



24 November 2021

NSW Department of Planning, Industry and Environment  
Locked Bag 5022  
Parramatta NSW 2124  
Attention: [REDACTED]

Dear [REDACTED]

### **Explanation of Intended Effect for the new Fun SEPP**

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Thank you for the opportunity to comment on the *Explanation of Intended Effect for proposed changes under a new Fun SEPP*. Please note that the comments contained within this letter are technical officer-level comments only as the matter has not been reported to the elected Council.

It is understood that the proposed changes to the Codes SEPP outlined in the Fun SEPP are to support the outdoor hospitality, events and art industries recover from the pandemic and emerge from lockdown. This may allow these industries to use exempt and complying development pathways to help deliver a 24-hour economy that is vibrant, diverse, inclusive and safe.

Although the incentive to provide simpler planning processes and improve the overall flexibility and efficiency of the Codes SEPP may be appropriate following COVID-19 lockdown restrictions, there are concerns that the extent of the changes proposed may be incompatible with existing land uses and adversely impact the amenity for local communities.

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

- Concern is raised that permitting small live music or arts venues as complying development would not be appropriate in certain land use zones, particularly where shop top housing is permitted.
- A small live music or arts venue within the ground floor of a shop top housing development would trigger requirements for significant acoustic and fire separation measures. Approval under complying development is not appropriate for enabling detailed consideration and assessment of the impacts, risk, issues and necessary upgrades for shop top housing. It is recommended that small live music or arts venues should not be permitted as complying development on ground floors where the first floor has a residential use. Further, acoustic management requirements should be outlined to minimise interface issues.
- It is recommended that the following additional provisions should be considered prior to finalisation of the SEPP:

- A secondary exit from any floor above ground level (similar to early childhood centres) for proposed developments over two-stories;
  - Crowd management within a building to allow safe egress. In particular, where the change of use is proposed to be considered as a class 6 but does not include class 9b door requirements (panic bars).
  - Improved accessibility requirements for all proposed developments. Many existing shops do not have toilets or accessible toilets and have many inconsistencies with accessibility including threshold steps, non-compliant stairs, ramps, doors, continuous accessible path of travel (CAPT) etc. Where there are no works proposed the Disability (Access to Premises – buildings) Standards 2010 may not be triggered allowing for a public venue that has inadequate amenity and accessibility provisions.
  - Any proposed change of use within a shopping centre/mall should include accompanying documentation including a proposed fire safety schedule to accommodate impacts on performance solutions within a centre.
- It is noted that the complying development pathway limits the capability of local councils to effectively assess the location and possible interface issues related to these types of developments. Further, a complying development pathway would remove the application of Sections 93 and 94 of the *Environmental Planning & Assessment Regulation 2000* (EP&A Regulation) resulting in inadequate structural and fire safety components of a building not being assessed by Council. Reliance of this assessment will be wholly placed on the engaged private (or otherwise) certifier and section 129D of the EP&A Regulation. Historically Council has not received notification from certifiers under section 129D of the EP&A Regulation.
  - Further, it is recommended that details are provided to clarify certain planning controls and provisions including (but not limited to) floorspace, fire safety standards, food and beverage operation, seating and hours of operation.

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

- It is noted that 'Industry' is the parent definition for 'artisan food and drink industry'. Concern is raised as this type of land use may be permitted in LEPs in more land zones than outlined in the Standard Instrument LEP, resulting in compatibility issues within certain land zones, particularly acoustic, parking and other interface issues. It is recommended that acoustic requirements and assessment within the proximity to sensitive receivers and appropriate parking provisions are provided to accommodate estimated customers/patrons.
- Council's experience is that food premises approved under complying development often do not satisfy Australian Standards as private certifiers are generally not trained in food and drink premise inspections and the installation of kitchens. For artisan food and drink industries as complying development, it is recommended that the appropriate authority be required to inspect and add the property to their register for food/drink premises prior of occupation.

## **3. COVID-19 emergency measures for food trucks and dark kitchens to be made permanent**

### *Food Trucks*

- Concern is raised with the proposal to extend the permitted hours of operation adjacent to residential zones, due to the potential acoustic impacts and light spill from associated signage. It is recommended that land zone restrictions (particularly adjacent to residential zones) should be

considered prior to finalisation and maximum hours of operation without requiring approval be limited to 10pm to minimise interface issues.

- Mobile food trucks are the subject of a number of objections in Hornsby Shire as they remove trade from shop owners within commercial centres that pay rent. The proposed changes for food trucks outlined in the Fun SEPP would appear to be in conflict with the purpose of the changes to support business by increasing competition from operators with lower operating costs.
- It is also recommended that existing approval required to utilise food trucks on public land under section 68 of the *Local Government Act 1993* are retained.

#### *Dark Kitchens*

- Concern is raised regarding hours of operation for existing operators with DA approved conditions and hours of operation. It is recommended that exemptions from their existing approval should be limited.
- Concern is raised with Councils undertaking food safety inspections and environmental health checks, as some dark kitchens can be located within residences rather than traditional restaurants and cafes. It is recommended that further details be provided to outline the requirements for access and food health and safety inspections.
- It is also recommended that dark kitchens be required to display appropriate public notification signage and address active street frontages (where located) to enhance, rather than de-activate the streetscape.

#### **4. Exempt development standards for temporary private and community events**

##### *Proposed definition*

- It is acknowledged that the proposal to replace 'community event' with 'temporary event' definition may assist in providing a more suitable definition that better fits the purpose.

##### *Events on Council-Owned and Managed Land*

- It is acknowledged that the proposal to combine 'temporary use' and 'temporary structures' under one clause may assist in clarifying statutory interpretation moving forward.

##### *Events on Private Land*

- Concern is raised with the permitted capacity of events on private land (up to 300 patrons) and the resulting significant infrastructure, waste and acoustic impacts that it may have on the surrounding the area, particularly on sensitive receivers in close proximity.
- It is recommended that a waste management plan and structures plan be required to be provided to Council with notification of the event.
- Further, it is recommended that the notification timeframe to Council and neighbours is increased from the proposed 7 days to 14 days to provide suitable notice for all stakeholders.

#### **5. Extended filming days as exempt development**

- It is acknowledged that extending filming days as exempt development would maintain the ability for Councils to approve a film management plan to ensure public safety, environmental protection, traffic management and hours of operation.

Once again, thank you for the opportunity to comment and I trust that the comments raised above will assist DPIE with preparing changes for the Codes SEPP outlined under the Fun SEPP.

Should you require any clarification in relation to any of the matters raised, please contact [REDACTED] [REDACTED] during business hours.

Yours faithfully

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[REDACTED]

[REDACTED]

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