/density clause is another part of the Government's strategy to support live music venues and to encourage more vibrant areas to go out in. The proposal will help to deliver the government's election commitments. It increases opportunities and feasibility for development that will help boost the live music, entertainment and creative industries in NSW.

What does this mean for businesses?

A bonus floor space area will enable developers to apply for a larger building footprint. This will provide more space and opportunities for businesses to develop music venues. The proposed floor space/density bonus clause will give developers an incentive to include live music, arts and entertainment spaces.

The proposed change will help development and attract investment in creative spaces, particularly in areas where this may be priced out by other uses.

What does this mean for councils?

Councils can adopt and use the proposed floor space/bonus clause to encourage new and existing developments to build in creative spaces, whether individually or as part of a larger precinct.

Councils will use their strategic planning process to identify locations where creative uses are in demand. They can select locations that take advantage of local opportunities such as access to public transport nodes, education, or other entertainment and recreation facilities. Following consultation with their communities, councils can adopt the clause and set the standards for the amount, type and location of facilities.

What uses will the bonus clause apply to?

The government wants to revitalise the music industry by encouraging the development of the following uses:

- **Creative industry** includes a building or place with the principal purpose to produce or demonstrate arts, crafts, design or other creative products, and includes artists' studios, recording studios, and set design and production facilities.
- **Entertainment facility** includes a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.
- **Information and education facility** includes a building or place that provides information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

What type of developments will the clause apply to?

The type of developments that the clause will apply to will be decided by each council informed by its strategic planning process. The bonus provisions will be set out in a council's local environmental plan and will include types of developments it applies.

Where will the bonus clause apply?

It will be up to councils to decide where the bonus clause will apply following its strategic planning process. For example, councils may decide that the floor space/density bonus should be available in certain areas such as:

- Special Entertainment Precincts
- in or around transport nodes
- in or around other strategic centres where there is a need to support more entertainment, cultural and creative offerings.

A council will set out the bonus provisions in its local environmental plan, which will include details of the extent of the bonuses and the locations where they apply.

What does this change mean for local environmental plans?

The amendment to the Standard Instrument LEP will only be for setting the standard structure, objectives and requirements of the 'bonus' clause. If a council adopts the clause, it will set out the specific bonus provisions in its local environmental plan. This will include details of the:

- extent of the bonuses
- locations where it applies
- benefits it encourages.

General information

What is exempt development?

Exempt development is minor and low-impact development that can be carried out without the need for approval if it meets predetermined criteria. For development to be done in this way, it must satisfy several requirements. These include, but are not limited to, the requirements that it must:

- comply with the Building Code of Australia
- be installed in accordance with the manufacturer's specifications (if applicable)
- not be carried out on certain environmentally sensitive land, such as a wilderness area, area of outstanding biodiversity value or a State Heritage Item.