

Environmental Planning and Assessment (COVID-19 Development—Takeaway Food and Beverages) Order 2020

I, the Hon. Rob Stokes, MP, the Minister for Planning and Public Spaces, make the following Order under section 10.17 of the *Environmental Planning and Assessment Act 1979*.

I am satisfied this Order is necessary to protect the health, safety and welfare of members of the public during the COVID-19 pandemic as it will allow greater access to food and beverages on a takeaway basis. I have consulted with the Minister for Health and Medical Research in relation to the making of this Order.

1 Name of Order

This Order is the *Environmental Planning and Assessment (COVID-19 Development—Takeaway Food and Beverages) Order 2020*.

2 Commencement

This Order commences on the day it is published in the Gazette and remains in force for the prescribed period within the meaning of section 10.17 of the Act.

3 Definitions

(1) In this Order—

the Act means the *Environmental Planning and Assessment Act 1979*.

Note. The Act and the Interpretation Act 1987 contain definitions and other provisions that affect the interpretation and application of this Order.

(2) A word or expression used in this Order has the same meaning as it has in the Standard Instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

(3) Notes included in this Order do not form part of this Order.

4 Relationship with orders under the *Public Health Act 2010*

To the extent that this Order is inconsistent with an order under Part 2 of the *Public Health Act 2010*, the order under that Part prevails.

5 Development authorised by this Order

(1) The development specified for this Order may be carried out without the need for any approval under the Act if it complies with the conditions specified for the development.

(2) Nothing in this Order affects the times at which liquor may be sold.

6 Use of existing premises to prepare and sell food, beverages or any other goods

- (1) The use of the following for the preparation and sale of food or beverages (or both) for persons to consume off the premises is development specified for this Order:
 - (a) a community facility,
 - (b) an educational establishment, business premises or office premises that was operating as a cooking school immediately before the commencement of this Order,
 - (c) food and drink premises, or
 - (d) a function centre.
- (2) The conditions specified for the development are that the development must—
 - (a) be for the use of premises that are the subject of a development consent or premises that may be used for the existing purpose without development consent, and
 - (b) in the case of premises, the use of which is authorised by a development consent—comply with all conditions of the consent for the use of the premises other than any condition that restricts:
 - (i) the hours of trading or operation,
 - (ii) the use of the premises for food and beverage preparation,
 - (iii) the use of the premises for food and beverage delivery purposes,
 - (iv) the sale of prepared or packaged food or beverages (or both) for consumption off the premises, and
 - (v) the location of retail sales and food preparation within the premises, and
 - (c) in the case of premises, the use of which is authorised without the need for development consent—comply with the provisions of any environmental planning instrument applying to the development other than any provision which restricts—
 - (i) the hours of trading or operation,
 - (ii) the use of the premises for food and beverage preparation,
 - (iii) the use of the premises for food and beverage delivery purposes,
 - (iv) the sale of prepared or packaged food or beverages (or both) for consumption off the premises, and

- (v) the location of retail sales and food preparation within the premises.
- (d) have existing kitchen or kitchenette facilities, and
- (e) make sufficient space available for customers to allow a social distance of at least 1.5 metres from other customers, and
- (f) not involve any seating for customers during the preparation of food or beverages, or for the consumption of food or beverages, and
- (g) when operating outside the hours of trading or operation of the premises that would apply but for this Order—take steps to ensure that it has no adverse impact on the amenity of the neighbourhood by reason of the emission of noise, smell, fumes or waste products.

7 Mobile food and drink outlets

- (1) The use of a mobile food and drink outlet by any person at any time for the preparation and sale of food or beverages (or both) for consumption off the premises is development specified for this Order:
- (2) The conditions specified for the development are that the development 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) make sufficient space available for customers to allow a social distance of at least 1.5 metres from other customers, and
 - (g) not involve any seating for customers during the preparation of food or beverages, or for the consumption of food or beverages, and
 - (h) if located on private land—be limited to 1 development on the land and not contravene any conditions of a development consent for any other use carried out on the land.

Note. A registrable vehicle within the meaning of the *Road Transport (Vehicle Registration) Regulation 2007*, or a cart, bicycle cart or the like must operate in

accordance with the *Guidelines for mobile food vending vehicles* (NSW/FA/F1055/1302) published by the NSW Food Authority in February 2013, and any requirements of the *Food Act 2003*.

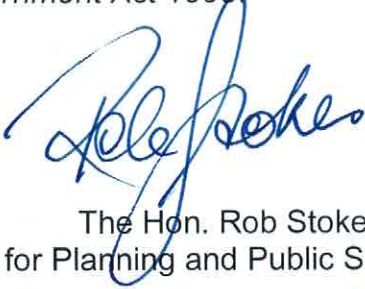
(3) In this clause—

mobile food and drink outlet means a food truck, van, cart or other similar vehicle.

8 Suspension of regulatory instruments

For the purpose of enabling development to be carried out in accordance with clause 6 of this Order, the following regulatory instruments do not apply to the extent necessary to serve that purpose:

- (a) any agreement, covenant or other similar instrument that restricts the carrying out of that development, and
- (b) Part 1 of Chapter 7 of the *Local Government Act 1993*.



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

31st March, 2020