

Submission – Proposed Fun SEPP (Outdoor Dining and Fun Experiences)

November 2021



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Executive Summary

The NSW Department of Planning, Industry and Environment (DPIE) is seeking feedback on the proposed State Environmental Planning Policy Outdoor Dining and Fun Experiences (proposed Fun SEPP) which seeks to amend the State Environmental Planning Policy (Exempt and Complying Development Codes) (Codes SEPP). The proposed SEPP seeks to support small businesses and to deliver a 24-hour economy and make it easier to hold outdoor events, film, set up artisan food and drink premises or convert shops to arts or small live music venues.

Council officers request the issues and recommendations contained in this submission be addressed prior to the finalisation of the proposed SEPP.

Council officers have reviewed the Fun SEPP Explanation of Intended Effect (EIE) and provide in-principle support for the intent and aim of the proposed changes. There is a clear synergy between this policy and Council's policy priorities including those identified in the Camden Local Strategic Planning Statement (LSPS) and the Draft Camden Economic Development Strategy.

Council officers also note that further consideration of the operation of some of the proposed changes is needed. This is about how the new exempt and complying approval pathways will interact with other the approval and regulatory responsibilities under the Local Government Act 1993 (LG Act 1993) and other environmental health and building legislation and codes.

Key issues and considerations raised in this submission include the potential impact on amenity, regulation functions of Council, unplanned, increased costs to business owners, uncertainty about approval pathways, food and fire safety, availability of services, site capability and appropriateness.

Introduction

The proposed Fun SEPP seeks to introduce the following:

- exempt provisions trialled in 2020-2021 to simplify approvals for outdoor dining in pubs, small bars, cafes, and restaurants.
- a complying development pathway to allow a change of use of retail premises to small live music or arts venues and a change of use of premises to artisan food and drink industry.
- reclassify small live music and arts venues in the Building Code of Australia (BCA), in line with other States.
- permanent provisions for food trucks and dark kitchens.
- revision and clarification of exempt development standards for temporary private and community events; and
- removal of the maximum number of days for filming as exempt development.

Council officers provide in-principle support for the strategic intent of the proposed amendments and thank you for the opportunity to provide comment.

Making it easier to hold outdoor events, film, set up artisan food and drink premises and convert shops to arts or small live music venues will provide much needed support to small businesses and support economic recovery. We support the notion of “fun” and vibrant town centres and a flexible, robust night-time economy.

Council officers are also supportive of increasing the number and diversity of creative industries and arts and music venues and welcome changes to the NSW planning system to help achieve this.

This submission raises issues regarding some of the mechanisms discussed in the proposed SEPP to achieve these changes and the impact these changes may have on Council’s existing regulatory role and the potential for costly future impacts on the business owner or event manager as a result of compliance with other state government legislation and policy.

Strategic Context

Relationship to Camden Local Strategic Planning Statement (LSPS)

Council adopted its LSPS on 14 April 2020. A key priority of the LSPS is a commitment to liveability with specific reference to encouraging vibrant and connected centres which reflect Camden’s evolving character (Local Priority L4) and supporting cultural infrastructure to promote cultural and creative spaces (Local Priority L5).

The LSPS also commits to a review of existing planning controls to support a night-time economy within Camden’s centres (Action 56). DPIE’s review of the Codes SEPP to achieve a similar outcome is complementary to this work.

Relationship to Draft Camden Economic Development Strategy 2022-2026 (Draft EDS)

The draft EDS is currently on public exhibition until 7 February 2022. The draft EDS is broadly in keeping with the vision and directions of the proposed SEPP that promotes a more diversified local economy that facilitates jobs growth and investment attraction (Proposal 1 & 2) as well as encouraging the development of vibrant centres (Proposals 1, 2, 4).

Key Issues and Considerations

Proposal 1 - Outdoor dining

Council officers are supportive of the proposal to simplify the approvals process for outdoor dining, which is consistent with Council's Outdoor Dining Policy. There may be potential conflict with the exempt provisions for outdoor dining and existing Alcohol-Free Zones and it is recommended that further consideration be given to this issue.

Recommendation:

- 1. That further consideration be given to the potential impact Alcohol-Free Zones may have on outdoor dining.**

Proposal 2 - Small live music and arts venues

Some concern is noted with the proposed changes to the BCA to reclassify a small live music and arts venue to the same building class as *a shop or other building for the sale of goods by retail or the supply of services direct to the public*. A small live music and arts venue is viewed as being an intensification of this use and with a proposed maximum number of patrons being set at 300, there is concern that there may be potential fire safety and evacuation implications.

There is concern noted with the proposal to amend the BCA through legislative changes. The preferred manner is to make a submission to the ABCB (Australian Building Codes Board). Submissions will have to demonstrate that there will be no lessening of the minimum building standards already in place in the BCA or demonstrate that a particular building standard is onerous.

It is also noted that a maximum capacity of 300 patrons and staff does not seem to fit with community expectation of what would constitute a small venue and this figure is viewed as being potentially too high. Further clarification on how capacity will be managed is required. This includes clarification on whether patrons will be seated for performances and if dancefloors will be permitted, who is going to enforce the maximum capacity, and will there be additional funding for local government to investigate complaints?

Council officers suggest that capacity considerations be aligned to consider the following elements that will impact on the movement of patrons:

- (a) location of the venue i.e. ground or first floor.
- (b) size of the venue; and
- (c) whether or not food and drink are served.

There is also the question of who is going to ensure that there are enough toilets and will the reduced capacity for venues that serve food and drinks be a disincentive for operators to provide refreshments and what could be the implications on patrons attending these events in terms of recreational drug use? It is recommended that these questions be further explored and considered in the final changes.

The proposed complying development pathway is also viewed as limiting Council's ability to influence the location of these venues and manage potential land use conflict. Therefore, more consideration should be given to potential impacts on amenity and the likelihood that small shops are often located near residential areas and are not built for purposes of noise reduction or have appropriate acoustic treatments.

More consideration is also required on how acoustic assessment can be undertaken as part of the complying development approval pathway, noting that acoustic mitigation for such premises can be problematic and costly. It is also noted that in the absence of a development application, who will be ensuring that the proposed measures are complied with and who will be assessing that Fire Safety Systems are adequate in relation to the propose new use? Currently this would be assessed by Council's Fire Safety Officer and sometimes a performance-based solution must be developed by a Fire Safety Engineer when a building doesn't comply.

Clarification is also required regarding the permissibility of food, beverage/small bar operations operating as ancillary uses, and will these be considered as complying development or will they require a DA? It is noted that most live music and arts venue require a food and drink option for viability.

It is recommended that further consideration of parking be given to accommodate this intensification of use.

It is also recommended that the development standards require that a Plan of Management (POM) to be developed in consultation with the Police to considers patron safety and patron dispersal and complaints handling. A requirement that a copy of this POM be provided to Council for record keeping purposes should also be considered.

It is also noted the proposed SEPP references Noise for Industry Policy 2017. Council officers have previously been advised by the Environmental Protection Authority (EPA) that this document has not been prepared for Councils and is for EPA licensed premises. This requires further clarification.

Recommendation:

- 2. Further consideration be given to patron numbers, building capability, fire safety and evacuation are required.**
- 3. That a set of standards be introduced to determine venue capacity.**
- 4. That more consideration be given to how acoustic assessment can be undertaken prior to approval being granted.**
- 5. Clarification is required on the approval pathway for ancillary food, beverage/small bar operations.**
- 6. That the impact of operators not providing food and drink due to the lower capacity requirements on patrons be further considered.**
- 7. That a Plan of Management (POM) be required and that this POM be provided to Council.**
- 8. Clarification be provided on the appropriateness of a reference to the Noise for Industry Policy 2017.**
- 9. That further consideration of parking be given to accommodate this intensification of use.**

Proposal 3 - Artisan food and drink industry

Concern is raised regarding potential amenity and land use conflict issues because of noise, parking, lighting, location, and hours of operation. It is recommended that additional consideration be given to these issues and that development standards include provision for impacts on amenity and parking requirements.

It is also recommended that trading hours only commence at 7am on sites adjoining/near residential areas, rather than the proposed 6am.

Concern is also raised that due to the complexity and layers of approvals associated with food and drink industries, not all private certifiers will have the appropriate experience to adequately approve and sign off on these venues.

It is also recommended that the proposed development standards also require compliance with AS4674 Design, construction and fit-out of food premises as well as AS1668 The use of ventilation and air conditioning in buildings Mechanical ventilation in buildings, the Food Act 2003 and the Food Standards Code. Standards should also include and distinguish between notification requirements to either Council (retail) or the Food Authority (manufacturing).

Recommendation:

- 10. That industry training for assessment of artisan and drink industry type developments is provided.**
- 11. That the standards ensure compliance with AS4674, AS1668, the Food Act 2003, the Food Standards Code, and that notification requirements to either Council or the Food Authority is included.**
- 12. That standards also include provision for assessment of impacts on amenity (noise, light, hours of operation, adjoining sensitive uses) and include parking requirements in line with the number of patrons.**
- 13. That trading hours only commence at 7am on sites adjoining/near residential areas, rather than the proposed 6am.**

Proposal 4 - Food Trucks***Potential impact on existing businesses in centres***

Concern is raised regarding the potential economic impact food trucks may have on existing food and drink businesses in centres. These existing permanent businesses have often made a significant investment in the area and have higher overheads and may not be able to financially compete with food trucks businesses. It is recommended that more consideration be given to the locations in which food trucks can set up to ensure that they are not impacting on the financial viability of businesses operating in centres.

Operation and regulation issues

Operational and regulation issues that Council officers regularly investigate in relation to food trucks centre around noise, smoke, odour, lighting, parking, rubbish generation, lack of toilet facilities and waste disposal.

It is recommended that provision of appropriate power, sewer and waste facilities be considered in determining the appropriate location for food trucks. Potential impacts on amenity should also be a consideration.

Another concern is that operators have also been known to set up multiple vehicles across adjoining industrial sites, technically complying with one vehicle per site requirement but resulting in multiple vehicles and more of an 'event' type atmosphere. More consideration should be given to preventing this type of scenario.

Food Regulation

Concern is raised regarding the lack of regulation of where the food sold in food trucks is prepared and stored. It is recommended that more consideration be given to food preparation and storage within the proposed exempt provisions.

It is also recommended that a review of supporting legislation and standards be undertaken in conjunction with the proposed changes and include:

- a review of the Food Act 2003 to introduce powers of entry to home food businesses.
- a review of AS4674 to reflect current uses and construction practices (including kiosks and serveries that have appeared in response to COVID-19 restrictions).

Hours of operation

It is recommended the maximum hours of operation without requiring approval should be capped at 10 pm due to acoustic concerns (where operating on private land) and a 10 pm cap should also apply to food trucks operating adjacent to a residential zone.

Recommendation:

- 14. That consideration be given to the potential economic impact food trucks may have on existing businesses in centres and that this be addressed in locational provisions.**
- 15. That standards to ensure adequate services (power, wastewater, and waste) are available to the site and that potential impacts on amenity are addressed.**
- 16. That standards are introduced to ensure:**
 - a) Storage and preparation of food sold by food trucks is regulated and premises are inspected regularly.**
 - b) The maximum hours of operation are capped at 10 pm; and**
 - c) Requirements for availability of existing services and infrastructure at site.**
- 17. Ensure supporting legislation and standards are reviewed to consider regulation of food trucks.**

Proposal 5 Dark Kitchens

Food safety

Clarification is required on how and when councils should undertake food safety testing and environmental health checks of dark kitchens, as it is currently unclear who the responsible authority is for breaches of the Food Act 2003.

A further concern is that some existing community facilities may not comply with AS4674, or the Food Safety Standards Code and so it may not be appropriate to advocate for their use if they are non-compliant.

Public notification

Public notification and clear signage should be a requirement.

Impact on Commercial High Streets

Further consideration should also be given the potential impact the ongoing operation of dark kitchens may have on the high street. It is recommended that the uptake of dark kitchens in these locations should be monitored and reviewed to ensure the ongoing activation of centres.

Recommendation:

18. Clarification is required on who is responsible for Food Safety inspections and breaches of the Food Safety Standards Code.

19. Introduce standards for:

a) existing kitchens to comply with the AS4674 and the Food Safety Standards Code before commencing operation.

b) public notification and signage; That the uptake of dark kitchens on high streets and the impact on centre activation be monitored.

20. That the uptake of dark kitchens on high streets and the impact on centre activation be monitored.

Proposal 6 Temporary events

The proposal to create a combined temporary use and temporary structures clause for temporary events on public land is supported.

The proposal to replace the definition of 'community event' with 'temporary event' is viewed as being clearer and a better fit and is supported in-principle.

To ensure the range of events held in the Camden LGA can meet this definition, we recommend that the following types of events are included in the wording:

'that is a ceremony, cultural celebration, exhibition, fete, fair, gathering, market, sporting event or the like, that is carried out either inside or outside.'

More detail on what would constitute a 'small and low impact' type event and a definition be to assist with this characterisation is recommended.

It is also recommended that events on Council owned and managed land, where Council has the authority to regulate, should not have to meet the 'small and low impact' requirement and should be able to operate under the exempt provisions regardless of scale.

The definition of 'small and low impact' should also exclude events on private land where approval under the LG Act 1993 is required for activities such as wastewater plan, traffic

management plans, food inspections and other approvals under the Act and should exclude events on private land that is located close to sensitive receivers.

It is recommended that only events on private land of a minor nature, where access to existing and adequate services and infrastructure and are appropriately located away from sensitive receivers, be provided with an exempt pathway.

The requirement for emergency and evacuation plans in the event of bushfire and flooding should also be explored further for events on private land.

It is also recommended that a waste management plan and site plan be required in any notification and that the notification timeframe to councils and neighbours be extended from 7 to 14 days.

Further consideration for public liability insurance for events on private land is recommended. This requirement is already captured in the general requirements for booking Council owned and operated land and so including this requirement for events on private land will help to ensure that event organisers are appropriately insured.

Concern is also raised that the new exempt provisions could potentially be more limited than the existing exempt provisions in Schedule 2 of Camden Local Environmental Plan 2010. The new provisions should provide for the same level of exemption. The existing provisions can be viewed here: <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2010-0514#sch.2>

Recommendation:

- 21. That a clear definition of what constitutes a small low impact event be included.**
- 22. That events on Council owned and managed land is not restricted to only small and low impact.**
- 23. That criteria be introduced to ensure exempt temporary events on private land can only be undertaken on land where:**
 - a) existing and adequate services and infrastructure is available at the site;**
 - and**
 - b) the event is located a suitable distance from sensitive receivers.**
- 24. That the need for emergency and evacuation plans be further considered in the event of fire or flood.**
- 25. That a requirement for public liability insurance be included in the provisions for events on private land.**
- 26. That waste management and site plans be included in requirements for notification.**
- 27. That a fact sheet with diagrams be developed to make it easier for event organisers to understand approval pathways.**
- 28. That the new exempt provisions continue to allow for the flexibility of existing provisions in Schedule 2 of Local Environment Plans.**

Proposal 7 Filming

The proposed changes are supported in-principle, as councils will retain their ability to provide input through the proposed filming management plan.

Other Matters – Community Consultation

The Fun SEPP is likely to have significant impacts on the community and local business. As noted in DPIE's 'Community Guide to Planning' (December 2020), early community participation in planning is vital to ensure strategic planning and planning rules are based on community knowledge and views.

Council is concerned about the limited community consultation undertaken as part of the exhibition and whether the community and businesses have full understanding of all the proposed changes with the Fun SEPP planning package.

In this regard, clarification is sought about what actions have been undertaken by DPIE to ensure the proposed changes have been adequately explained to the general community and specifically business owners.

Recommendation:

29. That further consultation be carried out with the general community and specifically with business owners.

Conclusion

This submission supports the broad intent and aims of the proposed Fun SEPP. This submission has outlined recommendations to address key concerns and has sought further clarification on several proposed provisions.

Concerns include the potential impact on amenity and regulatory functions of Council, unplanned, increased costs to business owners, confusion about approval pathways, food and fire safety, availability of services, site capability and appropriateness.

Council officers appreciate the opportunity to comment on the draft Fun SEPP and we would welcome any further opportunity to discuss our recommendations.

Recommendations

This submission has outlined Council officers' key concerns and recommendations for DPIE's consideration. A summary of the recommendations provided throughout this submission is provided here:

Proposal 1 Outdoor Dining

1. That further consideration be given to the potential impact Alcohol Free Zones may have on outdoor dining.

Proposal 2 – Small live music and arts venues

2. Further consideration be given to patron numbers, building capability, fire safety and evacuation are required.
3. That a set of standards be introduced to determine venue capacity.
4. That more consideration be given as to how acoustic assessment can be undertaken prior to approval being granted.
5. Clarification is required on the approval pathway for ancillary food, beverage/small bar operations.

6. That the impact of operators not providing food and drink due to the lower capacity requirements on patrons be further considered.
7. That a Plan of Management (POM) be required and that this POM be provided to Council.
8. Clarification be provided on the appropriateness of a reference to the Noise for Industry Policy 2017.
9. That further consideration of parking be given due to accommodate this intensification of use.

Proposal 3 – Artisan food and drink industry

10. That industry training for assessment of artisan and drink industry type developments is provided.
11. That the standards ensure compliance with AS4674, AS1668, the Food Act 2003, the Food Standards Code, and that notification requirements to either Council or the Food Authority is included.
12. That standards also include provision for assessment of impacts on amenity (noise, light, hours of operation, adjoining sensitive uses) and include parking requirements in line with the number of patrons.
13. That trading hours only commence at 7am on sites adjoining/near residential areas, rather than the proposed 6am.

Proposal 4 – Food Trucks

14. That more consideration be given to the potential economic impact food trucks may have on existing businesses in centre and that this be addressed in locational provisions.
15. That standards to ensure adequate services (power, wastewater, and waste) are available to the site and that potential impacts on amenity are addressed.
16. That standards are introduced to ensure that:
 - a) Storage and preparation of food sold by food trucks is regulated and premises are inspected regularly.
 - b) The maximum hours of operation are capped at 10 pm; and
 - c) Requirements for availability of existing services and infrastructure at site.
17. Ensure supporting legislation and standards are reviewed to consider regulation of food trucks.

Proposal 5 – Dark Kitchens

18. Clarification is required on who is responsible for Food Safety inspections and breaches of the Food Safety Standards Code.
19. Introduce standards for:
 - a) existing kitchens to comply with the AS4674 and the Food Safety Standards Code before commencing operation; and
 - b) public notification and signage
20. That the uptake of dark kitchens on high streets and the impact on centre activation be monitored.

Proposal 6 – Temporary Events

21. That a clear definition of what constitutes a small, low impact event be included.
22. That events on Council owned and managed land is not restricted to only small and low impact.
23. That criteria be introduced to ensure exempt temporary events on private land can only be undertaken on land where:
 - a) existing and adequate services and infrastructure is available at the site.
 - b) the event is located a suitable distance from sensitive receivers; and
 - c) the site is not flood-prone land.
24. That the need for emergency and evacuation plans be further considered in the event of fire or flood.
25. That a requirement for public liability insurance be included in the provisions for events on private land.
26. That waste management and site plans be included in requirements for notification.
27. That a fact sheet with diagrams be developed to make it easier for event organisers to understand approval pathways.
28. That the new exempt provisions continue to allow for the flexibility of existing provisions in Schedule 2 of Local Environment Plans.

Other Matters – Community Consultation

29. That further consultation be carried out with the general community and specifically with business owners.



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