

# Interim Outdoor Dining Policy

NSW Outdoor Dining Trial



This interim policy supports the NSW Outdoor Dining Trial conducted by the Office of the NSW Small Business Commissioner to streamline the process for existing restaurants, cafés and other food-based businesses to expand trading onto the public footpath. The trial will run from September 2017 to July 2018.



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# Message from the Deputy Premier and Minister for Small Business



The NSW Government is working hard to support businesses and create jobs across NSW.

The Sydney metropolitan area and regional NSW offer great conditions to start and grow a business. NSW has the strongest economy in the country and highest business confidence in our regional areas.

Earlier this year I announced the NSW Small Business Strategy, which outlined the NSW Government’s commitment to making it easier to do business in NSW. As a government, our focus is to cut costs and red tape, giving businesses the best chance at being a success.

As part of this focus, the Office of the NSW Small Business Commissioner is working with local councils to pilot a new initiative, the Interim Outdoor Dining Policy, which will be trialled across six council areas.

The trial will allow cafés, restaurants and food-based businesses to more easily expand their operations on to local footpaths, which will mean more business for local hospitality venues, more local jobs, and a more vibrant setting for local streets, stimulating local economies.

As Deputy Premier, Minister for Regional NSW, Skills and Small Business, I am dedicated to growing regional economies, creating the skilled workforce of the future and giving NSW businesses every opportunity to start, grow, upskill and innovate.

The NSW Government recognises the critical role small businesses play, and we will continue to develop new programs that can unlock opportunities for small business across NSW.

A handwritten signature in blue ink, appearing to read 'John Barilaro'. The signature is fluid and cursive, written on a light-colored background.

**The Hon. John Barilaro** MP, NSW Deputy Premier  
NSW Minister for Skills, NSW Minister for Small Business

# 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 Interim Outdoor Dining Policy 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.

We have consulted with many small businesses and worked closely with the City of Parramatta, Canterbury-Bankstown, Snowy Valleys, Cootamundra-Gundagai Regional, Liverpool Plains Shire and Queanbeyan-Palerang Regional 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 with a large, looping initial 'R'.

**Robyn Hobbs OAM** NSW Small Business Commissioner

# Interim Policy

## New South Wales

# Outdoor Dining Trial

### 1. Purpose of this policy

The aim of the Interim Outdoor Dining Policy is to establish a statewide 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 interim policy will form the basis for the NSW Outdoor Dining Trial, an initiative under the government's Easy to do Business program.

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
  - ensuring operations do not detract from the visual appeal of an area
  - meeting ongoing operational requirements
  - meeting all necessary state and federal legislative requirements
- outline the steps a business must take to be granted an outdoor dining permit, and reduce the time and complexity of the approval process for businesses
- 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 protecting the existing local character of an area.

### 2. Scope

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

- 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 interim policy
- meet the liquor requirements outlined within this interim policy (if required)
- do not require approval for any permanent structure
- will not have their outdoor dining areas located on Crown land.

### 3. Important information

Before making an application under this interim policy, businesses should read the *Interim Outdoor Dining User Guide 2017-18*, referred to throughout this policy as the *User Guide*.

All businesses undertaking outdoor dining activities must have a valid permit. The relevant local council issues the permit.

To be granted a permit for outdoor dining activities under this interim policy, a business must self-assess its proposed outdoor dining area against the five permit 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.

# Interim Policy

## Outdoor dining permit requirements

Table 1. Overview of permit requirements

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

## 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
- b. the applicant is the owner or proprietor of that business premises
- c. the public space is wide enough to accommodate the outdoor dining area while still maintaining a clear pathway of travel for all pedestrians, including those who use mobility aids, prams and motorised scooters
- 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. there is no unreasonable hazard to pedestrians, diners or vehicular traffic
- f. the location and operation of the outdoor dining area has taken into consideration the amenity of neighbours and other users of the public space
- g. for businesses that have no internal dining facilities, such as bakeries or ice cream shops, the proposed outdoor dining area is not larger than 35 per cent of the internal size of business and must be contained within the business frontage
- h. outdoor dining involving 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 per cent of the adjoining businesses' frontages, subject to revocable Outdoor Dining Adjoining Business Permission from the adjoining business owner and adjoining building landlord (or their managing agent). 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, the applicant business or the adjoining building owner.

A business owner who wishes to expand beyond 50 per cent of the frontage of the adjoining business may only do so if their council allows this within the Local Amenity Statement and the Outdoor Dining Adjoining Business Permissions are obtained from all relevant business owners and landlords, (or their managing agents). If a council does not have a Local Amenity Statement or such additional expansion is not expressly provided for under the relevant Local Amenity Statement, such an expansion is not covered under this self-assessment policy and an applicant must lodge an application for expansion of their outdoor dining area beyond 50 per cent of the adjoining business frontage with the council through the council's standard development approval processes

- j. consideration is given to any relevant Local Amenity Statement issued by the appropriate local council for the locality where the outdoor dining will take place.

**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

Ensure an equitable and safe environment is maintained for outdoor dining areas for all users.

An outdoor dining area is only permitted where:

- a. the outdoor dining area is integrated with existing streetscape, pedestrian circulation and traffic safety by maintaining adequate clearances. This is outlined in the *User Guide*
- b. the number of tables and chairs in the outdoor dining area allow unobstructed access and circulation for patrons and staff
- c. the business owner agrees that if dogs are permitted, they must be on leashes and suitably restrained
- d. a high standard of public safety and amenity, including cleanliness, is established and maintained
- e. an equitable, clear and safe throughway is maintained on footpaths for all pedestrians including those using mobility aids, prams and motorised scooters
- f. all furniture, including temporary bollards, is to be stored inside after hours
- g. 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 one to three-metre clearance from the corner to the edge of the outdoor dining area.

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. the relevant Local Amenity Statement prepared by the local council is complied with
- c. the business owner has regard to the existing urban character, cultural significance, 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 Amenity Statement 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*.

**Local Amenity Statements:** A council may develop a Local Amenity Statement 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 Amenity Statement that is in effect at the time of their application. If a council introduces a Local Amenity Statement, 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

Ensure the design of the outdoor dining space, furniture, fixtures and day-to-day requirements reflect the local area, and the outdoor dining area is kept clean.

An outdoor dining area is only permitted where:

- a. the *User Guide* and relevant Local Amenity Statement have been consulted and complied with in respect to 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 for outdoor dining 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 properly.

For further guidance see the *User Guide*.

#### 5: Legal and compliance

Ensure management of outdoor dining activities avoids nuisance, endangerment or inconvenience and there is compliance with all requirements.

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.

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. waste management requirements of the local council are met
- d. the business owner complies with the conditions in this interim policy, and all other relevant local, state and federal requirements for food-based businesses
- e. the proposed business owner has public liability insurance required by their local council, usually from \$10 million to \$20 million.

For further guidance see the *User Guide*.

## Interim 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. Download an application from the Service NSW website [service.nsw.gov.au](https://www.service.nsw.gov.au)

### 6. Application fees

Council and state government agency fees will be waived for businesses that participate in the trial and obtain a permit under this interim policy, to test the effectiveness of the policy. This fee waiver will only apply during the trial.

Fees may apply for the final outdoor dining policy. Currently, fees for outdoor dining differ significantly between local government areas, and many different factors are considered by councils when determining their fee structure, including the location, land values, and private use of public space. In addition, services and approvals involving Service NSW, Liquor & Gaming NSW and Crown Lands also usually attract fees. For this reason, additional research and consultation is necessary and will occur during the trial period before a policy position on fees is settled.

# Interim Policy

## Businesses with an on-premises (restaurant) licence

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

Restaurants and cafés that meet all the criteria to be included in this trial, and also 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 as a violent venue, or a strike under the Three Strikes scheme has not been incurred at the premises.
- c. The business provides consent for Service NSW to notify Liquor & Gaming NSW and the relevant local council of their 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 with liquor licences other than a standard on-premises licence (including, on-premises with PSA or ETA, small bar or hotel) will still be able to apply for an outdoor dining permit under this interim 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](http://www.liquorandgaming.nsw.gov.au)) for instructions on how to extend a licence boundary).

During the trial, further research and consultation will be undertaken to consider whether approvals in relation to liquor can be extended to new applicants and other types of liquor licence when the final outdoor dining policy is implemented.

# Interim Policy

## Conditions of approval

### 8. The outdoor dining permit

A permit will be issued to each applicant if they satisfy the requirements of this interim 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 interim 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.

### 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 interim policy, the *User Guide* and Local Amenity Statement. 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, therefore, proceed to 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 12 months from the date of approval.

At the conclusion of the trial period, a permit holder with a permit issued under the trial will be notified by the local council about future arrangements for outdoor dining in their location.

Should the outdoor dining policy not proceed after the trial, the permit holder will be contacted by the local council about any further requirements to continue operating outdoor dining.

### 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 current policies and processes.

The use of 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.

### 12. Dispute resolution

Any dispute about an outdoor dining area, except for disputes about liquor licences, will be handled by the relevant local council's current 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.

# Interim Policy

## Roles and responsibilities

### 14. 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 that participate in this outdoor dining trial are responsible for meeting permit approval and operating requirements during the term of an approved permit.
- **Office of the NSW Small Business Commissioner** is coordinating the development of the trial policy. The OSBC is responsible for developing the interim and final outdoor dining policies 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. They are responsible for ensuring compliance with food-based business, outdoor dining permit requirements, other relevant legislation, heritage restrictions, and for defining any Local Amenity Statement 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 and Gaming NSW** administers liquor licencing in NSW. It is responsible for issuing licences and ensuring compliance with license requirements.

# Interim Policy Legislation

## 15. Compliance with legislation and regulations

This interim policy will be endorsed as an approved local policy for the notified period of the NSW Outdoor Dining Trial 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.

Because of the scope of the NSW Outdoor Dining Trial, it is expected that all outdoor dining permitted under the trial will meet the requirements to be exempt development under the *Environmental Planning and Assessment Act 1979* and will not need development consent.

This interim policy does not apply to the following land types:

- Outdoor dining on community lands, such as a park or reserve, requires approval under the *Local Government Act 1993*.
- Outdoor dining on Crown Land requires approval under the *Crown Lands Act 1989*.
- 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.

# Interim Policy

## Definitions

The following definitions apply to this policy document.

- **Outdoor dining area:** is limited to public footpaths and nature strips or any other public spaces under the control and management of the council that are used by an adjacent approved restaurant, café or food-based business for temporary commercial dining activities only. 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 and other assistance within a 24 hour period.
- **Trial outdoor dining locations:** the street and/or area nominated by each council participating in the trial.
- **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.

# Interim Policy

## Consultation and feedback

This interim policy supports the NSW Outdoor Dining Trial. Feedback on this interim policy and from the trial will inform the development of a statewide outdoor dining policy.

We welcome and encourage any feedback on the trial program, this interim policy, and how outdoor dining can be encouraged and operate more effectively in NSW.

Provide your feedback by email to [sbf.councils@smallbusiness.nsw.gov.au](mailto:sbf.councils@smallbusiness.nsw.gov.au)

