

Department of Planning, Industry and Environment

Fun SEPP

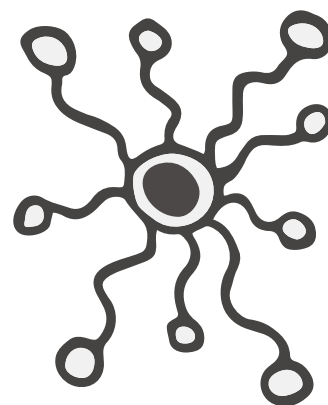
Proposed changes to support outdoor dining, artisan food and drink premises, events, and small live music or arts venues

October 2021



Acknowledgement of Country

The Department of Planning, Industry and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.



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www.dpie.nsw.gov.au

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Photography:
Jay Black/DPIE

Minister's Foreword

Summer is on its way and we want to make up for lost time. We've been stuck indoors, unable to do the simple things we enjoy with our friends and family.

We want to make it simpler, faster and cheaper for businesses to get back on their feet. We want to help the arts and hospitality industries, which have been some of the hardest hit by the pandemic, get back to giving us the fun and joy of music, dance, arts, and showcasing the best talent, food and drink our state has to offer.

Life won't look the same as before - it won't be business as usual. Many venues won't be able to welcome us all back straight away. This gives us a chance to adapt and experiment - with later, longer, smaller events popping up in more and new locations. We want to adjust the settings so creatives and councils can make the most of how this might look in their local area, and bring back the connections and creativity we've missed in our streets and towns.

We have a fantastic climate, and spectacular places and open spaces around the state. So when lockdown eases, let's move indoors outdoors, raise a glass and get back out there.



The Hon. Rob Stokes, MP
Minister for Planning and Public Spaces
and Minister for Transport and Roads



Photography:
Destination NSW

About this explanation of intended effect

To support hospitality, events and arts industries use exempt and complying development, the NSW Department of Planning, Industry and Environment proposes reforms to a government policy called the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#) or the Codes SEPP.

The department has prepared this explanation of intended effect (EIE), which sets out the aims of the reforms, under section 3.30 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Proposals

We would like to inform you of the following changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (**Codes SEPP**):

- make permanent the trial that allow pubs and small bars to have **outdoor dining** on the footpath as exempt development

and seek feedback on **proposals** to:

- create a complying development pathway to allow a change of use of retail premises to **small live music or arts venues**, including developments standards and variations to the Building Code of Australia
- create a complying development pathway to allow a change of use of premises to **artisan food and drink industry** in certain circumstances, including development standards
- make some of the COVID-19 emergency measures for **food trucks** and **dark kitchens** permanent.
- clarify the exempt development standards for **temporary private and community events**
- extend the number of days for **filming** as exempt development

The proposed changes will help to deliver a 24-hour economy that is vibrant, diverse, inclusive and safe. They will help the hospitality and arts industries to recover from the pandemic by providing flexibility and a simpler, faster planning process. It will make it easier to hold outdoor events, film, set up artisan food and drink premises or convert shops to arts or live music venues.

What is exempt and complying development?

The [Codes SEPP](#) contains the exempt and complying development standards that apply statewide.

Exempt development is minor and low-impact development that can be carried out without the need for approval, as long as it meets predetermined criteria.

Complying development is a fast-tracked approval process for straight-forward development where planning and building standards can be signed-off by an accredited certifier. This process offers many benefits to applicants including certainty, as well as time and cost savings compared with a development application (DA). Complying development certificates (CDC) can be issued by council or private accredited certifiers within 10 days.

Complying development must strictly comply with the development standards in the Codes SEPP. If a development cannot comply with just one of these controls, it cannot obtain a CDC and must go through the DA pathway. The development controls are designed to manage amenity and ensures the development will not significantly affect surrounding properties.

Outdoor dining

Overview

We're making **outdoor dining on the footpath for pubs and small bars exempt development**.

Outdoor dining and entertainment is a year-round opportunity for NSW; we have the perfect climate to socialise outdoors, day and night. It brings activity to our streets and public spaces, attracting residents and tourists alike to showcase the best of our local produce, hospitality and talent.

In October 2020, the department helped pubs and small bars to quickly provide [outdoor dining](#) areas as COVID-19 safety measures limited the number of people allowed inside venues. We've trialled a streamlined process where councils approve outdoor dining without needing business owners to submit a separate development application. This is a more efficient process for councils and saves time and money for the hospitality industry, which has struggled through the COVID-19 pandemic. It helps to keep businesses open and staff employed, and gives us more safe spaces to dine and socialise.

During the trial, we have supported councils and businesses to expand outdoor dining areas - making the most of temporary road closures, local events and coordinated activations for the public to enjoy.

Trial of fast-track outdoor dining approvals

The outdoor dining trial for pubs and small bars runs from 16 October 2020 until 31 October 2021. During this time, councils and Place Management NSW (the managers of The Rocks and Darling Harbour) have approved outdoor dining areas at small bars and pubs as exempt development.

Councils have used their own outdoor dining policies and approved outdoor dining on footpaths and roads under the *Roads Act 1993* (Roads Act) and *Local Government Act 1993* (Local Government Act). Approvals are then fast-tracked to Liquor & Gaming NSW to approve new liquor licence boundaries in as little as 3 days under the *Liquor Act 2007* (Liquor Act).



Photography:
Anna Kucera/DPIE

Making the trial permanent

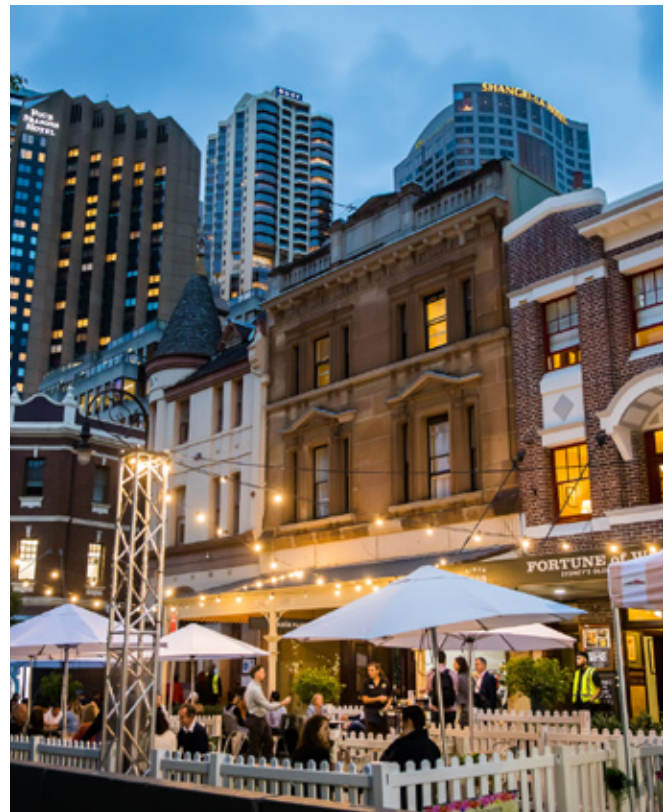
The trial has run smoothly. Businesses have benefited from increased turnover and the community has enjoyed new outdoor dining areas. **We will be making this change permanent before the trial measures expire** to ensure pubs, small bars, cafés and restaurants are ready to offer outdoor dining when lockdown eases, and to attract people back to outdoor dining as soon as it is safe to do so.

The Rocks Outdoor Dining Trial

Commencing in October 2020, The Rocks outdoor dining trial provided immediate support for local businesses recovering from COVID-19.

There were 24 businesses in the trial. Footpaths, road areas and parking bays were expanded into over 2,000 square metres of additional outdoor dining space. This catered for over 1,000 extra diners at any given time – in line with COVID safety restrictions.

In the first quarter, gross revenue on food and beverage for businesses in The Rocks increased by 101% when compared to the previous quarter, before the trial. Most businesses in the area now attribute their ongoing financial recovery to the expansion of outdoor space to serve customers.



Outcomes

Removing duplication in the approvals process, which save time and money for businesses, and assisting the industry to continue to operate in a COVID-19 safe manner.

Photography (top and bottom):
Anna Kucera/DPIE

Small live music or arts venues

Overview

We've missed the thrill of live music, performance and arts, whether it's as part of the audience or as a creative outlet for our hobbies and passions. For a sector that has been one of the hardest hit during the pandemic, we'd like to help make sure that the show can go on.

The independent arts sector has previously raised the lack of affordable and suitable small- to medium-sized performance spaces as a critical issue. There are barriers preventing shops and commercial spaces from being used as small-scale venues in NSW.

Arts and performance venues are classed in the Building Code of Australia (BCA) as 'public assembly buildings', such as a night club or sporting facility. These have higher fire and building standards than shops to ensure public safety. As a result, the cost and time to gain approval and upgrade a small venue to the higher building class standards means converting retail premises is often not financially viable for the arts sector.

In November 2020, new legislation introduced the term [small live music or arts venue](#) into the BCA NSW. This also established some development standards to limit the size and patron capacity of venues to reduce risk and remove the need for the higher building classification.

At the time, these changes did not establish a complying development pathway to change the use of a shop or food and drink premises to a small live music or arts venue without needing a development application.

To address this, we are proposing 2 changes:

- to amend the BCA so that a small live music or arts venue is treated as a Class 6 building in NSW
- to introduce a new complying development pathway with accompanying building, fire safety and amenity development standards.

The changes have been developed with accredited fire and building certifiers and the Department of Customer Services' Building Policy Unit to ensure that public safety is maintained. South Australia and Victoria have already made equivalent changes to the BCA in their states.



Photography:
Destination NSW

Providing flexibility for the arts industry and neighbourhoods

Supporting the conversion of shops into new functions is important as online shopping and economic conditions changes the nature of traditional retail. Centres and high streets will continue to reinvent themselves to attract new businesses and uses.

A complying development pathway will significantly reduce start-up costs and lead times for small live music or arts venues to establish and operate. This will allow local arts groups and creative industries to be flexible and agile and take up opportunities presented by changing retail conditions.

Proposed amendments

We propose to make amendments so small live music and arts venues:

- are in the same building class as shops, cafés and restaurants through a state variation to the Building Code of Australia classification
- can use the complying development change of use and development standards in the [Codes SEPP](#).

Changes to the Building Code of Australia and Codes SEPP

The department will amend the Building Code of Australia in NSW to allow suitable 'shops' or 'food and drink premises' to change use to a small live music or arts venue. This means creative industries can apply for a Complying Development Certificate from a registered or council certifier to ensure their venues are safe and meet the standards without needing a development application.



Photography:
Destination NSW

We are proposing that for premises to be used as a small live music or arts venue, they must meet the following criteria:

- have a maximum floor area of 300 metres²
- 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 BCA 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.

These measures manage the risk of fire or hazardous situations and limit patron capacity to be consistent (for health, safety and amenity) with the Class 6 BCA category and standards. The NSW definition of Class 6 buildings will allow multiple venues in one building.

Venues can be used for a range of arts, handicraft and performance activities; however, this excludes building or production activities, such as wood or metal cutting, that require fixed machinery. More intensive activities which include production elements and machinery that pose a potential higher risk will be categorised under a new term 'creative industries' which was proposed in the [Employment Zones Reform](#) exhibition.



Photography:
Destination NSW

What do you think?

Are the proposed development standards for building, fire safety and amenities appropriate for this use?

Outcomes

To support the arts industry to capitalise on opportunities to use small retail spaces for performing and carrying out activities in a way that saves time and is cost effective.



Photography:
Destination NSW

Artisan food and drink industry

Overview

The artisan food and drink industry includes the making or manufacturing of boutique, artisan or craft food or drink products, such as bread, cheese, cured meat, coffee and alcohol. They are made locally, on a small scale, using traditional methods or recipes. The small-batch goods are popular alternatives to mass-manufactured and imported products. The industry generates local skilled employment and can support associated industries such as agriculture, tourism and hospitality by attracting customers who want to sample the products and see how they are made.

A new definition of the [artisan food and drink industry](#) was introduced into the Standard Instrument LEP in 2018, which reflects the new type of mixed-use business where the main purpose is manufacturing a product with a smaller space for product sales, tastings, a restaurant or café. Previously, they had been considered a [light industry](#) and required additional approvals for an [industrial retail outlet](#) to sell the products made on site.



Photography:
Destination NSW

Allowing a change of use of premises

The artisan food and drink industry is a type of light industrial use and is permissible wherever light industry is in an environmental planning instrument, such as an LEP. This typically includes industrial and business zones, and less frequently in rural zones.

There is currently no exempt or complying development pathway for a change of use to an artisan food and drink premises in the Codes SEPP.

We have heard that some producers would like to convert their light industry development consents to artisan food and drink without needing to submit a new development application to assess the ongoing operations. We have also heard that the restriction on industrial retail outlets that only allow for the sale of products made on site is impractical and overly restrictive. An example could be a coffee roaster who may also wish to sell reusable cups manufactured off site.

We propose this amendment within the broader context of work the department is doing to drive economic recovery and support innovation and productivity:

- [Building Business Back Better](#)
- [Employment Zones Reforms](#)
- [Agritourism](#)

Proposed amendment

Change of use to artisan food and drink as complying development

We are proposing a complying development pathway that 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 [Enterprise Corridor](#) (B6) and [Business Park](#) (B7), [General Industrial](#) (IN1), [Light Industrial](#) (IN2) and [Working Waterfront](#) (IN4) zones and artisan food and drink is consistent with their objectives. We would also like to include the [Business Development](#) (B5) zone, which the Employment Zone Reform propose to incorporate into a new E3 Productivity Support zone with B6 and 7.

Proposed changes

We're also proposing changes to artisan food and drink industries that reflect those consulted on in the Building Business Back Better reforms. These proposed to increase patron numbers from 50 to 100 in food and drink premises in neighbourhood and local centres (that is, B1 and B2 zones) and increased hours of operation. We would like to hear your views on extending these provisions to the artisan food and drink industry.

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 LEP, whichever is lesser
- maximum of 100 patrons at any restaurant or café
- trading hours for food and drink premises and retail sales from 6 am to 10 pm 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*.



Photography:
Destination NSW

What do you think?

Do you think the proposed changes strike the right balance for the uses in these locations?

Outcomes

Introducing a swift and simple change of use pathway for artisan food and drink businesses so they can easily increase their operations, while aligning with standards.

Making some temporary COVID-19 measures permanent

Overview

Last year, we made a number of temporary measures to support the community and businesses in response to the COVID-19 pandemic. While they were intended as a temporary solution, we would like to maintain those that have been beneficial to the community. We would also like to support businesses to be flexible and adapt to changing situations as lockdown requirements change over time.

Food trucks

[Food trucks](#) were introduced as exempt development in 2013, and the [temporary measure](#) gave businesses more flexibility by allowing food trucks to operate on any land, at any time, subject to land owners' consent. We propose 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.



Photography:
Destination NSW

'Dark kitchens' — takeaway and deliveries from existing food and drink premises and commercial kitchens

As cafés and restaurants were forced to close, takeaway and home delivery became vital for these businesses to survive. These services were a welcome treat for the community and helped people maintain a sense of normality. Even before the pandemic, home delivery was growing in popularity and there were more delivery options to choose from.

[Dark kitchens](#) cook meals solely for delivery, rather than eat-in diners. We propose to continue to allow premises with an existing commercial kitchen, including restaurants and cafés, community facilities, cooking schools and function centres, to prepare, sell and deliver food and drinks that can be consumed off site. This will enable existing restaurants and cafés, and other businesses, to adapt when necessary to changing situations and customer needs.

Outcomes

Encourage local food businesses to continue to operate and service their local communities.

Temporary events

Overview

Cultural celebrations, exhibitions, fetes, markets, music and sporting events help make our neighbourhoods vibrant places to live, work and visit. They allow us to get outside, connect communities, celebrate and participate. They give a platform for a thriving performance and music scene, let us share each other's food and culture, and support local organisations and business.

We want to make sure events are well managed, that the rules are easy to understand and appropriate to the scale of the event.

We want to clarify that events on council-owned or managed land don't need separate planning approval. Councils can use their event application process to assess proposals against their event policies and any management plans that apply to the site. They will approve the event under legislation such as the *Local Government Act 1993*.

Events on private land, however, are not subject to the same approvals and oversight of council. We'd like your help to determine sensible controls to make sure private events are equally well managed without disturbing the environment or neighbours' amenity.

Providing certainty for councils and the community

The Codes SEPP includes separate planning controls for community and private events. We've heard that the structure and wording for [temporary events](#) are not clear and cause confusion.

Users are interpreting the controls differently, either:

1. using the land for a temporary event requires a development application and must abide by the development standards in clause 2.8 of council's local environmental plans (LEP), while the temporary structures used for the event (such as a stage) can be set up as exempt development under the Codes SEPP

or

2. both the use of the land for the temporary event and the event's temporary structures are exempt development under the Codes SEPP.

Some councils have also included exempt development standards for temporary events in Schedule 2 of their LEP, which may intend to provide additional flexibility or clarity.



Photography:
Destination NSW

A temporary event could be a fair, fete, market sporting or cultural event or the like that is open to the public or section of the public that is held for a limited amount of days per year. For example a food market that is held every month.

Proposed amendments

Temporary events on council and private land

We are aiming to provide clear and easy-to-use planning controls so that people know what approvals, if any, they need for their event. We want to support small and low-impact events with a simple and straightforward process, and make sure the success of larger events isn't at the cost of the environment or local amenity.

We have split the provisions into events on council land and private land. Whether an event is held on public or private land, the [general requirements](#) for temporary uses and structures will also apply. These are standard considerations, such as having the landowner's permission and ensuring structures are safely installed.

Council-owned and managed land

We are 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.

We know that some councils have also added bespoke exempt controls for temporary events in Schedule 2 of their local environmental plans (LEPs). Where there is an inconsistency between the Codes SEPP and the LEP, the Codes SEPP will prevail.

Private land

We need to make sure there are appropriate controls for temporary events on private land. While events on public land are subject to *Local Government Act 1993* approvals as well as plans of management, events on private land may not be subject to the same oversight. This means that a different approval pathway is needed to ensure that the amenity and environmental impacts are appropriate and managed well.

The Codes SEPP's current controls for [private events](#) apply to land other than rural, residential and environmental-protection zoned land (unless it is used for residential accommodation), Crown land and land under the control of a council. The department is also investigating controls for events in rural zones in its [agritourism](#) work.

We know that 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.

We propose to provide an exempt pathway for the **use of land** for small and minimal-impact events on private land. We are not seeking 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 (see definition in Table 1).

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.

There are no proposed changes to the current planning controls for structures ([tents and marquees](#) and [stages and platforms](#)) themselves for private events.



Photography:
Marley Morgan/DPIE

Major events sites – additional temporary development

To make the most of our open spaces at The Rocks, Darling Harbour, Barangaroo and Sydney Olympic Park we propose an extension to the number of days temporary uses can be undertaken. This will provide more flexibility for activities such as community events, art installations and commercial events.

Currently the number of consecutive days these activities can be held for is limited to 21 days, with no location to be used for more than 140 days (including set-up and clean-up) in any calendar year. We are proposing to increase this to 60 consecutive days and no more than 200 days in any calendar year, allowing these great outdoor spaces to host a range of activities.

Proposed definition

The new focus on temporary events on public or private land means that we need a new definition.

We propose to delete the existing definition of **community event** and replace it:

Table 1

Comparing the old definition to the proposed one.

Delete	Replace with...
<p>Community event means a function or event open to the public or a section of the public that is a ceremony, cultural celebration, exhibition, fete, fair, gathering, market or sporting event.</p> <p>(Codes SEPP cl.1.5)</p>	<p>Temporary event means a function or event open to the public or a section of the public that is a ceremony, cultural celebration, exhibition, fete, fair, gathering, market or sporting event, that is carried out either inside or outside.</p>



Photography:
Destination NSW

Outcomes

Enabling event organisers to use a streamlined process which will make holding events on public and private land straightforward and uncomplicated.



Photography:
John Slaytor

Filming

Overview

There's no doubt that NSW has spectacular scenery. We boast world-famous beaches, rainforests, mountains, cityscapes and charming outback towns. Our wintry mountains, expansive coastline and sun-baked desert are the backdrop and star of many feature films, music videos and TV shows.

State-of-the-art studios, highly skilled local production staff and talented actors, combined with reliable weather, provide the perfect conditions to attract a growing stream of local productions and international blockbusters.

The government has a long-standing aim to make NSW the most attractive destination in Australia for screen productions and works proactively with filmmakers, agencies and councils to be film-friendly and help the industry grow.

These productions bring economic benefit to areas directly through industry jobs, local suppliers and services, and showcase our state to attract more tourism and investment

Supporting filming

The government and councils have agreed that requests for film productions on **public land** can occur, unless there are exceptional circumstances or reasons which prevents this, such as the presence of an item of Aboriginal significance or because the land is home to a threatened species. A development application is not needed for filming itself, but other approvals may be needed, depending on the location used or length of filming. Councils will approve a film management plan to ensure public safety, environmental protections and matters such as traffic management and hours of operation. More information on filming on public land can be found in the [Local Government Filming Protocol](#).



Photography:
Pexels

The Codes SEPP includes exempt development standards to support [filming](#), [temporary structures and building alterations](#) and [tents and marquees](#) used during filming.

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.

We are 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.

We'd also like to know if any of the current measures need updating to meet changes in technology and filming practices.

Outcomes

To build on existing exempt development provisions to facilitate filming for longer periods of time on private land without the need for development approval in a way that maintains minimal impacts on the environment.



Photography:
Pexels



Have your say

How to make a submission

We want to hear from a broad range of stakeholders. Your feedback will help us balance the needs of the community and industry.

We are exhibiting this document in line with the department's Community Participation Plan.

To make a submission on the amendments proposed in this document, please visit www.planningportal.nsw.gov.au/draftplans/on-exhibition and complete the submission form.

Hearing about real-life situations will give the department an evidence base to help improve the experiences of stakeholders who use the controls. It will help us support the community, hospitality and arts industries, and ensure that the development standards are clear and effective.

The exhibition runs till 22 November 2021.

Photography:
Destination NSW



dpiensw.gov.au