What Rules?
Local Government Land Use Decision Making for Events in NSW

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My Background

• UNSW School of Town Planning Graduate.

• I am a qualified town planner since 1981 and have worked in local government and private practice.

• Part-time PhD since July 2012.
Time is missing from planning

“That’s interesting!”
(davis1971)
My research motivation is the result of the following:

• “…change the culture across all levels of planning in NSW”
• Planners are viewed as a problem despite numerous law changes so how do they make decisions.

• One council wanted to limit events to two 6000 person concerts annually.
• Another council had no issues with two concerts for 29,000 people on the same night.
• Residents object to commercial recreation groups using “their” reserve.
• Open Gardens should be regulated.
What happened next?

I started investigating and found:

• Planning for temporary land uses is relatively new.
• There are few rules and methodologies to inform the planning process for temporary land uses.
• NSW standardised its legislative approach for temporary land uses in 2006.
• There is decision making uncertainty in the NSW land use planning process.
A quick history of Temporary uses

- Temporary use has many names: “pop-up”, “temporary urbanism”, “temporary city”, “inter-while – meanwhile or interim”.

- In 2001 in Berlin, Urban Catalyst investigates the potential of temporary uses as a motor of urban change.

- 2012 temporary use of vacant spaces in Helsinki on the public agenda.

- 2013 Place Research Award “Pop Up City: Temporary Use Strategies for a Shrinking City,” Cleveland.

- 2013 Mill River Connecticut Planning Study
Examples of temporary uses

Carnivals, Circuses, Exhibitions, Festivals, Filming, Meetings, Parades, Recycling Depots, Sporting Events, Concerts, Musical and Theatrical Festivals/Entertainment, Military Training Exercises.
Research Purpose

This qualitative research aims to understand, analyse and interpret the uncertainty in the local government decision-making for temporary land use for the purposes of public, private or commercial events in the NSW Hunter Region.
Refining the Research Focus

Decision making
Public Sector
Land Use Planning
Temporary Land use - Events
Local councils
Hunter Region of NSW
Town planners

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Events are inconsistently treated in the land use planning process.

• In 2006, NSW amendments to planning legislation resulted in an on-going transition of event assessment to the local government land use planning process. The transition has not been without issues.

• There are many rules, practices, regulations and definitions of events, conflicting governmental and organizational priorities and community expectations.
<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
<th>Intention/Decision</th>
<th>Implications/Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945</td>
<td>Town planning provisions inserted into the Local Government Act</td>
<td>To control permanent development and improve town health</td>
<td>No reference was made to temporary use of land.</td>
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<tr>
<td>1980</td>
<td>Environmental Planning and Assessment Act (EPAA) commences</td>
<td>To separate planning controls for land activities from local government Act</td>
<td>No reference was made to temporary use of land.</td>
</tr>
<tr>
<td>1983</td>
<td>High Court of Australia Lizzio v Ryde Municipal Council</td>
<td>The Court ruled that an annual fete raising funds for a charity is incidental to a residence</td>
<td>Land use for the purposes of a charity receive different assessment</td>
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<td>1987</td>
<td>Land and Environment Court of NSW (LEC) Australian Children’s Foundation v Blacktown City Council</td>
<td>The Court ruled that a large concert did not constitute use of land</td>
<td>The size of the event triggers a different assessment process.</td>
</tr>
<tr>
<td>1992</td>
<td>LEC Sydney Cricket and Sports Ground Trust v City of South Sydney</td>
<td>The Court ruled that a concert in the Showground for 40,000 people is development</td>
<td>Implies commercial events need a more rigorous review</td>
</tr>
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<td>1993</td>
<td>New Local Government Act</td>
<td>Council powers to regulate events on public land</td>
<td>Regulation of private land for events not included in the legislation.</td>
</tr>
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<td>1995</td>
<td>NSW LEC Gosford Council v Popran Creek Pty Ltd</td>
<td>The Court ruled that a music festival for 2,500 people on rural land is development</td>
<td>Reinforces that commercial events have a more rigorous review</td>
</tr>
<tr>
<td>1997</td>
<td>NSW LEC Baulkham Hills Council v Horseworld Australia</td>
<td>The Court ruled that a dance party for 1200 people does not fit the Council’s exemption</td>
<td>Questions a Council’s interpretation of controls</td>
</tr>
<tr>
<td>2001</td>
<td>NSW LEC Byron Shire Council v The Rising Damp Corporation</td>
<td>The Court ruled that commercial public dance party for 3,500 people required Council approval</td>
<td>Land owner not prosecuted because they did know about the party</td>
</tr>
<tr>
<td>2003</td>
<td>Changes to EPAA with focus on standardisation</td>
<td>Legislative changes to simplify the plan making system in NSW</td>
<td>Implementation and transitional issues result in extensive delay in local councils applying the new legislation</td>
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<tr>
<td>2006</td>
<td>Standard Instrument Template adopted for all new planning controls</td>
<td>Create a common format and content for zoning plans for land and water</td>
<td></td>
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<tr>
<td>2010</td>
<td>NSW LEC Bellingen Shire Council v Lamir-Pike</td>
<td>Council planning control allow events without approval The Court ruled that development requires an approval</td>
<td>Creates an interpretation issue</td>
</tr>
<tr>
<td>2012</td>
<td>State Government proposes a new Planning Act and Review of Local Government Act</td>
<td>To update rules and streamline processes</td>
<td>Ongoing delays</td>
</tr>
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<td>2014</td>
<td>89% of 152 Local Councils operate under the Standard template</td>
<td>Legislation to improve consistency and streamline processes</td>
<td>Outcome is uneven distribution: Several councils granted exemptions to the temporary use process</td>
</tr>
</tbody>
</table>
What are TLUEs?

A temporary land use for an event (TLUE) includes:

• land, water or air based uses,

• either one-off or regular,

• commercial or not-for-profit,

• using temporary non-purpose-built facilities,

• on land or water not primarily planned for the activity.
Why are TLUE processes worth researching?

In 2007, the three year Australian Research Council funded Festivals Project in NSW and Victoria (outside Sydney and Melbourne) and all of Tasmania recorded:

- more than 2850 events across NSW, Victoria and Tasmania,
- generating $10 billion dollars for the local economies, and
- about 1300 regional events and festivals in NSW.

“Although most festivals were small, not-for-profit and did well to earn a modest profit, the sheer number and distribution of rural festivals makes them a sizeable industry in a cumulative sense.”  

(Chris Gibson & Stewart, 2009, p. 4)
A new rule and more uncertainty?

SILEP STANDARD CLAUSE - 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.
The literature shows significant gaps and unresolved issues

• Scarcity of literature on the land use planning and regulation of temporary uses.

• Limited research about the efficacy of the planning assessment process of events at the local government level.

• No adequate land use planning rules and methodologies exist to guide decisions.

• Why is the NSW local government town planner’s decision-making processes for the assessment of events clouded in uncertainty?
CULTURAL HISTORICAL ACTIVITY THEORY
a powerful framework to analyse, interpret and understand the assessment process and its components.

Subject
Person or people engaged in activity who are the focus of a study on activity. The point of view used to focus on the activity.

Tools
Physical objects and systems of symbols (like language, mathematics) that people use to accomplish the activity

Rules
Laws, codes, conventions, customs, and agreements that people adhere to while engaging in the activity

Community:
People and groups whose knowledge, interests, stakes, and goals shape the activity

Motives
Purposes, reasons for the activity

Object
Problem space

Outcome
Desired goals of activity

Division of Labor
How the work in the activity is divided among participants in the activity
RQ1. How does the land use assessment activity for temporary events operate in NSW local government?

RQ 1 - Focus on CHAT components
RQ2. What are the connections and relationships within the land use assessment activity for temporary events?
**CHAT, the research questions and data management.**

### OPERATIONALISING CULTURAL HISTORICAL ACTIVITY THEORY

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<th>QUESTIONS</th>
<th>DATA MANAGEMENT</th>
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<td>COLLECTION</td>
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<tr>
<td>Research Questions</td>
<td>Guiding Questions</td>
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<tr>
<td>RQ1. How does the temporary land use assessment activity for events operate in NSW local government?</td>
<td>What is the activity?</td>
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<tr>
<td>RQ2. What are the connections and relationships within the temporary land use assessment activity for events?</td>
<td>What are the objectives?</td>
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<tr>
<td></td>
<td>What criteria exist to evaluate the outcome and objectives?</td>
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<td></td>
<td>What are the procedures to be followed?</td>
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<td></td>
<td>What are the roles of the respondents?</td>
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<td></td>
<td>Describe the work environment</td>
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<td></td>
<td>Create list of problems – when and where they happen. Create list of motives, goals and expectations and who sets them. Examine communications in the activity</td>
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<tr>
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<td>Clarifies policy and procedures</td>
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<td>Insight into the translation of policy into actions</td>
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<td></td>
<td>Clarifies historical context, motives, goals and expectations</td>
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<td></td>
<td>Triangulates other data</td>
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<td></td>
<td>What is said and not said</td>
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<td>Supports interpretative inquiry and provides rich data for thick descriptions and theory development</td>
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RQ3. Why does the town planners experience uncertainty in decision making for events?

RQ 3 - Town planner’s view
Data Collection will be qualitative.

- **Documents**
  Government Websites
  Event assessment reports from Council websites in HV.

- **Structured Interviews**
  Key informants from Policy sections of state government agencies responsible for tourism, planning and local government and General Managers of Hunter Councils.

- **Focus Groups**
  Event operators commercial and community Newcastle Council events group.
  Hunter Region Local government staff responsible for events

- **Semi Structured Interviews**
  local government town planners
The Analysis of the data will be undertaken several ways.

A situational analysis: to identify the indicative guiding questions for the Key informants and focus groups such as:

- What is the problem?
- Why is there a problem?
  - What are the probable causes of the problem?
  - How serious is the problem?
- Who are affected by the problem?
  - How many are they?
  - Where are they located?
  - What are their characteristics?
- What has been done to solve the problem?
More Data Analysis

Review all Documents – Electronic and printed - using qualitative content analysis.

Review of interviews using thematic analysis to identify, analyse and report patterned responses (themes) within data and interpret various aspects of decision-making.

Quality Controls

• Careful transcription and checking with respondents.
• Avoidance of ‘anecdotal’ approach.
• Triangulation of data.
• Themes analysed not just described.
• Themes are coherent, consistent and distinctive.
The research will advance theory building and contribute to the knowledge base

- Limited knowledge of how town planners make land use decisions for events.

- Event assessment has not been examined in this way.

- Recent legislative change which needs a systematic analysis.
Thank You

Any questions?
REFERENCES


NSW Environmental Planning and Assessment Act 1979 No 203 (1979).


