

## SUBMISSION



### **FOREWORD**

Willoughby City Council appreciates the opportunity to provide feedback with regards to the proposed amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes 2008* (Codes SEPP) to support outdoor dining, small live music and arts venues, artisan food and drinks, temporary events and filming.

[REDACTED]

## **1. General Feedback**

### **1.1 Purpose and exhibition**

The NSW Department of Planning, Industry, and Environment (DPIE) is undertaking a review of the Codes SEPP to support hospitality, events and the arts industries to recover and emerge from the recent Covid lockdowns. The review aims to simplify planning processes to support hospitality and entertainment industries, whilst providing a 24-hour economy that is diverse, vibrant, inclusive and safe.

Council is generally supportive of this aim and is actively exploring its own locally appropriate initiatives to revitalise parts of Willoughby following Covid.

DPIE is currently exhibiting the following:

- The *Outdoor Dining and Fun Experiences Explanation of Intended Effect*
- A document titled '*Fun SEPP*'

Submissions are invited until the extended date of 30 November 2021.

### **1.2 General Comments**

- i. The impact of COVID-19 and imposed lockdowns has caused a significantly detrimental impact on the hospitality and entertainment industries globally. A review of the Codes SEPP to explore the ability to simplify planning processes to support these industries across NSW and to encourage a diverse economy that is vibrant, inclusive and safe is strongly supported.
- ii. Whilst there is strong support to simplify processes for hospitality and entertainment industries, it is vital that the provisions of the Codes SEPP does not result in adverse impacts to communities and property owners as a result, causing on going concerns and complaints.
- iii. This submission addresses the following key categories to be reviewed by DPIE: outdoor dining, small live music or arts venues, artisan food and drink industry, food trucks and dark kitchens, temporary events, and filming.

## 2. Outdoor Dining

### 2.1 Review of exempt development standards for outdoor dining

- i. A trial was conducted in The Rocks from 16 October 2020 to 31 October 2021 to allow hospitality venues to obtain approval for outdoor dining without business owners needing to submit a separate development application.
- ii. The City of Sydney and Place Management NSW (the managers of The Rocks and Darling Harbour) have approved outdoor dining areas as exempt development during the trial.
- iii. DPIE proposes the exempt development process for outdoor dining to become permanent.

### 2.2 Feedback regarding outdoor dining

- i. Willoughby City Council currently applies its own outdoor dining policy if a business owner seeks to use the Council footpath for outdoor dining purposes. This process does not require the business owner to lodge a development application (DA) but does require Council consent. Willoughby Council's policy reflects the approval process conducted during the trial for The Rocks and has been effective to ensure there are no adverse impacts with regards to accessibility and amenity.
- ii. The term "exempt development" would imply that business owners do not require **any** approval from Council to use the public footpath for outdoor dining. Any introduction of exempt development clauses in the Codes SEPP with regards to outdoor dining should stipulate that any use of the public footpath for outdoor dining purposes must have the consent of Council as landowner.
- iii. Business owners can then be required to provide proof of adequate insurance cover should the public footpath be used for outdoor dining.

## 3. Small Live Music and Arts Venues

### 3.1 Review to provide a complying development pathway for small live music and arts venues

- i. In November 2020, new legislation introduced the term *small live music or arts venue* into the BCA NSW
- ii. DPIE proposes two changes with regards to small live music and arts venues:
  1. To amend the BCA so that a small live music or arts venue is treated as a Class 6 building in NSW, (a shop or other building for the sale of goods by retail or the supply of services direct to the public).
  2. To introduce a new complying development pathway within the Codes SEPP with accompanying building, fire safety and amenity development standards.

- iii. This complying development pathway would apply to a change of use of a premises to a small live music or arts venue.

### 3.2 Feedback regarding small live music and arts venues

- i. The proposal to introduce a complying development pathway for small live music or arts venues has a high likelihood of creating ongoing problems as such uses are likely to impact amenity, particularly with regards to nearby or adjoining residential dwellings.
- ii. A complying development pathway for small live music or arts venues raises concerns with regards to acoustic privacy and land use compatibility, and the following issues require serious consideration:
  - 1. Need for appropriate acoustic testing to be conducted before any complying development certificate is issued to ensure the operations of the premise do not adversely impact adjoining and nearby residential properties.
  - 2. If Council receive complaints with regards to the operations of a small live music or arts venue, provisions should be in place to allow Council the ability to assess the operations of the venue and issue a *cease of operations* order if necessary.
  - 3. The current complying development pathway for development currently does not take into consideration whether the change of use is compatible with adjoining premises.
  - 4. Issues such as operating hours, number of patrons, and the availability of food and drink have not been addressed.
- iii. Due to the above issues, a complying development pathway for small live music or arts venues is NOT supported at this stage until adequate consideration of impact mitigation to protect local communities has been demonstrated.

## 4. Artisan Food and Drink Industry

### 4.1 Review to provide a complying development pathway for artisan food and drinks industries

- i. The land use term '*artisan food and drink industry*' was introduced in July 2018
- ii. There is currently no exempt or complying development pathway for a change of use to an artisan food and drinks premises
- iii. DPIE proposes to introduce a complying development pathway within the Codes SEPP for artisan food and drinks industries with the following development standards:
  - 1. The change of use to an artisan food and drinks premises must be within an existing light industry or industrial retail outlet. The change of use will only be allowed where a Council already permits this type of use.
  - 2. A maximum retail floor area of 30% of gross floor area, or 500 square metres, or any limit in Council's Local Environmental Plan, whichever is lesser.

3. Maximum of 100 patrons at any restaurant or café.
4. 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.
5. 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.

## 4.2 Feedback regarding artisan food and drinks industries

- i. The introduction of a complying development pathway for artisan food and drinks industries raises serious concern with regards to the following:
  1. Artisan food and drinks premises have different impacts in comparison to other light industries with regards to accessibility, noise generation, and parking. Allowing a complying development pathway may result in conflict with surrounding industrial operations.
  2. Issues such as the provision of car parking and accessibility by public transport are not considered in the proposed complying development standards.
  3. A complying development pathway does not take into consideration the context of the surrounding area and whether the artisan food and drinks premises is compatible with neighbouring premises. E.g. an artisan food and drinks premises with the capacity for 100 patrons may cause amenity and parking conflicts with surrounding industrial uses that are known to be active during peak hours.
- ii. Due to the above issues, a complying development pathway for artisan food and drinks premises is NOT supported at this stage until adequate consideration of impact mitigation to protect local businesses has been demonstrated.

## 5. Food Trucks and Dark Kitchens

### 5.1 Review of temporary measures for food trucks and dark kitchens to be made permanent under exempt development

#### Food Trucks

- i. In 2013, the Codes SEPP was amended to enable mobile food and drink outlets (food trucks) to operate as exempt development if the proposal met the specified standards.
- ii. Temporary measures were introduced on 25 March 2020 through the *COVID-19 Legislation Amendment (Emergency Measures) Bill 2020* which allowed food trucks to operate on any land at any time if the following requirements were met:



1. Food trucks must have the consent of the owner of the land on which they are located. If a council or other public authority has control and management of the land, such as a public road, public reserve or other public place, consent in writing from the council or relevant public authority must be obtained
2. If the food truck is located on private land:
  - It is limited to one food truck per lot
  - It must not contravene any conditions of development consent for any other use of the land.
3. There must be enough space to allow customers to stand at least 1.5 metres from each other, and seating for customers cannot be provided.
4. Other requirements from the Codes SEPP also applied, including not obstructing vehicle or pedestrian access.

iii. The above temporary measures are proposed to be made permanent.

#### Dark Kitchens

- i. A dark kitchen is using commercial kitchen facilities within an existing premise to prepare, sell and deliver takeaway food and beverages to be consumed off the premises.
- ii. Temporary measures were introduced on 25 March 2020 through the *COVID-19 Legislation Amendment (Emergency Measures) Bill 2020* which allowed dark kitchens to operate on any land at any time subject to the dark kitchen operating in an existing commercial kitchen.
- iii. DPIE proposes dark kitchens to be permissible as exempt development if the dark kitchen operates within an existing commercial kitchen and must be located in any of the following:
  1. Community facility
  2. Education establishment, business premise or office premise which operated as a cooking school before April 2020
  3. Food and drink premise
  4. Function centre.

The existing premise must have development approval for the use and will need to comply with conditions of consent. The operating hours for a dark kitchen will need to comply with any condition of consent that restricts or specifies the hours of trading or operation.

## 5.2 Feedback regarding food trucks and dark kitchens

### Food Trucks

- i. The operation of food trucks on public land requires landowners consent under section 68 of the *Local Government Act 1993*. It is vital this requirement be maintained.
- ii. Food trucks must obtain and be able to provide proof of registration with Council to enable the required food safety audits to be conducted.

- iii. Food trucks should be not permissible within residentially zoned land.
- iv. Food trucks operating on land immediately adjacent to a residential zone should be limited to the operating hours of 7am to 7pm on any day as currently stipulated in the Codes SEPP.
- v. There are currently no maximum operating hour limits proposed for food trucks. This raises concerns with regards to acoustic impacts and amenity. There should be consideration with regards to the impact on surrounding premises.
- vi. Food trucks should not be permissible under exempt development if vehicle access to the site is solely obtained from a classified road. Classified roads are major transport routes and food trucks on sites where vehicle access is solely from classified roads would cause conflict with transport routes.

#### Dark Kitchens

- i. The operating hours of dark kitchens should be restricted to any conditions of consent of the premises in which the dark kitchen is operating.
- ii. Clarification should be provided with regards to how and when Council are to undertake food safety testing and environmental health checks of dark kitchens.
- iii. There are concerns with regards to the location of dark kitchens not being notified to the general public.

## 6. Temporary Events

### 6.1 Review of requirements to hold temporary events on public and private land under exempt development

- i. Temporary events on Council owned and managed land must obtain landowners approval under section 68 of the *Local Government Act 1993*.
- ii. DPIE seeks a new clause in the Codes SEPP to combine temporary use and temporary structures into one clause to provide clarity and remove duplication of information.
- iii. DPIE is seeking feedback for temporary events to be permissible under exempt development. Feedback is sought with regards to the following under exempt development:
  1. Capacity limits for temporary events.
  2. The length of time permissible for temporary events.
  3. Within which land zones can temporary events be held.

### 6.2 Feedback regarding temporary events

- i. Temporary events held on public land requires landowners consent under section 68 of the Local Government Act 1993. It is vital this requirement be maintained.

- ii. There is concern with regards to allowing temporary events to be held under exempt development. Serious consideration is to be given to the following:
  - 1. Limits on capacity and time limits for temporary events should be imposed. The proposed maximum limit of 300 patrons is considered too large to be permissible as exempt development.
  - 2. Temporary events can often require significant supporting infrastructure and produce extensive waste and acoustic impacts. It is uncertain how an exempt development pathway will ensure these impacts will be properly managed.
  - 3. Temporary events (particularly with a capacity of 300 persons) would typically require stringent waste management plans and noise management plans. It is uncertain how an exempt development pathway will ensure temporary events will provide adequate waste and noise management.
  - 4. The prior notification time period should be a minimum of 14 days.
- iii. Allowing temporary events on private land through exempt development is concerning and NOT supported, particularly in circumstances where private commercial or retail premises are within close proximity to residential premises as with shop-top housing.

## 7. Filming

### 7.1 Review of filming allowances under exempt development

- i. The Codes SEPP currently allows up to 30 days a year for filming for commercial purposes on private property. DPIE proposes to remove the 30-day limit. No maximum time limit has been proposed.
- ii. The Codes SEPP currently requires a film management plan to be provided to Council.

### 7.2 Comments regarding filming

- i. Extending the allowed timeframe for filming on private property provided a film management plan is produced can be supported.
- ii. Requirements under the Local Government Filming Protocol are also expected to be maintained.

## 8. Concluding Comments

Willoughby City Council supports a review of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)* to provide support for outdoor dining, small live music and arts venues, artisan food and drinks premises, temporary events and filming.

Particular areas of support relate to:

- i. Allowing Councils to assess proposals from business proprietors to utilise the public footpath for outdoor dining, rather than requiring a business proprietor to lodge a development application (DA).
- ii. Providing further clarity within the Codes SEPP by consolidating information and reducing duplicate approval processes.
- iii. Extending the maximum period of time that filming can take place on private property.

Areas of concern that are **not supported** relate to:

- i. Providing a **complying development** pathway for '*small live music and arts venues*' and '*artisan food and drinks premises*' due to potential amenity impacts and concerns with land use compatibility.
- ii. Providing an **exempt development** pathway for food trucks and dark kitchens also due to potential amenity impacts and concerns with land use compatibility.
- iii. The proposed allowances for temporary events on private property to be permissible under **exempt development** involving up to 300 patrons for a temporary event.

A review of the *Outdoor Dining and Fun Experiences Explanation of Intended Effect and Fun SEPP* has been undertaken.

It is considered that there is insufficient information and inadequate nominated control to be confident that the proposed changes under exempt and complying development will not lead to detrimental impacts on communities, industries, and neighbouring residential amenity.

Further information with regards to proposed changes to the Codes SEPP is anticipated and Willoughby City Council will be happy to provide further feedback at that time.