



# **SUBMISSION**

## **Proposed Amendments to (Exempt and Complying Development Codes) SEPP – The Fun SEPP**

To the NSW Department of Planning, Industry and Environment (DPIE)

November 2021  
File No: A4789316

This submission outlines Fairfield City Council's response to amendments proposed to the SEPP (Exempt and Complying Development Codes) 2008 under The Fun SEPP. Overall, the proposed changes are supported and this is a positive proposal which will continue to enable arts and hospitality venues to provide services out of the COVID pandemic.

Council welcomes the Fun SEPP's aims to simplify processes and lower costs so venues and businesses can provide services with ease as businesses reopen. However the potential impacts on residential amenity and Council resources needs to be considered and a balanced approach delivered particularly in areas directly adjoining residential zones.

Of relevance to Fairfield City there are several issues that Council has some concerns with and these are outlined below.

### **1. Small Live Music or Arts Venues**

It is proposed to permit small live music or arts venues as complying development (subject to meeting predetermined building, fire safety and amenity development standards) and to amend the BCA so that these venues are treated as a Class 6 building in NSW which will align them with shops, cafes and restaurants.

To be considered as a small live music or arts venue the following must be met:

- have a maximum floor area of 300m<sup>2</sup>
- not be located above the second storey of a building
- not occupy more than 2 storeys in a building, including the ground floor
- provide cultural activities to the public such as live music, visual arts displays, dancing, poetry and spoken word performances
- display fire safety approvals such as a current fire safety certificate and emergency evacuation diagram
- not use pyrotechnics or theatrical smoke (smoke machines, hazers or the like) or have tiered or fixed seating
- have a maximum occupancy limit of 300 people (including staff and performers) or 50 people if food and drink are provided
- 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
- 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.

It is noted that the proposed changes are well suited to areas in Sydney with the open space capacity that enable these opportunities, especially live music and art venues e.g. Sydney CBD. In contrast, potential venues/businesses in the Fairfield LGA contend with restricted footpath areas and road spaces and are not equipped to accommodate these proposals.

Therefore, vendors in Fairfield City may not be able to open up for events. Essentially, this is a solid state-wide plan but Council will need to align the proposals with Council's current planning policies to ensure the application of the Fun SEPP in Fairfield City takes into consideration the spatial and social considerations relevant to the area.

There does not appear to be a restriction on location of these premises and that could potentially operate in any centre where there are existing shops, cafes or restaurants. Given that there is no minimum floor area applied (only a maximum) this could mean that live music venues could set up within existing local and neighbourhood centres. The implications of this relating to traffic, parking, noise and other amenity issues is significant for Fairfield City in light of the numerous smaller centres scattered across the LGA that directly adjoin residential areas.

Council would support the establishment of such venues as complying development where there is certainty that the residential amenity of adjoining properties is not impacted upon as well as adequate car parking available for potentially 300 patrons. Therefore permissibility should not be included as complying development for change of use of shops in the B1 Neighbourhood Shops or B2 Local Centre zones or any residential zones that permit neighbourhood shops.

For proposals to establish such events in B1 and B2 zones, the initial application for the live music venue should be via a development application submitted with Council. There are additional issues that require careful technical consideration and assessment including traffic management, noise impacts, parking provision, safety and security measures.

As a result of a range of proposed employment zone reforms recently issued by the Department, it is important to note that commenting on such a proposal at a time when there is significant ambiguity surrounding the future business/employment zone framework and land use permissibility is extremely difficult. Currently the future classification and hierarchy of local and neighbourhood centres is uncertain and hence the implications of permitting this use as complying development is unknown.

## **2. Artisan Food and Drink Industry**

It is understood that proposed changes to artisan food and drink industries include:

- increasing the number of patron in a related food and drink premises from 50 to 100;
- increasing hours of operation from 6am to 10pm for associated food and drink premises and 24 hour operation for production components including baking, brewing and fermenting.
- increasing the maximum retail floor area to 30% of gross floor area, or 500m<sup>2</sup> or any other limit in an LEP, whichever is the lesser.
- Establishing a complying development pathway for change of use from a light industry to an artisan food and drink premises in IN1, IN2, B5 and B6 zones.

The proposed changes discussed above are not considered to have any significant impacts and are supported.

### **3. Food Trucks and Dark Kitchens**

Whilst food trucks are an existing type of exempt development they are not without their concerns particularly in Fairfield LGA. The proposed changes provide very little detail and the EIE simply states that the existing measures (including temporary measures) will be maintained and hours of operation will be increased on land adjoining a residential zone. This is taken to mean that food trucks can operate on any land, at any time, subject to land owners consent as these are the current temporary provisions in place for food trucks.

One of the major issues with food trucks within an LGA such as Fairfield, is the diversion of rent away from purpose built premises which would otherwise be used as a form of food and drink premises. In addition, the proposal to operate at any time on any land will have implications on the amenity in residential areas particularly in the evenings. This will have a flow on effect to Council's compliance and enforcement team who will be left to deal with issues arising from inevitable land use conflicts.

Food security is an emerging issue in the Fairfield LGA. There are significant pockets of communities who experience ongoing disadvantage and lack of access to fresh food. Enabling food trucks without healthy food options within or adjoining residential land is likely to exacerbate this issue.

Council would therefore suggest that one of the development standards included for this form of development is that food trucks operating in or adjoining residential areas should meet a healthy menu quota e.g. at least 30% of the menu should be considered "everyday food". For example, the Department of Education's Nutrition in School's policy currently states that 75% of school menu should be 'everyday food' and 25% can be 'occasional food'. This can be applied for food trucks, especially those allowed in residential area.

No major issues have been identified with respect to "Dark Kitchens" as the food is made solely for delivery and the preparation of the food must be within an existing commercial kitchen, including restaurant and café, community facility, cooking school or function centre.

The food is to be consumed off-site and will allow business to adapt when necessary to changing situations and customer needs. Council supports the requirement to ensure hours of operation for a 'dark kitchen' will need to comply with any condition of consent that restricts or specifies the hours of trading or operation of the existing approved use.

#### 4. Temporary Private and Community Events

The EIE sets out proposed changes to the approval requirements for temporary events depending on their location on either private land or Council owned and managed land. Council supports the intent to clarify that events on Council owned or managed land will not need separate planning approval.

A temporary event, whether a community event or a private function, is proposed to be permitted on council owned and managed land without the need for a separate approval. Councils can use their event application processes such as via the Local Government Act 1993 to assess proposals against their own policies and plans of management.

Fairfield Council already has controls for temporary uses on Council owned or managed land within Schedule 2 of Fairfield Local Environmental Plans 2013. These provisions allow temporary use of Council owned or managed land for between 52 and 104 days (whether consecutive or not) in a 12 month period and is particularly relevant to a broad range of community events, activities and festivals that occur at the Fairfield City Showground in Prairiewood.

The EIE states that where there is an inconsistency between the Codes SEPP and the LEP, the Codes SEPP will prevail. Council requests confirmation that the proposed provisions within the SEPP amendment will **not** specify a maximum number of days for temporary use of Council owned or managed land that could undermine or restrict community events, uses and festivals that currently take place across the LGA.

Temporary events on private land however do not have the same level of oversight and management as events on Council owned or managed land. For this reason Council supports the following additional requirements proposed under the SEPP amendment for temporary events on private land:

- Limiting events to land other than a rural, residential or environmental protection zone;
- Limiting events on private land to 2 days in a 12 month period whether or not consecutive;
- Limiting hours of operation to between 7am and 10pm;
- Requiring organisers to notify the council at least 7 days prior to the event; and
- Limiting the number of patrons to 300.

All of these proposed development standards are supported to ensure that temporary events of private land have minimal impacts on the surrounding community. Beyond these controls, the event will be required to seek a development approval from Council. Exempt development provisions will still apply for the temporary use of structures associated with an event.

**5. Filming**

Amendment proposed to the Codes SEPP will remove the 30-day limit on filming and enable longer periods of filming and associated structures to be agreed upon with the landowner, filmmakers and Council through a film management plan.

Council does not raise any objection to this proposal as long as Council has the provision to approve a film management plan prepared in conjunction with the proposal to ensure public safety, environmental protections and matters such as traffic management, noise impacts and hours of operation are considered, addressed and managed appropriately.

As discussed above, Council supports the majority of proposed amendments to the Codes SEPP to facilitate a re-emergence and revitalisation of the arts and hospitality industries following significant periods of uncertainty and stress. Some of the provisions proposed do however require adjustment to ensure that residential amenity, health standards and resources required for enforcement are managed effectively.

Thank you for taking the time to consider Council's views on this matter and should you have any questions please do not hesitate to contact [REDACTED]

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