



Frank McKay Building 62-64 Menangle Street, Picton NSW 2571

All Correspondence to PO Box 21, Picton NSW 2571

Telephone: 02 4677 1100 Fax: 02 4677 2339

Email: council@wollondilly.nsw.gov.au Web: www.wollondilly.nsw.gov.au

ABN: 93 723 245 808

Our Reference: CM 13004

NSW Department of Planning, Infrastructure and Environment
c/o NSW Planning Portal

30 November 2021

Dear Sir/Madam,

**SUBMISSION TO FUN SEPP - PROPOSED CHANGES TO SUPPORT OUTDOOR DINING,
ARTISAN FOOD AND DRINK PREMISES, EVENTS, AND SMALL LIVE MUSIC OR ARTS VENUES**

Thank you for the opportunity to provide feedback on the explanation of intended effect for the Fun SEPP. The matters included in the proposed updates are of key interest to Wollondilly and we strongly support the work currently being undertaken to provide flexibility and a simpler, faster planning process for the hospitality and arts industries to recover from the pandemic.

For Wollondilly, the proposed amendments will also assist local businesses and communities in their recovery from the impacts of drought, Black Summer Fires, and the February 2020 flood event.

Developing the visitor experience and economy by increasing access to natural areas and rural landscapes and cultivating creative and cultural destinations to connect people with places are key priorities for Wollondilly which are recognised in Wollondilly 2040, our Local Strategic Planning Statement. These key priorities are also reflected in our suite of newly adopted planning strategies, as well as our Economic Development Strategy and our Destination Management Plan.

The proposed amendments will assist to realise and complement the innovative work that Wollondilly Shire Council has carried out over the last few years and continue to advocate strongly for as part of a program of staged planning proposals to make it easier to celebrate in Wollondilly.

The Stage 1 (LEP Review Program), Stage 1A (Events + Visitor Economy) and Stage 2 (Developing the Visitor Economy + Employment Land Uses) planning proposals seek to fill fundamental gaps in the planning system for events and visitor economy land uses. We strongly recommend that you consider introducing the key

findings of this robust foundational work. These matters are again outlined at the end of the submission.

Unfortunately to date, the successful implementation of these amendments to the Wollondilly LEP has been limited and in some cases denied by the Department as it appears there is unfortunate contrary legal, policy and legislative practice within DPIE, with the ultimate result not allowing the desired outcomes and permissible land uses.

Despite similar amendments being approved in other jurisdictions such as Wingecarribee, Camden and, we understand Narrabri and the north coast, the Wollondilly proposals have been delayed unreasonably and unnecessarily.

The Mayor of Wollondilly has written separately to the Planning Minister to highlight these inconsistencies and the urgent need for correct resolution. This amendment will provide some resolution and is a step in the right direction. However, to get the full affect and benefit realisation, we will need support from DPIE to ensure our planning proposal is considered and finalised without any further delay.

Feedback on Temporary Events

There is a fundamental need to provide a clear planning pathway for holding events.

Removing barriers to holding lawful events is a priority for Wollondilly with 'increasing opportunities for events' includes as an intended outcome for the Events + Visitor Economy Planning Proposal (LEP Review Program Stage 1A) which is currently with the Department for finalisation since 27 August 2021.

Throughout the progress of the Stage 1A Planning Proposal, the Department have expressed concern with the soundness of the proposed 'events' provisions. In particular, the Department has expressed the view that an event or function (i.e. a gathering of people) is generally not considered to be development that can be regulated under the Standard Instrument despite the numerous examples from other environmental planning instruments that demonstrate otherwise and are recognised by the explanation of intended effect for the Fun SEPP.

The Department has indicated that they have concerns as to whether this amendment will be supported by Parliamentary Counsel.

This letter includes an attachment of an earlier memo provided to the Department highlighting both legal and policy precedents, including temporary provisions previously enacted by State Government to help support Councils position.

While it is disappointing that there appears to be profoundly inconsistent approaches to how events can be facilitated in the land use planning system within the Department it is hoped that the principles set out by the explanation of intended effect will strengthen the policy framework to now finalise the events provisions in the Stage 1A Planning Proposal.

We are aware of a number of events in Wollondilly that have not gone ahead or cannot be planned due to the planning system barriers.

Wollondilly would also like to see the proposed provisions for temporary events on private land applied to a broader range of land zones and include rural and some environmental protection zoned land where it is safe to do so.

The Department's investigation into controls for events in rural zones as part of its agritourism work does not capture the full range of opportunities which may include temporary events on rural land which is not related to farm.

Feedback on Outdoor Dining

While we strongly support the provisions related to outdoor dining, Wollondilly is concerned that the governance infrastructure is still not presently in place to support Councils to implement a streamlined process. This concern was raised in our submission to the Draft Codes SEPP (temporary amendment to remove existing restrictions for small bars and pubs to allow outdoor dining as exempt development) last year.

Recent Department initiatives on this matter assume that councils who do not have existing outdoor dining policies in place, such as Wollondilly, can utilise the *NSW Outdoor Dining Policy 2019* and associated toolkit developed by the NSW Small Business Commissioner.

In investigating the merits of implementing the Policy for Council and the Community, our experience has shown that the necessary support for councils to implement the policy is, unfortunately, not available.

The proposed amendments are a great step, however, there are still fundamental barriers to establishing a genuine streamlined outdoor dining process.

It is recommended that the proposed amendments are supported with further guidance for Councils on how to implement fast-track outdoor dining approvals including any necessary Liquor & Gaming NSW approvals that was applied as part of the trial.

Our key recommendations:

- There is a fundamental need to provide a clear planning pathway for holding events.
- Consideration should be given to extending the application of exempt development provisions for temporary events to rural and environmental protection zones where appropriate.
- Councils would benefit from additional support and guidance towards implementing streamlined approval pathways for outdoor dining.

Unfortunately given the limited time for response and the current caretaker period for local government elections, our elected body has not had an opportunity consider this submission. Please note that this is a draft submission until it is endorsed by council at its next available meeting in 2022. We will advise at that time if there are any additional comments.

Our Council has also expressed strong concern that the NSW Government continues to provide short exhibitions and timeframes for submissions. We again respectfully request that more time is provided to Councils to provide meaningful and considered feedback through written submissions.

Please contact [REDACTED]
[REDACTED] or [REDACTED] for any questions
about this submission.

Yours faithfully

[REDACTED]

[REDACTED]
[REDACTED]

ATTACHMENT 1:

AREA OF CHANGE

FEEDBACK

OUTDOOR DINING

Proposed changes include:

- ❖ Make permanent temporary outdoor dining measures for pubs and small bars as exempt development

- Supported.
- The extension of outdoor dining provisions to pubs and small bars as exempt development is welcomed. Council proposed to include a similar provision in the Wollondilly LEP through the original LEP Review Program Stage 1 Planning Proposal submitted to the Department in December 2019.

Unfortunately this particular initiative did not receive gateway support to proceed and was removed from the planning proposal.

- Wollondilly is concerned that the governance infrastructure is still not presently in place to support Councils to implement a streamlined process.

For example, from our experience there is no ongoing ownership and oversight being provided for the NSW Outdoor Dining Policy 2019 developed by the NSW Small Business Commission to streamline and simplify the application process. In particular, we have not been able to connect with anyone who can provide technical support around the model policy for outdoor dining or to 'opt-in'.

It is also unclear how Councils can implement a streamlined process similar to that applied to The Rocks as part of the NSW Government's alfresco dining pilot.

SMALL LIVE MUSIC OR ARTS VENUES

Proposed changes include:

- ❖ To amend the Building Code of Australia (BCA) so that a small live music or arts venue is treated as a Class 6 building in NSW
- ❖ To introduce a new complying development pathway with accompanying building, fire safety and amenity development standards
- ❖ Provides criteria for premises to be used as a small live music or

- Supported.
- The finalisation of the criteria for the proposed amendments should accommodate 'Theatre performances' within the list of cultural activities.
- The intention to update the BCA as part of the package provides a good opportunity to also improve the gender equity of sanitary facilities (Class 6 in Table F2.3 of the BCA).

It takes longer to use a cubicle than urinal, so the number of cubicles for women should

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arts venue

always be greater than the total number of cubicles plus urinals for men. Also, the BCA should make provision for some unisex toilets to better cater for non-binary people.

ARTISAN FOOD AND DRINK INDUSTRY**Proposed changes include:**

- ❖ Provide a pathway for change of use from light industry to artisan food and drink as complying development
- ❖ Extending existing development standards

- Supported.
- The intent of the proposed changes could be supported by additional updates as part of the Employment Zones Reform.

It is recommended 'Artisan Food and Drink Industry' is de-coupled from the parent term of 'Light Industry'. Currently, the parent term restricts the permissibility of this land use, and is considered a barrier to business. Council has an active planning proposal to review the permissibility of this land use in recognition of this planning barrier.

'Artisan Food and Drink Industry' offers a suitable land-use definition to enable micro-brewery and distillery's which are seen to be a potential tourism opportunity in some locations in Wollondilly. However, micro-breweries and distilleries have the ability to trigger designated development under the *EP&A Act* and associated Regulations. It is recommended this is reviewed or a practice note is developed in consultation with Council to enable small scale micro-breweries and distilleries in appropriate locations.

MAKING SOME TEMPORARY COVID-19 MEASURES PERMANENT**Proposed changes include:**

- ❖ Make permanent temporary measures for food trucks and dark kitchens

- Generally supported.
- It is difficult to consider the potential impacts from the proposed changes without additional information. The Explanation of Intended Effect indicates that additional flexibility will be provided for Food trucks by increasing the hours a food truck can operation on land adjoining a residential zone. Clarification is required on the proposed change to hours.
- Greater certainty could be provided by including wording to clarify that the exempt development measures for mobile food trucks does not include the sale of alcohol. We have received advice from Liquor and Gamin NSW that a mobile food truck will generally not be

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approved for a liquor licence as they do not have a permanent address.

TEMPORARY EVENTS**Proposed changes include:**

- ❖ Temporary events on council-owned land and managed land would not need separate planning approval
- ❖ A new clause for temporary events on public land will combine the temporary use and the temporary structures into one clause
- ❖ Propose an exempt pathway for the use of land for small and minimal-impact events on private land
- ❖ Acknowledges separate work to investigate events in rural zones in its agritourism work.
- ❖ Proposed definition for 'Temporary event'

- Supported.
- The deletion of the existing definition for 'community event' and replacement with a definition for 'temporary event' is strongly supported.
- The new definition should also be inserted into the Standard Instrument – Principal Local Environmental Plan.
- As a condition of the Gateway determination for Wollondilly's Events + Visitor Economy Planning Proposal (LEP Review Program Stage 1A), Council was required to support its proposed 'events' provision by providing more information on what type of events were envisaged. In response the following list was prepared:
 - Ceremonies
 - Conferences
 - Community and public events
 - Concerts
 - Cultural celebrations
 - Exhibitions
 - Festivals
 - Fetes
 - Fairs
 - Food and wine based events
 - Functions
 - Fundraising events carried out by or for charitable and non-profit organisations
 - Gatherings
 - Night markets
 - Markets
 - Outdoor cinema
 - Parades
 - Street arts
 - Tours
 - Sporting and adventure based events
 - Other similar experiences.
- A broad definition for events is encouraged.
- In considering feedback from community and stakeholder engagement to inform the final recommended approach for 'events' as exempt development in Wollondilly's recent Events + Visitor Economy Planning Proposal (LEP Review Program Stage 1A) it was determined that an event holder should notify Council at least 28 days before holding an event, The notification should include the

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dates and times for the event and the expected numbers. This is to ensure adequate time is available for the preparation of any traffic management plans.

- Clear direction is necessary in the planning framework to determine what events are exempt and when a development application is required. This could be facilitated through clear thresholds and definitions on types of events.
- There should be an exempt development pathway established for temporary events on rural and environmental protection zones where appropriate.

The department's investigation into controls for events in rural zones as part of its agritourism work does not capture the full range of opportunities which may include temporary events on rural land which is not related to farm.

- It is difficult to understand what opportunities may be available in the absence of a more definitive list of limitations or development standards that would apply to temporary events.

FILMING**Proposed changes include:**

- ❖ Proposing to remove the 30 day limit and enable longer filming and associated structures to be agreed with the landowner, filmmakers and council through the film management plan.
- Supported.

GENERAL FEEDBACK

- The changes are likely to lead to an increase in people being out at night. In Wollondilly it can be difficult to get home without driving, so the SEPP amendment should be complemented by advocacy for better public transport provision, particularly at night.

ATTACHMENT 2:



BRIEFING NOTE

TO:	Department of Planning, Industry and Environment		
FROM:	[REDACTED]		
DATE:	[REDACTED]	TRIM:	11262-3
SUBJECT:	Events & Visitor Economy Planning Proposal (LEP Review Program Stage 1A)		

KEY ISSUES

- Developing the visitor experience and economy by increasing access to natural area and rural landscapes is a key priority for Wollondilly which is recognised in
 - Wollondilly 2040, our Local Strategic Planning Statement.
 - Wollondilly Destination Management Plan
 - Wollondilly Employment Land Strategy
 - Draft Wollondilly Rural Lands Strategy
- While there have been NSW Government initiatives to better enable 'agritourism' development to be approved, Wollondilly is also seeking to simplify and increase the opportunity for events beyond agriculture.
- In particular, rural landowners are looking for opportunities to diversify and find new customers, particularly in their recovery from the impacts of the drought, Black Summer Fires, February 2020 flood event and the COVID-19 pandemic.
- Wollondilly is seeking to remove existing barriers and support events throughout Wollondilly. In the absence of an appropriate existing land use definition, or the ability to amend the Standard Instrument LEP to create new definitions, an alternative approval pathway is being sought.
- A temporary SEPP amendment for community events on Council land that was in place for the period 21 December 2020 to 18 April 2021 could provide an alternative pathway to delivering our desired economic opportunities for local communities, which would also benefit all councils.
- The fact sheet on the now repealed temporary SEPP provisions: clearly states that the gatherings of people outside of these temporary arrangements, ie beyond 18 April 2021, would now require development consent.
- This was both for the events and for the structures associated with the events:

*Councils can use the provision for outdoor community events from 21 December 2020 until 18 April 2021. After 18 April 2021, the exempt development provision will no longer apply. Any temporary structures associated with the outdoor events must be removed and **future uses will require a development application**.*

ACTION SOUGHT:

To seek one or more of the following to ensure legal framework and transparency in the planning system:

- Support for Councils approach in its planning proposal and consider amending the SI instead of Wollondilly Shire Councils individual approach
- To amend the SEPP (E&C) to reinsert the land use previously made permissible, and extend it to private areas consistent with Councils approach.
- To seek an alternative arrangement where DPIE clearly issues a practice note or circular regarding the definitions and land uses, and identify why the previous SEPP amendment and the current FAQ no longer applies and why other numerous examples are in effect.

PURPOSE

- To consult with the Department of Planning, Industry and Environment to progress proposed amendment 1 in the Stage 1A planning proposal to increase the opportunity for events.
- To fulfil the requirements of Condition 1 of the Gateway determination directs Council to:

...consult the Department of Planning, Industry and Environment (Planning System Policy Branch) to further investigate the planning framework in relation to proposed Amendment 1 and to update the planning proposal to address feedback received.

EXECUTIVE SUMMARY

- Since the impacts of drought, the Black Summer fires, the February 2020 event and the recent COVID-19 pandemic, smaller farmers, agribusinesses, potential tourism operators and local communities in Wollondilly have been struggling.
- In response to this, our farmers, rural land owners (large and small) and our agribusiness have been seeking to diversify and innovate to survive and become more resilient during these challenging times, but also to maintain their core business and activity.
- Council has recently been working to amend its Local Environmental Plan to help facilitate these initiatives in our rural area. On 16 December 2019, Council resolve to support changes to the LEP for new tourism initiatives. Unfortunately, these new concepts were not supported at the time by officers in the Department of Planning, Infrastructure & Environment.
- Notwithstanding that decision, Wollondilly along with Destination Sydney Surrounds South (DSSS), Destination NSW (DNSW), the NSW Small Business Commission (NSWSBC) and the Regional NSW Taskforce see there is a strong case for building a more resilient rural and agricultural economy, while helping to support Sydney's agriculture moving forward, supporting the role of struggling farmers to diversify into tourism and leveraging the new Western Sydney International Airport.

OVERVIEW OF THE ISSUE***Wollondilly Accelerated LEP Review Program Stage 1 Planning Proposal***

- In 2019/2020, as part of the Accelerated LEP Review Program, Council proposed a number of amendments to the *Wollondilly Local Environmental Plan 2011* to attract investment and grow local jobs. These amendments included:
 - Permit 'Rural Function Centres' (proposed new definition) with consent in rural and some environmental protection zones (E3 and E4) along with a new local provision to ensure appropriate scale and adequate protection for existing values,
 - Permit 'Tourist Park' (proposed new definition) with consent in recreation and rural zones,

- Include exempt development provisions for 'Events',
- Update the LEP to better utilise the following new definitions now available:
 - 'Artisan Food and Drink Industry' in RU1, RU2, RU4, B1, B2, B4 and B5 land use zones
 - 'Eco-tourist facility' in RU1, RU2, RU4 and E4 land use zones along with the associated adopting the model clause.
- These amendments were removed due to the need for a Strategic Bush Fire Study.
- The necessary strategic bush fire study has now been completed (with significant cost at advice of the Department) and the, predominantly, visitor economy related amendments have been resubmitted to the Department in the Events & Visitor Economy Planning Proposal (LEP Review Program Stage 1A).
- Amendment 1(a) and 1(b) seek to introduce mechanisms into the WLEP 2011 to enable events either as exempt development (i.e. small scale events on non-bush-fire prone land) and as a development that is permissible with consent in nominated land use zones.
- A Gateway determination was issued for the proposal on 13 May 2021 and, amongst other things, requires Council to consult the Department to further investigate the planning framework in relation to proposed amendment 1.
- These initiatives support Planning Priority 9 in *Wollondilly 2040*, Council's Local Strategic Planning Statement. Planning Priority 9 seeks to develop the visitor experience and economy by increasing access to natural areas and rural landscapes in Wollondilly.

Legal Issues

- The Gateway determination report (PP-2021-3086) dated May 21 questions whether 'events' (gathering of people) can be regulated by the planning framework and therefore whether the proposed amendment 1 can be legally made. The report indicates that a development application is not currently required for gatherings of people.
- The Gateway determination report recognises that existing provisions such as through Division 3 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP) already apply to facilitate the delivery of 'events'.
- Council maintains that the Codes SEPP refers to the construction of structures and not to the use.
- Temporary Use is not a path Councils are comfortable to use following court cases and compliance matters, including *Marshall Rural Pty Ltd v Hawkesbury City Council and Ors [2015] NSWLEC 197*.
- Events tend to include a 'commercial' component. This shifts the characterisation of development away from a conclusion that an event is not development. The 'commercial' component often influences the types of activities, scale and impacts of the event. By their very nature, events do not comfortably fit under the existing definitions available in the Standard Instrument. Often, the closest land use term available is not a good fit and can result in the use being prohibited.

Interpretation

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008;

Supports the physical structures associated with community events. For example;

- Subdivision 3 Tents, marquees or booths for community events relates to 'the construction or installation of a tent, marquee or booth used for a community events is development specified for this code...'

- Subdivision 4 Stages or platforms for community events relates to 'The construction or installation of a stage or platform used for a community event is development'
- Subdivision 10 Major event sites – additional temporary development sets out in 2.125(2) refers to land uses rather than structures;

Development for the purposes of temporary uses in the public domain, including development for the following purposes, is development specified for this code-

- (a) A community event,
- (b) A commercial event (Such as a product launch and sampling),
- (c) trading for retail or other commercial purposes (such as providing a temporary dining and drinking area),
- (d) associated storage areas and truck lay-by areas and the like

2.125(1) sets out the specific land this clause applies to.

Explanation of Intended Effect; Agritourism and small-scale agriculture development (March 2021)

- The Department of Planning, Industry and Environment, earlier this year released an Explanation of Intended Effect (EIE) for proposed amendments to support farm businesses and regional economies.
- The EIE includes proposals to introduce new 'events' related terms into Standard Instrument LEP. These include 'farm events', 'farm gate activities' and 'agritourism'.
- The focus of the new definitions is around land use rather than physical structures.

Examples from other LEPs

LEP	Example	Reference
Camden LEP 2010	Includes an exempt development provision for 'Events – Community and fundraising'. Does not include a reference to what an event includes.	Schedule 2 Exempt development
Coffs Harbour LEP 2013	Includes a local provision to provide for the temporary use of public reserves and public roads for events. 'Temporary event' is defined as meaning <i>an exhibition, meeting, concert or other event that is open to the public for which land is used for a period of not more than 30 days (whether or not consecutive) in an period of 12 months.</i>	Clause 7.18 Events permitted on public reserves and roads without development consent
Hawkesbury LEP	Includes an exempt development provision for ' Community event or festival involving parades, stalls, amusement devices and public entertainment (And includes fairs and fundraising events carried out by charitable and non-profit organisations)...'. Utilises exempt development clause for a number of temporary visitor economy uses including markets, community events etc where they are situated on public land.	Schedule 2 Exempt development
Sydney LEP 2012	Includes a local provision for 'Public art' and notes that development for the purpose of	Clause 7.26

LEP	Example	Reference
	public art is permitted with development consent. This is not a term in the dictionary.	
Wingecarribee LEP 2010	Includes an exempt development provision for 'Public Events' . Makes reference to public events and what this includes.	Schedule 2 Exempt development
SEPP (Exempt and Complying Development Codes) 2008	Includes a definition for 'community event' ; <i>means a function or event open to the public or a section of the public that is a ceremony, cultural celebration, exhibition, fete, fair, market or sporting event</i>	Clause 1.5 Interpretation - general

