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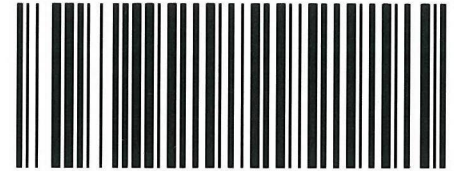
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Ms Karen Armstrong
Director Metro Delivery CBD
NSW Department of Planning and Environment
Attention: Yolande Miller
GPO Box 39
SYDNEY NSW 2001



PCU064606

BB3 (CIS)

15 March 2016

Dear Yolande,

RE: Planning Proposal – Special Events



I refer to our telephone conversation on 8 March 2016 and your email dated 8 March 2016 in relation to Council's Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) by inserting a new provision into *Schedule 2 – Exempt Development* to identify 'special events (including markets)' as a form of exempt development.

In particular, it was agreed that Council would again look at State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) to determine whether or not the Planning Proposal's intent could be wholly achieved under that Policy and thereby rendering the Planning Proposal redundant.

Council staff have undertaken a comprehensive review of the Codes SEPP and are still of the opinion that the intent of the Planning Proposal cannot be fully achieved through the provisions of the Codes SEPP alone. The justification for Council's position is outlined in the following section.

JUSTIFICATION

Are community events an exempt development type?

Development that can be undertaken as exempt development under the Codes SEPP, is primarily addressed by the provisions under Division 3 to Part 2 of the Codes SEPP (cll.2.108-2.132). With regard to the proposed intent of the Planning Proposal, Subdivisions 7 (cll.2.119 & 2.120) and 9 (cll.2.23 & 2.124) respectively relate to the erection and use of 'tents, marquees or booths' and 'stages or platforms' for the purpose of 'community events'. A copy of Division 3 to Part 2 of the Codes SEPP is attached to this letter.

For a development to be considered as exempt development under the Codes SEPP, it must first meet the criteria for 'specified development'. With regard to tents, marquees or booths for community events, cl.2.119 states:

ENGLISH	If you do not understand this information, please ring the Translating and Interpreting Service (TIS) on 13 14 50, and ask for an interpreter in your language to contact North Sydney Council on (02) 9936 8100. This is a free service.
ARABIC	إذا لم يكن بمقدورك فهم هذه المعلومات، فالرجاء الاتصال بخدمات الترجمة الخطية والفورية (Translating and Interpreting Service (TIS)) على الرقم 13 14 50 والطلب من مترجم فوري يتحدث العربية أن يتصل لك بمجلس مدينة شمال سيدني على الرقم (02) 9936 8100 – هذه الخدمة مجانية.
GREEK	Αν δεν καταλαβαίνετε αυτές τις πληροφορίες, παρακαλώ τηλεφωνήστε στην Υπηρεσία Μετάφρασης και Διερμηνείας (Translating and Interpreting Service (TIS)) στο 13 14 50, και ζητήστε να σας διαθέσουν ένα διερμηνέα στη γλώσσα σας για να επικοινωνήσετε με το Δήμο του North Sydney στο (02) 9936 8100. Αυτή είναι μια δωρεάν υπηρεσία.
HINDI	यदि आप इस जानकारी को समझ नहीं सकते हैं तो कृपया अनुवाद और दुभाषिया सेवा (Translating and Interpreting Service - TIS) को 13 14 50 पर फोन करें और अपनी भाषा के दुभाषिए द्वारा उत्तरी सिडनी काउंसिल (North Sydney Council) को (02) 9936 8100 पर फ़ोन करने के लिए कहें। यह सेवा निःशुल्क है।
INDONESIAN	Jika Anda kurang memahami informasi ini, silakan telepon Translating and Interpreting Service (TIS) di 13 14 50, dan mintalah seorang juru bahasa dalam bahasa Anda untuk menghubungi North Sydney Council di (02) 9936 8100. Layanan ini tidak dipungut biaya.
ITALIAN	Se non capite queste informazioni, chiamate il Servizio di Traduzione e Interpretariato (TIS - Translating and Interpreting Service) al numero 13 14 50, e chiedete ad un interprete nella vostra lingua di contattare il North Sydney Council al numero (02) 9936 8100. Il servizio è gratuito.
JAPANESE	上記の情報について何かご質問がございましたら、通訳・翻訳サービス (Translating and Interpreting Service (TIS)) 電話番号 13 14 50 までお問い合わせください。また、ご自分の国の言語で通訳の手配をご希望の方は、ノース・シドニー・カウンスル (North Sydney Council) 電話番号 (02) 9936 8100。まで電話でお問い合わせください。尚、このサービスは、無料です。
KOREAN	이 정보를 이해하지 못하실 경우 번역 통역 서비스 (Translating and Interpreting Service (TIS))에 13 14 50으로 연락하셔서 한국어 통역사를 요청하시고 노스 시드니 카운슬 (North Sydney Council) 연락처인 (02) 9936 8100로 연결하도록 요청하십시오. 이 서비스는 무료입니다.
TAGALOG	Kung hindi ninyo naiintindihan ang impormasyong ito, mangyari lamang na tumawag sa Translating and Interpreting Service (TIS) sa 13 14 50, at hilingin sa interpreter ng inyong wika na tawagan ang North Sydney Council sa (02) 9936 8100. Ito ay isang libreng serbisyo.
TRADITIONAL CHINESE	如果你不明白這份資料，請致電13 14 50聯絡Translating and Interpreting Service (TIS)，要求一名能說你的語言的傳譯員，代你致電(02) 9936 8100聯絡North Sydney Council。這是免費服務。

The construction or installation of a tent, marquee or booth used for a community event is development specified for this code if it is carried out on land other than land within a rural, residential or environment protection zone.

Similarly, cl.2.123 in relation to stages and platforms for community events states:

The construction or installation of a stage or platform used for a community event is development specified for this code if it is carried out on land other than land within a rural, residential or environment protection zone.

It is clear from the wording of cl.2.119 & 2.123, that those developments can only be deemed to be an exempt development type if it:

- relates to the temporary erection of a specified structure; AND
- that temporary structure is used in conjunction with a community event.

If these high level criteria can be met (i.e. the development is an exempt development type), the development must then be assessed against more detailed criteria (cl.2.120 and 2.124) for that development type. If all the criteria can be met, then the development is exempt development.

The wording of cl.2.119 & 2.123 limits the use of the specified temporary structures for community events and does not extend to include all land to which a community event applies. This suggests that community events as a whole are not a specified exempt development type under the Codes SEPP and would therefore necessitate the obtaining of development consent for its use.

Whilst it is noted that clauses 2.120(k) and 2.124(j) specify operating periods for community events in relation to the temporary structure, these controls do not comprise the 'specified development' or the exempt development type. The implications of these controls are to ensure that any temporary structure associated with a community event must comply with those times.

It is further noted that Subdivision 10 (cl.2.125 & 2.126) to Division 3 to Part 2 of the Codes SEPP sets out provisions for undertaking additional temporary development as exempt development on major events sites (Circular Quay, Darling Harbour, The Rocks, Overseas Passenger Terminal, Sydney Olympic Park and Barangaroo). In particular, clause 2.125(2) outlines those purposes which are deemed to be 'specified development' on those lands, including:

- (a) a community event,
- (b) a commercial event (such as a product launch and sampling),
- (c) trading for retail or other commercial purposes (such as providing a temporary dining and drinking area),
- (d) associated storage areas and truck lay-by areas and the like.

This suggests that 'community events' are a type of development which can be undertaken as exempt development, separately from the temporary structures erected in conjunction with such an event.

Similarly, Subdivision 11 (cll.2.127 & 2.128) to Division 3 to Part 2 of the Codes SEPP sets out provisions for undertaking additional temporary development as exempt development at the Sydney Cricket Ground. In particular, clause 2.127 outlines those purposes which are deemed to be 'specified development' on those lands, including:

Development for the purposes of temporary outdoor non-sporting events (such as concerts) and associated equipment, structures and facilities (such as stages, public address systems, food or beverage outlets, video screens and information or ticket booths) is development specified for this code if it is carried out on land described in Schedule 2 to the Sydney Cricket and Sports Ground Act 1978.

This suggests that 'community events' and associated temporary structures are a type of development which can be undertaken as exempt development in their own right.

It is also further noted that "filming" is identified as a separate exempt development type under the Codes SEPP (Subdivision 4 to Division 3 to Part 2 of the Codes SEPP), with separate exempt development types for temporary structures or works associated with filming (Subdivisions 5 & 6 to Division 3 to Part 2 of the Codes SEPP).

It is therefore questioned why community events themselves are treated as the principle development activity under part of the Codes SEPP (i.e. Subdivisions 4, 10 & 11 to Division 3 to Part 2 of the Codes SEPP) when other parts treat the erection of associated temporary structures as the main activity (i.e. Subdivisions 7 & 9 to Division 3 to Part 2 of the Codes SEPP).

Based on the evidence above, it is concluded that community events are not considered to be an exempt development type under the Codes SEPP, unless, such an activity is undertaken on land at Circular Quay, Darling Harbour, The Rocks, Overseas Passenger Terminal, Sydney Olympic Park, Barangaroo or the Sydney Cricket Ground. It is therefore clear that the intent of the Planning Proposal is not covered by the Codes SEPP.

Furthermore, cl.1.9 of the Codes SEPP states:

(1) Exempt or complying development under this Policy and standard plans

A standard plan does not apply to development that is specified in the plan as exempt development or complying development and that is specified in this Policy as exempt development or complying development.

The Codes SEPP only identifies temporary structures which are used in association with a community event as exempt development. Therefore, the Planning Proposal seeks to make community events themselves exempt development which would not contradict a specified development within the Codes SEPP.

Limitations on temporary structures associated with community events

The Codes SEPP severely restricts the types of temporary structures capable of being erected as exempt development in conjunction with a community event. At present the Codes SEPP limits the erection of temporary structures associated with a community event to tents, marquees, booths, stages or platforms.

However, community events often involve the erection of other types of temporary structures that have minimal environmental impacts and can include structures such as fencing/barricades, start/finish lines, public art, amusement devices and the like. At present, if a community event incorporated any of these types of additional temporary structures, it would necessitate the obtaining of development consent. Obtaining development consent could be seen as an onerous and expensive task in light of the potential impacts from such structures and timing of approvals. For example, the installation of public art pieces in conjunction with Vivid Sydney, would require the obtaining of development consent.

In contrast, Clauses 2.126 and 2.127 to the Codes SEPP enables the erection of temporary structures associated with a community event as exempt development, with no real restriction on the types of temporary structures that are permitted.

It is therefore suggested that the Codes SEPP incorrectly places the emphasis on allowing temporary structures as exempt development without the appropriate weight given to community event itself which is the principle activity that would create an impact (i.e. the cumulative impact of an event is greater than an isolated temporary structure).

Community events with no temporary structures

There are instances where a community event may be proposed that does not involve the erection of any temporary structures. An example of this is a car boot sale. Such an activity would necessitate the obtaining of development consent prior to undertaking the activity. This appears to be unreasonable given the level of potential impacts arising from such an activity.

This further emphasises the need to create an exempt development type to cover community events as a stand-alone exempt development type.

CONCLUSION

It is clear that community events or special events are not identified as a specified exempt development type under the Codes SEPP and therefore the intent of the Planning Proposal is still valid. On this basis, it is requested that the Department of Planning and Environment progress the Planning Proposal with the view to issuing a Gateway Determination.

Should you have any further queries, please do not hesitate to contact Ben Boyd or the undersigned on 9936 8100.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Marcelo Occhuzzi', with a stylized flourish at the end.

MARCELO OCCHUZZI
MANAGER STRATEGIC PLANNING