

Overview of Proposed Change	Details of proposed change as per Explanation of Intended Effect	Cumberland City Council’s Feedback and Recommendations
<p>Create CDC pathway for change of use from retail premises to small live music or arts venues</p>	<p>Development standards for CDC pathway are proposed to be:</p> <ul style="list-style-type: none"> (a) have a maximum floor area of 300 metres² (b) not be located above the second storey of a building (c) not occupy more than 2 storeys in a building, including the ground floor (d) provide cultural activities to the public such as live music, visual arts displays, dancing, poetry and spoken word performances (e) display fire safety approvals such as a current fire safety certificate and emergency evacuation diagram (f) not use pyrotechnics or theatrical smoke (smoke machines, hazers or the like) or have tiered or fixed seating (g) have a maximum occupancy limit of 300 people (including staff and performers) or 50 people if food and drink are provided (h) provide sanitary facilities based on employee and patron numbers in F2.3 and Table F2.3 of the BCA for a Class 6 pub, restaurant, café, bar or equivalent (i) may operate from 7.00 am to 10.00 pm Monday to Saturday and 7.00 am to 8.00 pm on a Sunday or a public holiday 	<p>We have concerns about the potential for adverse noise impacts from such a change of use, particularly from amplified sound and live music. Although retail premises would invariably have some degree of noise impact, we would expect live music and arts venues to produce a greater degree of noise.</p> <p>There are inherent and non-trivial risks associated with emission of noise from live music venues that require assessment on a case-by-case basis, and often necessitate the application of non-standard conditions restricting operational activities. The current standard acoustic criteria that apply to CDCs issued for commercial and industrial premises (Schedule 8 of the Exempt Complying SEPP) require compliance with the Noise Policy for Industry. However, the Noise Policy does not include any specific criteria for entertainment noise (amplified music and patron speech) or include a criteria set in each octave band (which would be of importance where tonal or low frequency noise may be an issue, as may be the case with live music venues). Often live music venues require use of a noise limiter, development of a plan of management, and restrictions on the location of external speakers in order to meet such criteria and manage impacts on the surrounding areas. These restrictions need to be informed through an acoustic assessment and to take into account the specifics of the development and its location.</p> <p>In light of the above, we do not support a CDC pathway for change of use to a live music/arts venue. We note that there is already an exempt pathway for provision of low impact live music or arts in an existing premises under the SEPP code, which limits such activities to non-residential zones, among other restrictions. A change of use of the premises to a live music venue suggests that live music will be the sole (or main) activity at the premises and will no longer be considered ‘low impact’.</p> <p>Further, there are a variety of retail premises located immediately below or adjoining residential premises, where there is a heightened risk of noise transfer through shared floors/ceilings/walls. In these cases, the existing standard noise criteria for commercial and industrial developments in the SEPP will not suffice to control noise impacts, and a site specific assessment would be required to set more suitable noise emission criteria.</p> <p>Given the above, we consider that such a change of use should be required to go through a DA process, and not be provided with a CDC pathway.</p> <p>If, however, the Department decides to proceed with such a proposal, then we would strongly recommend that impacts on residential receivers (particularly those located in close proximity to the venue) are strictly controlled – e.g. through imposition of development standards restricting the development to locations which do not adjoin or are opposite residential uses. We would also recommend that requirements around the design construction and fitout of any food and drink preparation areas be included.</p>

Overview of Proposed Change	Details of proposed change as per Explanation of Intended Effect	Cumberland City Council’s Feedback and Recommendations
<p>Create CDC pathway for change of use from light industry (or light industry with an industrial retail outlet) to artisan food and drink industry</p>	<p>Development standards for CDC pathway are proposed to be:</p> <ul style="list-style-type: none"> (a) a maximum retail floor area 30% of gross floor area, or 500 m², or any limit in the LEP, whichever is lesser (b) maximum of 100 patrons at any restaurant or café (c) trading hours for food and drink premises and retail sales from 6 am to 10 pm while allowing 24-hour operations (for baking, brewing, fermenting and so on). This does not over-ride other laws, for example liquor licence conditions (d) premises must comply with Australian Standard 4674-2004 Design, construction and fit-out of food premises and the requirements contained in the Noise Policy for Industry 2017. 	<p>We have concerns about the potential for noise generation from the proposal, particularly in relation to the 24/7 operation of the premises in areas that adjoin residential zones. Although we acknowledge that these uses would only be permissible in certain zones (and not in residential zones), these zones regularly adjoin residential zones, which invariably brings with it increased risk of adverse impact on residents.</p> <p>The provision of unrestricted operating hours for non-retail/customer activities has the potential to result in an increase in noise from mechanical plant and deliveries/truck movements which could impact on adjoining residential zones. We would consider that an acoustic assessment would be appropriate in these cases to fully assess the range of impacts from the use and provide specific recommendations to achieve compliance with criteria. Such an assessment should then be assessed through a DA assessment pathway.</p> <p>If, however, the Department determines that the proposal for a CDC pathway will go ahead, we would strongly recommend that specific noise criteria are included as a development standard, in line with the following:</p> <ul style="list-style-type: none"> (a) the development must comply with the requirements for industrial premises contained in the Noise Policy. Noise emitted by the development must not exceed the lower of the following criteria: <ul style="list-style-type: none"> i. an L A (15 min) of 5dB(A) above background noise when measured at any lot boundary of any nearby residential premises, or ii. the relevant amenity criteria in Table 2.2 in the Noise Policy. <p>In this clause, <i>the Noise Policy</i> means the document entitled <i>NSW Noise Policy for Industry (ISBN 978 1 76039 481 3)</i> published in October 2017 by the Environment Protection Authority.</p> <p><i>(Reason: to ensure noise emissions from the development are adequately controlled, and the requirements are specified clearly)</i></p> <p>We also have concerns about the potential for odour impacts from this proposal, particularly where coffee roasting is involved, as it is in our experience that coffee roasting activities carry an increased risk of adverse odour impacts on the surrounding area, particularly if the use adjoins a residential zone. To control these potential odour impacts, we would recommend the following additional development standards be considered:</p> <ul style="list-style-type: none"> (b) if carried out on land within or immediately adjacent to a residential zone—not involve coffee roasting.

Overview of Proposed Change	Details of proposed change as per Explanation of Intended Effect	Cumberland City Council’s Feedback and Recommendations
		<p><i>(Reason: there is an elevated risk of odour impacts from coffee roasting where it is carried out in close proximity to residential premises. These odour impacts need to be assessed and conditioned as part of a DA)</i></p>
<p>Make temporary COVID-19 emergency measures for food trucks permanent</p>	<p>The current (temporary) measures which are proposed to be made permanent are:</p> <ol style="list-style-type: none"> (1) The use of a mobile food and drink outlet by any person at any time for the preparation and sale of food or beverages (or both) for consumption off the premises is development specified for this order: (2) The standards specified for the development are that the development must— <ol style="list-style-type: none"> (a) have the consent of the owner of the land on which the development is carried out or, if a council or public authority has the control and management of the land, the consent, in writing, of the council or public authority, and (b) not restrict any vehicular or pedestrian access to or from the land or entry to any building on the land, and (c) not obstruct the operation of, or access to, any utility services on the land or on adjacent land, and (d) not be located within the canopy of, or result in damage to, any tree growing on the land or on adjacent land, and (e) not result in any damage to public property on the land or on adjacent land, and (f) make sufficient space available for customers to allow a social distance of at least 1.5 meters from other customers, and (g) not involve any seating for customers during the preparation of food or beverages, or for the consumption of food or beverages, and (h) if located on private land—be limited to 1 development on that land and not contravene any conditions of a development consent for any other use carried out on the land. <p>Note: A registrable vehicle within the meaning of the <i>Road Transport (Vehicle Registration) Regulation 2007</i>, or a cart, bicycle cart or the like must operate in accordance with the <i>Guidelines for mobile food vending vehicles</i> (NSW/FA/F1055/1302) published by the NSW Food Authority in February 2013, and any requirements of the <i>Food Act 2003</i>.</p>	<p>We have significant concerns about likely adverse noise, odour and other impacts from the unrestricted operation of mobile food premises in and near residential zones. During the temporary Covid-19 Order period, we received an influx of complaints from residents regarding the continual operation of mobile food vehicles nearby their homes, resulting in excessive noise, light, odours and smoke (from cooking processes), and visual impacts on the streetscape. The proposed removal or relaxation of the restrictions for trading on or immediately adjacent to a residential zone is likely to cause considerable adverse impacts on local residents.</p> <p>Over the last year, we observed a marked increase in problems and complaints associated with mobile food vehicle operators, including:</p> <ul style="list-style-type: none"> • An increase in the number of operators parking their food truck on the front lawn of their residence and trading all day and night, 7 days per week. Technically they are still meeting the exempt standards from the Order, as the vehicle retains its <i>ability</i> to move (even though it remains parked in the same location permanently). Residential neighbours go from living next door to a quiet residential home, to living next door to a 24/7 takeaway restaurant, without the right to be notified or make submissions regarding this development, nor have the proposal go through the normal merit assessment/DA process. The permanent or regular parking of a mobile food vehicle on the front lawn of a residential premises impacts negatively on the visual amenity of the street, which the neighbours should have a right to make submission on. • We have encountered ongoing problems with generation of offensive noise from food trucks operating near residential areas, particularly in the evening/night period, and particularly where the mobile vehicle trades continuously from the same location. • We have encountered ongoing problems with the generation of waste and litter in the area surrounding a mobile food vehicle from customers throwing their takeaway packaging onto the ground as they walk away. The litter often ends up on the public footpath, gutter, and neighbouring properties, rather than within the premises where the food vehicle is parked. • We have encountered problems with the generation of light pollution from mobile food vehicles parked in and near residential areas, particularly in the evening/night period, and particularly where the mobile vehicle trades continuously from the same location. Vehicles often stay illuminated for the entire time they are operating, which often extends late into the night under the current temporary order.

Overview of Proposed Change	Details of proposed change as per Explanation of Intended Effect	Cumberland City Council’s Feedback and Recommendations
	<p>(3) In this clause– Mobile food and drink outlet means a food truck, van, cart, or other similar vehicle.</p>	<ul style="list-style-type: none"> • We have encountered problems with inadequate storage and disposal of waste water and oil from mobile food vehicles, which has resulted in pollution of the stormwater system, and illegal connections to Sydney Water’s sewer system (without the appropriate trade waste agreements/permits). • We have found that allowing mobile vehicles to operate permanently from the one location has resulted in many operators installing generators and external cool rooms to support larger scale food production, which increases the risk of noise impacts on nearby residents. These mobile food vehicles also often play amplified music from the vehicle to attract customers. <p>To control these adverse impacts, we would recommend the following development standards and restrictions be considered in addition to those in the current (temporary) Covid-19 Order:</p> <p>(a) if carried out on private land within or immediately adjacent to a residential zone—</p> <ul style="list-style-type: none"> i. only be carried out between 7.00 am and 10.00 pm on any day, and ii. not be carried out on the same parcel of land on more than 2 days in every 7-day week (Monday to Sunday), and iii. not result in the emission of noise that exceeds an LAeq (15 min) of 5dB(A) above background noise when measured at any lot boundary of the property where the development is being carried out, and iv. not involve the use of an external power generator, and v. not involve the preparation of food at the outlet by charcoal or other solid fuel cooking methods. <p><i>(Reason: to control the likely impacts from excessive noise, odour, light pollution and litter, and potential visual/streetscape impacts, from the operation of mobile food vehicles in residential areas for extended periods. Without these additional controls, the problems observed with unrestricted mobile food vehicle operations over the past year or two will only worsen)</i></p> <p>We strongly recommend that a time limit be retained to restrict the operation of mobile food and drink outlets on or near residential zones to certain hours. However, if this limit is to be removed, we would want to see the following additional restrictions applied (in addition to those already outlined above) to manage the inevitable noise impacts on residents:</p> <ul style="list-style-type: none"> vi. not result in the emission of noise that is audible within any room in any residential premises (that is not a garage, storage area, bathroom, laundry, toilet or pantry), whether or not any door or window to that room is open, before 7:00 am or after 10:00 pm on any day.

Overview of Proposed Change	Details of proposed change as per Explanation of Intended Effect	Cumberland City Council’s Feedback and Recommendations
		<p>In addition to the above, we would like to recommend that an additional exempt development standard be included for mobile food and drink premises that is not related to the recent temporary Covid-19 order, to help prevent unlawful disposal of wastewater from these developments:</p> <p>(b) not result in the discharge of wastewater and/or cooking oil to the stormwater system at any time, or to the sewer system without first obtaining all necessary approvals, permits and licences from the relevant water utility service.</p> <p><i>(Reason: to prevent ongoing pollution and illegal connections/discharges of liquid waste from mobile food vendors)</i></p>
<p>Make temporary COVID-19 emergency measures for dark kitchens permanent</p>	<p>The current (temporary) measures which are proposed to be made permanent are:</p> <p>(1) The use of the following for the preparation and sale of food or beverages (or both) for the persons to consume off the premises is development specified for this Order:</p> <ul style="list-style-type: none"> (a) a community facility, (b) an educational establishment, business premises or office premises that was operating as a cooking school immediately before the commencement of the Order, (c) food and drink premises, or (d) a function centre. <p>(2) The conditions specified for the development are that the development must–</p> <ul style="list-style-type: none"> (a) be for the use of the premises that are the subject of a development consent or premises that may be used for the existing purpose without development consent, and (b) in the case of premises, the use of which is authorised by a development consent–comply with all conditions of the consent for use of the premises other than any conditions that restricts: <ul style="list-style-type: none"> i. The hours of trading or operation, ii. The use of the premises for food and beverage preparation, iii. The use of the premises for food and beverage delivery purposes, iv. The sale of prepared or packaged food or beverages (or both) for consumption off the premises, and v. The location of retail sales and food preparation within the premises, and 	<p>We have noticed a marked increase in the prevalence of dark kitchens over the past 5 years or so, driven in part by the rise in popularity of delivery service apps like UberEats, Deliveroo, Hark Hark, EASI, Menulog, and others. Since more recent Covid-19 related lockdowns, we have also seen an increase in unauthorised home food businesses with sales through Facebook Marketplace and other online platforms. From our experience, dark kitchens (when compared with conventional front-of-house / customer facing food premises) have a much greater risk of poor food safety outcomes and impacts on the public, due mostly to a combination of:</p> <ul style="list-style-type: none"> • poor design, construction and fitout of the premises itself, as the ‘dark’ businesses often start up within derelict, poorly maintained, and/or abandoned food premises – these premises often technically have development consent but no longer comply with construction requirements due to lack of maintenance; • low rates of notification of their food business activities with the local Council, despite this being a requirement of the Food Act 2003, • poor compliance with food safety legislation due in part to a lack of oversight from the public, customers and Council inspectors, • failure by a number of food delivery services to require proof of council notification and satisfactory inspection as a condition of joining the meal delivery platform/service. <p>In addition to food safety impacts, we have also encountered problems with:</p> <ul style="list-style-type: none"> • increased noise and odour emissions from the use of existing food premises as dark kitchens, particularly where they are located close to residential premises, and • difficulties in regulating the use of one premises by multiple (10 or more) ‘dark’ food businesses throughout the day and week, via a multiple ‘sub-lease’ agreement for the kitchen space. This has caused some confusion for Council as the regulator in determining who is responsible for the premises and for the various food activities carried out at different times.

Overview of Proposed Change	Details of proposed change as per Explanation of Intended Effect	Cumberland City Council’s Feedback and Recommendations
	<p>(c) in the case of premises, the use of which is authorised without a development consent—comply with the provisions of any environmental planning instrument applying to the development other than any provision which restricts—</p> <ol style="list-style-type: none"> i. The hours of trading or operation, ii. The use of the premises for food and beverage preparation, iii. The use of the premises for food and beverage delivery purposes, iv. The sale of prepared or packaged food or beverages (or both) for consumption off the premises, and v. The location of retail sales and food preparation within the premises, <p>(d) have existing kitchen or kitchenette facilities, and</p> <p>(e) make sufficient space available for customers to allow a social distance of at least 1.5 meters from other customers, and</p> <p>(f) not involve any seating for customers during the preparation of food or beverages, or for the consumption of food or beverages, and</p> <p>(g) when operating outside the hours of trading or operation of the premises that would apply but for this Order—take steps to ensure that it has no adverse impact on the amenity of the neighbourhood by reason of the emission of any noise, smell, fumes or waste products.</p>	<p>To help control all of these impacts, we would recommend the following additional development standards be considered <u>in addition to</u> those in the current (temporary) Covid-19 Order:</p> <p>The conditions specified for the development are that the development must—</p> <p>(b) in the case of premises, the use of which is authorised by a development consent—comply with all conditions of the consent for use of the premises other than any conditions that restrict—</p> <ol style="list-style-type: none"> i. the use of the premises for food and beverage preparation (except for restrictions on cooking by charcoal or other solid fuel methods) <p>(c) in the case of premises, the use of which is authorised without a development consent—comply with the provisions of any environmental planning instrument applying to the development other than any provision which restricts—</p> <ol style="list-style-type: none"> i. the use of the premises for food and beverage preparation (except for restrictions on cooking by charcoal or other solid fuel methods) <p><i>(Reason: there is a significant risk of air pollution, including odour and smoke impacts, from the use of solid fuel cooking methods in premises which have not been designed, constructed and approved for such methods)</i></p> <p>(h) have existing kitchen or kitchenette facilities which comply with Australian Standard 4674-2004 Design, construction and fit-out of food premises and the Food Act 2003, <i>(Reason: existing kitchen or kitchenette facilities, particularly those in an existing community centre, may not comply with the minimum design construction and fitout standards to ensure food safety is maintained)</i></p> <p>(i) not result in the emission of noise that exceeds an LAeq (15 min) of 5dB(A) above background noise level when measured at any lot boundary of the property where the development is being carried out, <i>(Reason: there is a risk of adverse noise impacts from the lifting of restrictions on operating hours, particularly where the existing use is located in close proximity to sensitive noise receivers. A limit needs to be set on noise emissions to ensure noise impacts are managed)</i></p> <p>(j) not be located below or adjoining premises or parts of premises used for residential purposes, <i>(Reason: there is an elevated risk of internal noise transmission through shared walls/ceilings/floors with sensitive noise receivers, particularly if limits on operating hours are lifted)</i></p> <p>(k) where the development will involve more than one food business as defined in the Food Act 2003—each food business must be notified as required by that Act,</p>

Overview of Proposed Change	Details of proposed change as per Explanation of Intended Effect	Cumberland City Council’s Feedback and Recommendations
		<i>(Reason: to minimise confusion in terms of who is carrying on food preparation activities where one premises is used by multiple different businesses for different activities at different times)</i>
Clarify exempt development standards for temporary private and community events	<p>It is proposed for an exempt pathway to be created for the use of private land for small and minimal-impact public events. Limitations for such events may include:</p> <ul style="list-style-type: none"> a) limiting events to land other than a rural, residential or environmental protection zone b) limiting events on private land to 2 days in a 12-month period whether consecutive or not consecutive c) limiting hours of operation to between 7 am and 10 pm d) requiring organisers to notify the council at least 7 days before the event e) requiring organisers to notify the adjacent residents at least 7 days before the event f) limiting the number of patrons to 300. <p>There is also a proposal to delete the term community event and replace it with temporary event which would be defined as <i>“a function or event open to the public or a section of the public that is a ceremony, cultural celebration, exhibition, fete, fair, gathering, market or sporting event, that is carried out either inside or outside”</i></p> <p>It is also proposed to modify the requirements for major event sites (like The Rocks, Darling Harbour, Barangaroo, and Sydney Olympic Park) to allow events to held on more days each year. Currently the number of consecutive days these activities can be held for is limited to 21 days, with no location to be used for more than 140 days (including set-up and clean-up) in any calendar year. It is proposed to increase this to 60 consecutive days and no more than 200 days in any calendar year.</p>	<p>We agree that the current provisions of the Exempt Complying Codes SEPP around events can be confusing and would benefit from additional clarity and simplification. We also agree that events on public/Council owned land can be adequately managed through the section 68 Local Government Act 1993 approval process.</p> <p>We have no objection to the proposed changes relating to temporary and community events.</p>
Extend the number of days for filming to be considered exempt	Currently the Exempt Complying Codes SEPP permits filming for up to 30 days on per year on private property. This limit is proposed to be removed.	We have no objection to the proposed changes to the SEPP in regard to filming activities.