

## Footpath dining and mobile food and drink outlets

This information sheet details the requirements under the State policies for footpath dining or for mobile food and drink outlets as exempt development.

### Important note

This information sheet is for guidance only and may not contain all the information relevant to every property in NSW. Applicants should refer to the [relevant planning controls](#)<sup>1</sup> before beginning work, or seek professional advice on how the planning controls apply to their property.

The majority of the development that can be done as exempt or complying development in NSW is identified in the State wide exempt and complying development policy (the policy). View the policy at the [Exempt and Complying Development Policy website](#)<sup>2</sup>.

**Exempt development** is minor building work that does not need planning or building approval. [Information sheet 1.1](#)<sup>3</sup> provides more information about exempt development.

Note: As identified in Information Sheets 1.1 and 1.2 exempt and complying development cannot be carried out on certain land.

### Footpaths and outdoor dining

A footpath or a public open space that is adjacent, connected or part of a café or restaurant (food and drink premises) may be used as an outdoor dining area as exempt development.

The outdoor footpath and outdoor dining areas must comply with the following standards:

- the café or restaurant that the outdoor dining is connected to must have approval to operate as a food or drink premise
- the food and drink premises cannot be a pub or a small bar

The outdoor area must be carried out in accordance with an approval issued under section 125 of the *Roads Act 1993*, and the approvals conditions such as hours of operation of the premises must be complied with, and approval issued under section 68 of the *Local Government Act 1993* (LGA).

Local councils can issue an approval under section 125 of the *Roads Act 1993* to occupy and use the footway on a road for the purpose of an outdoor dining area connected to a café or restaurant.

Approval to operate a restaurant on a footway of a classified road requires a concurrence approval from Roads and Maritime Services.

An approval under section 68 of the LGA is required from the local council for certain activities to be carried out on council or public owned land. The activities include engaging in a trade or business, to expose items for sale on or near a road.

Additionally, under Part 3 of Chapter 7 of the LGA councils have the ability to prepare policies and many councils have a policy on footpath and outdoor dining. These policies can deal with any

<sup>1</sup> <https://maps.planningportal.nsw.gov.au/Terms>

<sup>2</sup> <http://www.planning.nsw.gov.au/exemptandcomplying>

<sup>3</sup> <http://www.planning.nsw.gov.au/exemptandcomplyingoverview>

issue that the community or council believe needs to be addressed and commonly include:

- size requirements of the outdoor dining area
- the provision of adequate pedestrian access (including disabled access)
- the hours of operation of outdoor dining areas
- the type and quantity of furniture that is to be provided (i.e. chairs, tables, umbrellas, planter boxes, display shelves etc), and
- cleaning and maintenance requirements for the outdoor dining area.

## Mobile food and drink outlets

These are mobile facilities used for the retail sale of food, drinks and related products on land from a food truck, van, cart or other similar vehicle.

Food and drink outlets must have the consent of the owner of the land on which they are located. If a council or public authority has the control and management of the land, such as a public road, public reserve or other public place, the consent in writing of the council or relevant public authority must be obtained. Approval may also be required under section 68 of the LGA to:

- use a stationary vehicle for the purpose of selling any article in a public space
- connect the facility to water supply and waste water services.

If the food and drink outlet is located on private land it is limited to one such outlet per lot, and the operation and placement of the food and drink outlet must not contravene any conditions of the development consent for any other approved use which is carried out on the land.

Other development standards that apply to mobile food and drink outlets are that they must:

- not constrain or block any vehicular or pedestrian access to or from the land, or entry to any building on the land
- not interfere or obstruct the access to any utility services on the land or on adjacent land
- if operated on land next to, or adjacent to, a residential zone it should only operate between the hours of 7am and 7pm on any day.

If the mobile food or drink outlet is a registrable vehicle within the meaning of the *Road Transport (Vehicle Registration) Regulation 2007*, or if it a cart, bicycle cart or the like, it must operate in accordance with the 'Guidelines for mobile food vending vehicles' published by the NSW Food Authority in February 2013, and any requirements of the *Food Act 2003*.

## Exempt development in a council Local Environmental Plan (LEP)

Where a council includes an exempt development type that is substantially the same as a development type in the policy, the development type in the policy prevails over the development listed in the LEP.

A number of councils have outdoor footpath dining and mobile food and drink outlets specified as additional types of exempt development in their LEPs. These provisions and any development standards specified cease to apply to these activities.

Council may still choose to apply any relevant standards in authorising these activities under an approval issued under the *Roads Act 1993* or *Local Government Act 1993*.

If your proposal doesn't meet the required standards for either exempt or complying development, you may still be able to do the work, but you must get development approval first. In this case, you should contact your local council to discuss your options.

## Further Information

For more information visit the [Exempt and Complying Development Policy website](#)<sup>4</sup> or contact the Department's Exempt and Complying Development Team on 1300 305 695 or by [email](#)<sup>5</sup>.

## Electronic Housing Code

The Electronic Housing Code website helps applicants determine whether the proposed development qualifies as exempt or complying development and the standards that must be met.

Applications for complying development can also be lodged and tracked online for those council areas which are using the Electronic Housing Code. Visit the [Electronic Housing Code website](#)<sup>6</sup> to find out if it is used by your local council or for more details.

---

<sup>4</sup> <http://www.planning.nsw.gov.au/exemptandcomplying>

<sup>5</sup> [codes@planning.nsw.gov.au](mailto:codes@planning.nsw.gov.au)

<sup>6</sup> <http://www.electronichousingcode.com.au/>