

30 November 2021

Department of Planning, Industry and Environment

Electronic submission via NSW Planning Portal

Dear Sir/Madam

Thank you for the opportunity to provide feedback on the Fun SEPP, which proposes amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

City of Newcastle (CN) support many of the changes and efficiencies identified within the Fun SEPP and the benefits this will have for our local economy. The changes will facilitate greater flexibility for arts and hospitality sectors. This is considered a positive benefit towards recovering from the COVID-19 pandemic and opening up opportunities for industry.

Whilst there are many positive benefits identified, CN has identified several areas of concern with the Fun SEPP as proposed. These concerns largely relate to amenity impacts and conflict between land uses / zones and the issues associated with outdoor dining.

It is requested that further consideration of the amendments be undertaken as suggested below. The submission below has been formatted to reflect the topics listed in the explanation of intended effect.

Topic	Notes/Concerns for Submission
Outdoor Dining	<p>The proposed exempt provisions are supported as well as the continuation of individual Council Outdoor Dining Policies to identify and manage issues relating to outdoor dining.</p> <p>However, concern is raised over the possible implications with the Building Code of Australia (BCA). Clause 2.40B Development Standards 1d) of the Codes SEPP (shown below) requires that the dining area must not be under an awning unless it meets the BCA, effectively requiring certification of the structural adequacy of awnings. To be exempt development, the emphasis is on the applicant to prove that a proposal is exempt. Concern is raised that proponents will not consider the structural adequacy of awnings and there is no trigger for Councils to have the awnings inspected or its adequacy confirmed. The additional cost and timeframe associated with reviewing or certifying awnings as well as the safety of the community needs to be considered in more detail, as this does not align with the objective of making the outdoor dining process easier for businesses.</p> <p>Subdivision 20A Footpaths—outdoor dining</p> <p>2.40A Specified development</p> <p>The use of a footway or public open space within the meaning of the <i>Roads Act 1993</i> as an outdoor dining area associated with lawful food and drink premises is development specified for</p> <p>2.40B Development standards</p> <p>(1) The standards specified for that development are that the development must—</p> <p>(a) (Repealed)</p> <p>(b) be carried out in accordance with an approval granted under section 125 of the <i>Roads Act 1993</i>, including in accordance with any hours of operation to which the approval is subject</p> <p>(c) be carried out in accordance with any approval granted under section 68 of the <i>Local Government Act 1993</i>, and</p> <p>(d) not be under an awning, unless the awning complies with the requirements set out in BP1.1 and BP1.2 of Volume 1 of the <i>Building Code of Australia</i>.</p> <p>(2), (3) (Repealed)</p>

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	<p>The current alfresco trial which expands the area into reserves, recreation spaces and the like is not supported at this stage due to the complications associated with community land, operational land, and the Crown Lands Act. The legal implications, notification requirements, need for Plans of Management and licences needs to be fully assessed and understood by several agencies before CN could support further changes to the outdoor dining provisions. The current trial has raised numerous issues in this regard and has placed additional workload pressure on staff when the legal implications of this trial were not fully considered or discussed with CN prior to the trial. For example, to use community land to conduct a trade requires a 28-day notification process. This again has implications on timing and the ability of CN to assess such applications in a timely manner.</p> <p>Concern is also raised over liquor licences and the relationship with Development Applications (DAs). It is recommended that the Department liaise and work with Liquor and Gaming NSW on the project to simplify and align the application processes for new businesses requiring development consent and a liquor licence. This project has been identified as a parliamentary priority under section 163 of the Liquor Act 2007, with a Discussion Paper to be shortly released. CN is not supportive at this time, of any additional processes other than DAs, being planned to use the ePlanning portal due to the current issues associated with the portal.</p>
Small live music or arts venues	<p>CN supports the introduction of a complying development pathway for small live music or arts venues and suggests the following development standards:</p> <ul style="list-style-type: none"> • Compliance with the Building Code of Australia (BCA) for Class 6 buildings. • The current use must be a lawful use in the zone. • If the use also proposes the sale of food and drink the premises is to comply with AS 4674—2004, <i>Design, construction and fit-out of food premises</i>. • The submission of a Plan of Management which includes details on alcohol management, hours of operation, patron movement, safety and security measures and parking. • Standard hours of operation to be identified including set-up and shutdown. • The premises is not located in a residential zone. • The use and location of any structures related to the use will not adversely impact on the environmental attributes of features of the land or increase the risk of natural hazards that may affect the land. <p><u>Carparking</u></p> <p>The provision of carparking for new uses via complying development provisions generally relies on the carparking provisions nominated under the most recent consent. Most parking requirements are imposed as part of the original approval for construction of a building. Since the introduction of more categories of complying and exempt development, less emphasis is placed on the parking requirements as uses are often speculative at the time of the original application. For example, a mixed-use development may have approval for a commercial space on the ground floor. If a small live music or arts venues was proposed (as discussed in the EIE), this could have a floor area up to 300sqm or an occupancy limit of 300 persons.</p> <p>This would have a higher requirement for parking than a retail or commercial space approved under the original application. The proposed complying development pathway does not allow for the additional parking needs to be assessed or considered as part of the assessment.</p> <p>CN suggests development standards be included to ensure that adequate parking is provided for the proposed uses, noting that not all commercial areas have good access to public transport. Venues proposed in mixed-use developments will have additional impacts as small live music or arts venues demand a higher rate of parking</p>

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	<p>than may have been envisaged with a commercial or retail use at the time of the original application. The mixed- use developments often have residential units on the higher floors so there maybe amenity impacts on these residents which are unable to be assessed as part of a complying development application.</p> <p><u>Safety and Security</u></p> <p>The principles of Crime Prevention through Environmental Design (CPTED) for proposed venues should be considered including the submission of a Plan of Management which includes details on alcohol management, hours of operation, patron movement, safety, and security measures, drop off locations and parking.</p>
<p>Providing flexibility for the arts industry and neighbourhoods</p>	<p>Concern is raised regarding the potential loss of amenity to residential properties within a mixed-use building, in particular acoustics, waste, and parking. It is recommended that consideration be given to development standards that cater for mixed use developments and protecting the amenity of residential neighbours.</p> <p>The concerns raised about carparking, safety and security as stated above also apply for this category.</p>
<p>Artisan food and drink industry</p>	<p>CN has received many DAs for artisan food and drink premises since the introduction of the definition in the Standard Instrument. Many of the applications received have issues pertaining to use, hours of operation, carparking and the like, and often receive several submissions following public notification.</p> <p>It is the experience of CN that many of the artisan food and drink premises proposed have a higher focus on the retail/dining component as opposed to the manufacturing component. This is often seen with developments proposing manufacturing, and a café/restaurant, tasting area/workshop, and retail sale, or alternatively proposing a large restaurant/café area and small/ancillary manufacturing area adjacent. As a result, the manufacturing component becomes the ancillary use as opposed to the primary use.</p> <p>For these reasons, CN believes that approval for artisan food and drink premises are to remain outside of the complying development pathway and should remain the subject of a DA.</p> <p><u>Definition</u></p> <p>Currently the definition of an Artisan food and premise within the standard instrument is</p> <p><i>artisan food and drink industry mean a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—</i></p> <ul style="list-style-type: none"> <i>(a) a retail area for the sale of the products,</i> <i>(b) a restaurant or cafe,</i> <i>(c) facilities for holding tastings, tours, or workshops.</i> <p><i>Note—</i></p> <p><i>See clause 5.4 for controls in industrial or rural zones relating to the retail floor area of an artisan food and drink industry.</i></p> <p><i>Artisan food and drink industries are a type of light industry—see the definition of that term in this Dictionary.</i></p> <p>5.4 Controls relating to miscellaneous permissible uses</p>

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	<p>(10) Artisan food and drink industry exclusion <i>If development for the purposes of an artisan food and drink industry is permitted under this Plan in an industrial or rural zone, the floor area used for retail sales (not including any cafe or restaurant area) must not exceed—</i></p> <p style="padding-left: 40px;">(a) 10% of the gross floor area of the industry, or</p> <p style="padding-left: 40px;">(b) 400 square metres,</p> <p style="padding-left: 40px;"><i>whichever is the lesser.</i></p> <p>The current definition allows for potentially all of the above ancillary options to be provided, and further allows for any cafe or restaurant to be provided in addition to this ancillary use. CN as a result receives a number of applications which are predominantly commercial in their intent, with the manufacturing component being secondary/ancillary. As further outlined below, this decreases the sites available for industrial activity.</p> <p>Consideration should be given to amending the controls provided in the Standard Instrument to clearly define that any ancillary use to manufacturing (e.g., retail sales, tasting/workshop areas) be within the nominated retail/ancillary floor area. In addition, controls regarding the number of patrons allowed for any café/restaurant is required to ensure that this use is also ancillary to the associated manufacturing use.</p> <p><u>Increase in floor area</u></p> <p>The increase of allowable ancillary retail floor space to 30% for complying development raises concern. Where large GFAs are permitted such as in industrial developments allowing increased ancillary use (retail) and/or larger restaurants/cafes (food and drink premises), will lead to less development in the core business zones of the City, which is not consistent with the centres hierarchy as intended by the LEP. It is therefore suggested that the existing development controls in relation to Artisan Food and Drink premises remain (i.e., 10% of GFA or 400m² – whichever is the lesser).</p> <p><u>Carparking</u></p> <p>The carparking rate for industrial premises is considerably less than that required for cafes/restaurants. Currently complying development requires that change of use developments comply with the parking rates from any last approval. Where this exists, the parking provision is not considered to be adequate to service a café/restaurant that may cater up to 100 patrons.</p> <p>If a site is adjacent to residential properties, this may adversely impact the availability of on-street parking and cause conflict with residential areas.</p> <p>The DA process would allow Council to conduct a detailed merit assessment of parking for the individual proposal and enable consideration of the parking rates nominated within planning controls.</p> <p><u>Amenity</u></p> <p>There are several industrial areas adjacent to residential areas within the CN Local Government Area (LGA). The consideration of Artisan Food and Drink premises via the DA process allows CN to ensure that the amenity of the neighbourhood is protected and maintained.</p>
Food Trucks & Dark Kitchens	<p>CN is supportive of the measures that allow the operation of food trucks and dark kitchens.</p> <p><u>Food Trucks</u></p> <p>Subdivision 27A Mobile food and drink outlets, of the Exempt and Complying Development SEPP, does not require that a food truck vacate the site after any</p>

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	<p>period. As such, food trucks may remain in a permanent location (not mobile) therefore operating essentially as a take-away food and drink premise without the associated controls. To ensure the intention of this section of the SEPP are met, it is suggested that consideration be given to amending the development controls to provide maximum hours/days a food truck may operate from one site, ensuring that food trucks are mobile and are not fixed structures.</p> <p>The hours of operation nominated within the current development controls from 7.00am to 7.00pm are satisfactory. Any increase in hours of operations, in particular on sites adjacent to residential properties may result in adverse amenity impacts for residents (e.g., acoustics and privacy). No details are provided in the EIE on the proposed changes to the hours.</p> <p><u>Dark Kitchens</u></p> <p>CN supports the use of existing commercial kitchens for the use of 'Dark Kitchens'. Consideration is to be given to the use of commercial kitchens within Mixed Use developments and the amenity impacts that may result.</p> <p>As no planning approval would be required the operators of "Dark Kitchens" may not be aware to seek approval to operate as a Food Business as required by the <i>Food Act 2003</i>.</p> <p>It is recommended that agencies such as the NSW Food Authority run a media campaign to advise these operators of the need to register with their Council under the <i>Food Act 2003</i>.</p>
Temporary Events	<p><u>Council owned and managed land</u></p> <p>CN supports the continued assessment of temporary events on Council owned and managed land via their respective policies and plans of management.</p> <p><u>Private Land</u></p> <p>Given the vast number and types of events that may be covered under this banner, CN raises concerns about events on private land being a form of exempt development as these events may result in an increase in the need for compliance regulation.</p> <p>In addition, events that may cater for up to 300 people may result in several planning matters that need further consideration and management such as acoustics, parking, waste, safety and security, and the like.</p> <p>For example, this would allow a pub to use their car park for a football grand final or a beer tasting festival, with such an event having potential amenity impacts and no consideration being made to the provisions of toilets or fire safety.</p> <p>In addition, using Council owned land requires a section 68 approval under the Local Government Act. This allows consideration of matters such as waste, traffic management and food safety to be considered as well as public liability insurances. The use of private land for an event as exempt development does not allow any consideration to be made to these issues or no formal process to liaise with the NSW Police if alcohol is involved.</p> <p>For these reasons CN recommends that consideration of events on private land remain part of the standard development application process.</p>
Major Events	<p>It is unclear if this section is to only apply to The Rocks, Darling Harbour, Barangaroo and Sydney Olympic Park. If this to be extended to all parts of NSW, concern is raised over the extension of the number of days that temporary events can operate. The extension in number of consecutive days from 21 to 60, and the overall number of days in a calendar year to 200, is considered to be creating a semi-permanent use</p>

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	<p>as proposed to a temporary use. This is of particular concern for any <i>events</i> proposed for indoor premises.</p> <p>In addition, when considering the proposed definition of a temporary event being: <i>Temporary event means 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 may be argued that the nature of the definition and the proposed events that it aims to cater for, are unlikely to generate the need for a significant increase to the number of days already provided for.</p> <p>CN supports the proposed new definition but suggests that the number of days remains as currently prescribed as it is unclear what types of uses are envisaged with this change.</p>
Filming	CN is in support of provisions to allow for filming on private property where it does not impact on the intended use of the site in the long term.

In summary, CN acknowledges the importance of providing additional flexibility for the arts and hospitality industry, particularly as our economy recovers from the impacts of COVID 19.

The Department's guidance and clarification on the issues raised above is required as part of the next stage of the process. CN is also willing to be involved in any additional sessions or workshops on the amendments once they are finalised.

Thank you for the opportunity to comment on the Fun SEPP. If you require any further information, please contact [REDACTED]

Yours faithfully

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