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RE: The Fun SEPP, Proposed changes to support outdoor dining, artisan food and drink premises, events, and small live music or arts venues

The Live Music Office and Sydney Fringe Festival strongly supports the [Fun SEPP](#)

Firstly, many of the problems the live music and performance industries face from a regulatory aspect can be compartmentalised under the following issues:

- Failure to adequately scale between small scale and larger scale live music and performance uses
- Duplication in process, particularly liquor licensing, planning, and environmental protection

As background, these issues for our industry have been thoroughly investigated through the following report:

[AN ANTHOLOGY OF SPACE 2015-2018: ACTIVATING UNUSED AND UNDERUTILISED SPACE FOR THE CREATIVE INDUSTRIES AND PERFORMING ARTS SECTORS OF NSW](#)¹

The report collated all the research projects undertaken by The Sydney Fringe and partners including the Live Music Office, and proposed solutions to overcome the onerous red tape that is strangling Sydney's creative sectors.

It is our belief if clear pathways were opened up for the temporary use of commercial space by the performing arts and cultural sector, the venue crisis in Sydney could cease to exist. Our high streets could be filled with new small cultural spaces and vibrant mixed use businesses. Our large industrial space awaiting residential development could be utilised to provide greatly needed transient space for organisations like Sydney Fringe and their communities.

But for this to be possible we need to remove the assumption of risk that is associated by regulatory authorities when dealing with performance. We need to advocate for a State variation to the National Construction Code for the inclusion of a low-risk small arts venue, we need exempt and complying development for temporary cultural activities and we need clear pathways to enable that activity to take place.

The Fun SEPP tackles these challenges head on in respective areas which will cut cost for businesses and has real potential to better support jobs and opportunities for many in our sector and associated industries.

¹ An Anthology of Space 2015-2018, Sydney Fringe Festival; Activating unused and underutilised space for the creative industries and performing arts sectors of NSW. Published on Nov 29, 2018

1. Outdoor Dining

We strongly support this proposal, and make the following suggestion with regards to:

Liquor Act 2007 No 90

Part 12 Special provisions relating to COVID-19 pandemic

164 Purpose

The purpose of this Part is to introduce temporary measures during the period of the COVID-19 pandemic to allow local councils to encourage the use of outdoor space for outdoor dining and performance to assist with social distancing measures.

The Special provisions relating to COVID-19 pandemic specifically reference *the use of outdoor space for outdoor dining **and performance*** in the legislation.

We seek for the corresponding references in the Fun SEPP to also include performance to align with this associated section in the Liquor Act.

We acknowledge the Outdoor Dining changes specifically address duplication issues, which is great.

2. Small Live Music or Arts Venues

We also strongly support the proposed changes for Small Live Music or Arts Venues. The Live Music Office and Sydney Fringe Festival led the campaign in NSW for the cultural sector that saw the regulation ultimately included in the Night-time Economy Legislation in NSW, with submissions to all of the associated inquiries, roundtables and local government live music and performance taskforces on these issues which are on the public record, as well as the Anthology of Space Report.

The Live Music Office also published a series of papers and worked with the Victorian Regulation Roundtable on the small music venues regulation in Victoria, as well as the South Australian Building Code Variation. We correspondingly prepared a proposal for change to the Australian Building Codes Board previously [which can be found here](#).

Progressing a code variation for NSW as distinct from a variation by regulation which will enable complying development for small music or arts venues in the planning scheme addresses another of the chronic regulatory issues our sector experiences, in that regulations often don't adequately scale between small scale and larger scale live music and performance uses.

Looking to the proposed conditions, we propose that existing operations trade at current conditions, and for new venues, we propose that venues may operate from 7.00 am to 11.00 pm Sunday to Wednesday, and Thursday to Saturday 7.00 am to 12.00 am, and without distinction for public holidays, which are often great occasions for live music and performance.

Creative people often work at night, particularly for live music and performance activity. The 24hr Economy legislation has had its detractors in that it has very little applicability to the 24hr economy at all. In fact, the 24hr Economy Act was renamed the Night-time Economy Act in the NSW Parliament for this very reason. Restricting operations to 10pm on Friday and Saturday nights as the current proposal specifies will only reinforce the perception that the legislation is not catering to the 24hr Economy.

We strongly support this proposal for NSW.

3. Artisan Food and Drink Industry

The live music and performance industry operates alongside compatible land uses such as retail and hospitality, and so developing measures to support these industries will benefit night-time economies and produce fun and interesting places.

Creating an exempt or complying development pathway for a change of use to an artisan food and drink premises in the Codes SEPP will continue the process for these compatible sectors through also providing scale-ability between small and larger operations and land use.

We strongly support this proposal for NSW.

4. Temporary Events

We support the changes where temporary events on council-owned and managed land would not need separate planning approval as well as the provision for an exempt pathway for the use of land for small and minimal-impact events on private land.

We are quite concerned that the proposed definition creates uncertainty for our sector as it stands, where:

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

We therefore propose that 'live music and performance' be also included which is imperative to remove any uncertainty here. And why wouldn't live music and performance' be in there.

s.68 approvals continue however to be a serious issue for our industries, where sporting events are allowed in parks for example and live music and performances require s.68 approval. It's important that live music, performance, and sporting events be given the same conditions in like indoor and outdoor settings in NSW in the absence of a clearly communicated position as to why this distinction is applied.

We strongly support this proposal for NSW.

5. Filming

Like retail and hospitality, the Film industry has an association with the live music and performance sector, so developing measures to support these industries will benefit the cultural and economic development of NSW.

We strongly support this proposal for NSW.

6. In Closing

The Fun SEPP has wide ranging potential to not only support the Live Music and Performance sectors, but also the cultural and economic development of NSW across the Film, Events, Artisan Food and Drink, Tourism and Hospitality industries,

Addressing chronic issues for our sectors such as duplication and failure to adequately scale between smaller and larger scale uses are guiding principles for the review which we recognise and endorse.

Our organisations have worked hard for many years to provide industry positions and research to support these planning policies, and we extend our appreciation to the Codes, Planning and Assessment team and the Department of Planning, Industry and Environment for this work.

Yours Sincerely,

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