

Ms Lynda Voltz MP  
Chair  
Legislation Review Committee  
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Dear Ms Voltz *Lynda*

Thank you for your correspondence about the Legislation Review Digest No. 13/58 – Environmental Planning and Assessment Amendment (Vibrancy Reforms) Bill 2024.

In accordance with Sessional Order 188A, Legislative Assembly Members with carriage of a Bill must, if reasonably practicable, address any matters raised by the Committee in its Digest report on the Bill during the Second Reading Debate. If not reasonably practicable, Members must respond to the Committee by correspondence. I hope this letter addresses the Committee's comments. I also note the Hon John Graham MLC, Minister for Music and the Night-time Economy also drew attention to the report during the debate in the Legislative Council.

I refer to the comments of the Legislation Review Committee in Legislation Review Digest No. 13/58 (Report) dated 14 May 2024, relating to the Environmental Planning and Assessment Amendment (Vibrancy Reforms) Bill 2024 (Bill). In its Report, the Committee noted:

*The Bill seeks to insert Part 5 into Schedule 8 of the Environmental Planning and Assessment Act 1979, which would empower the Planning Secretary to create 'vibrancy guidelines' that a consent authority must consider when determining applications for extended hours of operation. Subclause 2(1) provides that the vibrancy guidelines are to "enable venues to operate in a way that achieves their full social, business and cultural potential, particularly as part of the night-time economy". These proposed amendments do not include a requirement that the guidelines be tabled in Parliament.*

*Therefore, the Bill may provide for the incorporation of extrinsic materials into law. The Committee generally comments on any legislative provisions that permits the incorporation of external materials like guidelines and gives those materials legal force. It also prefers substantive matters to be set out in legislation or to be published in the Gazette and tabled in Parliament as regulations, where they can be subject to disallowance and therefore to appropriate parliamentary scrutiny.*

*The Committee acknowledges that the vibrancy guidelines may be intended to be published on a New South Wales Government website and made transparent in that way. However, the Committee notes that the Bill does not include any provisions which prescribe or clarify where the guidelines are to be published or how interested persons may access them.*

I note the Bill allows the Planning Secretary to issue vibrancy guidelines. If the Planning Secretary decides to issue vibrancy guidelines, they will need to be published.

While the Bill is silent on where the vibrancy guidelines will be published, it is standard practice for guidelines to be published on the Department of Planning, Housing and Infrastructure's website and/or the Planning Portal.

The Committee also noted in its Report:

*The Committee also acknowledges that the proposed amendments include provisions which limit the application and contents of the guidelines, by clarifying that the guidelines cannot 'require applications to be automatically approved or refused' and that they must operate in addition to any other relevant legal requirements. However, the Committee considers that these limitations do not sufficiently narrow the broad range of matters which the guidelines may relate to. As it stands the Bill would enable the Secretary to issue vibrancy guidelines to 'enable venues to operate in a way that achieves their full social, business and cultural potential, particularly as part of the night-time economy'. The Committee notes that these terms may be interpreted widely with the consequence being that the Secretary is empowered to issue guidelines on a broad range of matters. As the guidelines are not required to be tabled in Parliament and are therefore not subject to parliamentary scrutiny, the Committee refers the matter to Parliament for further consideration.*

I also note the vibrancy guidelines may refer to a broad range of issues relating to venues achieving 'their full social, business and cultural potential'. However, pursuant to proposed clause 8 of Schedule 4 of the Environmental Planning and Assessment Act 1979 (Schedule 1, item [1] of the Bill), the requirement to consider the vibrancy guidelines only applies in very limited circumstances and only to an extended hours of operation application. There is no legal requirement to consider any other matter that the vibrancy guidelines may cover when a proponent makes a development application or modification application generally that is not an extended hours of operation application.

To explain the limited application further, extended hours of operation is defined by the Bill to mean hours of operation that extend beyond 7pm on any night of the week. An application of extended hours of operation is restricted to applications made in relation to relevant food and drink premises in relation to a development application that includes a proposal for extend hours of operation or an application to modify a development consent to allow extended hours of operation. Therefore, the vibrancy guidelines must only be considered in relation to these limited circumstances.

The Bill also limits the application of the vibrancy guidelines by restricting what is meant by 'relevant food and drink premises'. A 'relevant food and drink premises' is defined to mean premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, including a restaurant or café, takeaway food and drink premises, a pub or a small bar, and which are not located within a special

entertainment precinct (within the meaning of section 202 of the Local Government Act 1993) or an residential zone, and is situated on land that is 500 metres or more from the nearest residential accommodation.

Therefore, regardless of the broad range of issues that may be included in the vibrancy guidelines relating to venues achieving 'their full social, business and cultural potential', the guidelines are applicable in so far as they relate to applications for extend hours of operation in the above circumstances only. Additionally, as the Committee has noted, the legislation makes sure that the vibrancy guidelines may not require applications to be automatically approved or refused. Furthermore, the Planning Secretary is required to consult with the 24-Hour Economy Commissioner before the guidelines are issued.

Should you have any questions, [REDACTED]

Thank you for bringing this to my attention.

Yours sincerely

[REDACTED]  
Paul Scully MP ✓  
Minister for Planning and Public Spaces

13/7/24