

RESPONSE TO QUESTION ON NOTICE:

INQUIRY INTO FRESH FOOD PRICING

At Macquarie Room, Parliament House, Sydney, on Thursday 9 August 2018

QUESTION:

The Hon. COURTNEY HOUSSOS: This question might be more appropriate for you, Mr White. What are the current requirements to establish a farmers' market? I am happy for you to take these on notice; they are not trick questions.

Mr WHITE: I do not think there are any difficulties in the right areas in establishing farmers' markets. I suppose it depends on what you define as a farmers' market because you often see them established in church grounds or in parks. It is probably the case that there is not a lot standing in the way of those smaller farmers' markets. If you were to look at them in a more institutionalised way, that is a question I probably would have to take on notice. There is overarching flexibility and appreciation around the whole idea of having markets in your town centres at weekends and various suburban areas. As you get out into some of the rural cities, the whole notion of having a street market in your main street is something that is not unusual as well.

The Hon. COURTNEY HOUSSOS: I appreciate that when we talk about farmers' markets, from a planning perspective and when we are talking about DPI, they mean two different things. Mr White and Ms Hill, I think you were here when NCOSS was talking about the changes to the planning Act and health and wellbeing. What practical things have occurred as a result of those changes?

ANSWER:

Use of land for the establishment of a farmer's market is regulated through the Environmental Planning and Assessment Act 1979 (EP&A Act) and the Local Government Act 1993 (LG Act).

Whether or not development consent or other approval under the EP&A Act or LG Act is required depends on a number of factors, such as:

- a) whether it is proposed as an ongoing or temporary use;
- b) the applicable zoning under councils Local Environmental Plans (LEP);
- c) whether the proponent is council or other private individual or company; and
- d) whether the land on which it is proposed is in public or private ownership.

Councils establish the permissibility of markets within their LEPs. Markets as a type of retail premises, are typically permitted with consent in business zones and often industrial zones as well. The applicable zoning of the land is particularly relevant where the use is proposed as a permanent use of the land.

Alternatively, where the use is temporary – such as held weekly, or fortnightly, a development consent may be granted on any land in any zone subject to council being satisfied as to certain conditions. The use of temporary land in accordance with clause 2.8 of councils LEPs is subject to a maximum number of days within 12 months. This is determined by council and typically between 28 days and 52 days.

Councils may also amend their LEPs to identify markets as exempt development, meaning a development consent is not required in certain circumstances. For example, Parramatta LEP 2011 permits markets as exempt development on land owned or managed by council. Similarly, the Pittwater and Warringah LEPs both permit the use of community land for commercial purposes as exempt development subject to the development being authorised under LG Act.

Additionally, the Temporary Uses and Structures Exempt Development Code under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) specifies that the erection of certain structures (tents, marquees and booths) for the purposes of a community event is exempt development if it is carried out on land other than land within a rural, residential or environment protection zone and meets the relevant development standards. The standards include floor area, height, hours of operation, pedestrian areas around the structure and the required number of exits. The provisions of the Code operate on a State-wide basis and prevails to the extent of any inconsistency with a council's LEP.

Where development consent is not required because the use is exempt under the provisions of an environmental planning instrument, this does not exempt the proposed use from the need to obtain any other agreement, approval, lease or licence required such as those required under the LG Act. The LG Act generally requires approval where the proposed use is on community land.

Food Safety

In addition to the requirements under the EP&A Act and LG Act individual stall holders selling food products are typically required to register their business activities with council or on the NSW Food Authority's notification and Food Safety Information System. Some retailers may also require a Food Authority Licence depending on the nature of the products they offer for sale.

Stall holders must also comply with the NSW Food Act 2003 and the Australia New Zealand Food Standards Code.