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Submission to the Fun SEPP Explanation of Intended Effect

Thank you for the opportunity to comment on the Explanation of Intended Effect (EIE) for the Fun SEPP and changes to support outdoor dining, events, and small live music or arts venues.

The City supports the intent of these changes which align with its long-term commitment to the night-time and cultural sectors and addressing the significant challenges that creative and cultural businesses face from Covid-19.

The proposals also reflect the intent of the City's work since 2015 to progress its Open and Creative planning reforms. These reforms aim to reactivate the night time economy and remove regulatory burden from shops and businesses wanting to trade later, provide alternative venues for temporary small scale cultural activities, allow a greater range of creative uses in local centres and facilitate the fair management of entertainment sound.

While the overall intent to create a vibrant, diverse and safe 24-hour economy through a streamlined planning process is supported, the Fun SEPP proposals could be further improved to create greater certainty for the arts and culture sector and protect local amenity. These important improvements are outlined in this submission.

The City and other NSW councils will play a significant role in addressing implementation and compliance issues arising from the proposals, particularly those which make permanent changes through the complying development pathway for the use of shops and food and drink premises. The drafting of SEPP provisions and conditions that will be placed on Complying Development Certificates will be critical for the successful implementation of the proposals.

Key recommendation

Given the City will be involved in implementing the proposal and managing compliance issues associated with impacts on local amenity, it requests further consultation on the final drafting of the Fun SEPP and any conditions that are proposed for inclusion in its Schedules.

Support for the outdoor dining trial becoming permanent across the LGA and protection of local amenity

The proposal to make the trial of outdoor dining as exempt development for small bars and pubs permanent across the LGA is supported. This initiative has been successful in helping local businesses begin their recovery from Covid-19, reactivating the city's day and night-time economies and creating safe and amenable places and streets in which to eat, drink and socialise. Public areas made available for this purpose should be taken up and used, otherwise they should revert to their previous use.

Ensuring the complying development pathway provides certainty for the operation of small live music or arts venues and protects local amenity

The City supports the proposals which will encourage new small live music or arts venues and will complement the City's Open and Creative proposals to reuse retail, office, community, warehouse, and business buildings for temporary venue space for small-scale cultural uses. It is hoped that the City's proposals will soon be finalised by DPIE.

The proposal to allow suitable shops or food and drink premises to become small live music arts venues is supported in principle. Opting for a complying development pathway allowing a permanent change to the land use, makes it critical that the appropriate criteria and operating conditions are set to give clarity to operators and to the community. However, if a specific condition in an existing consent requires a DA for the intended use of space, this should not be overridden.

There is insufficient detail in the Explanation of Intended Effect for Council to understand the implications of the proposal, its geographical spread and how it will work in practice, particularly for monitoring and compliance activities.

Recommendation

Councils need to be consulted on the drafting of both the SEPP and relevant conditions to ensure that greater certainty is provided to venue operators about their proposed operations. This will allow Councils to understand the implications for monitoring and compliance.

In refining the proposals, further consideration should be given to the following matters:

- (1) Restricting the proposals to application only in certain zones to manage amenity impacts. Shops and food and drink premises are located throughout a range of zones including the R1 Residential and B4 Mixed use zones. Many of the City's B4 zones, for example in Green Square, Surry Hills and Chippendale include a significant amount of residential development and character.
- (2) Amplified music, at any time during the day and evening may have the potential to cause impacts on neighbours, and so should only be allowed as complying development in areas with a non-residential character where there is an expectation that this type of noise and activity will occur.
- (3) Clarity about how the impacts of entertainment sound will be addressed. It is unclear whether the offensive noise provisions under the *Protection of the Environment and Operations Act 1997* will be the only control applied, or whether standard conditions will be able to be imposed which set noise level limits and require the installation of noise mitigation measures. Despite only occurring until 10pm Monday-Saturday and 8pm on Sunday, the absence of noise control for an

event using amplified sound and attended by up to 300 people has the potential to impact neighbours and become a significant compliance matter. Conditions should limit the impact on surrounding amenity from amplified sound and the Department of Planning, Industry and Environment should provide guidance on how to comply with these conditions. Where an existing condition of consent require a separate DA for a particular space, these should stand.

- (4) Inclusion of education, seminars, rehearsals, exhibitions, and multi-use spaces in association with arts and culture – The definition of arts and culture in the SEPP should include teaching and discussion, exhibitions and multi-use arts spaces (without fixed machinery). This will extend the opportunity for operators who host art and culture seminars, training, talks, or exhibitions to use shops and food and drink premises as alternative venues. The extension of the defined activity to include these and other creative activities that can be programmed during the day will be important to ensure that converted premises remain activated. Premises that are only utilised during the evening and remain vacant during the day can undermine the vitality of high streets and mixed-use business areas.
- (5) Limitation to 50 patrons if food and drink provided - This limitation seeks to minimise impacts of events larger than 50 patrons serving food and drink without a Development Application. This cap may however discourage the uptake of the provision by making some performance events unviable.

Recommendation

The proposal for a complying development pathway for the conversion of shops and food and drink premises to live music, arts and culture venues with up to 300 patrons should:

- not be applied to the R1 General Residential and the B4 Mixed Use zones
- only permit proposals requiring amplified music in zones with an established non-residential character, including business, enterprise and industrial zones
- include teaching, seminars and rehearsals in association with a cultural activity
- include information about how noise from live music and arts venues will be addressed through the complying development pathway, for example conditions with noise limits and/or the offensive noise provisions under the *Protection of the Environment and Operations Act 1997*

Ensuring that impacts of dark kitchens protect local amenity

The proposal to allow dark kitchens to continue to provide flexibility for retail food outlets to cook and deliver food to their customers on a temporary basis in response to changing circumstances, is supported in principle. It is understood that the Ministerial Order allows dark kitchens in association with a community facility, premises that operates as a cooking school, food and drink premises and function centre if they are authorised or have a development consent.

The City supports the hours of operation for dark kitchens being aligned with the hours included in the current development consent for the retail food outlet or from 7am to 10pm where there are no hours of operation specified.

A permanent change of use to a dark kitchen (from Class 6 to Class 8) could avoid the assessment of fire safety and structural adequacy and a need for building upgrades. To address potential unacceptable outcomes and to ensure long-term clarity in terms of

building classification under the BCA, the SEPP should prevent a permanent change of use to a dark kitchen operation with 100% off-site sales by way of an appropriate development standard.

Recommendation

The SEPP should include development standards which ensure that:

- dark kitchens which are not visible from the front of a property display business identification signage so that Council can identify these operations for compliance purposes
- increased vehicle movements associated with food delivery do not cause adverse impacts on the locality; and
- the dark kitchen does not become a permanent change which may avoid required upgrades and have unacceptable impacts.

Ensuring that food trucks do not affect bricks and mortar businesses

The City supports the operation of food trucks and has included an exempt development provision in Sydney Local Environmental Plan 2012 which allows food trucks to operate without development approval provided they are consistent with the City's Local Approvals Policy. The Local Approvals Policy manages impacts on local amenity and established businesses.

Ministerial Orders provided flexibility for the operation of food trucks during the Covid-19 lockdown when some established food and drink businesses were closed. The continuation of the relatively unrestricted operation of food trucks post lockdown when these bricks and mortar businesses are open is not supported because of impacts on business viability and local amenity.

The City receives complaints from businesses that food trucks park on the public road, outside established food and drink premises and take their customers. Other complaints received by the City about the normal operation of food trucks include illegal parking, odour, waste and noise from motors, mechanical plant and customers congregating on the footways or open spaces.

Recommendation

To prevent impacts on established businesses, and align with the City's approval policy, the Fun SEPP should require that food trucks:

- not trade within 50m of an existing takeaway food or drink premises open for business that is serving the same or similar food types. This minimum distance requirement is measured in a straight line from 50 metres of any boundary of the any food and drink premises to the closest point of the Mobile Food Vending Vehicle
- not trade directly in front of any residential building (house or apartment) or buildings that contain residential premises (mixed use sites) on the same side of the road as the building frontage
- not dispose of garbage at public garbage bins and ensure that it is collected and contained until disposal at the nominated commercial kitchen can occur
- provide a suitable receptacle outside the vehicle for depositing of take away food containers and other litter

- do not dispose of garbage generated within the vehicle at public bins. It is to be collected and contained until disposal at the nominated commercial kitchen can occur
- any waste produced by the mobile food vending vehicle must be removed from the site by the operators at the end of the trading period
- liquid waste (including waste water) must not be discharged to the ground or in the stormwater drain.

Ensuring effective change for temporary events on Council land

The City is concerned that the proposals for temporary events on Council land do not streamline approvals any further than the current situation in the Codes SEPP.

The City already has an exempt provision in Sydney LEP 2012 which allows the temporary use of Council land for community events for 52 days a year. The exempt provisions in the Codes SEPP however place restrictions on the size of associated stages and marquees meaning in practice a development consent is required.

For examples the following provisions in the Codes SEPP require DAs:

- Division 2: Subdivision 11; Temporary event signs - 2.102 and 2.103
This code restricts the size, scale, and type of temporary event signage on site to levels that are often unduly restrictive for events. This includes the limitation of any sign to be no greater than 6 square metres in size and the prohibition of illuminated event signage which unduly hinders after dark activations designed to benefit the night-time economy.
- Division 3: Subdivision 7: Tents, marquees, or booths for community events – 2.119 and 2.120 This code restricts the floor area of a tent, marquee or booth to no greater than 300 square metres, whether as a single structure or cumulatively across all such structures throughout an event site. This restriction means that many low impact events such as community markets or cultural events that may use several smaller marquees require development consent for the tents or marquees, despite the temporary event use itself being exempt on Council land.
- Division 3: Subdivision 9: Stages or platforms for community events - 2.123 and 2.124. This code limits exempt stages or platforms for community events to no greater than 50 square metres floor space and not greater than 2 metres from the ground. Staging for many community events is often larger than 50 square metres while not resulting in impacts on the land or local amenity. Such structures can be appropriately managed through standard local government approvals under Councils assessment and licensing processes.

If the Fun SEPP is to make it easier for Councils to provide community events, a corresponding change to the Codes SEPP should be considered. This should remove the requirements for development consent for a single stage or a cumulative number of marquees, booths or tent structures which are needed for these events on Council land.

Recommendation

Include a change to the Codes SEPP to allow:

- illuminated signs for temporary events

- staging over 50 square metres and less than 300 square metres per stage to be exempt development
- tents or marquees over 300 square metres and less than 400 square metres per structure to be exempt development with no prescribed cumulative limit across multiple structures

Ensuring that adequate notice of temporary events on private land is given to residents

The proposed exempt pathway for temporary events of up to 300 patrons on private land requires the notification of adjacent residents 7 days prior to the event. This may not be sufficient to allow for temporary alternative arrangements to be made. This notification period for temporary events on private land should be increased to allow residents the option to make any necessary alternative arrangements.

Recommendation

Increase the notification period for temporary events on private land to 14 days prior to the event.

To speak to a Council officer about this submission, please contact [REDACTED]

Your sincerely

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