



Council Ref: SC2593-02 - 21/232036

22 November 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

Exhibition of *Outdoor Dining and Fun Experiences - Explanation of Intended Effect*

Woollahra Council staff welcome the opportunity to comment on the exhibition of the *Outdoor Dining and Fun Experiences - Explanation of Intended Effect* (EIE) which outlines proposed changes to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

Council supports the NSW Government's intent to assist the hospitality and arts industries recover from the pandemic. However, we are concerned that some of the proposals in the EIE are not suited to exempt or complying development pathways.

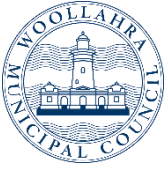
In particular, we object to the proposal to allow small live music and arts venues with a capacity of 300 people as a complying development change of use where "shops" or "food and drink premises" are currently permitted. For example, under the *Woollahra Local Environmental Plan 2014* "shops" are permitted in the R2 Low Density Residential and R3 Medium Density Residential zones. Live music and arts venues are not compatible uses in these residential zones, and may be problematic in the B1 Neighbourhood Business and B4 Mixed Use zones which directly adjoin, or are in close proximity to residential areas. Furthermore, impacts generated by a live music or art venue hosting up to 300 people, such as those associated with noise and vibration, cannot be adequately addressed and mitigated through the complying development pathway.

Similarly, the proposal to allow temporary events on private land with a capacity of 300 people will generate significant amenity impacts (e.g. noise, parking, traffic and waste management). It could also generate public health, safety and risk issues that cannot be suitably addressed through the exempt development pathway.

Our submission is attached. We sincerely request that you review the proposed changes in order to protect our community's safety and amenity.

If you require further information about our submission please contact [REDACTED]
[REDACTED] on [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



Submission to the exhibition of *Outdoor Dining and Fun Experiences - Explanation of Intended Effect*

The NSW Government is wanting to make it simpler, faster and cheaper for businesses to get back on their feet. To help the hospitality and arts industries recover from the pandemic, it is proposing changes to the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#) (Codes SEPP), as outlined in the Outdoor Dining and Fun Experiences Explanation of Intended Effect (EIE).

The proposed changes will make it easier to hold outdoor events, film, set up artisan food and drink premises or convert shops to arts or live music venues by providing flexibility and a simpler, faster planning process (i.e. establishing new exempt and complying development provisions in the Codes SEPP).

Council agrees with exploring innovative and flexible ways to support business. However, it is important that residential amenity and public safety is not compromised.

Woollahra Council staff have reviewed the EIE and we are concerned that some of the proposed changes to the Codes SEPP will not achieve a reasonable balance between facilitating business growth and protecting amenity and safety. Our comments are provided below for consideration.

1. Small live music and arts venues

1.1. Complying development to allow a change of use of retail premises to small live music or arts venues

The proposed amendments will allow the conversion of shops or food and drink premises into live music or arts venues as a change of use using complying development pathway in the [Codes SEPP](#).

We raise a number of concerns with this proposal.

Live music or arts venues will create noise and other impacts that are substantially different to “shops”, and to “food and drink premises”. The change of use provisions as proposed have the potential to result in significant land use conflicts. Accordingly, we strongly recommend that the following amendments are made before the SEPP is finalised:

- Limit the zones where the change of use applies
 - In the Woollahra LGA, where the built form is very dense, the R2, R3, B1 and B4 zoned land often comprises terrace/row style buildings which pose inherent difficulties containing or mitigating noise.
 - Small bars and live music venues are not compatible uses in the residential zones or in close proximity to residential properties, as the impacts (such as noise and vibration) cannot be adequately addressed and mitigated through the complying development pathway.
 - The change of use provisions should not apply to the following zones: R2 Low Density Residential and R3 Medium Density Residential. We also raise potential concerns with other zones, such as the B1 Neighbourhood Centre and B4 Mixed Use zones, which directly adjoin or are in close proximity to residential priorities¹.

¹ This issue would also apply to the proposed E1 Local Centre & MU1 Mixed Use zones as identified in the employment zone reform framework.

- Reduce the capacity
 - The maximum capacity should be determined by using the 2m² rule (e.g. 100 persons if the floor area was limited to 200m²) but with no more than 300 people regardless of the floor area of the venue.
- Acoustic and sound attenuation
 - Shops are often located below first floor residential properties. Noise, vibration and other impacts need to be further addressed to resolve potential land use compatibility uses.
 - We have concerns about how acoustic/sound attenuation, patron noise and management of live music can be adequately addressed through generic conditions in a *complying development certificate* (CDC). Compliance and regulatory enforcement issues are likely to be significant.
- Cumulative impact of live music and arts venues on amenity and character
 - We have a concern that shops, which provide for the day to day needs of local residents, could be displaced by live music and arts venues. Venues such as this would operate predominantly in the night time economy, which could create dormant daytime centers which no longer service the needs of the local community. The cumulative impact of a number of these premises has the potential to fundamentally change the character and function of an area. The complying development pathway does not provide any scope to consider this wider impact.
 - We are also concerned that an applicant will use the complying development pathway to establish live music and arts venues and then submit at DA to Council to extend trading hours. This leaves Council with a deficient and piecemeal approach to assessing the land use which is not an effective way to assess and mitigate impacts of a development type that has the potential to cause significant amenity impacts.
- Changes to the Building Code of Australia (BCA)
 - Proposed changes to the BCA must not compromise fire and building safety. In particular, the size of the premises must be limited to around 200m² and not located above other uses.
 - While the BCA definition may be changed to identify these businesses as a shop, there should be a specific planning definition added to the *Standard Instrument – Principle Local Environmental Plan* to ensure consistency.

2. Making some temporary COVID-19 measures permanent

2.1. Food trucks

Whilst we support food trucks in principle, there is a view that food trucks take business away from existing food and drink operators that are already invested in the area.

It may be more equitable to permit food trucks as exempt development on private land with the following limitations and standards to better address impacts:

- Do not permit food trucks on residential land zoned R2 and R3, including a site where the business is located within a residential zone and relying on existing use rights to operate.
- A site may host a food truck for no more than 3 days each week.
- A food truck must not take up a parking space or spaces, which then reduces car parking on the site which contravenes an existing condition of consent.
- When the food truck is not trading, it should be removed and returned to base.
- Trading hours within or immediately adjacent to a residential zone

- We suggest the standard CDC hours should be whatever trading hours are in the consent. However, these hours should be no later than 10.00pm if the consent provides for longer trading hours. The food truck operations (including bump in and bump out) should not commence before 7.00am Monday to Saturday and 8.00am on Sundays.

2.2. Dark kitchens

Whilst we note that dark kitchens provide an important function, Council staff are concerned about potential health, safety and amenity implications to the local community.

Council staff have the following issues to raise in relation to dark kitchens.

- Parking and loading requirements
 - The standards may need to address parking and loading. For example, how will the package food be loaded and transported? What are the likely impacts of this collection/transportation on the parking, traffic and amenity on the surrounding area? This is particularly relevant where commercial supply quantities are being produced, and delivery drivers are in constant attendance during the day and night. This is particularly relevant where a dark kitchen is operating from a unit.
- Register
 - Maintaining a register of dark kitchens with councils will be critical to ensure that dark kitchens can be regularly inspected to ensure compliance with relevant food and hygiene standards and safeguard the health and well-being of the community.

3. Temporary events

3.1. Temporary events

We make the following comments about the proposal for temporary events on private land:

- Capacity
 - The capacity of these temporary events should be limited to a maximum of 150 people.
 - An event with the capacity for 300 people should not fall under the exempt development pathway as it will generate significant amenity impacts (e.g. noise, parking, traffic and waste management). It could also generate public health, safety and risk issues that cannot be suitably addressed through the exempt development pathway
- Locations
 - We support the proposal in the EIE that temporary events on private land should not apply to residential or environmental protection zoned land as the impacts (e.g. noise, parking, traffic and waste) cannot be adequately addressed through the exempt development pathway.
 - Suggested zones where temporary events on private land may be suitable as exempt development include special purpose zones, recreation zones, and those zones where a “function center” is permitted under the relevant council’s LEP.
- Frequency
 - We support limiting events on private land to 2 days in a 12-month period (whether consecutive or not consecutive is suitable).
 - We do not support any extension to the number of days permitted. It is relevant to note that “function center” is a defined use in council LEPs. Any provisions for temporary events on private lands must not establish these temporary uses as quasi-function centres.

- Hours of operation
 - The proposed hours of operation of 7 am and 10 pm are suitable.
- Waste management
 - We recommend that it is the responsibility of the event organiser to arrange private contractors to remove rubbish from the site. Rubbish should not be placed out for kerb side collection, or in Council bins.
- Insurance
 - The event organiser must be required to have Public Liability Insurance to the value of \$20 million. Proof of the insurance should be provided to council as part of the notification.
- Notification
 - The organisers should be required to notify the council at least 14 days before the event. Seven days may not provide Council (or the organiser) with sufficient time to identify and rectify any matters to comply with the exempt development provisions.
 - The local community should be notified no less than seven days before the event.

3.1.1. Temporary structures

- Temporary structures
 - The issue of the event (use of a property) and the erection of temporary structures should be addressed as separate matters.

4. Filming

4.1. Filming

With our beautiful parks, beaches and foreshore areas, filming regularly takes place in the Woollahra LGA. We make the following comments in relation to the proposed changes to filming.

- There may be scope to increase the number of days for which filming on private land is exempt. However, we suggest that there should be a cap on the number of days that filming can occur, rather than allowing unlimited days for filming.
 - For example, the Code SEPP clause 2.114(b) states “the filming must not create significant interference with the neighbourhood,” It is likely that the neighbours threshold for what is a “significant interference” will be substantially lower if their street is frequently (or for long periods) impacted by film crew and support parking, road closures, scaffolding, lighting and temporary structures etc.
 - Allowing unlimited filming on private land as exempt development may also create unreasonable expectations by film makers that Council will also subsequently approve road and footpath closures and temporary structures etc, for extended periods. This may lead to non-compliance and enforcement issues where the council does not issue the approval.