



19 November 2021

Ref No: F2004/08242

Dear Ms [REDACTED]

Re: Randwick City Council Submission on the Fun SEPP

Thank you for the invitation to comment on the “Fun” *State Environmental Planning Policy* (Fun SEPP), which outlines a raft of amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) to support the hospitality, events and arts industries.

As an overarching comment, Council is generally supportive of measures that focus on economic recovery out of the pandemic, recognising that local hospitality and creative industries, have been amongst the most affected by the Government’s lock down restrictions. It is our position, however, that any proposed changes to the Codes SEPP to streamline development approval process for these sectors, must be contingent on maintaining sound environmental planning outcomes, particularly with respect to residential amenity and noise disturbance. To this end, the following comments are made on certain aspects of the proposed changes:

Outdoor Dining

The Fun SEPP proposes to make outdoor/footpath dining for pubs and small bars ‘exempt development’, following the recent successful trial for outdoor dining at The Rocks. This means that applicants would no longer be required to lodge a Development Application or Complying Development Certificate for alfresco dining for small bars and pubs, consistent with existing exempt development provisions for cafes and restaurants.

The proposal to extend outdoor dining for small bars and pubs is supported in principle, recognising that it provides a means of facilitating patronage of local hospitality businesses in a Covid safe way. Moreover, outdoor dining can provide significant environmental planning and amenity benefits such as activation of town centres and open space areas, adding to vibrancy and social capital, while improving the perception of safety in the public realm.

The current outdoor exempt development provisions for cafes and restaurants permit alfresco provided it does not cause offensive noise, nor contravene any existing development consent in relation to hours of operation, patron capacity, waste management, and food safety. Given the potential for noise and anti-social behaviour, greater control of the outdoor spaces is recommended for premises where the primary purpose is for the sale and consumption of alcohol. This may include limiting the use of the footpath/outdoor space for dining where the provision of alcohol remains ancillary to the provision of a meal, or alternatively via controls requiring mandatory management plans, security personnel, noise controls and limitations on certain activities such as the provision of certain types of entertainment.

Change of Use for Live Music and Small Arts Venues

The Fun SEPP proposes to make it easier to undertake change of use from a retail premises to a small live music or small arts venue by:

- Amending the Building Code of Australia (BCA) so that a small live music or arts venue is treated as a Class 6 building in NSW; and
- New Complying Development provisions with standards on patron capacity (300 patrons), trading hours, and building, fire safety and amenity standards.

These proposals are supported in principle as they align with Council's advocacy for reducing red tape and increasing the amount of creative multi-purpose spaces in our city. The benefits of the Complying Development pathway are that it would help to reduce start-up costs and lead times for small live music or arts venues to establish and operate, while increasing community access to the arts within the local area and allowing creative sectors to be more flexible and agile.

Council's Night Time Economy Study 2019 recognises that the lack of affordable small to medium sized creative space across metropolitan Sydney is a critical issue affecting the sustainability and viability of the creative sectors. This issue is echoed in the report "Anthology of Space Report" (K Glasscock 2019) which further identifies that retail space and vacant sites present a significant opportunity to address the shortfall in the supply of small-medium creative space, and if opened up to the creative sector, could contribute to a varied night life, and the revitalisation and diversification of the night-time economy.

In recognition of the challenges facing the creative sectors, Council's Comprehensive Planning Proposal proposes new Exempt Development provisions to allow small scale events and cultural activities to take place in existing office and retail space, subject to criteria on patron numbers (maximum 100 patrons), trading hours, noise and waste management. Notably, the proposed Exempt Development provisions have a specific requirement that any small-scale event or cultural activity must not cause an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.

The proposed Complying Development Provisions would suitably supplement Council's Exempt Development provisions, however the following issues require further consideration:

- **Noise management:** Complying development provisions need to suitably address potential land use conflict and noise issues as councils would have limited capacity to influence the location of these venues and manage these interface issues. In particular, the provisions require robust noise management requirements, as it is unlikely that shops and the like would be abated to the same standard as a fit for purpose small arts or live music venue. This issue is particularly critical given the proposed patron capacity is up to 350 people and the majority of shops and retail floor space in Randwick City are located on the ground floor of mixed-use buildings with residential above. It is therefore strongly recommended that the proposed Complying Development provisions include a requirement that any venues which provide amplified live music be required to meet mandatory and enforceable noise emission requirements. A condition should be imposed on any Complying Development Certificate for these development types, requiring submission of an Acoustic Report which demonstrates compliance with the Noise Policy for Industry, prior to commencing operations; and
- **Building requirements:** Meeting the requirements under the BCA may be difficult and costly to undertake in certain scenarios. For instance, making an existing shop compliant with relevant sanitary provisions of the BCA would in many cases require significant and expensive upgrading works.

Change of Use to Artisan Food and Drink Industries

The Fun SEPP proposes to permit change of use from light industrial uses to artisan food and drink premises under the Complying Development pathway. Artisan food and drink premises refer to small scale industries that make or manufacture boutique, artisan or craft food or drink products, such as bread, cheese, cured meat, coffee and alcohol with a smaller ancillary space for product sales, tastings, a restaurant or café. The artisan food and drink industry is a type of light industrial use and is permissible wherever light industry is permissible under the LEP.

While the provisions to allow change of use to an artisan food and drink premises are generally supported, the following comments are made:

- ***Zone interface and amenity:*** artisan food and drink premises located adjacent to or in proximity to residential zones have the potential to create unreasonable amenity impacts on residential and other permissible land uses by way of noise and odour. This issue is particularly pertinent given that the proposed provisions allow for 24-hour operations (for baking, fermenting and so on). In this context appropriate acoustic assessment of operations should be required where in proximity to sensitive receivers. These measures to protect residential amenity are important considering the proposed Employment Zone Reforms which are to be adopted by Councils in late 2022. The reforms permit light industry, including artisan food and drink premises, within the MU1 Mixed Use zone, which may result in amenity impacts on residential development within the MU1 zone if not appropriately managed;
- ***Parking requirements:*** industrial sites may not necessarily be designed to accommodate 100 patrons to a café that occupies up to 30% of the gross floor area; and
- ***Trading hours:*** The proposed hours of operation of 6am to 10pm are restrictive given that these premises would be mostly located in light industrial areas and as such are likely to have minimal impact upon residential amenity is noise and odour are managed appropriately as noted above. Moreover, many of these premises would be subject to a liquor licence under the Liquor Act 2007 whereby the standard trading hours are 5am-midnight. On the basis of these issues, it is recommended that the hours of operation be extended from 6am to midnight Monday to Saturday (unless adjoining residential land) and to 10pm on Sundays. These hours align with the trading hours for town centres in the Randwick DCP.

Food Trucks

The EIE proposes to retain the existing provisions of permitting food trucks as Exempt Development with added flexibility for land adjoining a residential zone by increasing the hours a food truck could operate in these locations. The EIE does not elaborate on the proposed trading hours for zones at the interface with residential areas. The current Exempt Development provisions allow food trucks to operate on land within or immediately adjacent to a residential zone from between the hours of 7.00am and 7.00pm on any given day.

The proposal to increase the trading hours for zones adjoining residential areas is not supported due to potential land use conflicts and noise issues. Furthermore, it is recommended that the existing provisions be amended to prohibit food trucks from serving alcohol or allowing for amplified music to maintain residential amenity and minimise noise conflicts and potential for anti-social behaviour.

Temporary and Community Events

The EIE proposes to remove potential duplicated approval processes for event organisers by clarifying that events on public/community land would not require a separate planning approval. Instead, approvals for events on public/community land would require council's approval under

section 68 of the *Local Government Act 1993*, which considers amenity, safety and potential environmental impacts. Furthermore, additional 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 proposals are supported on the basis that they would remove unnecessary red tape for events on public land. It is strongly recommended that provisions in the Codes SEPP be reviewed to ensure consistency with the Standard Instrument, incorporate separate definitions for the term 'community event' and 'private event', and to also provide optimum flexibility for stalls, stages and temporary structures associated with community events that are subject to an approval under the LGA 1993.

Filming

The EIE proposes to extend the number of days for filming and associated structures as Exempt Development, to be agreed with the landowner, filmmakers and council through a film management plan. These measures are supported, however it is recommended that guidance be provided around what constitutes a *significant interference with the neighbourhood* for the purpose of clause 2.114(b) of the Codes SEPP, so that effective management of impacts can be achieved through film management plans.

Please do not hesitate to contact [REDACTED] should you require any further information.

Yours sincerely

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