



24 November 2021

[Redacted]
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By email: [Redacted]

[Redacted]

Subject: Lake Macquarie City Council staff submission on Explanation of Intended Effect (EIE) - Fun SEPP

Thank you for the opportunity to comment on the EIE for the proposed Fun SEPP. This is a Council staff submission and any comments are provided from a staff perspective and do not represent a Council-endorsed position or comment.

Council staff support the continuation of COVID-19 business support measures to business as usual practice. Council staff support the initiative and believes these changes will result in improved economic opportunities for our local businesses.

Elements of the proposed Fun SEPP supported by staff include:

- supporting live music and performance artists through permitting performances in small venues
- permitting the continuation of outdoor dining for pubs and small bars
- continuation of measures to allow food trucks on both council and private land.

Whilst Council staff support the direction of the Fun SEPP, further amendments could be made or guidance provided to assist businesses and councils in ensuring these activities are consistent with other regulations including:

- requiring food truck operators to notify council or their local food authority of their operations when on private land
- making further changes to the events approval process or providing councils with additional guidance on event approvals to improve consistency across councils.

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Council staff provide detailed comments on the EIE in Attachment 1. Council staff welcome consideration of these suggestions to further support the proposed changes and ensure operators are able to easily comply with all regulations.

Should you require further information, please contact [REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

Attachment 1 – Staff comments on Explanation of Intended Effect for new Fun SEPP

Outdoor Dining

Staff welcome the proposed changes for outdoor dining. These changes reflect a pilot program undertaken by Lake Macquarie City Council which allowed cafes and restaurants to use on-street parking and Council-owned land for outdoor dining. The take-up was not as strong as expected and businesses noted that significant resources were required to expand their outdoor dining to use on-street parking without knowing whether this situation would continue beyond the length of the pilot.

Having this initiative become 'business as usual' will give businesses confidence to invest in additional furniture, equipment and staff. The changes to the liquor licensing timeframes having also been well received by businesses.

Small Live Music or Arts Venue

Council staff support in principle the introduction of a new complying development pathway to permit live music and performances. Staff recognise the importance the arts play in creating vibrant places. It is noted that the proposed changes apply to premises to be used as a small live music or arts venue in business or employment zones particularly in neighbourhood and town centres where 'shops' and 'food and drink' premises are permitted.

The proposed change not only gives artists new venue opportunities, but may help shop owners to find new purposes for shop-fronts in an economically challenging environment as retail demands reduce.

Staff note that there are concerns that this pathway may lead to an increase in complaints around noise, despite the proposed operating hours.

Whilst the maximum number of patrons of 300 in a space that is only 300m² is consistent with the BCA requirements, this number of people may be problematic in regards to noise attenuation and noise of patrons leaving the venue. Staff suggest the maximum number of patrons be reduced to 200 to assist with noise attenuation. Uses larger than this should require a Development Application to ensure noise is appropriately attenuated.

Council staff have raised concerns that a drum kit could be used as part of a live music performance. This noise generation is likely to have as great an impact as wood or metal cutting which is not permitted in this use. The use of drum kits that are not electric or muffled should be reviewed to ensure live music performance is feasible and not going to exceed noise restrictions.

Clarification around the calculation of floor space is also requested as it is not explicit as to whether this is gross floor area, or whether this also includes amenities, kitchen and back of house spaces (storage, office, change rooms etc).

These uses should be considered in the department's upcoming work on Special Entertainment Precincts, to help give surety to operators and the owners of the spaces that these activities will be viable and won't be stopped due to noise complaints. This could be through allowing greater flexibility of uses including; increased patronage and gross floor area, as well as permitting drum kits and more intensive creative arts activities.

Artisan food and drinks

Council staff welcome the proposed changes. Lake Macquarie has seen a number of producers make use of this land use for the purposes of opening breweries, distilleries and bakeries in industrial areas.

Allowing existing industrial premises to alter their use through a CDC is viewed as a low impact change in these areas.

Staff view artisan food and drink premises as a compatible land use for centres where the venue provides a restaurant/café or retail space. These uses will help keep our centres vibrant and attractive. However, the proposed trading start time of 6am is inconsistent with noise regulations and existing approval timeframes. It is suggested that trading hours start from 7am to match existing noise regulations.

Food Trucks and Dark Kitchens

Food Trucks

The number of food trucks has increased immensely in Lake Macquarie in recent times. At the start of the FY19/20 there were 10 operators using Council-owned land to trade. There are now more than 30 operators using Council-owned land, with a number of operators using private land.

There has been concern from the community about the impact of these operators on bricks-and-mortar businesses, however the rise in mobile vendors has led to new stores opening, plus an increase in local employment opportunities.

Environmental Health Officers have noted that mobile vendors who are permanently based on private land have not notified Council of their operation as required under the *Food Act 2003*. It is recommended that the controls in the *SEPP (Exempt and Complying Development Codes) 2008* include a requirement to notify the local food authority if they are setting up permanently to trade on private land. This is consistent with the requirements under the *Food Act 2003* and will address some concerns that

existing bricks-and-mortar vendors raise that mobile food vendors are not required to undergo the same inspections that they do.

Dark Kitchens

Staff welcome changes to support the operations of dark kitchens.

Staff have noted an increase in interest in the use of home kitchens as dark kitchens. Consideration to expand the proposed controls to home kitchens may assist with these enquiries.

Temporary Events

The proposed changes to temporary events aim to make the process clearer and easier for applicants and Council staff.

Whilst staff welcome the aim of these changes, it is recognised that the processes used to assess and approve events vary greatly between councils across NSW.

Staff at Lake Macquarie City Council are currently drafting an amendment to the *Lake Macquarie LEP2014* to permit events on Council land as exempt development for events that are under three days in duration, including set up and pack up (bump in and bump out).

These changes are proposed to delineate when an event should seek a Development Application (DA) to make clear to applicants, staff and the community the assessment process and expected impact an event may have.

The current planning controls and controls under the *Local Government Act 1993* do not provide this detail and can leave event organisers and staff unsure of the approval process events should follow.

Staff recommend that further work be undertaken to assist with the approvals process for events on council-owned land to ensure consistency across the state, which would give operators more confidence to host events in many local government areas, not just in areas in which they are familiar with the local council. This would also improve community confidence in the assessment process, ensuring consistency across all councils.

The proposed changes for events on private land are welcome and will assist staff in assessing whether a DA is required or if the activity is considered to be exempt development.

Filming

Staff welcome the changes to support the arts, television and film industries.