

Bringing the Indoor Out

The future of outdoor dining in NSW



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Overview

The NSW Business Chamber is pleased to respond to the bringing the outdoor in the future of outdoor dining fees in NSW.

As you are aware, the NSW Business Chamber was the leading advocate for the creation of the Small Business Friendly Councils (SBFC) initiative. This advocacy was in response to consistent feedback from member businesses that local government was one of the most complex and costly regulators for business to deal with¹.

We believe SBFC can be a key mechanism to help address and improve the regulatory performance of NSW councils and their interactions generally with small and medium businesses.

We welcome the Governments efforts in championing this initiative and its ongoing commitment to addressing the challenges faced by small business

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Outdoor Dining Fees

The release of the consultation paper is a positive step forward to reducing operating costs for businesses looking to open and operate outdoor dining as part of their offering.

In 2015, the NSW Business Chamber raised this specific issue during a meeting with a group of NSW Councils that had signed on to the SBFC program.

The Chamber identified that across 8 councils of Sydney there was a wide variance in the advice and information required from applicants seeking to commence outdoor dining. These variances included:

- Different names for the same thing (a footway restaurant approval/ an outdoor dining permit/ an outdoor eating area)
- Length of application 3 pages / 5 pages/ 6 pages / 8 pages
- Setbacks from the road (2.5m / 2.0m/1.8m)
- Minimum review periods (4 weeks / 5 weeks) and no maximum period

- The type of furniture to be used
- Specified heights for the display of approvals (1700mm)

The Chamber strongly endorses the commitment by Government to pursue a fee free arrangement for outdoor dining fees. Further to this the Chamber notes the primary and more substantial cost(s) experienced by business in seeking to offer outdoor dining are those regulatory costs incurred in responding to, and complying with, council requirements.

To that end, the primary benefits of this reform will be achieved through the introduction of the interim policy for outdoor dining as the model policy for councils across NSW. While our preference is for a fee free model, councils should still be able to participate in the new policy even in circumstances where they are still charging a fee so that the benefits of measures aimed at reducing the impost of regulatory compliance can be maximized.

The interim policy and its user guide sensibly standardises the requirements for an outdoor dining permit and utilises language that is clear and understandable. The facilitation of applications through the Service NSW portal with its accompanying concierge support is welcome and will help improve the service experience of applicant businesses regardless of their location.

The Chamber strongly supports the interim policy as a best practice approach to outdoor dining. We note however that for even those Councils that adopt the interim policy, there is capacity for them to impose requirements on applicants under *Local Amenity Statements*. The interim policy states:

“Outdoor dining activities approved under this policy must comply with any Local Amenity Statement that is in effect at the time of their application”

While applicants should be aware and look to comply wherever possible with Local Amenity Statements from council, it should be emphasised that requirements under such statements are not statutory in nature. This was confirmed by the *Environmental Planning and Assessment Amendment Act 2012*. That amendment clarified that development control plans (such as a local amenity statement) provide guidance only and should be interpreted by councils in a flexible manner. As stated in the second reading speech to the Bill:

where a development application does not comply with a standard, the consent authority must apply the development control plan flexibly and allow alternative solutions to address those aspects of the developmentⁱⁱ.

Advice to councils confirming the status of Local Amenity Statements as guides (and not strict statutory requirements) and the need to work with applicants towards practical and pragmatic solutions would be welcome.

The Chamber believes that the new outdoor dining policy is a positive step towards standardizing and improving the regulatory functions of local government and, more importantly, the experiences of businesses and other customers in engaging with councils. We look forward to learnings from this policy process being applied in other regulatory areas.

ⁱ <https://www.nswbusinesschamber.com.au/Issues/Business-Surveys/Annual-Red-Tape-Survey>

ⁱⁱ The Hon. Brad Hazzard MP, *Environmental Planning and Assessment Amendment Bill 2012* (Second Reading Speech), 24 October 2012

<https://www.parliament.nsw.gov.au/bill/files/1464/2R%20ENVIRONMENTAL%20PLANNING%20AND%20ASSESSMENT%20AMENDMENT%20BILL%202012.pdf>