



[REDACTED]

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RR (CIS)

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Dear [REDACTED]

RE: SUBMISSION TO FUN SEPP EXPLANATION OF INTENDED EFFECT

North Sydney Council (Council) would like to thank the Department of Planning, Industry & Environment (DPIE) for the opportunity to provide comments in response to the Explanation of Intended Effect for the "FUN SEPP" which seeks to amend State Environmental Planning Policy (Exempt & Complying Development Codes) 2008 (Codes SEPP).

This submission has been prepared by Council staff and given the stage of the current electoral cycle, it has not been able to be formally endorsed by the elected Council.

Whilst generally supportive of the proposed changes to the Codes SEPP, particularly through increasing flexibility for small business to re-establish themselves post pandemic, Council has identified a number of issues which require further clarification, investigation and/or amendment.

OUTDOOR DINING

The proposal seeks to make permanent the current temporary permitting of outdoor dining on footpaths for pubs and small bars as exempt development. Whilst Council does not object to making these temporary controls more permanent, there appears to be differing standards for outdoor dining as exempt development whether it is located on footpaths, public land or private land.

Of particular note, is that for outdoor dining to occur on public land (i.e. not a road) or private land, the outdoor dining must not contravene an existing condition of the most recent development consent, other than a complying development certificate, that applies to the associated land use providing the outdoor dining, as it relates to hours of

operation, patron capacity, waste management, food safety and pollution control. No similar controls apply to outdoor dining on footpaths.

Having unrestricted operational requirements could lead to adverse amenity impacts, especially in locations where there are residents living nearby. Accordingly, an increased level of compliance with existing development consent conditions would ensure that there is no intensification of use which may result in adverse impacts on the wider community.

Council Recommendation:

1. ***That the exempt development criteria contained within Section 2.40D of the Codes SEPP be replicated within Section 2.40B of the Codes SEPP as it applies to outdoor dining on footpaths or public open space.***

SMALL LIVE MUSIC OR ARTS VENUE

The proposal seeks to introduce a complying development pathway for a faster and quicker approval for a change of use of shops and commercial spaces to small live music or arts venues.

The EIE suggests that such uses are a low intensity version of a “creative industry”, which is a sub-term of “light industry”.

One of the requirements of complying development is for the particular use to be permitted with consent in a particular zone. If these land uses are defined as a “creative industry” then they will be limited to those zones which permit “light industry”. Light industries are typically not permitted in business zones and would be effectively limited to industrial zones.

The intent of the identified uses are more aligned with the following definitions:

entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.

information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

Such uses are typically permitted within business zones and better reflect the intent of the proposed change.

Accordingly, further clarification is required in defining the proposed land use terms and aligning it better with a more appropriate group term, to ensure the intent of the proposal is actually achieved.

There is a presumed assumption that these uses are undertaken indoors. However, nothing would prevent the use of outdoor areas, if provided, to be used for amplified music which would create significant amenity impacts, if residential dwellings are located nearby. Accordingly, appropriate controls are required to ensure that all activities are conducted indoors.

Even if activities are undertaken indoors, there are no proposed controls to minimise any acoustic impacts from such developments. This is particularly important where the proposed activities are undertaken within mixed use developments or on land adjacent to residential zones.

Questions arise regarding the setting of a 300 person capacity limit. The arrival and dispersal of such numbers from a small venue, where located in close proximity to existing residential dwellings could result in adverse amenity impacts. Consideration should be given to lowering this capacity limit to 100 persons regardless of whether food or drink is provided.

Council Recommendation:

2. ***That the intended land use be introduced as either:***
 - ***a new stand-alone land use; or,***
 - ***incorporate the intended land use as an “entertainment facility” or “information and educational facility” or as a new subset of that land use term.***
3. ***That the setting of Acoustic Standards or compliance with appropriate Guidelines be provided to ensure that noise levels are minimised, especially in close proximity to residential accommodation.***
4. ***That the maximum permissible capacity to be, either:***
 - ***limited to 100 people; or,***
 - ***if the proposed 300 person limit be imposed, incorporate a buffer requirement to residential zones,***

to ensure that a large patronage to a particular venue at a residential interface do not cause adverse amenity impacts.

ARTISAN FOOD AND DRINK PREMISES

No objection is raised with regard to the creation of complying development pathway for artisan food and drink premises within the zones suggested and increasing the ability to sell ancillary products not directly made on site. These amendments are unlikely to create adverse impacts on the wider community.

One of the requirements of complying development is for the particular use to be permitted with consent in a particular zone. These land uses form a type of “light industry” and are generally limited to those zones which permit “light industry”. Light industries are typically not permitted in business zones and would be effectively limited to industrial zones.

The EIE suggests that artisan food and drink premises will be permitted in B1 and B2 zones. However, it is not proposed to mandate these uses as being permissible in these zones under the Standard Instrument LEP and therefore may not be permissible in these zones when the amendment comes into force.

Council objects to the permitting of artisan food and drink premises within the B1 and B2 zones, given that other forms of light industrial uses are prohibited in these zones under the Standard Instrument. The purpose of retaining this prohibition is to minimise

potential amenity impacts on residents within these zones, especially where the zoning applies to isolated sites within a residential setting.

There appears to be a discrepancy between the minimum floorspace requires as proposed and those for artesian food and drink premises under clause 5.4 of the SILEP. In particular, the SILEP states that a maximum of 67% or 400sqm of the gross floorspace can be allocated for retail sales, yet this is increased to 500sqm within the EIE. The proposed figure under the EIE should be reduced to maximum GFA of 400sqm to match the SILEP. No change to the percentage rate should be made.

Concern is also raised with regard to the proposed operating hours under the EIE, especially where 24-hour operations are proposed. It is suggested that a more restrictive approach be applied to the complying development pathway, with extended hours requiring the obtaining of development consent. For example, the base hours should be limited to 7am – 7pm Monday to Friday and 7am to 5pm Saturdays. This is particularly important where such premises are located at the interface with residential zones.

Council Recommendations:

5. ***That the intended land use be restricted to within industrial zones to ensure there are no adverse impacts on the amenities to residents living within the business zones.***
6. ***That the proposed maximum retail sales GFA be limited to 400 square metres, however, NO change is made to the 30% percentage rates of the GFA.***
7. ***That the businesses seeking 24-hour operation still be required to obtain development consent through the development application process.***
8. ***That the operation hours for ancillary retail activities be limited to 7am-7pm weekdays, and 7am-5pm Saturdays.***

FOOD TRUCKS

It is proposed to increase the permitted operating hours of food trucks within Residential zones. However, there is no indication as to what the new hours are.

Food trucks are currently permitted to operate until 7pm in a Residential zone. Council does not support the increasing of operation hours within residential zones, due to the potential for increased amenity impacts on residents in these zones. It is unclear why such an increase is required, given that food trucks are more likely to target locations where there are higher number of patrons such as commercial centres and major public spaces.

Council Recommendations:

9. ***That no change be made to the operational hours of food trucks within residential zones.***

DARK KITCHENS

Whilst there is no specific objection to the continued operation of dark kitchens per-say, there could be some unintentional amenity impacts that may need to be addressed as

we return to a new normal. In particular, there is potential for existing businesses to be operating more intensely than before COVID (i.e. now dine in, home delivery and takeaway versus just dine in pre-COVID). In addition, there is a need to ensure that Dark Kitchens do not result in the de-activation of street frontages especially in business zones.

Council Recommendations:

- 10. That where dark kitchens are proposed, that they form an ancillary component of a restaurant or café, such that it does not lead to the de-activation of street frontages.***

TEMPORARY EVENTS

Council strongly supports the combining of exempt provisions that cover both the temporary event itself and the erection of temporary structures associated with that event. Council has been actively promoting such an amendment since at least 2015.

In relation to public events on public land, there appears to be little to no control other than reliance on existing Plans of Management. However, if the Plan of Management does not specifically enable the public event, there would be a significant delay in amending that Plan of Management to allow any event to occur. Similar issues could arise if there is no council policy regarding events. Standardised exempt requirements for all temporary events on public land in all LGAs could avoid this unnecessary step and would be the preferred approach.

The EIE also seeks to create a new pathway for private events on private land to be undertaken as exempt development. The initial set of suggested controls is generally supported. However, amenity issues may arise where events are held on land zoned for or on land adjacent to land zoned for residential uses. Consideration could be given to using buffer controls and or additional amenity criteria addressing noise, waste and traffic etc.

Council Recommendations:

- 11. That standardised exempt requirements be provided for all temporary events on public land in all LGAs.***
- 12. That buffer controls to be provided for private events on private land. This ensures that the adjacent and neighbouring residential properties are not adversely impacted.***

FILMING

The EIE proposes to remove the current restriction on the number of days that filming can occur on a property as exempt development. Whilst Council supports this proposal over private land, it cannot be supported where it applies to public land. Public land should be predominantly reserved for the use by the wider public for the majority of its time. It is suggested that the restriction be increased from 30 days to 100 days where it applies to public land which would ensure a more equitable use of land.

Council Recommendations:

- 13. That the existing 30-day limit be extended to a maximum of 100 days and not left unrestricted.**

There is a distinct lack of detail within the EIE to determine what implications could ultimately arise out of the future provisions, especially in light of Council's submission and possible other submissions. It is therefore also requested that a draft version of the actual proposed amendments to the Codes SEPP be released for public comment prior to the finalisation of any such amendment.

Council would again like to thank the DPIE for its involvement to date and welcomes the opportunity for continued involvement in the review of the Codes SEPP. If you have any further queries please contact [REDACTED] [REDACTED]: [REDACTED]

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