#E2021/145677

30 November 2021

[redacted]

Byron Shire Council submission DRAFT FUN SEPP.

Thank you for the opportunity to provide feedback on the draft Fun SEPP (SEPP).

Byron Shire Council generally supports the principles of *"supporting small businesses and delivering a 24-hour economy that is vibrant, diverse, inclusive, and safe*" as per the SEPP with conditions.

As exhibited, the SEPP reads as planning legislation perfectly suited to a metropolitan context that can be applied with ease and purpose to meet its principles – but is without sufficient regard to its application to rural and regional areas which for the main have poor infrastructure, locational restrictions, and potential amenity and cumulative land use impacts on neighbours that metropolitan areas do not.

This raises significant concerns for a council such as Byron Shire, which is a highly sought-after location for filming, events, and other activities, which will be further allowed under the SEPP as exempt and complying development. Our recent experiences with filming on private land exemplifies the conflicts and contradictions of this.

By definition:

- exempt development is minor and low-impact development that can be carried out without the need for approval if it meets predetermined criteria.
- complying development is a fast-tracked approval process for straight-forward development where planning and building standards can be signed-off by council or an accredited certifier.

The changes proposed in the SEPP are to '*allow for later, longer and smaller events popping up in more and new locations'*. It is questionable then, as to whether what results on the ground because of the SEPP provisions, is in fact exempt and or complying by definition, given the differences between metropolitan and rural regional areas.

This is an ongoing challenge for councils as state policy reforms and amendments are rolled out without proper acknowledgement of the differences between metropolitan, rural, and regional areas. Policy nuances are necessary upfront and not as an afterthought.

ALL COMMUNICATIONS TO BE
ADDRESSED TO THE GENERAL MANAGER
PO Box 219 Mullumbimby NSW 2482 (70 Station Street)
E: council@byron.nsw.gov.au
P: 02 6626 7000 F: 02 6684 3018
www.byron.nsw.gov.au ABN: 14 472 131 473

A further point of concern for Byron Shire is the likely compliance burden that will result from expanded and more intense land uses permitted under the SEPP. This concern is raised on the back of the recent removal of councils ability to charge an enforcement levy on development applications to support compliance and enforcement resourcing for the purpose of protecting local environment and amenity from non-compliant, and unauthorised development. The bulk of the enforcement and compliance work of Byron Shire at present is the result of non-compliance and unauthorised development where exempt and complying development has been taken too far.

Byron Shire believes that further refinement, clarification, and or deferral of the proposals in the SEPP is needed. To this aim, the following feedback is provided, and it is hoped it will be taken into consideration and addressed prior to the SEPP being expedited to notification.

Regards

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PROPOSAL	RECOMMENDATION	COMMENTS
make permanent the trial that allows pubs and small bars to have outdoor dining on the footpath as exempt development	conditional support	• provided an approval is still required under the Roads Act for footpath dining.
create a complying development pathway to allow a change of use of retail premises to small live music or arts venues, including developments standards and variations to the Building Code of Australia	conditional support	• no acoustic measures or requirements are specified. There is a need to consider acoustic management (appropriate dB & hz bass frequency) – many buildings would not have soundproofing to the same degree as a live music venue. • also need to consider that there are many adjoining residential properties (e.g. over a ground floor shop). • land use compatibility issues may be significant and therefore fall outside exempt and or complying development. • high probability of issues with compliance and regulatory enforcement because councils would have limited capacity to influence the location of these venues and manage these interface issues (as this is a complying development pathway). • needs clarification as to DA requirements if venues want to operate beyond standard hours specified in the proposed complying development pathway. • needs clarification as to whether patrons are seated for performances, or are dancefloors permitted? • needs clarification re food, beverage/small bar operations concurrent would be considered complying development or require a development application – most live music and arts venue require a food and drink offering for viability. • concerns re capacity - 300 is potentially too high – what are numbers reliant on? floorspace? Fire safety standards? Car Parking for patrons? • noting liquor licence still required; changes to outdoor dining on road reserves to include liquor licencing over those areas potentially should not be encouraged.

create a complying development pathway to allow a change of use of premises to artisan food and drink industry in certain circumstances, including development standards	conditional support	• light industries are permissible in more zones than are specified in the Standard Instrument LEP (and mentioned in the LEP):
		  ○ some councils will have in their own LEPs permitted light industries in more zones
		  ○ may allow councils to opt in, so the SEPP only applies to certain LGAs or parts of LGAs.
		• light industries are not explicitly prohibited in several zones, including mixed use. Interface issues may arise which could be concerning to some councils, as therefore technically a brewery could be approved on the ground floor of a large-scale mixed-use development.
		• need for an acoustic assessment of operations where in proximity to sensitive receivers – particularly due to the proposed allowance of 24-hour industrial operations.
		• council would likely support proposed minor changes to industrial retail outlet being allowed to sell auxiliary products associated with their primary industry manufactured on site. E.g. allow sale of coffee cups not manufactured on site at a coffee roaster
		• light industry is likely to have much less impact on the surrounding area as per the definition "means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil, or otherwise"
		• artisan food and drink likely to require more parking facilities as it is open to the public whereas a light industry is not – parking requirements need to be considered especially in light of a factory unit may only have limited parking allocated to it (e.g. 1 space per 100m2). That is - where do patrons park when visiting such a venue.
		• the SEPP should require compliance with Council's DCP provisions for car parking otherwise this will likely exacerbate existing parking issues. This would be particularly problematic in the Byron Shire's Industrial Estates.
		• concern that it would likely be easier to get approval for a light industry and then change to artisan food and drink as complying

		development, compared to a DA for a new artisan food and drink premises – is this the intention of the changes, and if not, could it be mitigated? • potential for Artisan Food and drink premises operating more like a licensed venue (e.g., a Pub) than a light industrial use. We have examples of this occurring already on the North Coast. A cap on patron numbers is recommended (e.g. 10-20) and a restriction on hours of operation (e.g. 9am to 5pm for "tastings" and tours). • should not extend to rural or conservation zoned land.
make some of the COVID-19 emergency measures for food trucks and dark kitchens permanent	conditional support	**food trucks** • existing approvals required for food trucks to operate on public land (under section 68 of the Local Government Act 1993) must be maintained. • strongly suggest maximum hours of operations without needing approval is capped – e.g. at 10pm due to acoustic concerns. (On public and private land?) • same 10pm cap should apply to where a food truck is operating near a residential zone. • check zone restrictions on where allowed – need to include impact on residential areas. **dark kitchens** • concern re hours of operation of dark kitchens – exemptions from approval should be as far as their current approved DA allows. • needs clarification as to how and when councils undertake food safety testing and environmental health checks of dark kitchens. • noted inconsistency with the proposed SEPP and requirements of the Local Government Act regarding lease or licences for use of community land for a dark kitchen – Council may grant a lease or licence for use of community land for prescribed events listed in clause 116(1) Local Government (General) Regulations 2021 (NSW) ('LGR') that includes trade or business. Inclusion of the word 'event' in cl116(1) implies that the use or occupation of the community land to generate trade and business must be linked to an event on the land. As a result, the personal use of a kitchen in facility on community land unlinked to an event on the land is not

		supported by cl 116(1)(b) LGR. A change to the SEPP does not overcome the inability of Council to grant a licence for use of a kitchen in a facility on land classified as community land.
clarify the exempt development standards for temporary private and community events	conditional support	**events on council-owned and managed land** • the clarification re temporary events on public land as exempt development is noted on our housekeeping register so is supported. • proposal for a new clause for temporary events on public land will combine the temporary use and the temporary structures into one clause would likely be supported by councils as it definitively clarifying an area of statutory interpretation that has long been an issue. **events on private land** • proposes an exempt development pathway for events held on private land which meet the set exempt development criteria in Page 18 of the EIE. This criterion is supported. • councils are likely to be concerned if the proposed event has significant infrastructure, waste and acoustic impacts – or where the event is to be held close to a sensitive receiver. • clarifications required that a waste management plan and structures plan should accompany the "notification" to council within 7 days. • what is the mechanism for enforcement / compliance action if no approvals are required? • strongly suggest notification timeframe to council and neighbours should be minimum of 14 days. • should there be limitations on frequency of such events on private land to minimise disruption to neighbourhood amenity, particularly in rural areas? **replacing 'community event' with 'temporary event' definition** • support in principle – definition is clear and better fits purpose.
extend the number of days for filming as exempt development	not supported	**general feedback re Local Government Filming Protocol – this needs to be reviewed as a matter of priority and before any changes to the exemptions occur for filming** • the protocol is outdated and unenforceable, with councils having little ability to say no or to request further information.

		• fee structure is outdated and does not allow for councils to set their own fees or cost recover fees properly.
		• there is little restriction on noise, lighting and other neighbourhood amenity issues which are ongoing issues for residents and councils.
		• concern about having a 'one size fits all' approach to filming – the impacts of filming in rural areas where residents cultivate a lifestyle of solitude with a strong value on peace, environment and wildlife can create significant distress and disharmony within small communities.
		• any changes to the Codes SEPP needs to be reflected in the LG Filming Protocol. To this end, has the proposed change been considered by the Office of the Local Government (OLG)?
		
		removal of 30-day limit
		• council wants to ensure that film producers consider their impact on the community, residents or businesses and that public safety and the environment is well protected. That is the activity is of low and minor impact.
		
		• council submits unlimited film days is inappropriate and not justified.
		
		• that being said - should the 30-day limit be removed it has to be made clear that filmmakers must still notify council when filming on private land and are under an obligation to notify surrounding residents and businesses prior to any filming set up or activity. Issues not clearly addressed:
		  ○ what is the new limit? If filming becomes exempt with no time restriction, could filming technically go forever? If so, does this essentially change the use of a residential / rural property to being a de facto film and production studio? An unlimited period is not supported in this regard.
		  ○ frequent filming on private property in certain locations will create significant challenges and impacts the amenity of the local community, particularly in rural areas. For example, noise, lighting, traffic, and heavy vehicle use (particularly on rural roads). Where

		there is damage to council assets there is no clear mechanism to recoup repair costs i.e., bonds, bank guarantees. We have a recent example of a road being damaged to the cost of $20,000 from a film production in a rural area. ○ how many properties in one area would be able to operate under this exemption? Could these properties be adjoining and adjacent? How would the impacts of such a land use outcome be assessed? What if properties straddle local government boundaries? ○ is the 30-day limit removed for ultra-low to low impact filming only? This is unclear. Filming should in some respects be considered as a temporary event on private land and similar limitations should apply – number of days, hours of operation, zoning, notification, number of cast and crew (as categorised by the Local Government Filming Protocol). • the SEPP fact sheet states "*Councils will approve a film management plan to ensure public safety, environmental protections and matters such as traffic management and hours of operation*." However, there is no capacity for councils to 'approve', control or enforce compliance. Under the protocol there is no process, no fee structure to cover this nor any additional resources. This is resulting in a significant cost shift burden to council areas with high film and production activity. **changes to the current measures** • the Office of Local Govt and Create NSW advised in December 2019 that they are aware of the issues the current Protocol is presenting for councils and industry and that discussions had commenced to identify potential resources and timeframes in relation to the review of the Local Government Filming Protocol. It is now three years later, and Council continues to try and apply an outdated Protocol to a rapidly transforming industry. • there are a multitude of changes required in relating to filming – both on public and private land, and they cannot be done without targeted

		consultation with NSW councils who try and balance community and industry expectations every day.