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30 November 2021

Dear Department of Planning, Industry and Environment

## **SUBMISSION – FUN SEPP - EXPLANATION OF INTENDED EFFECT**

Please find attached Wollongong City Council's submission on the Explanation of Intended Effect (EIE) for the proposed Fun SEPP. The submission has been produced with the input of Council staff across various divisions and has not been endorsed by Council.

A summary of the feedback from Council on the EIE is provided as follows:

- Generally, Council officers are supportive of the principles outlined within the EIE, but further clarification on a range of matters is required so they are not misconstrued or misappropriated by the user;
- Council requests a variety of worked examples and case studies to ensure that our assessment processes and the integration of the proposed SEPP reforms runs smoothly, achieving the best outcomes for both council and the community;
- Council does raise concern with the lack of clarity and flexibility currently afforded to mobile food and drink outlets. Whilst there are clear benefits to making trading easier for these businesses, the impact on residents and surrounding businesses needs to be addressed.

Council looks forward to seeing the draft legislation and providing further input into the process.

Please contact me should you require further information.

**This letter is authorised by**

[Redacted Signature]

## Explanation of intended effect (EIE) - Fun SEPP – October 2021

| Consideration | Comment |
|---------------|---------|
|---------------|---------|

### OUTDOOR DINING

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| <p>Trial of fast-track outdoor dining approvals</p> <p>Making the trial permanent</p> | <ul style="list-style-type: none"> <li>• Council notes the trial that allow pubs and small bars to have outdoor dining on the footpath as exempt development has been made permanent.</li> <li>• Council suggests that in future review of the Codes SEPP, that consideration is given to also providing minimum dimensions, road safety specifications for barriers, clarify acceptance of permanent vs temporary location of furniture, provision of entertainment and varied hours of operation related to zoning.</li> </ul> |
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### SMALL LIVE MUSIC OR ARTS VENUES

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| <p>Changes to the Building Code of Australia and Codes SEPP</p> <p>What do you think?</p> <p>Are the proposed development standards for building, fire safety and amenities appropriate for this use?</p> | <ul style="list-style-type: none"> <li>• Council is supportive of the changes in principle and enabling small live music or arts venues to be approved as complying development.</li> </ul> <p>Council supports the proposed assessment criteria outlined in the EIE and also note the following matters for consideration.</p> <ul style="list-style-type: none"> <li>• Clarification of which land use definition is applicable for small live music or arts venues. This may have implications for related outdoor dining (as exempt development).</li> <li>• With a view to limiting impacts on sensitive receivers and clustering like venues, consideration should be given to limiting this approval pathway to certain land use zones e.g. business zones.</li> <li>• Consideration needs to be given to acoustic impacts of live music venues where in close proximity to sensitive receivers and residential zones.</li> <li>• Consideration needs to be given to parking, servicing and loading needs of live music venues and ensuring the proposed sites are capable of accommodating the new use.</li> </ul> |
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### ARTISAN FOOD AND DRINK INDUSTRY

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| <p>Change of use to artisan food and drink as complying development</p> <p>What do you think?</p> <p>Do you think the proposed changes strike the right balance for the</p> | <ul style="list-style-type: none"> <li>• Council is supportive of the changes in principle, and enabling Artisan Food and Drink (AF&amp;D) Industries to be approved as complying development.</li> </ul> <p>Council supports the proposed assessment criteria outlined in the EIE and also note the following matters for consideration.</p> <ul style="list-style-type: none"> <li>• Regarding licenced premises, has the safety aspect of creating potential night time precincts in low activity areas been considered e.g. industrial estates?</li> </ul> |
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uses in these locations?

- Car parking impacts are often attributed to group tastings for breweries, distilleries and alike. It is noted that light industrial warehouse type buildings typically offer minimal parking.
- Council requests clarification as to whether outdoor dining (as exempt development) is available to the food and drink component of these premises.
- Since the commencement of the AF&D industry land use definition, Council has noted several examples of businesses with interface with residences and subsequently received complaints related to noise and car parking. This is largely due historic integration of residential and industrial development/zoning in Wollongong. These incidences are likely to increase should this reform proceed.
- Council requests some clarification of when assessing a complying development certificate application, what are the reasonable matters of considered in considering the capacity of an AF&D industry, and whether this capacity will include outdoor dining areas.
- Council will need to consider potential future change to AF&D industry in consideration of assessment of light industrial uses.

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## MAKING SOME TEMPORARY COVID-19 MEASURES PERMANENT

- Council has a number of concerns with the proposed plan to retain the increased flexibility of operations of Mobile Food and Drink Outlets provided under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) and related ministerial orders.
- Council is receiving an increased number of complaints about these businesses, particularly since the ministerial order was put in place allowing business to trade without restriction into the early hours of the morning.

The main impact of these semi permanently sited businesses is on residential amenity, and generally include:

### Food trucks

- o noise from exhaust systems, food service operations, cars coming and going, music etc,
  - o odour from cooking,
  - o smoke from charcoal,
  - o antisocial behaviour,
  - o litter,
  - o traffic and pedestrian safety,
  - o improper wastewater disposal, and
  - o lack of toilet facilities.
- These food businesses also tend to undermine the viability of fixed “bricks and mortar” food businesses who have suffered greatly due to covid restrictions and are working to re-establish their businesses. Council continues to receive complaints from frustrated local

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food business operators upset that mobile food businesses are, for example, setting up in the same carpark where their business is situated, or directly across the road, and selling the same or similar food products.

- It would assist Council if the Codes SEPP provided increased clarity to define what “mobile” means in the context of a Mobile Food and Drink Outlets.

Due to the ambiguity in definition, we have several Mobile Food and Drink Outlets permanently sited at locations in our city. These vehicles often comprise registered towable food vans, which do not come and go on a daily basis and in many cases are unable to be readily moved at all, with various attachments that render them fixed, such as timber screening, advertising boards, protruding exhaust systems, metal skirts affixed to the base, gas bottles permanently installed to their exterior, festoon lighting etc.

The Codes SEPP is not clear on the length of time a vehicle can stay at a single site and be deemed exempt development. Towable food vans or food trucks used at one site and not actively mobile, whilst technically capable of being mobile, in our view do not have a minor impact and are contrary to the intention of the Mobile Food and Drink Outlets activity.

Many of these businesses include ancillary structures such as marquees, storage sheds, tables and chairs etc. As such the Codes SEPP should make clear that any such business should be limited to a single self-propelled vehicle and not include any ancillary structures at all.

Related to the semi-permanent siting of these businesses, Council also notes that food safety issues have been arising from the improper storage of food in ancillary structures such as cool rooms and garden sheds.

- Council’s recommendations are that the Codes SEPP is explicit that vehicles must not remain in the same location for longer than a specified period (e.g. - one day) without development consent.
- There is also concern around the potential for mobile food outlet to become licenced venues and operate as “mobile small bars”. The Codes SEPP needs to provide clarification on the licensing of these outlets and whether this constitutes exempt development.
- The zone specific restriction in the Codes SEPP should be retained. Specifically, the 7am to 7pm restriction in or adjacent to residential areas should not be altered in the Codes SEPP and the Ministerial Order should be revoked or modified to remove address this exemption.

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**‘Dark kitchens’ —  
takeaway and  
deliveries from  
existing food and  
drink premises and  
commercial  
kitchens**

- It is understood that the proposal is that existing food and drink premises may operate as ‘dark kitchens’ (food and drink sold and consumed off site).
- What requirement is there for premises to do so only on a temporary basis – that is, not continue to operate in this way permanently? This question relates to a concern that food and drink premises in town centres may convert to ‘dark kitchens’ and never re-open in their previous form – potentially contributing to reduced active hospitality businesses and inactive streets.

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## TEMPORARY EVENTS

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| <b>Temporary events on council and private land</b>          | <ul style="list-style-type: none"><li>• Council is supportive of the improved clarity in the interpretation of the Codes SEPP with regard to events. Council also generally agrees with the proposed limitations listed in the EIE. Council also notes several matters for consideration in developing the provisions.</li><li>• Requirements and controls may vary across land use zone e.g. longer hours, more frequent events allowed in business zones as opposed to residential zones etc.</li></ul>  |
| <b>Council-owned and managed land</b>                        | <ul style="list-style-type: none"><li>• Appropriate licencing of temporary food vendors at events.</li></ul>   |
| <b>Private land</b>  | <ul style="list-style-type: none"><li>• Clarity will need to be provided with respect to service of liquor at events.</li></ul>  |
| <b>Major events sites — additional temporary development</b> | <ul style="list-style-type: none"><li>• Event organisers required to undertake appropriate consultation with key State Government agencies (e.g. TfNSW, NSW Police, NSW Ambulance, NSW Health) and surrounding residents. This should be not left to Council to resource, which may result as part of proposed notification requirements in the EIE.</li></ul>   |
| <b>Proposed definition</b>                                   | <ul style="list-style-type: none"><li>• There should be clear provisions around sound and amplification, noting that all sites are different, and requirements &amp; expectations may vary across LGAs due to density and topographic differences. For example, a review of Wollongong’s event approval process suggests by comparison historically Wollongong Council tends to approve acoustic levels that are slightly higher for events than other LGAs, noting that in many cases we have more separation from dense residential dwellings.</li></ul> |
| <b>Additional comments</b>                                   |  |

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## FILMING

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|                           | <ul style="list-style-type: none"><li>• Council seeks clarification on whether under the proposed reform that there would be no limit applied to exempt filming on both private and Council Land? Given the high usage of many Council owned lands to date, there would need to be some way of managing the inconvenience to the public.</li></ul> |
| <b>Supporting filming</b> | <ul style="list-style-type: none"><li>• Continued consideration of impact on heritage and environmentally sensitive lands is supported.</li><li>• Changes in filming technology and potential privacy impacts need to be considered in the reforms.</li></ul>  |

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