

POLICY

NSW Outdoor Dining Policy And Footpath Trading

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Related documents	Footpath Trading Policy
Responsible officer	General Manager
Department/Section	Environmental & Community Services
Category	Environmental Management
Community Strategic Plan goal	<p>Goal 4 – Plan for a sustainable future Goal 5 – A sustainable and prosperous economy</p> <p>G4 CS14 Provide efficient and effective advisory, assessment and regulatory services focused on being customer ‘friendly’, responsive and environmentally responsible. Wording</p> <p>G5 CS19 Encourage retail and commercial business to locate and prosper within our Shire.</p> <p>G5 CS22 Provide attractive and functional town centres and support revitalisation of the towns and villages including investment in built heritage and improvement of existing buildings.</p> <p>G5 CS23 Facilitate and support increased and innovative tourism and marketing opportunities.</p>

NSW Outdoor Dining Policy

2019



Small
Business
Commissioner

This policy supports the process for existing restaurants, cafés and other food-based businesses to expand trading onto the public footpath.



Contents

Message from the NSW Small Business Commissioner	3 ▶
Policy	
New South Wales outdoor dining	4 ▶
Outdoor dining permit requirements	5 ▶
Applications for outdoor dining permits	9 ▶
Businesses with an on-premises (restaurant) licence	10 ▶
Accessibility	11 ▶
Conditions of approval	12 ▶
Roles and responsibilities	13 ▶
Legislation	14 ▶
Definitions	15 ▶



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FROM 8AM

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Message from the NSW Small Business Commissioner



As the NSW Small Business Commissioner, my job is to make it easier for small businesses to get on with doing business.

My office works with small businesses to reduce burdens on their operations and strengthen local economies through regulatory reform and policy harmonisation.

The NSW Outdoor Dining Policy 2019 builds on the successful Easy to do Business program, run in partnership with Service NSW, to make it easy for retail food businesses to expand into outdoor dining activities.

Key benefits include:

- a streamlined and simplified approach for outdoor dining approvals
- cutting red tape for small businesses and local Councils
- user-friendly, online assessment and approval
- lower costs and compliance burdens on small businesses.

In developing this policy, we have consulted with many small businesses and Councils, and worked closely with our policy trial participants, the City of Parramatta, Canterbury-Bankstown, Snowy Valleys, Liverpool Plains Shire, Queanbeyan-Palerang Regional, Maitland City and Port Stephens Councils.

I thank these Councils for their willingness to be involved, their leadership and their commitment to improving the operating environment for our small business operators.

We look forward to seeing our small business sector thrive and our communities enjoy the wonderful social benefits of a vibrant outdoor dining culture.

A handwritten signature in blue ink that reads "Robyn A Hobbs". The signature is stylized and written in a cursive-like font.

Robyn Hobbs OAM

NSW Small Business Commissioner

The policy

New South Wales outdoor dining

1. Purpose of this policy

The aim of the NSW Outdoor Dining Policy 2019 is to establish a framework to make it easy for food-based businesses to expand their existing dining activities outdoors onto public land adjacent to their existing premises.

The policy is designed to:

- provide a framework for establishing and operating an outdoor dining area, including:
 - determining the suitability of a site
 - managing public safety including road safety
 - ensuring operations do not detract from the visual appeal of an area
 - meeting ongoing operational requirements
 - meeting all necessary state and federal legislative requirements
- reduce the time and complexity of the approval process for businesses by outlining the steps a business must take to be granted an outdoor dining permit
- encourage the use of public places for outdoor dining as a means of stimulating business growth and development in NSW
- ensure any outdoor dining activities have minimal disruption to neighbours, pedestrians and other street users
- promote vibrancy, culture, vitality, amenity and ambience in the street environment of commercial areas while also protecting the existing local character of an area.

2. Scope

This policy only applies to existing, approved, food-based businesses located within the identified outdoor dining locations in participating local government areas that:

- have seating inside. A business cannot solely rely on outdoor seating on a public footway
- do not currently offer outdoor dining and would like to expand their existing dining activities outdoors and may increase their overall capacity by doing so
- meet all five permit requirements outlined within this policy
- meet the liquor requirements outlined within this policy (if required)
- do not require approval for any permanent structure
- meet the sanitary facilities requirements under the Building Code of Australia
- will not have their outdoor dining areas located on Crown land
- the dining area does not cause any impediment to road safety or traffic network efficiency
- if the dining area is adjacent to a state-managed road, the road has a speed zone (limit) of 50 km/h or less and has a defined kerb and guttering or other suitable delineation.

Where a permit is issued under this policy to a business operating on a state-managed road with a speed limit of 50 km/h or less, the permit is issued with the concurrence of Roads and Maritime Services or Transport for NSW, which has been delegated to Councils for outdoor dining applications made on the Easy to do Business platform. Businesses operating on state-managed roads with a speed limit in excess of 60 km/h should contact their Council to discuss the possibility of outdoor dining.

The policy

Outdoor dining permit requirements

Table 1. Overview of permit requirements

Category		Key considerations
1	<p>Location/site suitability</p> <p>Facilitate the appropriate use of footpaths and public places for outdoor dining activities.</p>	<ul style="list-style-type: none"> • Minimum distances • Neighbours
2	<p>Safety</p> <p>Maintain an equitable and safe thoroughfare around outdoor dining areas for all users.</p>	<ul style="list-style-type: none"> • Public safety, including road safety • Accessibility • Line of sight • Management of animals • Engagement with public
3	<p>Amenity</p> <p>Facilitate improvement to the local character, street vitality and economic viability.</p>	<ul style="list-style-type: none"> • Local character • Attractiveness • Local vitality
4	<p>Function</p> <p>Ensure the design, furniture, fixtures and day-to-day requirements of the outdoor dining space reflect the local area.</p>	<ul style="list-style-type: none"> • Design of space • Furniture • Fixtures • Daily operations
5	<p>Legal and compliance</p> <p>Ensure that the management of outdoor dining activities avoids nuisance, endangerment or inconvenience to neighbours and the general public.</p> <p>Address public liability and manage risks, and ensure compliance with state legislation including liquor laws.</p>	<ul style="list-style-type: none"> • Noise • Waste • Operational conditions • Council inspections • Insurance • Compliance with legislation

3. Important information

Before making an application under this policy, businesses should read the *Outdoor Dining User Guide 2019*, referred to throughout this policy as the *User Guide*.

All businesses undertaking outdoor dining activities must have a valid permit. The relevant local Council will issue the permit once the outdoor dining application has been processed through the Easy to do Business online platform.

To be granted a permit for outdoor dining activities under this policy, a business must self-assess its proposed outdoor dining area against the five requirement areas outlined in Table 1 and ensure it meets all of the prerequisites detailed in the subsequent sections.

Once granted a permit, a business must maintain compliance with these requirements and the permit terms.

4. Permit requirements

1: Location/site suitability

When using footpaths and other public places for outdoor dining activities, reasonable consideration should be given to the suitability of the site and all users of the location.

An outdoor dining area is only permitted where:

- a. the outdoor dining area is directly related to the operation of an existing food business and operates on the same basis as the existing food business
- b. the applicant is the owner or proprietor of that business premises
- c. the ground surface of the outdoor dining area has additional clearance widths to allow for easy movement by staff and customers. Pedestrians must not be forced onto the road by the outdoor dining area or other non-permanent items on the footpath
- d. the ground surface of the outdoor dining area is suitably constructed and sufficiently level to accommodate outdoor dining furniture and enable the area to be used safely and without inconvenience to pedestrians or vehicles
- e. the outdoor dining area presents no hazard to pedestrians, diners or vehicular traffic
- f. the outdoor dining operator calculates clearance widths of the outdoor dining area, taking into account pedestrian volumes and any existing or proposed landscaping, vegetation, garden beds or street furniture that may impact on the clearance
- g. the location and operation of the outdoor dining area has taken into consideration the amenity of neighbours and other users of the public space

- h. the service of alcohol is limited to the applicant's business frontage only
- i. the outdoor dining area is contained within the frontage of the business premises, with an allowable expansion of up to 50% of the adjoining businesses' frontages, subject to revocable Outdoor Dining Adjoining Business Permission from the adjoining business owner. It is a requirement that this permission can be revoked at any time without notice and any approval will automatically lapse on change of ownership of the adjoining businesses or the applicant business
- j. any relevant Local Street Guide issued by the appropriate local Council for the locality where the outdoor dining will take place is taken into consideration
- k. the outdoor dining area complies with AUSTROADS Guide to Road Design Part 6A – Paths for Walking and Cycling (Section 5 Design Criteria) and Australian Standard AS2890

Permanent structures: Separate local Council approval is needed to erect permanent structures in a public space, including awnings that are not defined as temporary. This policy does not cover approval for permanent structures.

For guidance, see the *User Guide*.

2: Safety

A food business expanding their premises to an outdoor dining area must ensure that an equitable and safe environment is maintained for all users.

An outdoor dining area is only permitted where:

- a. a suitable risk assessment has been undertaken to ensure the safety of diners, and that other vulnerable road users are appropriately considered and there is no detrimental impact for road safety. If the dining area is adjacent to a state-managed road, the road's speed zone must be 50 km/h or less the area must have defined kerb and guttering, or other suitable delineation to separate diners from vehicles
- b. an equitable, clear and safe thoroughway is maintained on footpaths for all pedestrians including those using mobility aids, prams and motorised scooters
- c. the outdoor dining area is integrated with existing streetscape, pedestrian circulation and traffic safety by maintaining adequate clearances. This is further outlined in the *User Guide*
- d. the safety and convenience of road users and cycleway users is not compromised. The line of sight at intersections must be maintained, so outdoor dining must be set back at a 45-degree angle from the corner of the building, equating to a three to five metre clearance from the corner to the edge of the outdoor dining area
- e. the number of tables and chairs in the outdoor dining area allows unobstructed access and circulation for patrons and staff
- f. if the business owner agrees that dogs are permitted, dogs are kept on leashes, suitably restrained and remain on the floor
- g. a high standard of public safety and amenity, including cleanliness, is established and maintained
- h. all furniture, including temporary bollards, is stored inside after hours

For further guidance see the *User Guide*.

3: Amenity

Improve the local character, street vitality, amenity and economic viability of the local/surrounding area/locality.

An outdoor dining area is only permitted where:

- a. it is attractive, inviting and contributes to the amenity of the locality
- b. it is compliant with any relevant Local Street Guide prepared by the Council
- c. the business owner has regard to the existing urban character, cultural significance and street quality, and whether other existing outdoor dining is located along the building line or kerbside.

A Council may specify whether outdoor dining should be placed kerbside or along the building line. An applicant should check if there is a local street guide provided for their area. If there is no specified requirement, any dining should be aligned with the placement of other existing outdoor dining in neighbouring areas, so that the thoroughfare is not obstructed. If the site adjoins reverse angle parking, any dining must meet clearance requirements specified in the *User Guide*. The kerbside parking lane may be included as part of the minimum clear zone where parking is permitted, provided that tables and chairs located kerbside are set back a minimum of one metre from the kerb.

Local Street Guide

A Council may develop a Local Street Guide to ensure outdoor dining activities reflect the local character, heritage, and environment of a particular commercial area or precinct in a local government area. Outdoor dining activities approved under this policy must comply with any Local Street Guide that is in effect at the time of their application. If a Council introduces a local street guide, businesses that already have an approved permit will be notified by the Council and have 12 months to comply with any new requirements.

For further guidance see the *User Guide*.

4: Function

A food business expanding their premises to an outdoor dining area must ensure that the design of the outdoor dining space, furniture, fixtures and day-to-day requirements reflect the local area, and that the outdoor dining area is kept clean.

An outdoor dining area is only permitted where:

- a. the outdoor dining area is compliant with the *User Guide* and relevant Local Street Guide in respect to the use of umbrellas, screens, planter boxes and gas heaters
- b. furniture and fixtures are easy to clean and maintain
- c. the outdoor dining operator is satisfied that furniture used is suitable and safe for outdoor dining
- d. the business owner ensures that their outdoor dining area is cleaned and maintained on a regular basis. This includes ensuring tables are promptly cleared, and that all waste generated by the business and its customers is picked up and disposed of regularly.

For further guidance see the *User Guide*.

5: Legal and compliance

A food business expanding their premises to an outdoor dining area must ensure management of outdoor dining activities avoids nuisance, endangerment or inconvenience and there is compliance with all requirements.

An outdoor dining area will only be considered where:

- a. outdoor dining activities operate no later than midnight Monday to Saturday and 10pm on Sunday
- b. noise and music are appropriately managed to not be a nuisance to patrons, surrounding businesses, pedestrians and motorists and follow the state noise pollution requirements
- c. the business meets the waste management requirements of the local Council
- d. the business owner complies with the conditions in this policy, and all other relevant local, state and federal requirements for food-based businesses
- e. the business owner has public liability insurance required by their local Council, usually \$20 million.

For restaurants and cafés provisionally approved to serve liquor, the sale of liquor in the outdoor area and the operation of that area must comply with the licence conditions under the *Liquor Act 2007* that apply in relation to a licensed restaurant.

For further guidance see the *User Guide*.

The policy

Applications for outdoor dining permits

5. How to apply

Businesses can apply for a permit through the Service NSW Easy to do Business Concierge Service at mybusiness.service.nsw.gov.au/crsb/od

6. Application fees

Council and state government agency fees will be waived for businesses that obtain a permit under this policy.

The policy

Businesses with an on-premises (restaurant) licence

7. Criteria for change of boundary for on-premises liquor licence

Restaurants and cafés that have an existing on-premises liquor licence will need to meet the following criteria for their on-premises licence to extend their boundary to include the outdoor dining area:

- a. The restaurant or café has standard trading hours and is only authorised to serve liquor with meals, i.e. no extended trading authorisation (ETA) or primary service authorisation (PSA).
- b. Within the past 12 months, the premises has not been listed under Schedule 4 of the *Liquor Act 2007* as a violent venue, or has not incurred a strike under the Three Strikes scheme.
- c. The business provides consent for Service NSW to notify Liquor & Gaming NSW and the relevant local Council of its application to change liquor licence boundary.
- d. Where the above criteria are met, the restaurant or café will be provisionally approved to extend the licenced boundary to the outdoor dining area.
- e. Liquor & Gaming NSW will continue to assess the change of boundary application as per existing arrangements for expansion of liquor licence boundary.
- f. If no valid objections are received during consultation, Liquor & Gaming NSW will approve the change of boundary application. If Liquor & Gaming NSW refuses the application in accordance with its existing policies for change of liquor boundary, no alcohol may be consumed in the restaurant's or café's outdoor dining area.
- g. Any outdoor dining areas that fall within a designated alcohol-free zone must be cordoned off.
- h. Venues other than restaurants and cafés that have liquor licences that are not standard on-premises licences (including, on-premises with PSA or ETA, small bar or hotel) will still be able to apply for an outdoor dining permit under this policy. However, if/when approved, these businesses will not automatically be able to serve liquor on the footpath. They will need to apply to Liquor & Gaming NSW separately to extend their liquor licence boundary to include the footpath (please refer to the Liquor & Gaming NSW website (www.liquorandgaming.nsw.gov.au) for instructions on how to extend a licence boundary).

The policy

Accessibility

Over 4 million people in Australia experience disability.¹ That's around 1 in 5 Australians. People with disability, as well as their friends, relations and colleagues, constitute a significant group of consumers.

- Consider how people with a disability may enter and maneuver around your outdoor dining area and ensure there is enough space for someone to sit comfortably at a table in a wheelchair or mobility scooter.
- Uneven pavers can create a trip hazard for those less able. You should contact your local Council have the issue fixed.
- Ensure you provide adequate lighting for those with vision impairment.
- Consider using large font sizes on menus.

Following these tips will not only reduce the likelihood of discrimination complaints against your business, but will also increase your access to the market, and benefit the community, through greater economic participation of people with disability.



¹Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2012* ABS cat no 4430.0 (2013).

The policy

Conditions of approval

8. The outdoor dining permit

A permit will be issued to each applicant if they satisfy the requirements of this policy. The permit will detail the conditions of approval that apply to the business, its location and the outdoor dining activities.

The permit holder will be responsible for ensuring the outdoor dining area is operated in accordance with the requirements outlined in this policy and the *User Guide* and complies with details submitted as part of the application.

The permit must be displayed at the business to which the permit refers, or produced on request.

The application may be revoked or suspended at any time during the approval period if a government agency:

- determines that an unacceptable safety risk is created by the outdoor dining operation
- the agency's contractors
 - undertake works in the approved footway area, or
 - undertakes or propose to undertake works or an event that otherwise impacts access to adjoining footways, roadways, transport infrastructure, parks or public places.

Footway seating or structures are not to cover or impede access to public utilities and drainage pits. Access is to be made available at any time and at no cost, if required.

9. Commencement of a permit

The applicant will undertake a self-assessment to determine if their proposed outdoor dining activities meet the five permit requirements outlined in this policy, the *User Guide* and any Local Street Guide. If the applicant determines that all requirements are met and expected conditions of operations will be fulfilled, then they will provide a signed declaration, and a permit will be issued.

The permit holder can then operate the outdoor dining area in accordance with the conditions of the outdoor dining permit.

10. Permit period

The term of a permit will be seven years from the date of approval.

The permit is not transferrable. Outdoor dining approvals are given to the operator of a premises, not a business or location.

11. Compliance

Compliance is undertaken by the Council in the local government area where the business is conducting outdoor dining activities, in accordance with the relevant Council's compliance policies and processes.

Running an outdoor dining area without a permit or not in accordance with a permit is an offence and may result in the issue of an infringement notice or other regulatory action by the local Council including cancellation of the business' permit.

The policy

Roles and responsibilities

12. Dispute resolution

Any dispute about an outdoor dining area, except for disputes about liquor licences, will be handled by the relevant local council in accordance with its policies and processes. Disputes about liquor licences will be handled by Liquor & Gaming NSW through its policies and procedures.

13. Failing to remove and reinstate

In the event of the permit holder failing to remove furniture or other property from the outdoor dining area following the lapsing or cancellation of their permit, the Council may remove and dispose of such property at its discretion, if not claimed within 28 days of notification to the permit holder.

In the event of the permit holder failing to remove furniture and/or to reinstate the footpath to its original condition within 14 days from the date of expiration or cancellation of the permit, the Council may carry out the works at the permit holder's expense.

14. Terrorism

Applicants must comply with 'Australia's Strategy for Protecting Crowded Places from Terrorism', released in August 2017. This strategy and the supporting guidelines address a number of specific security risks for crowded places, including in relation to hostile vehicles. Documents are available at www.nationalsecurity.gov.au

15. Who is responsible for what

- **Food-based businesses, including restaurants and cafés**, provide a significant contribution to the vibrancy and economy of local communities. Businesses are responsible for meeting permit approval and operating requirements during the term of an approved permit.
- **NSW Small Business Commission** has co-ordinated development of the policy in consultation with Councils, small businesses, and other government agencies.
- **Local Councils** have a key role in promoting economic development and the vibrancy of their local community. Under the policy, Councils retain responsibility for final approval and issuance of the outdoor dining permit, in accordance with section 125 of the *Roads Act 1993*. They are responsible for ensuring compliance with outdoor dining permit requirements, all relevant legislation and heritage restrictions, and for defining any Local Street Guide for cafés and restaurants within their local government area.
- **Service NSW** is an integral part of the state's Easy to do Business initiative. Service NSW is responsible for administering the approval process for permits using its Concierge Service. It is developing an online digital platform for outdoor dining applications.
- **Liquor & Gaming NSW** administers liquor licencing in NSW. It is responsible for issuing licences and ensuring compliance with license requirements.

The policy

Legislation

16. Compliance with legislation and regulations

This policy will be endorsed as an approved local policy by each participating local Council under section 68 and Part 3 of the *Local Government Act 1993*.

In so doing, permitting any outdoor dining activity that is an exempt development does not require development consent under the *Environmental Planning and Assessment Act 1979*.

The State Environment Planning Policy (Exempt and Complying Codes) 2008 makes footpath dining an exempt development if it is:

- not associated with a pub or a small bar, and is carried out in accordance with an approval granted under section 125 of the *Roads Act 1993*, including any hours of operation to which the approval is subject
- carried out in accordance with any approval granted under section 68 of the *Local Government Act 1993*.

The State Environment Planning Policy (Exempt and Complying Codes) 2008 also makes the installation of bollards 'exempt development' if a business has a liquor licence and is located within an alcohol-free zone. See subdivision 8A Bollards of the State Environment Planning Policy (Exempt and Complying Codes) 2008 for development standards.

Where a permit is issued under this policy to a business operating on a state-managed road with a speed limit of 50 km/h or less, the permit is issued with the concurrence of Transport for NSW, which has been delegated to Councils for outdoor dining applications made on the Easy to do Business platform. Businesses operating on state-managed roads with a speed limit in excess of 60 km/h should contact their Council to discuss the possibility of outdoor dining.

This policy does not apply to the following land types:

- Outdoor dining on Crown Land requires approval under the *Crown Lands Management Act 2016*.
- Outdoor dining that is located on private land (i.e. land that is not on the public footpath) will require the approval of the local Council that administers the land on which the activity is proposed.

Policy

Definitions

The following definitions apply to this policy document.

- **Outdoor dining area:** is limited to public footpaths, nature strips and any other council-managed public spaces used by an adjacent approved restaurant, café or food-based business for temporary commercial dining activities. These activities include the serving of food or beverages, and the erection of associated temporary furniture and signs.
- **Outdoor dining operator:** the permit holder that exercises management and control over an outdoor dining area.
- **Outdoor dining activities:** the provision of suitable seating and tables and the performance of other activities directed at the consumption of food and beverages in an outdoor dining area.
- **Outdoor dining permit:** a permit issued under this policy authorising outdoor dining in a particular area.
- **Outdoor furniture:** items such as tables and chairs to accommodate outdoor dining patrons.
- **Permanent structure:** any outdoor structure not intended to be moved around frequently and that would be difficult to move without mechanical or other assistance within a 24 hour period.
- **State-managed road:** any road classified as 'State Road' by Roads and Maritime Services, under the *Roads Act 1993* S163 (4). State Roads are managed and financed by Roads & Maritime Services.
- **Temporary structure:** any outdoor structure intended to be removed from an outdoor dining area or packed away when the area is not in use, including removable umbrellas, sign boards and other decorative features such as storage units.

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