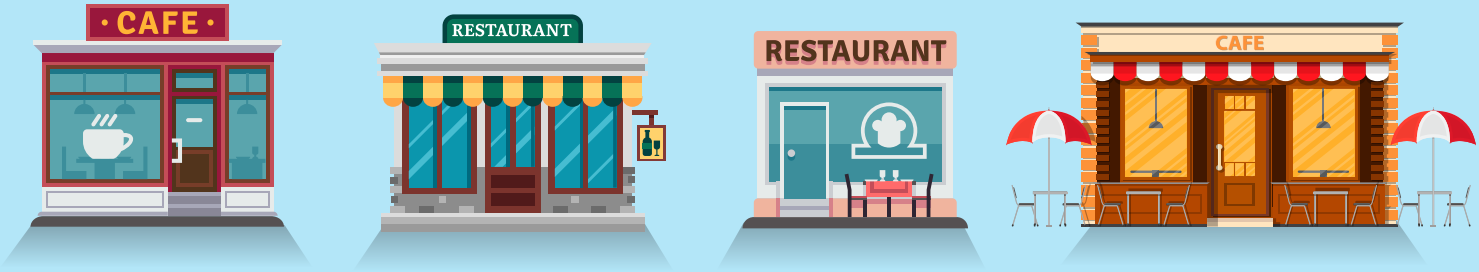
Setting up a restaurant or cafe

Rules for exempt and complying development



Change of use to a restaurant or cafe as complying development

This document answers frequently asked questions about opening a restaurant or cafe and explains the relevant planning provisions set out in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (State Policy).

Do I need planning approval for a change of use of premises to a restaurant or cafe?

Yes, a change of use of premises to a restaurant or cafe requires planning approval. You can get planning approval by submitting a development application to your local council or by applying for a complying development certificate.

Things to consider	
✓	COUNCIL APPROVAL Under s68 of the Local Government Act 1993 to connect to water supply and waste water services.
✓	NSW FOOD AUTHORITY Regulates appointment of a Food Safety Supervisor - may be required if processing and selling certain food.
✓	NOTIFICATION TO ENFORCEMENT AGENCIES Relevant council and NSW Food Authority.
✓	FOOD AUTHORITY LICENCE Certain activities listed in the Food Authority's Guideline require a licence e.g. businesses that handle or process meat.

Restrictions	
⛔	Refer to the State Policy for any land-based exclusions or local variations that may apply to the land

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What is the definition of a food and drink premises?

A restaurant or cafe is a type of food and drink premises. 'Food and drink premises' means premises that people use for the preparation and retail sale of food, drink, or both, for immediate consumption on or off the premises.

The State Policy allows for a change of use from any of the following uses to a cafe or restaurant under complying development:

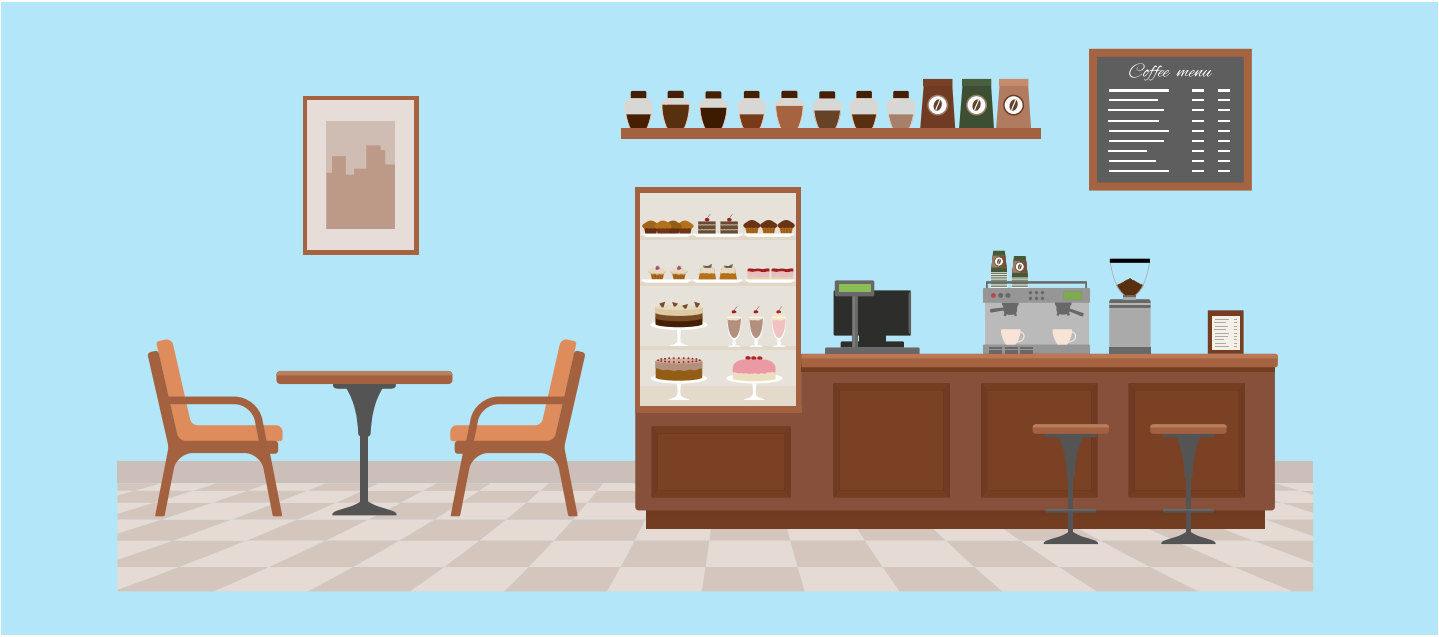
- Business premises
- Office premises
- Shop
- Food and drink premises
- Kiosk
- Medical centre

What criteria apply to the change of use of a premise to a restaurant or cafe?

Clause 5.4 of the State Policy sets out the full list of development standards that you must fully satisfy before you can start your restaurant or cafe. Development standards are criteria that manage the impacts of your business, including the Building Code of Australia requirements you must follow.

Additional development standards specific to a new restaurant or cafe include:

- The restaurant or cafe must not have capacity for more than 50 seats, other than premises where the seating is available within a common food court or food hall.
- The premises must comply with Australian Standard AS4674-2004—Design, construction and fit-out of food premises.



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Do I need to make sure council allows my restaurant or cafe under existing planning controls?

Yes. The use must be permissible with consent under an environmental planning instrument that applies to the land. A council's local environmental plan is one such environmental planning instrument.

The applicable land-use table in the local environmental plan must state that restaurants and cafes or food and drink premises are permitted with consent.

Figure 1 provides an example of a land use table. In the figure, the underlined land uses indicate that council permits restaurants and cafes with consent. If you are unsure, contact your local council for help determining whether it permits your restaurant or cafe.

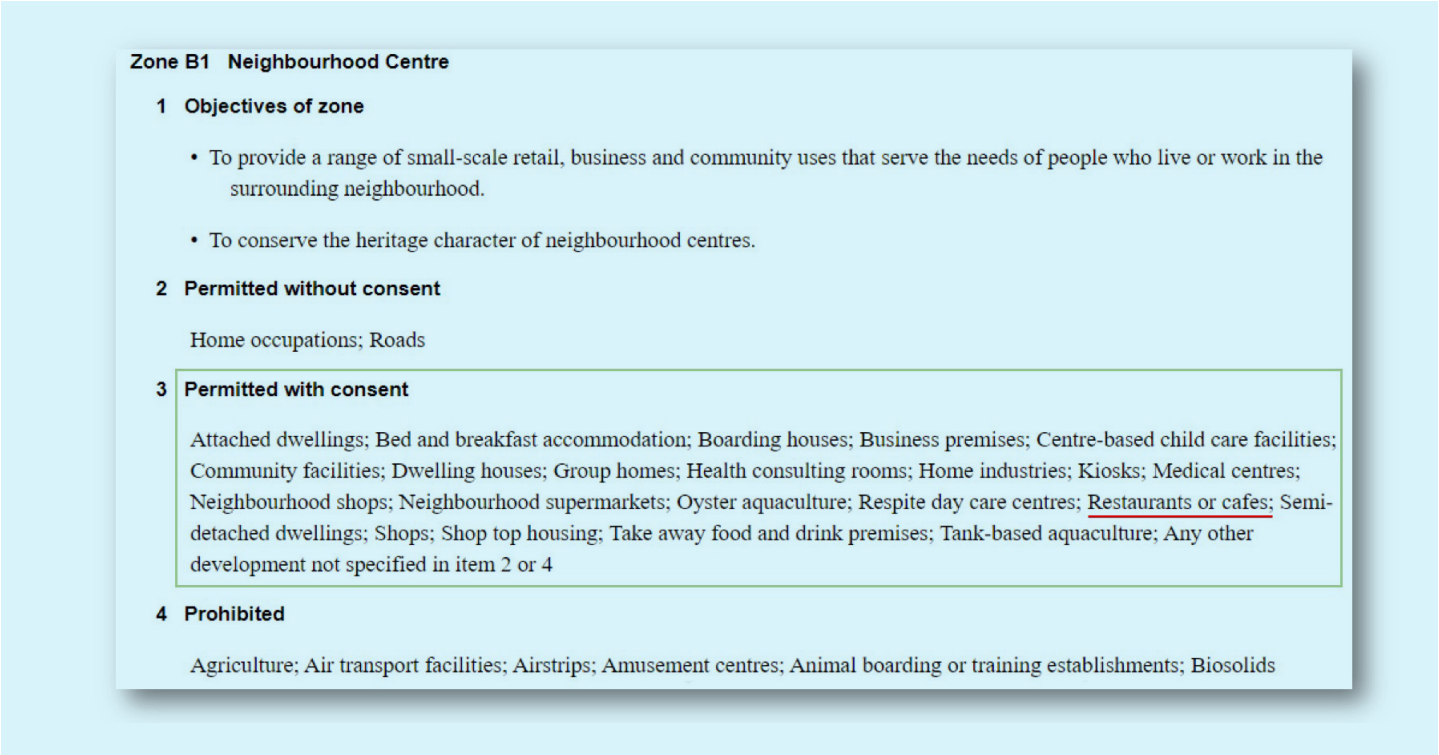
Does the previous use of the premises need to be lawful?

Yes, the previous use needs to be lawful. A consent authority must have previously issued a development consent or complying development certificate. You can get a copy of the previous approval from your local council.

Councils can release certain information relating to a development file, such as development consents, construction certificates, occupation certificates, plans and reports, subject to copyright restrictions. The public can review these documents for free and you can get copies for a reasonable photocopying fee.

The previous use must not be an existing use as defined in Section 4.65 of the Environmental Planning and Assessment Act 1979. An 'existing use' is one that a previous environmental planning instrument allowed and approved but that the government would no longer consider permissible since the start of a new environmental planning instrument.

Figure 1. Example land use table



Zone B1 Neighbourhood Centre

1 Objectives of zone

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To conserve the heritage character of neighbourhood centres.

2 Permitted without consent

Home occupations; Roads

3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Health consulting rooms; Home industries; Kiosks; Medical centres; Neighbourhood shops; Neighbourhood supermarkets; Oyster aquaculture; Respite day care centres; Restaurants or cafes; Semi-detached dwellings; Shops; Shop top housing; Take away food and drink premises; Tank-based aquaculture; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids

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If existing conditions of consent apply to the site, do I need to follow these?

The new restaurant or cafe must follow the most recent council approval that applies to the premises. This includes conditions such matters as hours of operation, noise, car parking, loading, vehicular movement, traffic generation, waste management and landscaping.

I will be the first occupier of the restaurant or cafe. Can I still apply for complying development?

Under Part 5 of the State Policy, you can apply for the first use of the premises as a restaurant or cafe as long as you meet all of the development standards.

Can I make alterations and additions?

The State Policy considers installing a new or replacement awning, windows or skylights; a rubbish bin enclosure; or a business identification sign (projecting from the wall or freestanding) as complying development. You can carry out these types of development as complying development as long as you comply with the development standards in Part 5 of the State Policy.

You may also build an addition to the rear of a commercial premises or externally alter a commercial premises as complying development under Part 5A of the State Policy.

	What you should know
✓	All cafes and restaurants must practise safe food handling and preparation to meet food safety requirements. This includes notifying local council of your business and food activities, appointing a food safety supervisor and meeting Food Standards Code requirements. To find out more, please visit the NSW Food Authority website.
✓	You need to check whether the building is suitable for occupation and use according to the Building Code of Australia classification. If you are proposing an increase to the area of the premises, you also need to confirm the building fire resistance performance and the structural integrity of awnings.
✓	Keep in mind that the number of car parking spaces you need to provide may increase when you change from one use to another. An existing development consent that applies to the land may stipulate these requirements, or they may vary between local government area policies. If you are unsure, check with council to see whether the local environmental plan or development control plan covers parking rates.

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Should I seek professional help with my application?

We encourage you to engage a professional town planner and building designer who can help you make sure your proposal meets the required development standards. When your plans fully comply with these standards, you can lodge your application with your local council or private certifier.

What happens once I lodge my application?

Once you have lodged your application, either your local council or an accredited certifier will assess it. If your development meets the specific development standards, they can approve your complying development certificate in as few as 20 days. The certifier will register the complying development certificate on the NSW Planning Portal, and your local council will be notified accordingly.

More information

Contact the Codes Hotline.

Tel: 13 77 88

Email: codes@planning.nsw.gov.au

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You should read this fact sheet in conjunction with our Exempt and complying development — FAQs