



New South Wales

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Outdoor Dining) 2023

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*.

PAUL SCULLY, MP
Minister for Planning and Public Spaces

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1 Name of policy

This policy is *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Outdoor Dining) 2023*.

2 Commencement

This policy commences as follows—

- (a) for Schedule 1[6]—on the day the policy is published on the NSW legislation website,
- (b) otherwise—on 1 January 2024.

3 Repeal of policy

This policy is repealed at the beginning of the day after all the provisions of this policy have commenced.

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

[1] Clause 2.40C Specified development

Omit clause 2.40C(1). Insert instead—

- (1) The use of private land as an outdoor dining area is development specified for this code if the use is associated with lawful food and drink premises or artisan food and drink industries.

[2] Clause 2.40C(2)(a)(i)

Insert “or in Zone E5 Heavy Industrial” after “zone”.

[3] Clause 2.40C(4)

Omit the subclause.

[4] Clause 2.40D Development standards

Omit clause 2.40D(a). Insert instead—

- (a) the development—
 - (i) must not be located on a rooftop of a building, 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 contravene an existing condition of the most recent development consent, other than a complying development certificate, that applies to the associated premises relating to hours of operation, maximum capacity of patrons, waste management, food safety and pollution control, and
 - (iv) must not restrict vehicular or pedestrian access to or from, or entry to a building on, the land on which the development is located, and
 - (v) must not reduce the existing access to the associated premises, or car parking spaces provided for the associated premises, for people with a disability, and
 - (vi) if carried out on land otherwise used for the purposes of a car park—must be designed to ensure pedestrian and patron safety, and
 - (vii) if located at ground level (existing)—must provide a direct exit from the outdoor dining area to open space or a road, and
 - (viii) 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, and

[5] Clause 2.40D(2)

Insert at the end of clause 2.40D, after the note—

- (2) In this clause—
associated premises means the food and drink premises or artisan food and drink industries with which the development is associated.

[6] Clauses 2.40E and 240H

Omit the clauses.

[7] Clause 2.40G Development standards

Omit clause 2.40G(a). Insert instead—

(a) the development—

- (i) must not be located on a rooftop of a building, 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 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
- (iv) must not restrict vehicular or pedestrian access to or from, or entry to a building on, the land on which the development is located, and
- (v) must not reduce the existing access to the registered club, or car parking spaces provided for the registered club, for people with a disability, and
- (vi) if carried out on land otherwise used for the purposes of a car park—must be designed to ensure pedestrian and patron safety, and
- (vii) if located at ground level (existing)—must provide a direct exit from the outdoor dining area to open space or a road, and
- (viii) 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, and