

30 November 2021

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**Re: State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

Thank you for the opportunity to comment on the proposed amendments to the *State Environmental Planning Policy (Exempt and Complying Development codes) 2008* (Codes SEPP). I write specifically regarding the proposal to maintain the current measures for mobile food and drink outlets (MFDO) and wish to provide the following feedback on behalf of Canterbury-Bankstown Council's Regulatory Services Unit:

**1. Non-compliance with the *Environmental Planning and Assessment (COVID-19 Development – Takeaway Food and Beverages) Order 2020* (COVID Order)**

The introduction of the COVID Order has significantly increased Council's compliance and enforcement workload. Council has received approximately 40 complaints from 1 July 2021 to 30 October 2021 regarding MFDO. Council has determined a high level of non-compliance with several conditions of the COVID Order, in particular MFDO operating from residential premises.

Businesses operating within the COVID Order requirements have a significant potential to cause an unreasonable amenity impact including odour, noise and traffic generation which is not consistent with the current amenity of many residential areas. Affected residents are often subject to MFDO setting up on a daily or weekly basis from the same premises and therefore exposed to ongoing nuisance. Council has investigated several complaints which were not able to be acted upon as the operator was complying with the COVID Order. Of significant concern is that the COVID Order does not condition noise, smoke or odour, which must be dealt with under the *Protection of the Environment Operations Act 1997* and creates unnecessary barriers for enforcement. The operation of a MFDO on residential zoned land is not consistent with the community expectation of amenity.

*Recommendation:* That MFDOs are not permitted to operate from residential zoned land.

**2. Increased administrative burden**

Due to the transient nature of MFDO and the registration requirements of the Food Standards Code, Council's administration workload has significantly increased.



*Recommendation:* In order to reduce the administrative burden for both local government and MFDO, a centralised, state-based registration portal should be developed, similar to the Victorian government's 'Stretrader'.

### **3. Increased number of enquiries**

Council receives several enquires daily from potential and current MFDO regarding the Codes SEPP. As MFDO are considered food premises, the majority of these enquires are received by Environmental Health Officers (EHO) who are expected to interpret and explain the requirements of the Codes SEPP. These enquires are ongoing and usually result in EHO verifying conditions of development consent including approved plans and local zoning. This process is often repeated again when the MFDO chooses to operate from another location. The alternative is to provide limited or no planning advice, however this inaction increases Council's compliance and enforcement workload.

*Recommendation:* That the Department of Planning, Industry and Environment provide formal and detailed advice, developed in conjunction with local government to assist MFDO.

### **4. Work health and safety concerns**

A popular trading location for MFDO are service stations, where both businesses operate concurrently. MFDO are often observed by Council's officers posing a potential work health and safety concern, impeding access to fire safety equipment, as well as groundwater monitoring wells and fill points for underground petroleum storage systems. Further, MFDO are observed hindering swept paths for fuel tankers.

*Recommendation:* That the Department of Planning, Industry and Environment consider whether it is practicable for a MFDO to safely operate at a service station.

### **5. Noise pollution**

Council receives numerous complaints regarding noise emanating from MFDO. Sources of noise are from the operation of mechanical ventilation, amplified music, traffic and patrons. These complaints are often substantiated and have resulted in Council undertaking enforcement action for non-compliance with the *Protection of the Environment Operations Act 1997*.

*Recommendation:* Include specific noise conditions in line with the *Protection of the Environment Operations Act 1997* and the Noise Policy for Industry (NSW EPA, 2017).

### **6. Air pollution complaints**

Air pollution complaints as a result of the operation of wood fire and charcoal cooking from a MFDO have also been received by Council. There is no clarity regarding whether these cooking methods are permitted and whether any odour/air pollution prevention devices are required to be installed and maintained.

*Recommendation:* Specify that charcoal and woodfire cooking is not permitted in a MFDO, consistent with Clause 5.2 (g) of the Codes SEPP.



## **7. Food safety concerns**

Again, due to the transient nature and the typical operating hours weekends of MFDO, they are often not routinely inspected by an EHO to ensure compliance with food safety legislation. When inspected by an EHO, on most occasions it is revealed that food and waste is being stored in a residential premises, which contravenes the Food Standards Code. The only viable option is for the MFDO to store food and waste in a commercial food premises, which nullifies the purpose of the Codes SEPP.

*Recommendation:* That the Department of Planning, Industry and Environment considers the abovementioned food safety implications.

If you would like to discuss the matter further, please don't hesitate to contact me on [REDACTED] or [REDACTED]

Yours sincerely,

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