

17 November 2021

Minister for Planning, Public Spaces, Transport and Roads
Department of Planning, Industry and Environment
Locked Bag 5022,
Parramatta NSW 2124

Confidential – Sensitive – NSW Government

Dear Minister Stokes

Screen NSW Submission: “Fun SEPP” Explanation of Intended Effect

Screen NSW thanks the Minister for Planning, Public Spaces, Transport and Roads, and the Department of Planning, Industry and Environment (**DPIE**) for the opportunity to comment on the proposed changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2009 (Codes SEPP)*, as presented in the currently exhibited “Fun SEPP” Explanation of Intended Effect (**EIE**).

1. Introduction

Screen NSW is supportive of the agenda for the intended reform to the Codes SEPP, designed to support the economic recovery of the hospitality, events and arts industries following the COVID 19 pandemic. Screen NSW’s specific focus in this submission is to identify opportunities as part of this reform process to streamline the rules and processes associated with on-location filming and supporting temporary on-set facilities.

In particular, Screen NSW appreciates the proposed changes to the Codes SEPP to remove the 30-day limit associated with undertaking filming activities to enable longer filming periods and use of temporary structures to be regulated through film management plans. This submission has been prepared to demonstrate support for the proposed changes to *Division 3, Subdivision 4, 5 and 6* of the Codes SEPP. Additional changes are presented for your consideration, which we consider will provide further certainty for the film industry, including clarifying the definition of key terms.

To provide greater insight into on-the-ground experiences for the application and issuing of permits for on-location filming, Screen NSW has undertaken consultation with key stakeholders in the film industry and relevant consent authorities. Learnings from this consultation has revealed that whilst reform to the Codes SEPP is necessary, it is only one factor impacting the industry.

Concurrent with the proposed changes to the Codes SEPP, there is a need for a holistic approach to reforming the regulatory environment for filming, including an update to the existing *NSW Film Friendly Protocol*, also referred to as *Local Government Filming Protocol (Filming Protocols)*. Screen NSW believes this will provide greater confidence to all stakeholders that the process for filming on-location can be streamlined, without adverse impact on the community.

This submission and the suggested Codes SEPP amendments are required for NSW to remain an attractive location for film productions of all scales against the growing competition

from other states and internationally. Screen NSW welcomes the opportunity for further consultation on measures to support the film industry, which is an important contributor to the NSW economy.

2. About Screen NSW

Screen NSW is part of Create NSW – the NSW Government’s arts and cultural driver, which brings together arts, screen and cultural functions in an integrated entity.

The entity is part of the Community Engagement Group within the Department of Premier and Cabinet, and is responsible for furthering Government’s vision for NSW to be known for its bold and exciting arts and culture that engages the community and reflects the State’s rich diversity.

Create NSW invests in the success and future of arts, screen and culture in NSW through infrastructure and a range of funding programs.

Create NSW works to achieve the NSW Government’s strategic objectives to develop and sustain the arts, culture and screen sectors, which are built upon the ambitions of excellence, access and strength, and which reflect and support the diverse communities across NSW.

The Screen Destination Attraction (**SDA**) team at Screen NSW is made up of production professionals that assist with advice on locations, technical and creative talent, studio space, post production and visual effects facilities, and on all aspects of filming in NSW. The SDA team also promote and administer the Filming Protocols, broker relationships, and facilitate conversations between productions and the State and local government authorities that own or manage locations.

The Filming Protocols are designed to encourage and guide a film friendly dialogue between all stakeholders involved in film and television production and to facilitate filmmaking in Sydney and across the State.

3. How the film industry contributes to NSW

The film and television industry is a valuable contributor to the NSW economy. Annually, the film and television industry is estimated to directly contribute approximately \$1.6 billion to the NSW economy, with over 1,500 screen businesses employing 9,600 people.

NSW is Australia’s leading state for film and television production, with a total value of \$3 billion in 2012-2013¹. Some of the domestic and international films and TV series that have chosen NSW include Marvel Studios’ *Shang Chi and the Legend of the Ten Rings*, *Thor Love and Thunder*, Sony Entertainment’s *Peter Rabbit* and *Peter Rabbit 2* directed by Will Gluck, *The Drover’s Wife*, *Poker Face*, *Penguin Bloom*, *Alien: Covenant*, directed by Sir Ridley Scott, *Hacksaw Ridge*, directed by Mel Gibson, *The LEGO® Movie*, *The Invisible Man*, *Unbroken*, directed by Angelina Jolie, *The Great Gatsby*, directed by Baz Luhrmann, along with TV Series *Heartbreak High*, *Nine Perfect Strangers*, *Pieces of Her*, *Wolf Like Me*, *God’s Favorite idiot*, *Total Control*, *Cleverman*, *Rake*, *Janet King*, *Secret City*, *Love Child*, *Doctor Doctor*, *The Commons*, *Wakefield* and *Secret City*.

NSW is home to nearly 60 per cent of all Australians employed in the screen production industry and more than half of all Australian production and postproduction businesses are located in NSW. Australian and international producers and directors are drawn by the combination of competitive financial incentives, diverse locations, experienced crews, world-class facilities and enviable lifestyle.

¹ https://www.mpa-apac.org/wp-content/uploads/2018/05/ASA_Economic_Contribution_Report.pdf

Whilst NSW may historically have the lion's share of Australia's film and television industry activity, the industry is highly globally mobile and competitive. The COVID 19 pandemic has only heightened competition for filming in Australia and internationally and requires efficient scheduling to meet film production needs. As such, securing locations for filming and rapid planning approvals are critical for NSW to remain a competitive filming location and securing the long term future of the film industry in NSW.

Screen NSW highlights that the NSW Government are committed to NSW remaining a popular filming destination. In 2020/21, the NSW Government invested almost \$100 million to support the screen industry in NSW. This includes \$35 million in new funding for the Made in NSW fund, support for the Post, Digital and Visual Effects sector, through a 10 per cent rebate and \$12.5 million for other screen programs.

The new funding for Made in NSW is the first part of a five-year commitment which will see \$175 million invested to attract major feature films and high-end television drama. In addition, a 10% Rebate for post-production, visual and digital effects (**PDV**) has recently been extended to apply to digital games.

Despite the pressures of the COVID 19 pandemic, NSW has been home to more than 90 productions, from large international feature films, TV drama series, documentaries, reality shows and entertainment. Through its funding programs, Screen NSW supported 40 local film and television productions in 2020/21 and committed support to an additional seven international projects. This support was valuable in retaining highly skilled specialist jobs in NSW and Australia's strong reputation in the international film industry. Together these productions will contribute more than \$800 million to the NSW economy and support more than 10,000 local jobs.

4. Fun SEPP - Explanation of Intended Effects

Screen NSW are excited and thankful for the proposed reforms to the Codes SEPP, to support the hospitality, events and arts industries. This is an important reform to assist these valuable industries in recovering from the COVID 19 pandemic, and facilitate a prosperous, exciting and creative future for communities in NSW.

The aim of the proposed reform is detailed in the Fun SEPP EIE, prepared under section 3.30 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. Important to Screen NSW are the proposed changes to the Codes SEPP to support the film industry.

The EIE rightfully recognises that NSW is an attractive destination for film production, leveraging NSW's diverse natural and urban settings in metropolitan and regional centres. The film industry attracts significant international investment directly into the economy, providing industry jobs, supporting local supplies and services, and showcases our state which in turn attracts more tourism and investment.

The proposed changes to the Codes SEPP to support the film industry are narrow in scope and relate to exempt development standards to support filming on private property only, and requirements for temporary structures required during filming.

The relevant provisions are contained in Division 3 Temporary Uses and Structures Exempt Development Code, Subdivision 4, Subdivision 5 and Subdivision 6 of the Codes SEPP.

Presently the Codes SEPP enables filming as exempt development under the EP&A Act for up to 30 days per year on private property. This 30 day control suits short term projects such as commercials and temporary activity associated with larger projects. However, the existing 30 days provision is often unsuitable for filming for feature films, TV mini-series or reality shows, which typically are on a fixed location for longer periods of time. This creates

pressure on the industry and production companies to trim schedules or relocate to other states or internationally.

In summary, the EIE proposes to relieve pressure on the film industry by:

Removing 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.

5. Stakeholder consultation

Screen NSW are committed to a collaborative approach in facilitating on-location filming. We pride ourselves on working closely with Councils and other authorities to obtain permits for filming, whilst minimising impacts on local communities. To support this submission, Screen NSW has consulted with film production experts and relevant authorities as listed below, to understand the challenges the film industry and consent authorities face when applying for filming on-location:

- Inner West Council
- Sutherland Shire Council
- City of Sydney Council
- National Parks and Wildlife
- Location Manager, Mary Bartrop
- Location Manager, Colin McDougall

Findings from this consultation are summarised in the following sections.

5.1 What works well?

- Existing relationships between councils and location managers/scouts means there is often consultation and forewarning when a filming permit application is soon to be submitted.
- Some councils such as Inner West Council, use an online application platform (Tech1), meaning applications are immediately issued directly to the Film Contact Officer. The same platform then issues permits electronically. This facilitates a rapid turn-around of approximately five business days.
- A centralised application process with key decision makers at well organised and experienced local authorities means decision makers do not need to refer to other teams, which would typically cause delays in assessment.

5.2 What could work better?

- The number of filming permit applications for filming on-location per year is generally trending upwards across councils, and often there is pressure for permits to be issued in less than the minimum 5-10 business days that authorities typically require. Additional pressure exists as authorities typically have small teams for assessing filming permit applications and often are under-resourced and under-funded to cope with demand. Existing Film Contact Officers are also often under threat of no longer being funded in some councils.
- Often council land-use policies, community plans and traffic strategies do not take into consideration the demands for on-location filming. One of the greatest challenges facing many authorities is traffic management and feedback from the community, often due to competition for parking between residents and vehicles associated with filming productions. Without strategies to balance and manage demands for

production crew parking, authorities have limited tools to manage stakeholder and community needs.

- Some locations such as beaches, residential streets in heritage areas, or inner city suburbs are popular for filming and need to be managed to prevent over-utilisation. Fortunately, authorities interviewed already have practical measures and protocols to guide production companies to alternative locations.
- The film industry is experiencing inconsistencies across NSW when submitting applications for on-location filming. Often, experiences come down to how an individual authority representative interprets the provisions of the Codes SEPP and this is causing ambiguity and frustration for production crews. For example, most authorities and film production companies interpret the 30 days provision for filming activity only, and excludes bump in/out of materials, sets and temporary structures. However, many councils interpret this differently and regardless of scale of production (television commercial, small documentary, or major studio film), councils are requiring a development consent to be obtained for any filming activity (inclusive of bump in/bump out activities) that totals more than 30 consecutive days on a given location, including on private land or Crown/public land.
- Unfortunately, many productions tend to have very short lead time to accommodate approvals. When productions are required to obtain development consent through the planning system, approval can typically take months. This can impact on the viability of the production, and there are recent examples of productions leaving NSW to film overseas where on-location filming can be established in a shorter time frame.
- There is some confusion and ambiguity over the use of drones for filming, including required minimum separation distances for safety, and landing and take-off areas. Some Councils are more prepared and supportive of drones than others. This inconsistency between local government areas (**LGAs**) impacts on the planning process for production companies and is often a problem or a restriction is identified too late.
- Production companies consider the proposed planning changes to the 30-day period for private land only is addressing only half the problem. Consistency and clarity is also required for filming on public land. It is recognised that under the Filming Protocols, councils are generally obliged to support on-location filming. However, some councils are selecting to adopt alternative policies and Plans of Management to limit the operation of the Filming Protocols and restrict filming on-location. On occasion, this has required assistance from State Government to facilitate outcomes.
- Some councils voiced concern over the removal of the 30 day provision. However, all parties including Screen NSW recognise that the Filming Protocols play a critical role for authorities managing demand, and defining what is required by production companies to minimise impacts. Screen NSW and film industry representatives stress that the Filming Protocols provide suitable protection and requirements for detailed Plans of Management when filming on-location. Notwithstanding, the Filming Protocols were adopted in 2009 and no longer provide suitable guidance on latest practices or the increased demand for filming. An update to the Filming Protocols are required to support the amendments proposed under the EIE
- Industry representatives also identify that some councils in NSW are prohibiting filming within rural zones.

5.3 Opportunities for change

5.3.1 Operational actions to support new legislation

- Stakeholders request that the Codes SEPP be amended to provide greater clarity for authorities and production companies. This includes the removal of the 30-day limit that triggers development applications for public **and** private land.
- The Codes SEPP requires further clarity on the definition of key elements of the legislation. Should requirements in the Codes SEPP still refer to a day limit, additional definitions should clearly define what the period of time refers to (i.e just filming or bump in/out).
- The Codes SEPP should contain provisions to clearly identify opportunities for filming in nominated zones and could adopt a similar approach to that presented in clause 2.113 of the Codes SEPP.

5.3.2 Other commentary

- All stakeholders interviewed have highlighted that changes to the Codes SEPP must happen in tandem with the modernisation of the Filming Protocols, to provide clarity and ensure that the proposed changes to Codes SEPP are reasonable and provide suitable confidence to all parties that film management plans are robust.
- Importantly, the filming industry are seeking consistency across all jurisdictions in NSW to provide certainty for investment and confidence on what is required for every filming application. This requires that all councils are held to the same protocols and interpretation of rules.

6. Requested Amendment

6.1 Codes SEPP amendment

6.1.1 Removal of 30 days provision

The EIE identifies that the government and councils have agreed that requests for film productions on public land can occur, whilst the current exempt measures support filming for up to 30 days a year on private property.

However, if filming is required longer than a 30-day period or if there are two separate productions which cumulatively extend beyond 30 days in one year, a development application is required to be lodged with a consent authority to support filming. This can create delays given the time taken to process and determine development applications.

Screen NSW strongly supports the proposal within the EIE which seeks to remove this 30-day limit for filming on private property, which will enable longer filming to occur without the need for further planning approvals.

For consistency and to avoid confusion, this new provision should also relate to the provisions within the Codes SEPP which permits the erection of temporary structures and alterations or additions to buildings for filming purposes, which similarly has a restriction of no more than 30 days in a 12-month period.

The new provisions should include a clause which requires temporary structures to be removed and any building alterations or additions to be reinstated to their original form when filming finishes, in accordance with an approved filming management plan.

Recommendation 1

Screen NSW recommends the 30-day limit for filming and temporary structures on private land as suggested in the EIE is removed. It is also recommended that the Codes SEPP be amended so that timeframes for removing structures and returning the location to its original condition is in accordance with a film management plan. This recommendation is outlined further in Table 1.

The removal of the 30-day period for both filming and temporary structures will also serve to remove any ambiguity in the interpretation of the Codes SEPP, given it is currently unclear as to when the 30-day period commences, i.e. when bump in/out occurs or when the actual filming begins. Likewise, it is also unclear when any given 12-month period would commence and whether this is counted from a calendar year (i.e. January to December) or another set period. Therefore, the removal of this timeframe from the Codes SEPP will assist the film industry where fixed locations are required for a longer period, and it will also make the regulations easier to consistently interpret for filmmakers, Councils, and the public.

6.1.2 Land to which the Codes SEPP policy for filming applies

The revised controls above should explicitly apply to both private and public land, including Crown Land. This is for clarity purposes and to prevent the controls being misinterpreted as not applying to public land.

In addition, feedback from the industry highlighted circumstances where filmmakers were unclear whether filming would be permissible within certain land use zones, given that filming is not a land use that is specifically referred to within land use tables in Council LEPs. This can give rise to situations where uses not identified in the land use table for a particular zone are prohibited, which would inhibit the use of the Codes SEPP for exempt development.

Accordingly, it is recommended that the zones where filming can be undertaken as exempt development are explicitly defined in the Codes SEPP.

Recommendation 2

Screen NSW recommends that the Codes SEPP is amended to explicitly state that filming may be carried out on both private and public land, and that it clearly identifies the land use zones where filming is permissible. This is set out in Table 1.

6.1.3 Clear definitions related to filming

It noted that within the Codes SEPP there is currently no definition of filming. This has the potential to create difficulties in interpreting the regulations to understand what is permitted under the exempt development pathway. It is therefore proposed to introduce a definition for filming, which utilises the definition in the Standard Instrument LEP.

Recommendation 3

Screen NSW recommends that the definition of filming that is included within the Standard Instrument—Principal Local Environmental Plan, is adopted in the Codes SEPP. This standard definition is set out in Table 1.

The proposed recommendations for updating the Codes SEPP are outlined in **Table 1**.

Table 1 – Proposed changes to the Codes SEPP to support on-location filming and associated activities

Current Wording	Proposed Amendment	Rationale
<p><i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i></p> <p>Clause 1.5 – Interpretation</p> <p>There is currently no definition of ‘filming’</p>	<p>Introduce the definition from the <i>Standard Instrument—Principal Local Environmental Plan</i></p> <p>filming means recording images (whether on film or video tape or electronically or by other means) for exhibition or broadcast (such as by cinema, television, or the internet or by other means), but does not include—</p> <p>(a) still photography, or</p> <p>(b) recording images of a wedding ceremony or other private celebration or event principally for the purpose of making a record for the participants in the ceremony, celebration, or event, or</p> <p>(c) recording images as a visitor or tourist for non-commercial purposes, or</p> <p>(d) recording for the immediate purposes of a television program that provides information by way of current affairs or daily news.</p>	<p>This is proposed to clarify what constitutes filming within the SEPP, to ensure that the provisions can be easily interpreted by the film industry, Councils, and other relevant stakeholders.</p>
<p>Codes SEPP / Division 3 Temporary Uses and Structures Exempt Development</p> <p>Subdivision 4 Filming</p> <p>Clause 2.113 – Specified Development</p> <p><i>Filming is development specified for this code.</i></p>	<p>Introduce a new provision within this clause that identifies the land on which filming can occur under the Codes SEPP</p> <p><i>Filming may be carried out on any of the following land—</i></p> <p>(a) land within an environment protection zone and used for residential accommodation,</p> <p>(b) land in a zone other than an environment protection zone,</p>	<p>This is proposed to clarify the land on which a filming use can occur under the Codes SEPP as exempt development</p> <p>This is proposed to provide clarity as to what land use zones filming is permitted as exempt development.</p>

Current Wording	Proposed Amendment	Rationale
	<p><i>(c) Crown land (within the meaning of the Crown Land Management Act 2016),</i></p> <p><i>(d) land vested in or under the control and management of the council or other public authority of the area in which the development is carried out,</i></p> <p><i>(e) Private property.</i></p>	
<p>Subdivision 4 Filming</p> <p>Clause 2.114 Development Standards</p> <p><i>(c) if the filming is carried out on private land—the filming must not be carried out for more than 30 days within a 12-month period at the particular location</i></p>	<p>It is proposed that the 30-day within a 12-month period limitation is removed, so this clause is to be deleted from the SEPP.</p>	<p>This is proposed in the Fun SEPP EIE and will support the film industry, given that the 30-day provision is often unsuitable for feature films or TV series where filming is required for longer periods of time.</p> <p>Additionally, removing this reference clears up any ambiguity that currently occurs when seeking to interpret when the 30 day or 12-month period commences and finishes, or whether the days are required to be counted consecutively.</p>
<p>Subdivision 5 Temporary structures and alterations or additions to buildings for filming purposes</p> <p>2.116 Development standards</p> <p><i>(b) not be at the location for more than 30 days within a 12-month period</i></p>	<p>It is proposed that the 30-day within a 12-month period limitation is removed, so this clause is to be deleted from the SEPP.</p> <p>Addition of a new clause which states that temporary structures are to be removed and any building alterations or additions to be reinstated to their original form when filming finishes, in accordance with an approved filming management plan.</p>	<p>As above, the removal of this clause will assist in supporting the film industry and remove any ambiguity in terms of how the 30 day or 12-month period is interpreted</p>

6.2 Other Recommendations

6.2.1 Update to Filming Protocols

Feedback from the filming industry has revealed a clear desire for the establishment of a consistent framework for filming across NSW. This is important to streamline processes and allow for production companies to work across NSW with confidence and certainty of the process and information requirements for an on-location filming permit application. The existing Filming Protocols from 2009 are outdated and should be updated in tandem with the proposed changes to the Codes SEPP, to ensure consistency and avoid any potential conflicting requirements or provisions.

Recommendation 4

Screen NSW recommends coordination with all tiers of Government to facilitate the Office of Local Government in finalising and releasing updated NSW Filming Protocols to take effect on the gazettal of the amendments to the Codes SEPP.

6.2.2 Standardised film management plans

The existing Filming Protocols go some way to providing guidance on the requirements and quality of film management plans to accompany applications for filming on-location. However, industry feedback has suggested that some local councils are requiring unique information or enforcing Council Plans of Management that restrict filming, contravening the intent of the Filming Protocols as extracted below:

Councils are expected to grant approvals and, where appropriate, any necessary lease or licence over council owned or council controlled land for filming, unless there are exceptional circumstances. Some particularly sensitive community land may be exempt from filming, for example because of the presence of an item of Aboriginal significance, or because it is a critical habitat for a threatened species.

Recommendation 5

Screen NSW recommends that the Filming Protocols should contain a template film management plan that is to be adopted by all councils, with guidelines provided on how to address traffic and pedestrian management (including minimum requirements), drone management, construction and demolition of sets and supporting facilities including waste management.

Recommendation 6

Screen NSW recommends that the appropriate legislation (including the EP&A Act, Local Government Act and Filming Approval Act) is reviewed to support consistency of filming applications and alignment with the Filming Protocols across all jurisdictions.

7. Conclusion

Screen NSW once again thanks the Minister and DPIE for the opportunity to make a submission on the proposed changes to the Codes SEPP to support the film industry. We look forward to working with DPIE collaboratively during the finalisation of the proposed reforms.

We also look forward to discussing the issues raised in this submission directly with DPIE. In the interim, please do not hesitate contacting Matt Carroll or me on 0417 492 131, should you require any additional information regarding this submission.

We also extend our thanks to the stakeholders that have contributed to this submission.

Yours sincerely,



Grainne Brunson
Head, Screen NSW