



30 November 2021

Reference File: 21/277572 (F00678)

To: Department of Planning, Industry and Environment

Via online submission portal

**SUBJECT                      The Fun SEPP**

Thank you for the opportunity to provide feedback on the proposed Fun SEPP.

Please find attached a submission from Blue Mountains City Council, with a general support for measures that encourage economic activity in the hospitality and creative sectors, with some matters of concern raised for consideration.

Should you require any clarification of the key issues raised in this submission, the most appropriate contact would be [REDACTED] on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# Submission on the Draft Fun SEPP

## Blue Mountains City Council

Thank you for the opportunity to provide feedback on the proposed Fun SEPP, currently on exhibition. Blue Mountains City Council reiterates general support for innovative planning policy that facilitates economic opportunities at the local level for the hospitality and creative industries. However, some concerns are raised with regard to the potential adverse impacts of the mechanisms used to achieve this. In addition, the opportunity to improve temporary use provisions in the Standard Instrument LEP has been identified.

### Outdoor dining on the footpath as exempt development

It is understood that the temporary trial to allow outdoor dining on the footpath as exempt development is to be made permanent, including food and drink premises as well as small bars. No issues are raised with this proposal provided that the current exempt provisions in the Codes SEPP (Subdivision 20A, Subdivision 20B and Subdivision 20C) are retained, which require existing lawful use, Roads Act and Local Government Act approval issued by Council, and is subject to approval from the Office of Liquor and Gaming where relevant. It is important that this proposed change does not result in regulatory burden or cost on Councils.

### Small live music or arts venues

As previously raised with the Department, most recently in our letter dated 9 June 2021, Council acknowledged the challenging environment faced by creative practitioners and raised the need to support creative industries through reducing barriers to both production and performance. In this context, establishing a complying development pathway for a change of use from retail premises to small live music or arts venue is supportable in principle. So too is the opportunity for a venue to provide a range of arts, handicraft and performance activities, with suitable protections of amenity for the surrounding area.

However, some concerns are raised:

- Development via a complying development pathway (CDC) omits the opportunity for public consultation. As such the scope and scale for CDC should be carefully determined.
  - While occupancy rate aligns with BCA provisions  $m^2$  per person, with limits to a maximum area of  $300m^2$  floor area, whether this scale is suitable for a CDC pathway is questioned, as the merit assessment is foregone.
  - It is noted that there can be multiple premises within a building offering the same service, and a CDC does not consider the potential cumulative impact of this occurring, particularly in relation to acoustic measures.
- The Compliance and regulatory burden on Councils is likely to be significant, particularly where there are impacts to people and no opportunity to participate in the assessment process.
- Clarification is required on the availability of a DA pathway for proposals that exceed the CDC provisions, to allow a merit assessment of such proposals.
- Transparency of the fire safety standards proposed is needed.
- Surety is sought that the BCA re-classification will not introduce risk to persons, property or public safety.

### Artisan food and drink industry

Council supports a complying development pathway being made available for the artisan food and drink industry land use in light industrial areas. It is understood that it is proposed to increase patron numbers from 50 to 100 in neighbourhood centres (B1 zone) and local centres (B2 zone) and increase the hours of operation to allow for trading from 6am-10pm, with 24-hour production permissibility.

While an increase in patrons may be suitable, a broad upscale and intensification of use in neighbourhood and local centre zones is not supported. The existing fine grained approach that the Blue Mountains planning framework relies upon for orderly, locally appropriate outcomes includes a buffer between residential uses and industrial uses. The introduction of 24 hour production in neighbourhood villages that encompass and adjoin residential areas would create unacceptable amenity impact, increase burden on Council regulation resources, and is strongly opposed.

### Food trucks and dark kitchens

While Council can provide in principle support for innovation and alternatives for small businesses, ensuring minimal adverse impact from food trucks, especially in residential areas, is critical. The exhibition material speaks to increasing permissible operating hours, but does not provide specifications of what these will be. Extension of the hours of operation will also increase community expectations for enforcement. Enforcement of offensive noise under POEO Act requires significant cost and resourcing by Council, namely after hours observations to gather evidence to support the issue of a Notice. The current provisions are supported, namely limiting operating up to 7pm (Ministerial Order when adjacent to Residential setting as well as the Codes SEPP 27A Mobile Food and drink outlets). In the absence of detail, Council can only reiterate that such land uses must not introduce amenity impacts or a compliance burden.

### Temporary use provisions for private and community events

Exempt development standards for temporary private and community events introduces proposed options for temporary events on Council owned and managed land without need for a separate planning approval, if an event is consistent with plan of management for the land. This is supportable. Maintaining and enhancing provisions that accord with general requirements for temporary uses and structures on both private and public land is an intelligent approach, which provides consistency and reduces complexity.

Council is recommending that these reforms consider the approval pathway for events beyond exempt and complying provisions. Many local events, such as those held on school grounds which is Department of Education Land, not Council owned land, do not benefit from these provisions, and are currently impeded by onerous standards in the Standard Instrument LEP.

As per our aforementioned communication to the Department on 9 June 2021, while it is acknowledged that the Standard Instrument LEP has a non-mandatory provision for temporary use of land which covers temporary events, the test at Cl.2.8(3)(b), that the use will not adversely impact on any adjoining land or the amenity of the neighbourhood is especially challenging, particularly for events which by their nature often involve music, traffic generation and the like. The clause should be modified to set the bar at no 'unreasonably impact' or similar, to allow pragmatic merit based assessment of events.

Such an approach would also enact the Aims of the Standard Instrument LEP Cl.1.2(2)(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts.

Improving the temporary use of land provisions in the Standard Instrument LEP will ensure appropriate development pathway is available to a range of events that contribute to the culture and community of an area. More than 150 such events are held across the Blue Mountains each year (prior to COVID), many with an arts or creative focus. The number and nature of these events support tourism and the local economy, but are also a fundamental community connector.

The proposal to limit exempt events on private land to 2 days in a 12 month period, limiting patrons and hours, as well as a council and neighbor notification process, is supported. For management purposes, it is suggested that such events also require a notification to the NSW Police Force as a proactive measure.

In the Blue Mountains context, lack of onsite parking will be an issue for locations throughout the LGA, pushing vehicles out onto the public road system, therefore recommendations are made that the provisions speak to suitable management of traffic generation related to the Code. Further, provision of amenities for patrons to the event are necessary, to limit the impact on public amenities away from the venue (especially pump out systems) and to avoid toileting in the World Heritage National Park and adversely impacting the water supply catchment.

#### Number of days for filming as exempt development

It is acknowledged that the film industry is a significant contributor to the local economy. While it is understood that the current exempt provisions for filming of up to 30 days on private property may not be adequate in all circumstances, there is distinct lack of detail in the exhibition material to be able to comment fully on this component. It is also necessary that the Code distinguishes between actual filming days and set-up days, including the time frame for set-up of associated structures. More information is required, as well as clarity around any intent to extend exempt temporary structure provisions to align with these potential changes. For management purposes, and to ensure minimal amenity impact, it is suggested that requirements for notification of Council and neighbours be added to the Code.

#### Conclusion

Council acknowledges that the hospitality and creative arts sectors have been significantly impacted during the COVID-19 pandemic. Approaches to increase vibrancy of town centres, and re-invigorate a night economy, is necessary and in this regard, planning policy that broadly encourages local economic recovery is supported. However, there are some reservations, as outlined in this submission, that the mechanisms to implement this support may result in adverse impacts. While the aims of the proposal are positive, the trade-offs need to also be considered. Notably, 'the devil is in the detail'; the explanation of intended effects does not contain draft legislation, with only an explanation of intended changes and policy direction exhibited. Clarity must be provided, with the opportunity to engage with the Department, prior to legislative changes being made.