

Department of Planning, Industry and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2150

Submitted via Planning Portal

**Re: Liverpool City Council submission on 'Fun' SEPP Explanation of Intended Effect**

Thank you for the opportunity to provide feedback on proposed changes to State Environmental Planning Policy (Exempt and Complying Development Code) 2008 (Codes SEPP) as outlined in the 'Fun' SEPP Explanation of Intended Effect (EIE).

Council supports a more flexible and simplified planning process for our hospitality and arts industries which have been significantly impacted by the Covid 19 pandemic. The proposed changes will help to deliver a 24-hour economy that is vibrant, diverse, inclusive, and safe. This aligns with Council's vision for an 18-hour economy in the Liverpool City Centre in the next decade and a 24-hour economy by 2040, as outlined in Planning Priority 5 of the Liverpool Local Strategic Planning Statement 'Connected Liverpool'. To this end, the reforms will assist in the activation of sites across the City, through events and festivals, improve night-time activities and provide a lively environment for locals.

Whilst Council commends the objectives of the Fun SEPP, there is a need to balance environmental protection and economic development. Striking the appropriate balance will ensure impacts on residential amenity, human health and the environment are minimised.

If DPIE proceeds with the proposed reforms outlined in the EIE, it is requested that explanatory information and FAQ sheets regarding the changes are made available to the community.

Council's detailed comments are provided in **Attachment 1**.

Thank you again for the opportunity to provide feedback on these proposed changes. If you have any queries please contact [REDACTED], [REDACTED] or by email at [REDACTED].

Yours sincerely

[REDACTED]

[REDACTED]

## Attachment 1 – Comments

### Part A – GENERAL COMMENTS

#### 1. Land use conflict

The reforms will enable small scale venues and artisan food and drink industries in the business zones, which typically have a strong interface with residential land. Council supports the enabling of such venues to improve the vibrancy and amenity of communities. However, these uses may locate adjacent to or directly below residential development. In such circumstances, Council considers that appropriate consideration be given to potential residential amenity impacts and how they can be minimised through the complying development pathway, given these uses may generate noise, traffic and odour.

**Recommendation:** DPIE consider provisions to limit impacts to adjoining dwellings and those near small scale venues.

#### 2. Parking

Liverpool's population is largely reliant on private vehicle transport.

Council is concerned with the lack of parking requirements in the Fun SEPP given that these provisions will allow up to 300 patrons at small venues / events and 100 patrons within the café / restaurant component of an artisan industry. While Council acknowledges that often these venues operate / events occur outside of the typical business hours where parking capacity is limited, sufficient parking remains crucial for a successful venue in terms of its operation and the avoidance of impacts to the immediate locality.

**Recommendation:** Appropriate parking requirements be introduced based on location. It is acknowledged that parking requirements would not be appropriate where venues or events have sufficient access to public transport.

#### 3. Food premises

Although not stipulated in the Codes SEPP, any food business proprietor would be required to comply with the Food Act 2003 and Australia New Zealand Food Standards Code. Uses such as mobile food and drink outlets and dark kitchens are also required to notify their details to Council in accordance with Section 100 of the Food Act 2003.

**Recommendation:** Community information be provided to clearly identify where regulations apply in addition to the provisions of the Codes SEPP to inform existing and potential business owners and operators.

#### 4. Implications for Council's operational and regulatory roles

As discussed in Council's BBBB submission, local government play an important role in improving and preserving environmental health standards. In recent years, Councils

have assumed additional regulatory responsibility for matters under the Food Act 2003, Protection of the Environment Operations Act 1997 and Public Health Act 2010. Although these legislative and policy changes are made in isolation, they culminate into an increasing burden for local government which has finite resources for responding to a multitude of public health and environmental matters.

Once operational, local government authorities will have responsibility for the ongoing regulation of the exempt and complying development proposed as part of these planning reforms. The complying development approval process is intended for straightforward development and does not facilitate a thorough assessment of complex land uses. If not implemented carefully, this framework is likely to result in additional administrative costs and regulatory burden for local government authorities.

### **5. Notification and Complaints**

The changes proposed will limit the capacity of Council to influence both the geographical and operational details of a development. It is important to ensure the community are still granted the opportunity to raise valid concerns with any development arising out of the proposed reforms.

**Recommendation:** Council suggest complaints register arrangements be integrated into the proposed reforms to provide the community with an appropriate channel to raise concerns.

## **PART B – PROPOSED REFORMS**

### **1. Create a complying development pathway to allow a change of use of retail premises to small live music or arts venues.**

#### 1.1 Acoustics and hours of operation

Council typically requires development applications for extended trading hours and noise-generating activities to be supported by an acoustic report, in accordance with the Noise Policy for Industry 2017 and NSW Road Noise Policy 2011. Notwithstanding this, Council understands a key objective of the reforms are to reduce start-up costs for creative industries. To this end, Council would be supportive of an alternative approach to ensure noise impacts on adjoining uses are minimised (e.g., noise assessment completed at a precinct level). Council also notes that the nominated hours of operation proposed do not align with those typically adopted by industry.

**Recommendation:** Clear and concise provisions are included to mitigate against acoustic impacts. Council also suggests the nominated hours of operation be reduced for Monday to Wednesday nights and increased for Thursday to Saturday nights when extended trading is generally more prevalent and accepted.

#### 1.2 Licensed premises

The change of use provisions under Part 5 of the Codes SEPP stipulate that the new use must not include a pub. Clarity is sought regarding if small live music venues are

intended to include licensed premises. For a licensed premise, it is noted music and patron noise is typically assessed in accordance with the Liquor and Gaming NSW noise criteria. These applications are also supported by a Plan of Management to ensure that operational procedures are implemented to prevent potential impacts upon human health and the environment.

**Recommendation:** Clarification is provided as to whether a small live music venue can include a licensed premise. Further, Council requests that additional relevant requirements such as the Liquor and Gaming NSW noise criteria be specified in the provisions and community information material.

### 1.3 Development criteria

Council considers a proposed occupancy limit of 300 patrons to be excessive in some circumstances, particularly given the maximum floor area of a venue is restricted to 300sqm. It is suggested that insufficient detail has been provided regarding standing and seated restrictions. It is also considered that insufficient detail has been provided in relation to mitigating lighting impacts on adjoining uses.

**Recommendation:** The proposed limit of 300 patrons be reconsidered as appropriate. It is suggested that a patron limit could be categorised further for venues based on floor space. Additionally, it is requested that appropriate lighting restrictions to external areas are included within the proposed provisions to mitigate against impacts to the immediate surroundings.

### 1.4 Conversion of shop to small live music or arts venues

In the instance that a shop is converted to a venue, it is unclear if separate approval is required for the serving of food or drink. Council acknowledges that the majority of targeted uses stipulated in the EIE (live music, visual arts displays, dancing, poetry and spoken word performances) would generally include food and drink offerings.

**Recommendation:** Clarification is provided as to whether separate approval is required for the serving of food or drink.

## **2. Create a complying development pathway to allow a change of use of premises to artisan food and drink industry.**

### 2.1 24-Hours of operation

It is understood that 24-hour operations are proposed for the industrial activity (brewing, fermenting etc) without the need for an acoustic assessment. Council is reluctant to support a blanket approach to this and notes that typically 24-hour operations are only granted following a thorough assessment of the nature of the industrial activity, proximity to sensitive receivers, locality, and existing site conditions. Moreover, the provision may unintentionally allow future uses which locate on the same site via complying development to also benefit from these extensive hours.

**Recommendation:** That clear and concise acoustic provisions are included to limit impacts, such as those contained within the Noise Policy for Industry (2017), to help avoid adverse impacts of 24-hour operations.

## 2.2 Odour

Council currently requires development applications involving activities like coffee roasting to be supported by an odour impact assessment. The assessment must be in accordance with the Approved Methods for the Modelling and Assessment of Air Pollutants 2017 publication and the Technical Framework for the Assessment and Management of Odour from Stationary Sources in NSW 2006 document.

**Recommendation:** That clear and concise odour control provisions apply where in vicinity to sensitive uses to ensure potential air quality impacts are considered appropriately.

## 2.3 Tastings, tours and workshops

The criteria includes hours of operation for the restaurant / café and industrial activity. However, hours of operation for tastings, tours or workshops have not been included.

**Recommendation:** That the criteria include hours of operation during which tastings, tours or workshops may be held.

## **3. Make some of the COVID-19 emergency measures for food trucks and permanent.**

### 3.1 Consistency with Council Mobile Food Vehicles Policy

The Liverpool City Council Mobile Food Vehicles Policy 2017 has guided the operation of food trucks.

**Recommendation:** Council requests consistency with this policy be considered in the proposed provisions as follows:

- Mobile food or drink outlets within or immediately adjacent to residential zones remain restricted to operating between 7am and 7pm.
- A standard requiring compliance with the Protection of the Environment Operations Act 1997 be introduced, which contains provisions relating to the prevention of offensive noise, smoke, and odour.

### 3.2 Stationary mobile food and drink outlets

Council officers have identified concerns with stationary mobile food and drink outlets, which may generate considerable and consistent parking demand and essentially function as a semi-permanent business premises.

**Recommendation:** An appropriate length of time restriction is included to ensure that mobile food and drink outlets remain mobile in their operation.

### 3.3 Food safety regulation

Council currently applies the NSW Food Authority's 'Advisory Guideline for Enforcement Agencies Regulating Mobile and Temporary Food Businesses'. Food trucks are required to notify Council in accordance with Section 100 of the Food Act 2003. Compliance is also required with the Food Regulation 2015, the Australia New Zealand Food Standards Code, and the 'Guidelines for Mobile Food Vending Vehicles' published by the NSW Food Authority.

**Recommendation:** That the proposed provisions and supportive community information clearly outlines the regulatory framework that applies to food truck safety and operations.

## **4. Make some of the COVID-19 emergency measures for dark kitchens permanent.**

### 4.1 Street activation

Council supports the provisions proposed to enable local businesses to operate effectively, however requests several considerations be included to avoid unintended consequences on centres.

Land uses such as cafés and restaurants elevate local centres and play a key role in the activation of street frontages. This is reflected in the Liverpool Centres and Corridors Strategy which reflects upon the need for existing centres to display attractive public domains and retain uses within the hospitality sector. Council raises concern regarding the implementation of these measures on a permanent basis and how these will satisfy the objectives of the Fun SEPP and Council's own Centres and Corridors Strategy. It is suggested that these specific reforms may facilitate dark kitchens emerging within centres in a post COVID-19 setting.

**Recommendation:** That controls around public domain activation and hours of operation are included to limit impacts on traditional food and beverage offerings. Additionally, it is requested that controls are included to ensure safe and efficient pick-up and drop-off can occur for delivery drivers and riders.

## **5. Clarify the exempt development standards for temporary private and community events.**

### 5.1 Environmental impact

It is understood small and minimal-impact events up to 300 patrons on private land are intended to become exempt development. Council note that events of this scale can generate substantial noise, waste and traffic.

**Recommendation:** That additional provisions be provided to ensure events are located suitably (e.g., not within IN3 land or near sensitive land uses).

### 5.2 Notification

Council supports the inclusion of Council and neighbour notice requirements; however, concern is raised regarding the period by which notification is required and the scope of neighbours that must be notified.

**Recommendation:** The following changes are requested in relation to notification:

- The 7-day notification period to Council be extended to a 14-day period and require the submission of a waste management plan and site plan;
- The scope for notifying neighbours to be expanded to a wider radius as appropriate;
- Where appropriate and as dictated by the event or the site, a pathway for other relevant authorities to be notified should be established.
- That the provisions specify that events regarding road closures require a road occupancy permit and TfNSW may require a special event traffic management plan.

### **6. Extend the number of days for filming as exempt development.**

Council supports the removal of the 30-day limit for filming and associated structures. This will allow for longer productions that are economically beneficial to the LGA, through the provision of industry jobs, local suppliers, and services.