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PUBLIC ENTERTAINMENT IN LICENSED PREMISES

Background

On 26 October 2007, the Local Government and Environmental Planning and Assessment (Transfer of Functions) Act 2001 (Transfer of Functions Act) commenced. The legislation had the effect of transferring the regulation of places of public entertainment from approvals issued under the Local Government Act 1993 (the LGA) to development consents issued under the Environmental Planning and Assessment Act 1979 (the EPAA).

On 26 October 2007, the State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007 (the SEPP) also commenced. The SEPP is a regulation which covers the operation and use of premises as places of public entertainment. The SEPP expressly provides that a premises may not be used as a place of public entertainment, unless it is carried out with development consent, or in circumstances where it is exempt or complying development. For most operators who conduct entertainment, this means that strictly speaking in order to conduct public entertainment, it is necessary to obtain development consent, by way of lodgement of a development application with the local consent authority (usually the local Council).

Existing Approvals

A number of venues have operated pursuant to approvals issued under the LGA which were commonly issued for five year or other fixed terms by the conditions of the approval. The savings provisions of the EPAA have preserved such approvals for a period of 2

years after the commencement of the Transfer of Functions Act and SEPP. That means, that strictly under the current legislation, if your existing approval allowed you to conduct public entertainment beyond 26 October 2009, and you wish to conduct public entertainment after that date, you would not be able to lawfully do so, unless you obtained a development consent.

Public Entertainment

Many operators are experiencing confusion as to whether or not they are required to obtain consent for the type of activities that take place in their venues and a variety of mixed messages have been provided from individual consent authorities across the state. The Transfer of Functions Act caused public entertainment to be defined in the EPAA with a focus on admission to the public in return for payment of money or some other consideration. It is also necessary to consider whether or not the terms of any existing development consent authorise the conduct of entertainment, be it public entertainment or otherwise.

The Department of Planning has provided some interpretative guidance as to whether or not some forms of "entertainment" commonly provided by operators should fall within the scope requiring development consent which seem to distinguish between entertainment incidental to the primary operation of licensed premises (such as background music in the bar of an hotel), and those forms of entertainment which have a character of their own, or become the primary focus of the use of the licensed premises (such as an hotel operating

as a “nightclub” with live DJs and disco lighting).

There is clearly little doubt that venues that operate in a manner where entertainment is a primary focus of the licensed premises and those charging entry fees to patrons participating in entertainment provided at the premises would be deemed as providing public entertainment and therefore would need to make a development application in order to continue such activities after 26 October 2009. The apparent uncertainty for the Department of Planning and Councils is as to whether or not other operators who may provide some entertainment free of charge, which does not alter the character of the use of the premises should be required to obtain development consent and whether or not certain types of entertainment are considered as a legitimate ancillary use to previously approved uses (for example the principle approved use of an hotel having ancillary uses to provide background music and televised sporting broadcasts).

Action to be Taken

At this stage however, the law remains clear, and until specific amendments are made to the regulation operators who provide forms of entertainment will need to ensure that they comply. We understand that amendments are proposed to be made to the legislation, however it is not known when or if these will eventuate.

If operators plan to conduct entertainment which is likely to be more than incidental to the principal use of eating or drinking, then steps should be taken to obtain development consent for the conduct of public entertainment prior to 26 October 2009. Venues which operate entertainment in a manner which clearly changes the character of the licensed premises or that charge admission fees will almost certainly be required to obtain development consent if it is sought to continue such use after 26 October 2009. It would be a commercial imperative for such operators to

ensure that the necessary development applications are at least lodged prior to 26 October 2009.

Professional Assistance

We are able to offer advice and assistance in the preparation of any development applications seeking consent to use your venue as a place of public entertainment, including review of systems and operations and preparation of supporting material such as plans of management and alcohol management plans. The matters for consideration of applications of this nature do not only focus on the usual considerations under the EPAA, but also specific matters such as:

- maximum patron numbers and monitoring;
- principles for minimising crime risk;
- adverse noise impacts;
- limitation of trading hours for entertainment; and,
- traffic impacts.

We are able to address the matters for consideration and prepare detailed supporting submissions to accompany the application. We have the necessary knowledge and experience to ensure that your application has the best possible prospects of success.

Please call or email for an obligation free discussion to see what needs to be done in your circumstances.