LOCAL GOVERNMENT NSW

NOV 2021

SUBMISSION

FUN SEPP

PROPOSED CHANGES TO SUPPORT OUTDOOR DINING, ARTISAN FOOD AND DRINK PREMISES, EVENTS, AND SMALL LIVE MUSIC OR ARTS VENUES

LOCAL GOVERNMENT NSW
GPO BOX 7003 SYDNEY NSW, 2001
L8, 28 MARGARET ST SYDNEY NSW 2000
T 02 9242 4000 F 02 9242 4111
LGNSW.ORG.AU LGNSW@LGNSW.ORG.AU

LOCAL GOVERNMENT NSW

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

OVERVIEW OF THE LOCAL GOVERNMENT SECTOR

Local government in NSW employs more than **55,000 people**

Local government in NSW looks after more than **$136 billion of community assets**

Local government in NSW spends more than **$1.9 billion each year on caring for the environment, including recycling and waste management, stormwater management and preserving and protecting native flora and fauna**

NSW has 450 council-run libraries that attract more than **34.8 million visits each year**

Local government in NSW is responsible for about **90% of the state's roads and bridges**

NSW councils manage an estimated **3.5 million tonnes of waste each year**

NSW councils own and manage more than **600 museums, galleries, theatres and art centres**

LOCAL
GOVERNMENT
NSW

TABLE OF CONTENTS

4 OPENING

5 LGNSW GENERAL RESPONSE TO FUN SEPP

7 OUTDOOR DINING

8 SMALL LIVE MUSIC OR ARTS VENUES

11 ARTISAN FOOD AND DRINK PREMISES

14 FOOD TRUCKS

17 DARK KITCHENS

19 TEMPORARY PRIVATE AND COMMUNITY EVENTS

22 FILMING AS EXEMPT DEVELOPMENT

23 SUMMARY OF RECOMMENDATIONS

OPENING

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the NSW Government's Explanation of Intended Effect for the Fun State Environmental Planning Policy (SEPP): Proposed changes to support outdoor dining, artisan food and drink premises, events, and small live music or arts venues.

LGNSW consulted with councils to help inform the content of this submission, which is informed by input from councils across metropolitan and regional NSW.

This submission was endorsed by the LGNSW Board in February 2022.

FUN SEPP PROPOSALS

LGNSW GENERAL RESPONSE

The NSW Government has published an Explanation of Intended Effect (EIE) for the *Fun SEPP: Proposed changes to support outdoor dining, artisan food and drink premises, events, and small live music or arts venues*.

Councils support an efficient, fair, and locally led planning system that prioritises quality of life and meets the needs and expectations of local communities. Councils also support the creative, cultural and economic vibrancy of their communities through sensible land use planning, place management and activation and through encouraging investment for their cultural and visitor economy. Indeed, one of the 12 fundamental principles of the LGNSW Policy Platform is that local government promotes local and regional economic development and employment growth.

However, decisions of successive state governments have gradually diminished councils' and communities' authority to determine what and how development occurs in their local areas. Restoring community-led planning powers to local government is a longstanding priority for councils across NSW.

Position 7.2 of the LGNSW Policy Platform is that LGNSW advocates for local government to retain control over the determination of locally appropriate development. Local planning powers must not be overridden by State plans and policies or misuse of State Significant Development provisions.

At LGNSW's most recent annual conference, councils resolved to call on the NSW Government to amend the Exempt and Complying Development Codes SEPP (Codes SEPP) to provide more discretion for Councils to amend a SEPP when applying it in their Local Government Area (resolution 73 of 2020).

As population and density increases, the expansion of blanket statewide policies heightens the potential for land use conflict and adverse impacts on liveability and amenity. A one-size-fits-all approach denies the possibility of sound planning outcomes that are relevant and tailored to the local context.

While provisions in SEPPs may suit the specific needs of some parts of some LGAs, a one-size-fits-all approach fails to recognise or account for the specific needs and local context of diverse communities. Likewise, while some councils may welcome the opportunity to streamline approval pathways for certain activities to encourage social and economic development, for others this might result in highly adverse impacts on environment, infrastructure, adjoining land uses and the local community.

There can be marked differences between regional and metropolitan areas, and even within metropolitan areas there are significant differences between inner and outer areas. Complying development precludes councils and communities determining important location and design considerations for development. LGNSW opposes blanket state-wide changes.

For the provisions contained within the Fun SEPP, LGNSW does not support imposing statewide complying development pathways as a blanket policy across all council areas. Instead, the NSW Government should invite councils to opt-in parts or the whole of their Local Government Area (LGA) for these pathways where it is appropriate for the local context and where increased flexibility will benefit the vibrancy of communities' social and economic life.

Taking an opt-in arrangement would also ensure that where the council and community determine that the adverse impacts on local amenity or adjoining land uses would outweigh the social and economic benefits, a development assessment pathway would be more appropriate.

Recommendation 1: The NSW Government should not impose statewide complying development pathways, in recognition that a one-size-fits-all approach may have adverse impacts on local amenity and adjoining land uses where the development is not appropriate for the local context.

Recommendation 2: The NSW Government should instead invite councils to opt-in parts or the whole of their LGA for these pathways where the council determines it is appropriate for the local context, via variations to the Exempt and Complying Development Codes SEPP.

OUTDOOR DINING

AS EXEMPT DEVELOPMENT

The NSW Government proposes to make permanent the trial that allow pubs and small bars to have outdoor dining on the footpath as exempt development.

Importantly, the changes do not automatically mean that venues can trade outside or on the footpath. Venues must obtain their council's approval in line with the council's outdoor dining policies and guidelines. Approval to use the space is issued under the *Roads Act 1993* and the *Local Government Act 1993*, and venues must operate consistently with approvals granted.

This important council oversight ensures that councils can both support the vibrancy of their outdoor dining precincts while also protecting public amenity where appropriate.

Councils have welcomed guidance and support from the Office of Local Government and the NSW Small Business Commissioner's Outdoor Dining Policy to assist their assessments.

Recommendation 3: Existing arrangements retaining council controls to determine where outdoor dining is appropriate should continue.

SMALL LIVE MUSIC/ARTS VENUES

COMPLYING DEVELOPMENT PATHWAY FOR CHANGE OF USE

The EIE proposes to create a complying development pathway to allow a change of use of retail premises to small live music or arts venues. For premises to be eligible, they must meet the following criteria:

- have a maximum floor area of 300 square metres
- not be located above the second storey of a building
- not occupy more than 2 storeys in a building, including the ground floor
- provide cultural activities to the public such as live music, visual arts displays, dancing, poetry and spoken word performances
- display fire safety approvals such as a current fire safety certificate and emergency evacuation diagram
- not use pyrotechnics or theatrical smoke (smoke machines, hazers or the like) or have tiered or fixed seating
- have a maximum occupancy limit of 300 people (including staff and performers) or 50 people if food and drink are provided
- provide sanitary facilities based on employee and patron numbers in F2.3 and Table F2.3 of the Building Code of Australia for a Class 6 pub, restaurant, café, bar or equivalent
- may operate from 7.00 am to 10.00 pm Monday to Saturday and 7.00 am to 8.00 pm on a Sunday or a public holiday.

While local government is broadly supportive of streamlining approvals to support live music and arts and in-principle support flexibility in terms of change of use of retail premises, councils raised a number of concerns with the current proposal, as follows.

- **Land use conflict** – There is clear potential for land use conflict where the retail premises are in or adjacent to residential zoning.

- **Acoustic impacts** are a particular risk, especially from amplified sound and live music and the sound from up to 300 patrons. The acoustic impacts of a live music or arts venue are likely to have greater impact than those of retail premises. In many cases, residential premises are located above or adjoining retail premises, and retail premises would generally not be noise-abated to the same standard as a live music or arts venue. This would introduce a heightened risk of noise transfer through shared walls or floors/ceilings.

  As the proposal is for a complying development pathway, councils will have limited ability to influence the location of these venues and manage these interface

issues.

Under existing arrangements, in many cases live music venues will require use of a noise limiter, development of a plan of management, and restrictions on the location of external speakers in order to meet such criteria and manage impacts on the surrounding areas. These restrictions are informed through an acoustic assessment and take into account the specifics of the development and its location to ensure that noise impacts are appropriate for that particular location and context.

Councils would welcome clarification of how the complying development under this proposal would interact with offensive noise provisions of the *Protection of the Environment Operations Act 1997* (POEO Act). Under this Act, councils are required to undertake an assessment of whether noise constitutes 'offensive noise' by forming a position of what an acceptable noise level is for that context, imposing a regulatory burden on councils that they are not funded to deliver. Councils are not resourced to complete this assessment for an even greater number of venues if this proposal is adopted. For clarity, a condition could be added to the requirements for this complying development pathway that specifies the precise permissible noise limit audible from neighbouring residential premises or other sensitive land uses (e.g. a limit of no greater than background noise plus 5dB, plus an additional limit for bass frequency). Should a venue wish to operate with noise levels higher than this, it is appropriate that a development application be required.

- **Occupancy limit** – Many councils consider that the proposed occupancy limit of 300 patrons is too high, particularly as it is likely that in many cases all patrons would be leaving at the same time at the end of an event, creating additional noise and amenity impacts on neighbouring residents. Councils further submitted that this complying development pathway would make no assessment of the traffic and carparking impact of up to 300 additional patrons attending a venue, particularly in peak evening periods.

  Further, the EIE notes that accredited fire and building certifiers and the Department of Customer Services' Building Policy Unit were consulted about the changes. LGNSW questions what input if any, has been provided by emergency services (Police and Fire & Rescue NSW) about the impact and appropriateness of patron numbers for crowd control, fire safety and emergency evacuation.

- **Notification to neighbouring properties** – To avoid councils becoming the first avenue of complaint from neighbouring properties where a venue is causing excessive noise, it would be helpful to require venues to provide written notification to neighbouring properties with contact details of the person responsible for the venue.

- **Further clarification** – Councils also sought further clarification of the eligibility criteria to understand the impact on local amenity, including whether:

- A dancefloor is permitted for live music, or if an audience must instead remain seated,
- Live music and performances are permitted outdoors, or only in enclosed, indoors areas of a venue,
- Associated food and beverage service would also be considered complying development, or whether this would require a development application (noting that a liquor licence would be required for service of alcohol), and
- The limit of 2 storeys applies to the live music or arts activation, or the entire premises even if additional storeys will not be used for the activation.

Recommendation 4: While LGNSW does not support statewide complying development pathways, should the NSW Government nonetheless impose the complying development pathway for small live music and arts venues statewide, the potential amenity impacts should be mitigated by amending the proposal to:

a) restrict development to locations that do not share the same building, adjoin or are not opposite to residential land uses,

b) add a further criterion that specifies the precise permissible noise limit audible from neighbouring residential premises or other sensitive land uses,

c) reduce the maximum occupancy limit from 300 to 100 people to lessen amenity, traffic and parking impacts,

d) clarify permissibility of dancefloors, outdoor live music and performances, associated food and beverage service as complying development, and whether the 2-storey limit applies only to the live music and arts activation of larger premises,

e) consider requiring any liquor service to cease 30 minutes prior to the venue's closure to encourage a staggered departure of patrons from a venue, and

f) require notification to neighbouring properties with contact details for the person responsible for the venue.

ARTISAN FOOD & DRINK PREMISES

COMPLYING DEVELOPMENT PATHWAY FOR CHANGE OF USE

The EIE proposes to create a complying development pathway to allow a change of use of premises to artisan food and drink industry in certain circumstances.

The complying development pathway would allow a change of use from light industry or a light industry with an industrial retail outlet to an artisan food and drink industry. These uses are permissible with consent in the following zones:

- Enterprise Corridor (B6)
- Business Park (B7),
- General Industrial (IN1),
- Light Industrial (IN2)
- Working Waterfront (IN4)
- Business Development (B5), which the Employment Zone Reform proposes to incorporate into a new E3 Productivity Support zone with B6 and B7.

The proposal suggests that an artisan food and drink use is consistent with the objectives of these zones.

The proposal would also increase patron numbers from 50 to 100 in food and drink premises in neighbourhood and local centres (that is, B1 and B2 zones) and increase hours of operation.

The production function will remain the main purpose at the site. The development standards would see:

- a maximum retail floor area 30% of gross floor area, or 500 m2, or any limit in the Local Environmental Plan (LEP), whichever is lesser
- maximum of 100 patrons at any restaurant or café
- trading hours for food and drink premises and retail sales from 6am to 10pm while allowing 24-hour operations (for baking, brewing, fermenting and so on). This does not over-ride other laws, for example liquor licence conditions
- premises must comply with Australian Standard 4674-2004 (Design, construction and fit-out of food premises) and the requirements contained in the Noise Policy for Industry 2017.

The EIE lists the zones in which light industry is permissible in the Standard Instrument LEP, zones in which it is proposed the complying development pathway for change of use to artisan food and drink premises will be available.

However, it is important to note that some councils have in their own LEPs permitted light industries in additional zones to those in the Standard Instrument LEP. A number of councils are beginning to encourage a presence of light industries in local and neighbourhood centres to encourage jobs and visitation. As such, this proposal will have a broader impact in these LGAs which has not been considered in the EIE, and may have unintended consequences as a result

of further land use conflict.

Further, light industries are not explicitly prohibited in a number of zones, including mixed use zones. As such, interface issues may arise, for example where a brewery would be approved on the ground floor of a large-scale mixed-use development, bringing with it increased noise from mechanical plant and deliveries and truck movements.

Councils have also voiced concerns regarding:

- **Acoustic impacts** when premises are in close proximity to or adjoin residential zones and sensitive receivers, particularly due to the proposed permissibility of 24-hour industrial operations. In many cases, an acoustic assessment as part of a development application pathway would be more appropriate. While the development standards do reference the NSW Environment Protection Authority (EPA) Noise Policy for Industry 2017, this policy excludes amplified music and patron noise from premises that will likely result from a change of use to an artisan food and drink premises.
- **Parking and traffic impacts**, as many industrial sites will not be suitable to accommodate vehicular movements for up to 100 patrons in a café.
- **Odour impacts** – multiple councils have raised concerns based on past complaints around coffee roasting and brewing activity in premises adjoining residential zones. Development applications involving activities such as brewing and coffee roasting typically require an odour impact assessment in line with an EPA technical framework for assessment and management of odour from stationary sources and the EPA approved methods for modelling and assessing air pollutants.
- **Private certifiers without expertise in the Australia New Zealand Food Standards Code,** meaning that unsuitable finishings and design for food service premises will not be identified and addressed until a council Environmental Health Officer undertakes an initial inspection of the premises in line with *Food Act 2003* powers and requirements. This could mean that rather than being incorporated into the design at the start, additional works/fittings may have to be added later to meet the required food standards approvals.
- **The proposal including no reference to compliance with Australian Standard 1668 (mechanical ventilation such as range hoods)** being required under the proposed development standards despite being an important hygiene and food safety measure, and ventilation being an essential design and construction element considered during council food safety inspections.
- **The proposal including no reference to wastewater arrangements,** particularly consideration of whether additional liquid trade waste requirements are necessary (such trade waste agreements or grease arrestors).

For these reasons, a one-size-fits-all approach is not appropriate, and LGNSW reiterates recommendations 1 and 2, whereby councils can opt in the whole or

parts of their LGA for this complying development pathway where it is appropriate for the local context.

Recommendation 5: While LGNSW does not support statewide complying development pathways, should the NSW Government nonetheless impose the complying development pathway for artisan food and drink premises statewide, the potential amenity impacts should be mitigated by amending the proposal to:

a) restrict development to locations that are not within the same building, do not adjoin or are not opposite to residential land uses (for which a development assessment pathway is more appropriate)

b) add additional criteria to the development standards that:

   i) specify the precise permissible noise limit audible from neighbouring residential premises or other sensitive land uses,

   ii) limit hours of operation where residential premises are located nearby,

   iii) include consideration of odour,

   iv) include consideration of AS 1668 (ventilation) for food businesses,

   v) include consideration of additional liquid trade waste requirements as necessary,

   vi) include consideration of a limit on the number of patrons relative to floor area of the site to help manage car parking and other impacts.

FOOD TRUCKS

MAKING COVID-19 EMERGENCY MEASURES PERMANENT

Food trucks were introduced as exempt development in 2013, with development standards in the Exempt and Complying Development Codes SEPP requiring that the food truck must:

(a) have the consent of the owner of the land on which the development is carried out or, if a council or public authority has the control and management of the land, the consent, in writing, of the council or public authority, and
(b) not restrict any vehicular or pedestrian access to or from the land or entry to any building on the land, and
(c) not obstruct the operation of, or access to, any utility services on the land or on adjacent land, and
(d) not be located within the canopy of, or result in damage to, any tree growing on the land or on adjacent land, and
(e) not result in any damage to public property on the land or on adjacent land, and
(f) if carried out on land within or immediately adjacent to a residential zone—only be carried out between 7.00 am and 7.00 pm on any day, and
(g) if located on a public place—have any approval required under section 68 of the Local Government Act 1993, and
(h) if located on private land—be limited to 1 development on that land and not contravene any conditions of a development consent for any other use carried out on the land.

A temporary COVID measure gave businesses more flexibility by allowing food trucks to operate on any land (including residential land), at any time, subject to landowners' consent.

This new proposal seeks to maintain the existing measure and provide some additional flexibility on land adjoining a residential zone, by increasing the hours a food truck can operate there.

Importantly, this proposal retains existing council section 68 approvals *under the Local Government Act 1993* for food trucks on public land. However, council feedback has raised consistent and strong concerns with the operation of COVID emergency food truck provisions, particularly with the proliferation of this food trucks and associated delivery services in recent years.

Increasingly, councils are seeing food trucks being established on small blocks of land, on front lawns in residential areas and in carparks of retail premises. One example provided was of a food truck that was essentially permanently installed on a residential block less than 2 metres from a neighbouring house's windows, creating persistent odour and noise nuisance as it operated at all hours of the day.

The ability of councils to appropriately regulate food trucks is hampered by the emergency provisions. For example, the City of Sydney has prepared a *Mobile Food*

Vending Vehicles Local Approvals Policy (August 2019), which aims to minimise adverse impacts from food trucks with a policy tailored to the local context. However, the emergency COVID provisions currently override this policy.

Councils are reporting significantly increased compliance and enforcement workloads as a result of a marked increase in resident complaints about food trucks – and these frequently require investigation outside of standard business hours.

This is yet another example of the way in which councils are being expected to carry out an ever-expanding list of compliance work associated with the State Government's complying development codes. As the rules are relaxed to make it easier for the arts and hospitality industries to obtain development approvals, councils need a mechanism to enable them to help fund the costs of the compliance activities associated with the safe and environmentally sound operation of these developments activities.

Notably, many councils have suggested that food trucks should not be permitted to operate on private land in residential zones at all, without development consent.

Common themes arising in concerns raised by councils include:

- **Acoustic impacts** – particularly from generators, amplified music, congregating customers, mechanical ventilation and delivery or pick up services where food trucks are in residential areas and are operating 24 hours a day. These complaints are regularly substantiated and result in fines under the POEO Act.
- **Odour and light impacts** – particularly smoke from wood or charcoal fires, grease from exhaust systems and decorative lighting in residential areas.
- **Lack of toilet, litter and waste facilities** – existing fixed cafes and restaurants are funding customers using their toilets and garbage bins, while food trucks do not provide toilets and some appear not to be using a commercial waste service. Councils have expressed particular concerns around some food trucks not appropriately disposing of frying oils and waste water which is being illegally disposed of in sewer systems; fixed food businesses would require a grease trap but this is not the case for food trucks. Councils also report an increase in litter being discarded on the public footpath, gutter and in neighbouring properties.
- **Economic harm to fixed food businesses** – which have development consent and higher overheads. Businesses report their viability is being undermined as they are working hard to re-establish their businesses post lockdowns, while food trucks can readily establish in prime locations without these overheads and enjoy a competitive advantage.
- **'Permanent' food trucks** – Councils are reporting that many food trucks are effectively fixed on site indefinitely, unable to be readily moved at all due to various attachments such as timber screening, advertising boards, exhaust systems, metal skirts, and decorative lighting. Further, many have associated marquees and seating. Yet as the food truck is *capable* of being mobile, it does not require development consent even if it remains on site for years, which appears contrary to the intent of the provisions.

- **Traffic and parking impacts** – particularly on smaller streets in residential areas with limited parking, for which the food trucks can generate considerable and consistent parking demand.
- **Food safety concerns** – arising from improper storage of food in ancillary structure such as cool rooms and garden sheds. Councils also report food and waste being stored in operators' own residential premises, contravening planning and food safety requirements.
- **Fire safety concerns** – councils have observed food trucks at service stations impeding access to fire safety equipment and potentially hindering access in case of an emergency.

Recommendation 6: The temporary COVID measure allowing food truck operation on any land at any time should be revoked. Hours of operation in or adjacent to residential areas should revert to 7am to 7pm, as currently provided for in the Exempt and Complying Development Codes SEPP.

Recommendation 7: The development standards for food trucks in the Exempt and Complying Development Codes should:

a) Limit the duration of stay in one location for a food truck without development consent (such as no more than 2 days out of every 7-day week) to ensure the provisions apply only to food outlets that are genuinely mobile,

b) Prohibit a food truck operating within a minimum distance from the nearest residential dwelling,

c) Require waste generated to be disposed of through an appropriate waste service (and not residential or public garbage bins).

d) Permit a single food truck only on a lot of private land, and prohibit any ancillary structures without development consent,

e) Prohibit the preparation of food at the outlet using charcoal or other solid fuel cooking methods in or immediately adjacent to a residential zone,

f) Prohibit the use of a generator external to the food truck in or immediately adjacent to a residential zone,

g) Specify the precise permissible noise limit audible from neighbouring residential premises or other sensitive land uses.

DARK KITCHENS

MAKING COVID-19 EMERGENCY MEASURES PERMANENT

Dark kitchens cook meals solely for delivery, rather than eat-in diners or customer pick-up. It is proposed to continue to allow dark kitchens to be established in an existing commercial kitchen, as exempt development. The existing commercial kitchen must be located in a:

- community facility
- educational establishment, business premise or office premise which operated as a cooking school before April 2020
- food and drink premise
- function centre.

The hours of operation for a 'dark kitchen' will need to comply with any condition of consent that restricts or specifies the hours of trading or operation. The 'dark kitchen' will need to comply with other legislation and requirements, including for the sale of liquor and any requirements under the *Food Act 2003*.

Councils generally support the proposals to make permanent the COVID emergency measures for dark kitchens operating from existing commercial kitchens, and in particular support the requirement that dark kitchens must continue to comply with any condition of consent that specifies hours of operation. However, there are circumstances where some commercial kitchens do not have hours of operations specified in an existing development consent. In these cases, the hours of operation for a dark kitchen should be limited to 7am to 10pm.

Recommendation 8: Where no hours of operation are specified in a development consent for an established commercial kitchen, dark kitchen hours of operation should be limited to 7am to 10pm.

Councils have also raised concerns that the COVID emergency measures for dark kitchens (such as those in community facilities) do not explicitly require kitchen facilities that comply with Australian Standard 4674-2004 (Design, construction and fit-out of food premises), additional standards (such as for ventilation) and the *Food Act 2003*. While a deficiency in this area is likely to be identified for rectification during a council's initial food safety inspection of a premises, it would be preferable for this to be clearly required as a development standard for a dark kitchen at the outset.

It would also be helpful to use development standards to remind dark kitchen operators of their obligation to notify their council of their food business. Given they often lack an active street frontage, dark kitchens can operate undetected by councils for extended periods, meaning that important mandatory food safety inspections are not taking place.

Recommendation 9: Development standards for dark kitchens should:

a) explicitly require the dark kitchen to comply with relevant food safety standards as minimum development standards, and

b) require dark kitchens to notify their appropriate enforcement agency (usually council) of their food business prior to commencing operations (in line with section 100 of the Food Act 2003).

Dark kitchens, by their very nature of being not open to the customer, de-activate street frontages, particularly where located on commercial high streets. Councils would welcome requirements for operators of dark kitchens to appropriately dress/treat any publicly active frontage to minimise visual impact to the streetscape.

Recommendation 10: Dark kitchens should be required to appropriately dress any publicly active frontage to minimise visual impact to the streetscape, including through public signage for identification.

TEMPORARY EVENTS

CLARIFYING EXEMPT DEVELOPMENT STANDARDS

Events on council-owned and managed land
The NSW Government is proposing that temporary events on council-owned and managed land would not need separate planning approval. Events on public/community land require council's approval under section 68 of the Local Government Act 1993, which can consider amenity, safety and potential environmental impacts. Other approvals may also be needed from council if a street closure is needed, or from other agencies to ensure food safety and responsible service of alcohol.

Councils also have plans of management for the land that they own or manage and typically have an events policy and guidelines, as well as an application process to use their sites. These enable councils to manage temporary events without imposing additional or duplicated approval processes for event organisers.

A new clause for temporary events on public land will combine the temporary use and the temporary structures into one clause. This means that use of land and the current controls for tents, marquees and booths will be combined with the controls for stages and platforms.

There are no proposed changes to the current planning controls for structures (tents, marquees or booths and stages and platforms) for community events other than restructuring the clauses.

Councils welcome the clarification that events on council-owned or managed land do not need separate planning approval. Combining approvals into the one clause under the *Local Government Act 1993* definitively clarifies what had been an area of uncertainty for some time. Councils would welcome clear guidance to support them in updating their processes to reflect the proposed arrangements.

Events on private land
Some councils have exempt development provisions in Schedule 2 of their LEP for temporary events on private land. The controls in these LEPs differ, but all set limitations on the number of days an event can take place (2 days per year to 14 days per year). Some include hours of operation (ranging between 7 am and 10 pm), while others include limits on the type of event or limiting the number of patrons.

The NSW Government is proposing to provide an exempt pathway for the use of land for small and minimal-impact events on private land. This would not seek to capture everyday events such as picnics, family gatherings and birthday parties, but rather events open to the public or a section of the public.

Limitations may include:

- limiting events to land other than a rural, residential or environmental protection zone
- limiting events on private land to 2 days in a 12-month period whether consecutive or not consecutive
- limiting hours of operation to between 7 am and 10 pm
- requiring organisers to notify the council at least 7 days before the event
- requiring organisers to notify the adjacent residents at least 7 days before the event
- limiting the number of patrons to 300.

Any proposal that does not meet these requirements will need to seek a development approval for the event from the appropriate council. The Codes SEPP will still contain exempt development provisions for the structures associated with temporary events, as well as the general requirements for temporary events and structures.

Councils are generally supportive of the proposed changes to events on private land but suggest that the proposal could be strengthened through minor amendments.

- **Excluded zones** – Councils support the proposal to limit the exempt development pathway to events on land other than rural, residential and environmental protection zones.
- **Notification period** – Organisers should be required to notify council and adjacent residents at least 14 (rather than 7) days before the event, to allow a more reasonable duration of time to review the event and its accompanying plans and provide advice on any additional approvals required.
- **Accompanying plan for waste management and structures** – To ensure waste is appropriately managed and structures align with development standards in the Codes SEPP, organisers should be required to submit a waste management plan (including for toilets) and structures plan to council accompanying the notification of the event. Event organisers must be responsible for managing their own waste and should not use public litter bins.
- **Restrictive development standards for temporary infrastructure** – Councils generally support the less onerous pathways for temporary events, but noted that the development standards for temporary infrastructure in the Codes SEPP may be too restrictive and preclude an exempt pathway. As an example, a stage cannot exceed 50m2 in size, yet council feedback suggests the vast majority of low impact, low risk temporary events on council land use a stage size greater than this.
- **Highlighting additional approvals that may be required** – Amusement devices and rides require s68 approvals from councils prior to operation, fireworks require Safework NSW notifications, and temporary food stalls require notification to the council.

- **Recommendation 11:** Councils support the proposal to limit the exempt development pathway to events on land other than rural, residential and environmental protection zones.

- **Recommendation 12:** Temporary private event organisers using the exempt development pathway should be required to notify council and adjacent residents at least 14 (rather than 7) days before the event.

- **Recommendation 13:** Temporary private event organisers using the exempt development pathway should be required to attach a waste management plan and structures plan to their notification to council.

- **Recommendation 14:** The development standards for temporary events infrastructure in the Codes SEPP should be reviewed to ensure limits, such as for stage size, are not too restrictive.

- **Recommendation 15:** The NSW Government should assist event organisers by highlighting additional approvals that may be required for an event, such as for amusement devices, fireworks and temporary food stalls.

FILMING

EXTENDING THE NUMBER OF DAYS AS EXEMPT DEVELOPMENT

The Codes SEPP's current exempt measures support filming for up to 30 days a year on private property. This suits short-term projects such as commercials and location shots where activity and temporary disruption can be managed and minimised. However, the department and councils are frequently approached to allow longer filming for example for a feature film, TV mini-series or reality show which films in a fixed location for a longer period. Some councils have already made changes to their LEP to allow longer productions and to attract more opportunities to their area.

The NSW Government is 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.

LGNSW has received mixed feedback about the proposal to remove the 30-day limit for filming and associated structures. While some councils welcome the potential for increased economic activity and employment for their LGAs and surrounding businesses, for others this might result in highly adverse impacts on environment, infrastructure, adjoining land uses and the local community.

Already, councils report challenges applying the Local Government Filming Protocol which was issued by the [then] Department of Local Government in 2009 in line with section 119D of the *Local Government Act 1993*. Councils report that the filming protocol, with which they must consider filming applications, is outdated and no longer fit for purpose.

For parts of NSW and particular properties that are particularly sought after by filmmakers, an increase in or removal of the day limit will have significant adverse impacts – especially as it is not clear whether this cap will only be removed for ultra low and low impact filming, or for medium and high impact filming too (as defined in the filming protocol).

LGNSW understands that work has been undertaken by the Office of Local Government in recent years towards a revision of the filming protocol. Given this work and the interaction between the filming protocol and the filming provisions of the Codes SEPP, it would be more appropriate to consider changes to the Codes SEPP and the filming protocol concurrently.

Recommendation 16: No changes to the filming provisions of the Codes SEPP should be made until the NSW Government has undertaken a full consultation with councils that includes a review of the Local Government Filming Protocol.

SUMMARY OF RECOMMENDATIONS

COMPLYING DEVELOPMENT PATHWAYS

Recommendation 1: The NSW Government should not impose statewide complying development pathways, in recognition that a one-size-fits-all approach may have adverse impacts on local amenity and adjoining land uses where the development is not appropriate for the local context.

Recommendation 2: The NSW Government should instead invite councils to opt-in parts or the whole of their LGA for these pathways where the council determines it is appropriate for the local context, via variations to the Exempt and Complying Development Codes SEPP.

OUTDOOR DINING

Recommendation 3: Existing arrangements retaining council controls to determine where outdoor dining is appropriate should continue.

SMALL LIVE MUSIC OR ARTS VENUES

Recommendation 4: While LGNSW does not support statewide complying development pathways, should the NSW Government nonetheless impose the complying development pathway for small live music and arts venues statewide, the potential amenity impacts should be mitigated by amending the proposal to:

a) restrict development to locations that do not share the same building, adjoin or are not opposite to residential land uses,

b) add a further criterion that specifies the precise permissible noise limit audible from neighbouring residential premises or other sensitive land uses,

c) reduce the maximum occupancy limit from 300 to 100 people to lessen amenity, traffic and parking impacts,

d) clarify permissibility of dancefloors, outdoor live music

and performances, associated food and beverage service as complying development, and whether the 2-storey limit applies only to the live music and arts activation of larger premises,

e) consider requiring any liquor service to cease 30 minutes prior to the venue's closure to encourage a staggered departure of patrons from a venue, and

f) require notification to neighbouring properties with contact details for the person responsible for the venue.

ARTISAN FOOD AND DRINK PREMISES

Recommendation 5: While LGNSW does not support statewide complying development pathways, should the NSW Government nonetheless impose the complying development pathway for artisan food and drink premises statewide, the potential amenity impacts should be mitigated by amending the proposal to:

a) restrict development to locations that are not within the same building, do not adjoin or are not opposite to residential land uses (for which a development assessment pathway is more appropriate)

b) add additional criteria to the development standards that:

   i) specify the precise permissible noise limit audible from neighbouring residential premises or other sensitive land uses,

   ii) limit hours of operation where residential premises are located nearby,

   iii) include consideration of odour,

   iv) include consideration of AS 1668 (ventilation) for food businesses,

   v) include consideration of additional liquid trade waste requirements as necessary,

   vi) include consideration of a limit on the number of patrons relative to floor area of the site to help manage car parking and other impacts.

FOOD TRUCKS

Recommendation 6: The temporary COVID measure allowing food truck operation on any land at any time should be revoked.

Hours of operation in or adjacent to residential areas should revert to 7am to 7pm, as currently provided for in the Exempt and Complying Development Codes SEPP.

Recommendation 7: The development standards for food trucks in the Exempt and Complying Development Codes should:

a) Limit the duration of stay in one location for a food truck without development consent (such as no more than 2 days out of every 7-day week) to ensure the provisions apply only to food outlets that are genuinely mobile,

b) Prohibit a food truck operating within a minimum distance from the nearest residential dwelling,

c) Require waste generated to be disposed of through an appropriate waste service (and not residential or public garbage bins).

d) Permit a single food truck only on a lot of private land, and prohibit any ancillary structures without development consent,

e) Prohibit the preparation of food at the outlet using charcoal or other solid fuel cooking methods in or immediately adjacent to a residential zone,

f) Prohibit the use of a generator external to the food truck in or immediately adjacent to a residential zone,

g) Specify the precise permissible noise limit audible from neighbouring residential premises or other sensitive land uses.

DARK KITCHENS

Recommendation 8: Where no hours of operation are specified in a development consent for an established commercial kitchen, dark kitchen hours of operation should be limited to 7am to 10pm.

Recommendation 9: Development standards for dark kitchens should:

a) explicitly require the dark kitchen to comply with relevant food safety standards as minimum development standards, and

b) require dark kitchens to notify their appropriate enforcement agency (usually council) of their food business prior to commencing operations (in line with section 100 of the Food Act 2003).

Recommendation 10: Dark kitchens should be required to appropriately dress any publicly active frontage to minimise visual impact to the streetscape, including through public signage for identification.

TEMPORARY PRIVATE AND COMMUNITY EVENTS

Recommendation 11: Councils support the proposal to limit the exempt development pathway to events on land other than rural, residential and environmental protection zones.

Recommendation 12: Temporary private event organisers using the exempt development pathway should be required to notify council and adjacent residents at least 14 (rather than 7) days before the event.

Recommendation 13: Temporary private event organisers using the exempt development pathway should be required to attach a waste management plan and structures plan to their notification to council.

Recommendation 14: The development standards for temporary events infrastructure in the Codes SEPP should be reviewed to ensure limits, such as for stage size, are not too restrictive.

Recommendation 15: The NSW Government should assist event organisers by highlighting additional approvals that may be required for an event, such as for amusement devices, fireworks and temporary food stalls.

FILMING

Recommendation 16: No changes to the filming provisions of the Codes SEPP should be made until the NSW Government has undertaken a full consultation with councils that includes a review of the Local Government Filming Protocol.

LGNSW would welcome the opportunity to assist with further information during this review to ensure the views of local government are considered.

To discuss this submission further, please contact LGNSW Strategy Manager Damian Thomas at damian.thomas@lgnsw.org.au or on 02 9242 4063.