

Submissions report for Outdoor dining and fun experiences

Helping the arts and hospitality industries get back on their feet

The NSW Government exhibited an explanation of intended effect (EIE) for proposed amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) from 29 October to 30 November 2021.

The EIE sought feedback on initiatives to support the arts and hospitality industries by:

- creating a complying development pathway that allows retail premises to be used as small live music or arts venues
- clarifying the exempt development standards for temporary events
- extending the number of days for filming as exempt development
- making the outdoor dining trial measures permanent
- increasing the number of days for holding events at major events sites in The Rocks, Darling Harbour, Circular Quay, Barangaroo and Sydney Olympic Park
- creating a complying development pathway to allow a change of use of premises to an artisan food and drink industry
- making COVID-19 emergency measures for food trucks and dark kitchens permanent.

The NSW Department of Planning and Environment received 85 submissions from stakeholders. Table 1 summarises these.

Table 1. Submissions we received

Stakeholder group	Number of submissions	Support	Opposed
Council and Local Government NSW	35	29	6
Individual and community group	34	14	20
Industry (arts/hospitality)	13	13	0
State agency	3	3	0
Total	85	59	26

In summary, we heard

- there is strong support for the initiatives as they help economic recovery
- there is overall support for simplified planning pathways
- there are concerns about effects on amenity, particularly noise, traffic and parking.

From now on, we will aim to

- ensure that policy manages amenity issues such as noise, traffic and parking
- deliver information that makes the process clear for planning approvals.

Small live music or arts venues

There is support for the changes as they will help the arts and cultural industry recovery

From your feedback, the department heard that this initiative would allow artists to exhibit their talent, benefit night-time economies and create fun and interesting places. We received suggestions that targeted funding for the arts industry would also help the recovery after lockdown. Councils offered their support as arts venues can contribute to council cultural strategies and make town centres livelier. Many felt that the proposal would support small, locally run businesses and the arts.

Changes to the Codes SEPP that began on 1 February 2022 now allow a range of land uses as complying development. These uses may be classified as small live music or arts venues under the building classification regulation.

Proposed changes may affect amenity and the planning pathway

- There may be potential amenity effects such as noise from amplified music and patrons.
- There may be increased pressure on parking and traffic generation.
- There are different views about suitable hours of operation.
- Stakeholders need more information about the Building Code of Australia standards for accessing and exiting venues to identify servicing and loading requirements for live music.

From now on, we will

- consider an appropriate exempt pathway for certain land uses that are classified as small live music or arts venues under the building regulation. These exemptions would be subject to any existing approval conditions for the premises
- consider giving additional guidance on the exempt and complying development options already available for performances associated with existing business premises
- consider giving additional guidance on the building regulations for small live music or arts venues.

Temporary events

There is strong support for making it easier to hold events

Submissions supported the initiative to make the process easier for applicants and councils. While stakeholders supported changes to the planning pathway, they asked the department to make these aspects of the process clearer:

- definitions for events and relevant approval pathways
- getting written consent from the landowner
- temporary structures (hours of operation, development consent)
- other required approvals (councils' Section 68 under the *Local Government Act 1993*, SafeWork NSW)
- the lawful basis for regulating gatherings of people as exempt development instead of regulating primary land uses in the standard instrument for local environmental plans.

The department received a suggestion to expand the planning pathway for land owned or managed by councils to include:

- council operational land
- land owned by other public authorities, such as Crown land owned or managed by state agencies.

Changes to the Codes SEPP that began on 1 February 2022 now allow a range of land uses as complying development. These can include events, whether on private or public land.

Hours of operation and number of days for events

Residents support limiting the number of days and hours of operation for events on private land. However, several submissions, mostly from industry, commented that limiting the number of days is restrictive and would discourage events.

Procedures for giving enough notice

Several submissions stated that the timeframe to notify council and neighbours needs to be extended, as the protocols do not give enough time before events on private land. It was also suggested that event organisers should submit a plan of management as part of the notification to council. This would include a management plan for waste, toilets, traffic, structures, noise, and other essential items.

Proposed capacity limits may affect amenity

Stakeholders raised concerns about allowing up to 300 people at events held on private land. This was because of the potential effects on amenity such as noise, safety, and environmental issues, particularly when events are close to homes.

From now, we will

- give councils guidance to authorise events on public land without further planning approval
- give councils guidance on the use of Section 68 approvals under the *Local Government Act 1993* to authorise events on community land
- reconsider the need to make more regulations for private and community events. The policy did not intend to overly restrict the way people gather to be entertained or celebrate. Instead, as most events already correspond to lawful land uses, the department will consider giving guidance that explains how most events can already be held under existing, lawful land uses.

Filming

There is support for increasing the number of days for filming

There was general support in submissions to remove the 30-day filming limit, provided that filming management plans were considered and carried out appropriately. The submissions we received highlighted the need to update the *Local Government Filming Protocol 2009* in conjunction with this proposal because the protocol is outdated and difficult to enforce. Stakeholders thought filming management plans would do enough to protect amenity and that longer film productions would benefit the economy of NSW.

There is strong support from industry to reduce red tape

Industry viewed this initiative as a way to reduce red tape, improve film production scheduling, boost business confidence, and remove inefficiencies for filming on private land.

Longer filming times may affect amenity

Several residents believe removing the 30-day filming limit in regional NSW will affect amenity negatively. There were concerns about problems such as increased noise and traffic associated with filming activities.

From now on, we will

- continue discussions with the Office of Local Government about updating the *Local Government Filming Protocol 2009*
- consider the requirements for ensuring neighbours affected by filming receive appropriate notice
- identify an appropriate number of days for filming.

Outdoor dining

There is strong support for outdoor dining

Councils and the hospitality industry supported the permanent change for outdoor dining as it will help make centres pleasant and lively while following COVID-19 safety measures. Stakeholders gave support if councils continue to determine the location of outdoor dining. We heard that making the outdoor dining measures permanent encourages the use of outdoor spaces and makes for a more vibrant atmosphere.

Changes to the Codes SEPP that began on 8 October 2021 made the outdoor dining exemptions permanent. Stakeholders still have some concerns about amenity, but these can be managed locally.

While some stakeholders raised concerns about patron noise, pedestrian access and anti-social behaviour caused by alcohol consumption, stakeholders considered that local councils' outdoor dining controls and liquor licensing conditions will help minimise these effects.

The change regulates outdoor dining appropriately

We found that the trial measures provided appropriate requirements and standards for outdoor dining. The outdoor dining changes are supported by development standards which consider several matters including liquor licensing and amenity effects such as noise.

Outdoor dining areas:

- must seek council approval under the *Roads Act 1993* and the *Local Government Act 1993*
- operate in line with any outdoor dining policy and guidelines
- must operate in line with liquor licence approvals issued by Liquor & Gaming NSW under the *Liquor Act 2007*
- must comply with noise limit arrangements that are included in the development standards.

Artisan food and drink industries

There is support for encouraging artisan food and drink industries

Councils supported this initiative as artisan food and drink industries are seen to make food and drink offerings more diverse and increase the vibrancy of local areas. Industry strongly supported this change as artisan food and drink industries benefit night-time economies and produce fun and interesting places.

Changes to the Codes SEPP that began on 1 February 2022 now allow artisan food and drink industries as complying development.

Food and drink production may affect amenity and land use

Noise impacts, especially where industries are near residential zones, remain a concern. Residents also worry about traffic generation and increases in food odours. Some felt that the manufacturing and production elements of the artisan food and drink industry would no longer remain the primary purpose.

Helping businesses adapt quickly to changing economic circumstances

The 1 February 2022 changes to the Codes SEPP made artisan food and drink industries a form of complying development. This will help businesses adapt quickly to changing economic circumstances. Further, the change has been considered to ensure that effects on amenity such as noise are minimised. The changes also considered matters such as parking and maximum gross floor area.

Artisan food and drink industries must observe the development standards, which include complying with:

- the *Noise Policy for Industry*
- parking requirements as set out in a local development control plan
- maximum retail floor area and maximum patron capacity for food and drink uses.

Food trucks

There is support for food trucks as they provide more diverse foods and vibrant streets

Some councils noted their general support for making the initiative for food trucks permanent. We also heard that support for this initiative was given so long as food trucks do not affect other businesses negatively, and only where food trucks create food diversity without affecting residential areas.

Many stakeholders consider that food trucks can activate spaces, particularly in industrial areas where the availability of food and drink is limited. This plays an important role in providing amenity to the workers.

Changes to the Codes SEPP that began on 18 February 2022 made the temporary exemptions for food trucks permanent.

The set-up of food trucks may affect amenity

There were concerns about:

- light pollution, parking and traffic issues, and odour impacts (such as those caused by cooking with charcoal)

- food trucks and the proposed operating hours, because quiet residential areas would be disturbed
- ancillary structures such as seating and marquees, which could become a nuisance.

The change regulates food trucks appropriately

- There are reduced hours in land zoned as residential and land immediately adjacent to it.
- Food trucks located on public land must have approval from council under Section 68 of the *Local Government Act 1993*.

Dark kitchens

There is support for dark kitchens as there is an increased demand for their use

There has been a notable increase in the demand for dark kitchen spaces, so the initiative has received support. Some councils supported the initiative because it is consistent with their existing policies.

Changes to the Codes SEPP that began on 18 February 2022 made the temporary exemptions for dark kitchens permanent.

Deactivation of streets and administrative measures

- Dark kitchens, in contrast to restaurants and cafes, can reduce street activation.
- More clarity is needed on the management of dark kitchens, particularly their trading hours, environmental health, compliance and safety.
- Councils emphasised that dark kitchens should have public signage and should be registered to ensure that dark kitchens can be identified and inspected regularly.

The change regulates dark kitchens appropriately

Dark kitchens:

- must comply with any requirements in the parent development consent
- must comply with the registration and inspection requirements of the *Food Act 2003*
- must not unfavourably affect the amenity of the neighbourhood with noise, waste, fumes and odours.

More information

For more information on the exhibition, please contact the project team directly on codes@planning.nsw.gov.au