



New South Wales

State Environmental Planning Policy (Exempt and Complying Development Codes) Further Amendment (Outdoor Dining) 2021

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

ROB STOKES, MP
Minister for Planning and Public Spaces

State Environmental Planning Policy (Exempt and Complying Development Codes) Further Amendment (Outdoor Dining) 2021

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Exempt and Complying Development Codes) Further Amendment (Outdoor Dining) 2021*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Repeal of Policy

This Policy is repealed on the day following the day on which this Policy commences.

Schedule 1 **Amendment of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

Part 2, Division 1, Subdivisions 20B and 20C

Insert after Subdivision 20A—

Subdivision 20B Outdoor dining—general

2.40C Specified development

- (1) The use of the following land as an outdoor dining area is development specified for this code—
 - (a) private land, if the use is associated with lawful food and drink premises,
 - (b) public land.
- (2) To be exempt development, the development must not—
 - (a) be carried out on land—
 - (i) in an environmental zone, or
 - (ii) in a place of Aboriginal heritage significance identified in a local environmental plan, or
 - (b) be associated with a registered club.
- (3) This Subdivision does not apply to development to which Subdivision 20A applies.
- (4) In this clause—

public land has the same meaning as in the *Local Government Act 1993* and includes Crown land within the meaning of the *Crown Land Management Act 2016*.

2.40D Development standards

The standards specified for the development are—

- (a) the development—
 - (i) must be located at ground level (existing), and
 - (ii) 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
 - (iii) must not restrict any vehicular or pedestrian access to or from, or entry to a building on, the land on which the development is located, and
 - (iv) for development associated with lawful food and drink premises—must not contravene an existing condition of the most recent development consent, other than a complying development certificate, that applies to the existing food and drink premises relating to hours of operation, maximum capacity of patrons, waste management, food safety and pollution control, and
- (b) at the end of the use the land must, as far as practicable, be restored to the condition in which it was before the commencement of the use.

Note— Other legal requirements for the consent of the owner of the land and for approvals, licences, permits and authorities still apply. This includes, for example, a requirement for an approval under the *Local Government Act 1993*, section 68.

2.40E Repeal of Subdivision

This Subdivision is repealed at the end of 18 April 2022.

Subdivision 20C Outdoor dining—registered clubs

2.40F Specified development

- (1) The use of the premises of a registered club as an outdoor dining area associated with lawful food and drink premises is development specified for this code if the premises are located on—
 - (a) community land within the meaning of the *Local Government Act 1993*, or
 - (b) private land.
- (2) To be exempt development, the development must not be carried out on land—
 - (a) in an environmental zone, or
 - (b) in a place of Aboriginal heritage significance identified in a local environmental plan.

2.40G Development standards

The standards specified for the development are—

- (a) the development—
 - (i) 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
 - (ii) must not be carried out on more than 50% of the outdoor area of the registered club, and
 - (iii) if carried out on land otherwise used for the purposes of a car park—must be designed to ensure pedestrian and patron safety, and
 - (iv) must not reduce the existing access to the registered club for people with a disability, and
 - (v) 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
- (b) at the end of the use the land must, as far as practicable, be restored to the condition in which it was before the commencement of the use.

Note— Other legal requirements for the consent of the owner of the land and for approvals, licences, permits and authorities still apply. This includes, for example, a requirement for an approval under the *Local Government Act 1993*, section 68.

2.40H Repeal of Subdivision

This Subdivision is repealed at the end of 18 April 2022.