

**Submission  
No 386**

**INQUIRY INTO THE MUSIC AND ARTS ECONOMY IN  
NEW SOUTH WALES**

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### **Introduction**

This submission details my research into the issues relating to the planning for and regulation of land and water for the establishment and sustainability of temporary event spaces.

Innovative uses of land, air and water for staging events are increasingly encouraged by all levels of government for many reasons. In some cities, the outcome is a continual stream of events, some highly mobile, with novel locations and with times and duration designed to maximise outcomes. Much is known about how to run events but event planning and regulation is confused, uncertain and lacking in transparency.

Temporary land uses such as markets, community, sporting, music, art and agricultural events can be a combination of one-off, intermittent or regular users of vacant private or public spaces, on rural or urban land, or on water or in the air. Events are held almost anywhere (Getz, 2012; Gibson & Stewart, 2009; Johansson & Kociatkiewicz, 2011). Events provide significant environmental, economic and social benefits to a community (Getz, 2008). In NSW, the Government's Events calendar generates an estimated \$600 million per annum in direct expenditure (NSW Visitor Economy Taskforce, 2012).

The increasing demand for events and a desire for a scenic location when combined with improved temporary structures results in new locations becoming feasible venues for events. There is some evidence of community division over festivals, and the jostling of political viewpoints (Gibson & Stewart, 2009). Local residents feel concerned by the event planning process and negative impacts of traffic, noise, and crowding (Chien, Ritchie, Shipway, & Henderson, 2012). As the community becomes aware of decisions that affect their lives, they are increasingly aware of the legal planning mechanisms available to ensure that the development is acceptable (Carlos, 2001; Jeffreys, 2012). It is possible that seemingly inoffensive events can be stopped using the new rules.

My emphasis is on the land use planning and regulation process. It should be noted that 'land' is defined in the Environmental Planning and Assessment Act to include waterbodies such as lakes, lagoons, rivers and the sea.

Included in the attached supporting information are copies of two presentations I have given on this matter:

1. Australian Regional Tourism Network Conference Canberra 2017.
2. NSW Local Government Association Tourism Conference Taree 2017

## Key issues

The key issues I have identified are as follows:

1. A complex system of government, community and industry actors.
2. Many contradictions, inconsistency, uncertainty and ambiguity.

## Terminology

I use the terminology “events” to cover all planned activities for people seeking experiences in any location`. This includes arts and music as events do not have clear categories or boundaries. Discussions about the planning and regulation of events can be applied to the specific area of arts and music

In 2004, a state-wide legislative template called the Standard Instrument Local Environmental Plan (SILEP) to standardised planning controls. Included in the 2006 SILEP was a new clause (see Figure 1- Model Clause) which standardised the process for controlling temporary land uses including events (NSW Department of Planning, 2006).

**Figure 1- Model Clause**

**Model local clauses for Standard Instrument LEPs**

**General Information**

If a Standard Instrument LEP provides for the temporary use of land, this model clause should be used and inserted as clause 2.6B. The number of days, in the 12 month period, may vary from council to council but 52 days is recommended. Council should provide justification to such a variation.

**2.6B Temporary use of land [local]**

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.
- (2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary purpose for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.
- (3) Development consent must not be granted unless the consent authority is satisfied that:
  - (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and
  - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
  - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and
  - (d) at the end of the temporary use period the site will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

**Drafting direction.**

Specific exclusions, as follows, from the 52 day period may be added for sales offices, exhibition homes, builder's site offices etc.

- (4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or housing estate may exceed 52 days (whether or not consecutive days) in any period of 12 months.
- (5) Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).

All events, regardless of size, location or duration require a development approval. The standardised planning controls mean that local environment plans apply to water such as a river, stream or watercourse, whether tidal or non-tidal, and various harbours. But various councils have created different definitions and exemptions. This is detailed in the accompanying table entitled *Variations to the NSW SILEP Optional Clause for Temporary Land Use*. Local exemptions have further confused the regulatory environment by the introduction of terminology such “Special events (including markets)”, “Events (community and fundraising)”, “Events on Council land”, “Community events” and “Special events” with no definitions or clarification.

### **Data**

The planning and regulation of events requires data on the costs, benefits, number and location of events but there is no tracking system for events. Given the highly mobile nature of events, why complain when the process is difficult, confused or just too hard when it is easier to go elsewhere, to another Council.

Another difficulty occurs when trying to obtain data on events from government agencies with “*commercial in confidence*” or “*internal uses only*” used as a justification not to release data. Therefore, any discussion of costs or benefits remains hypothetical and unverifiable.

### **Many assessors and Many processes**

Within local government, many professions may have a role in regulation of events: urban or social planners; development control officers; community engagement; tourism or economic development managers; risk assessors; place-makers; urban designers. For example, the regulation of events in a public park may be the responsibility of the open space manager or if an event is proposed on private land falls within the jurisdiction of the town planner.

Several councils have adopted the “no DA” approach in relation to events on public reserves and public roads assuming that no DA meant an exemption but the Part 5 assessment process still applies. (see Figure 2 )

**Figure 2 - Events Exemption**

**Newcastle Local Environmental Plan 2012**

Current version for 8 January 2015 to date (accessed 4 May 2015 at 15:36)

[Part 6](#) > Clause 6.6 << page >>

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**6.6 Events permitted without development consent**

(1) The objective of this clause is to provide for the temporary use of public reserves and public roads for exhibitions, meetings, concerts or events.

(2) Despite any other provision of this Plan, development (including any associated temporary structures) for the purpose of a temporary event may be carried out on a public reserve or public road without development consent.

**Note.** Other approvals may be required, and must be obtained, under other Acts, including the *Local Government Act 1993*, the *Roads Act 1993* and the *Crown Lands Act 1989*.

(3) *State Environmental Planning Policy (Temporary Structures) 2007* does not apply to development to which this clause applies.

(4) In this clause:

**public reserve** has the same meaning as in the *Local Government Act 1993*.

**temporary event** means an exhibition, meeting, concert or other event that is open to the public for which land is used for a period of not more than 52 days (whether or not consecutive) in any period of 12 months.

Other local provisions assume events held on council owned or controlled lands have no significant impact but the same event on private land requires a DA and the associated environmental assessment.

Court decisions have also added to the confusion. Marshall Rural<sup>i</sup> was a third-party action against the approval for temporary use of existing buildings as a “*function centre*”. The Land and Environment Court (LEC) determined that Council failed to properly consider the preconditions of whether there was any adverse impact. There was no cautionary warning that the test for temporary uses differs from that applicable to an ordinary development application. Also, the LEC indicated that the “*not adversely impact*” test reflects the seriousness of the temporary land use clause. Subsequently the World Polo Cup was allowed on the land using the Major Events Act.

Later in 2016, the LEC allowed the temporary use of the Montrose House and Berry Farm as a function centre for a maximum period of 60 days. The LEC noted, that even though it was a substantial departure from the planning controls, the use will “*not adversely impact*” any adjoining land or the amenity of neighbourhood<sup>ii</sup>.

Local government shares event regulation with other agencies and quasi-government bodies such as Forests NSW, Roads and Maritime Services, National Parks and Wildlife, Crown Land, Trusts and Showgrounds and Marine Park Authorities. The resulting diversity of event-regulating processes creates issues over legal jurisdictions, conflicting priorities and land tenure boundaries.

The regulation of events will be further confused when Crown land applications become a Council responsibility with the implementation of the new Crown Land Act. An attempt to detail this process is included in the supporting information in a diagram called *Land Use Regulation of Events in NSW Hunter Valley*

### ***Where events are held?***

Many public spaces have been redesigned to accommodate events triggered by the increasing cost of permanent venues together with the difficulty posed by the related complex and time-consuming approval process (Smith, 2014). Other public spaces such as beaches, bushland reserves and marine parks have become venues when a promoter’s desire for a scenic location or “unique selling proposition” (Hall & Page, 2015) is combined with flexibility provided by temporary infrastructure. Also “events are more flexible than [*when*] certain types of fixed physical infrastructure [*is involved*]...cost less and achieve greater impact in the short-term” (Richards & Palmer, 2012, p. 19). The result is that new spaces in locations historically not considered by regulators are seen as feasible venues for events (Bishop & Williams, 2012; Briassoulis, 2002).

### ***Uncertainty***

In 2009, local government was excluded from regulating major events (“Major Events Act 2009,” 2009) and in 2017, car racing in Newcastle (“Motor Racing (Sydney and Newcastle) Act 2008,” 2008). The uncertainty of event assessment is best demonstrated by the NSW Government’s approach for the World Rally Championship. To allow this temporary land use in northern NSW, the NSW Government passed the Motor Sports (World Rally Championship) Act 2009. The WRC Act lists exemptions to other legislation rather than prescribing a process. This leads to the conclusion that the legislative environment is so complicated changes are required.

## Recommendations

Threatening legal action or requiring compliance with a development process can be triggered by community antagonism towards a small fitness training groups using a beach for paid exercise or even a council requiring a development application for an open garden because of a neighbour's complaint. Increasingly a community may seek legislative action to control and limit activities that do not fit their perception of an area's character. Whilst these potential extremes of legislative response may happen for very different reasons, it does reinforce the potential for the current ad hoc approach to land use decisions for temporary uses to threaten the staging of future music festivals, outdoor concerts, art displays and sculpture walks and even a surf carnival. But the short duration and impermanence of temporary uses means that they are difficult to fit into a regulatory system driven by accepted planning methodologies and tools constructed for the planning and assessment of "permanent" development. As a result, temporary uses are overlooked or inconsistently considered.

There is a need for a logical, spatial and temporal land use strategy and regulation for events to reduce procedural issues, build communities and maintain social cohesion, beyond the current economic contribution mantra. An analysis and informed debate of the event planning and regulation processes can contribute to the development and implementation of policies and practices for tourism, local government and planning in NSW.

To address this, an action plan is required that specifies an audit of the range and diversity of events and the related planning and assessment processes and engages with all stakeholders to develop a land use based events strategy for the events.

It is suggested that local councils be required to prepare a TEMPORARY ACTIVITIES STRATEGY in the following way:

1. Prepare an Audit of all temporary activities such as events on land, water and air.
2. Set up a working group with relevant stakeholders.
3. Process Audit for all agencies – e.g. planning and zoning controls, policies, plans of management, practices, delegations etc.
4. Encourage a council-wide approach by linking the Councils Community Strategic Plan, LEPs, policies, plans of management, delegations and consultation initiatives.
5. Develop a Temporary Activities Strategy to integrate policies, rules, delegations and practices.

Garry O'Dell is a qualified town planner with more than 30 years' planning experience in local government and private practice mainly in the NSW planning system. He is currently undertaking doctoral research at the University of Newcastle exploring the local government decision-making process for temporary land uses for the purposes of planned events.

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<sup>i</sup> Marshall Rural Pty Limited v Hawkesbury City Council and Ors 2016

<sup>ii</sup> Allman Associates Pty Ltd v Wingecarribee Shire Council [2016] NSWLEC 1126