

Council Reference: (D21/516208)

30/11/2021

Department of Planning, Industry and Environment

Dear Sir/Madam,

Submission – Fun SEPP Explanation of Intended Effect

Thank you for the opportunity to provide comments on the proposed changes to State *Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or the “Codes SEPP”. Unfortunately, there was not sufficient time to report this submission to the elected Council for consideration/endorsement before the due date for submissions. As such, the views in this submission are those of Council staff, not the elected Council.

We are generally very supportive of the proposed changes and appreciate the NSW Government’s desire to assist the arts and hospitality industries to recover from the effects of COVID-19 restrictions. We agree that there is room to remove some of the existing regulation in this area which has possibly had the effect of limiting opportunity and vibrancy in town centres.

More detailed comments on each proposal are provided below.

Small live music or arts venues

The proposed complying development pathway and changes to the Building Code of Australia (NSW) are a positive move. It has the potential to create significant new opportunities for small business operators and help activate town centres after normal working hours.

We believe that the development standards need to address potential noise and amenity impacts in certain locations where these venues are less likely to be compatible with other land uses (particularly residential and sensitive receivers) and/or existing character:

- a) B4 Mixed Use zone
- b) B1 Neighbourhood Centre zone
- c) RU5 Village zone
- d) Residential zones (R1-R5)
- e) Rural zones RU1 and RU2

Shoalhaven LGA contain 49 separate towns and villages, many of which are small rural or coastal settlements renowned for their scenic quality and amenity. Live music and arts venues supporting up to 300 patrons are not likely to be considered “small” in the major regional centre of Nowra, let alone in the smaller towns and villages throughout the LGA. These venues are not likely to be appropriate in many of the locations that they would be possible. In this regard we suggest that the proposed change of use provisions could exclude locations b) – e) above. Alternatively, a lesser maximum capacity could be stipulated for venues in these locations.

We are concerned that there are no acoustic measures or requirements in the proposed development standards. Consideration on acoustic management (both appropriate dB and hz bass frequency) is needed – existing shops and food/drink premises are not likely to be abated

to the same standard as a small arts or live music venue. Many shops are immediately below or adjacent to residential properties. This is likely to raise significant issues with land use compatibility. Compliance and regulatory enforcement issues for Councils are likely to be significant and will be made more difficult if the only applicable noise management standard is the 'offensive noise' threshold in the *Protection of the Environment (Operations) Act*.

Clarification on the proposed venue capacity limit is needed – is 300 an upper limit (would a lesser limit apply to premises with smaller floor area) or would it potentially apply to all approved venues?

We understand that the complying development standards for a change of use in the 'Codes SEPP' would require a venue to provide onsite car parking in accordance with the existing development consent for the building or, if no development consent exists, in accordance with the relevant environmental planning instrument or development control plan. This is generally supported and is one of the key issues to be managed for these venues.

Artisan food and drink industry

Whilst we generally support making the approval framework more flexible for these venues, car parking is a key concern. In Shoalhaven LGA artisan food and drink industries commonly occur in locations with limited car parking. Industrial sites are generally designed to accommodate the car parking requirements of an industry, not the much higher rate of car parking required for one (or more) artisan food and drink industries that might subsequently move into the site via a change of use. This might not be an issue if artisan food and drink industries operate outside of general operating/trading hours, however, existing premises in Shoalhaven largely operate within general trading hours as well. As a result, car parking for other industrial uses on a site may be restricted. In this regard the development standards for artisan food and drink industries possibly need to consider the needs of other industrial/commercial uses on a site.

In Shoalhaven LGA *light industry* is also permitted in the RU5 Village zone (in addition to the mandated business and industrial zones). Artisan food and drink industries with cafés supporting up to 100 patrons are likely to be less suitable in these locations which generally have limited car parking, limited public transport and are more sensitive to noise. In this regard we suggest that the proposed change of use provisions could just apply to the business and industrial zones B5, B6, B7, IN1, IN2 and IN4. Alternatively, a lesser maximum capacity could be stipulated for venues in other zones including RU5.

We generally support the proposal to allow industrial retail outlets to sell auxiliary products associated with their primary industry manufactured on site, provided that these remain a minor proportion of the overall sales from the site.

Making some temporary COVID-19 measures permanent

Food trucks

The requirement to obtain approval under section 68 of the Local Government Act to use a mobile outlet on public land should be retained. For sites that are in or adjacent to a residential zone, operational hours could be increased but we suggest that they be capped at 7am-10pm.

Dark kitchens

We generally support enabling the specified premises with commercial kitchens to continue to operate as dark kitchens under an exempt development pathway. Given the range of locations that could operate as a dark kitchen, parameters should be set around operational hours to manage potential impacts on adjoining uses (particularly residential and sensitive receivers). In this regard, the exemption from approval could extend as far as the operational hours set in any

existing development consent for the site. Alternatively, the code could specify standard operational hours, for example 7am-10pm Monday to Saturday, 8am – 9pm Sunday.

The code should include clarifications about requirements for dark kitchens to have food safety testing and environmental health checks undertaken by Councils.

Dark kitchens by their very nature de-activate street frontages, particularly where located on commercial high streets. Considerations should be made that would provide that operators of dark kitchens appropriately dress/treat any publicly active frontage to minimise visual impact to the streetscape.

Temporary events

Public land

We support the proposal to enable, as exempt development, temporary events on Council owned and managed land without the need for separate planning approval, noting that Council has its own events policy/guidelines and an application process under the Local Government Act 1993 and Roads Act 1993. Likewise, we support a proposed new clause combining the temporary use of land with associated temporary structures. This would clarify an area of statutory interpretation that has long been ambiguous and align with the clause that Council inserted into Schedule 2 of its LEP.

Private land

We generally support the proposed provisions which essentially it make it easier for small, minimal impact temporary events to be held and provide more opportunities to activate spaces. We consider events, arts, entertainment, bars and dining to be part of the mix in successful mixed use zones and town centres and believe that there needs to be a level of acceptance of this. In reality though, complaints about these uses are often received from residents in those areas. There will always be a tension where there are different uses and expectations in close proximity to each other.

The proposed limits on number of event days per year, hours of operation and patron numbers are generally considered reasonable in terms of managing noise and other potential impacts from events. The development standards should possibly include acoustic measures or requirements to manage the effects of amplified music, announcers etc. Again, it is difficult for Councils to take regulatory action on noise complaints if the only applicable noise management standard is the 'offensive noise' threshold in the PoEO Act.

We support rural, residential and environmental protection zoned land being excluded from the proposed provisions. These are clearly areas with a higher likelihood of land use conflict and/or inadequate supporting infrastructure (e.g. public transport, car parking) and/or where it is more difficult to ensure public safety.

Further clarification around the nature/form of the required 'notification' to Council is needed, i.e. what detail does it need to include? We suggest that the notification should be required to include a waste management plan and structures plan. The proposed 7-day notification period is too short if Council is required to review and action anything, we suggest that it be increased to 30 days. The notification period for adjoining properties should also be increased to 30 days. This would possibly encourage better engagement between event organisers and their neighbours and provide more opportunity to resolve any issues.

New definition

The proposed new definition for 'Temporary Event' is clear. We suggest that the wording could be amended to not be exhaustive, for example:

*Temporary event means a function or event open to the public or a section of the public that **includes** a ceremony, cultural celebration, exhibition, fete, fair, gathering, market or sporting event, that is carried out either inside or outside.*

Filming

We support the proposed removal of the 30 limit, with longer filming and associated temporary structures on private land to be agreed with Council through the film management plan.

We appreciate the opportunity to comment on the Fun SEPP Explanation of Intended Effect. If you need further information about this matter, please contact [REDACTED]
[REDACTED] Please quote Council's reference 64806E (D21/516208).

Yours faithfully

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