

16<sup>th</sup> November 2023

Department of Planning and Environment  
NSW Government

Re: Proposed Reforms to outdoor dining on private land and live music venues

The Glebe Society has over 400 members. We are one of Sydney's oldest and largest resident groups. It is most important that the proposed changes take full account of the zoning and character of the neighbourhood which licensed premises are located in.

The guidelines accompanying the consultation state that *given the variety of potential locations, rather than introducing new measures, it is proposed that potential amenity impacts are managed under existing legislation, such as the Protection of the Environment Operations Act 1997.*

How potential amenity impacts will be managed is of great importance to people who live near hotels and other hospitality and live music venues. Unfortunately the consultation does not explain how the *Protection of the Environment Operations Act 1997* will manage potential amenity impacts for residents who live close to hotels and other hospitality and live music venues. The guidelines also allude to other legislation when they state that *it is proposed that potential amenity impacts are managed under existing legislation, such as the Protection of the Environment Operations Act 1997.* No list is provided of the other legislation which it is proposed will manage potential amenity impacts.

#### **Recommendation 1**

**It is essential for the consultation to list all the legislation for managing potential amenity impacts and explain how it works. It is therefore recommended that a new document be prepared and advertised which lists the legislation which it is proposed will manage potential amenity impacts, explains its provisions and that the closing date for the consultation be deferred.**

Notwithstanding this it is important for you to have a detailed understanding of the variety of contexts that hotels are located in. Glebe provides an excellent case study for this, the detail of which we believe will assist the State Planning authority in its work.

There are a number of restaurants and bars in Glebe but it is the operation of the licensed hotels which have the most potential impact on residents.

There are eight licensed hotels (public houses) in the 2037 postcode.  
There are located in the following land use zones:

No of Hotels	Zoning	
4	R1	General Residential
1	B1	Neighbourhood Centre
2	B2	Local Centre
1	B4	Mixed Use

The purpose of land use zoning is to have orderly planning which avoids conflicts. The documents accompanying the proposal indicates that the E5 Zone will not be able to use the complying pathway. The Society believes that the R1 General Residential zone should also be excluded from the complying pathway for the reasons set out below.

## R1 General Residential

The objectives of the zone are

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To maintain the existing land use pattern of predominantly residential uses.

### 2 Permitted without consent

Home occupations

The Friend in Hand Hotel at 58 Cowper Street, Glebe illustrates the constraints which affect the operation of pubs in R1 General Residential zones.



Figure 1 The Friend in Hand Hotel, 53 Cowper Street is located in a Residential Zone. It is the only non-residential use in the precinct

The objectives of the R1 General Residential zone are focussed on housing. The provision of other facilities is permitted *when they meet the day to day needs of residents*. The Friend in Hand was established in the 1850s as a neighbourhood pub. The complying development pathway is not appropriate as the close proximity to houses of the alfresco dining means that neighbours should be advised of changes to operations and have the right to comment on them.



Figure 2 The hotel(left of image). It occupies a small site and is in close proximity to houses (right of image)

The key issues include:

- I. The amount of space allocated to alfresco operations
- II. The hours of operation
- III. The type of furniture used.

### **The amount of space allocated to alfresco operations**

In historic suburbs and towns 19<sup>th</sup> century hotels are often in close proximity to houses. Figure 2 above shows a houses at 60 and 62 Cowper Street Glebe which adjoin a hotel. The amount and location of space allocated to alfresco dining must take account of this.

### **The hours of operation**

In R1 zones where the land use is predominately residential and *other land uses that provide facilities or services to meet the day to day needs of residents* are permitted by consent the hours of operation of alfresco dining on public land must be limited so it does not impact unreasonably on residential amenity. Ideally such use should cease by 9pm.

### **The type of furniture used**

Furniture in alfresco areas on public land must be portable and removed when the hours for the use of the space are completed (e.g. if use of the alfresco space is permitted until 9pm then at 9pm the tables and chairs must be removed and stored). This is important because if the furniture is left out permanently it can be used informally by patrons of the establishment after the permissible hours of use of the alfresco area. Many establishments do have portable furniture which they put away after the alfresco dining hours have elapsed but others do not. There should be consistency of practice in R1 residential areas that furniture in public places where alfresco dining is permitted is portable and is removed outside the permitted hours for alfresco dining.

### **Recommendation 2**

The complying development regulations must provide clear and empirical guidance as to how close an alfresco area for a hotel, and other venue, can be to houses when the hotel or venue is located in an R1 residential zone.

### **Recommendation 3**

The complying development regulations must provide clear guidance as to when outdoor trading on public land for hotels, or other venues, which are located in R1 residential zones must cease. Ideally this should be by 9pm but no later than 10pm.

### **Recommendation 4**

The complying development regulations must make it mandatory that the furniture used by hotels or other venues for alfresco trading on public land must be portable and removed outside the permissible hours of use of the alfresco area.

### **Recommendation 5**

The current situation where periodic development applications are required provides checks and balances in relation to the operation of hotels and other venues in R1 residential zones. It is desirable that this approach be retained and that hotels and other venues located in R1 residential zones be excluded from the complying development pathway. The development application process would be simplified if there were clear regulations about proximity (Recommendation 2 above), hours when trading must cease (Recommendation 3 above) and furniture being put away outside of permitted trading hours (Recommendation 4 above) for hotels, and other venues, located in R residential zones.

### **Operations adjoining R1 residential land use zones**

Two of Glebe's hotels, the Nags Head at 162 St Johns Road, Glebe and the Toxteth Hotel at 345 Glebe Point Road, Glebe are on the boundaries of R1 Residential land use zones. The Nags Head is in a B1 Neighbourhood Centre land use zone whilst the Toxteth is in a B2 Local Centre land use zone. Figure 3 below shows why establishments which adjoin and are surrounded by an R1 residential zone should be assessed in the same way as hotels located in an R1 Residential land use zones.



Figure 3 Whilst the Toxteth Hotel is located in then B2 Local Centre Zone it is surrounded by residences which are in the R1 Residential Zone

**Recommendation 6**

Where a hotel, or other entertainment venue, is not in the R1 residential land zone but adjoins that zone Recommendations 2, 3 , 4 and 5 above should apply.

It is important to recognise that hotels, and similar venues, which are located in, or adjoining, R1 residential land use zones have special constraints in their use of public space.

Whilst all eight of Glebe and Forest Lodge’s hotels are currently exempt from the complying development SEPP because they are either heritage listed or in heritage conservation areas this may change and, in any case, does not apply to all hotels, and similar venues operating in NSW. We believe that the case studies we have provided will assist you in developing a planning framework which facilitates outdoor dining whilst reducing conflicts.

For this reason we make the following recommendations.

## Summary

### **Recommendation 1**

It is essential for the consultation actually list all the legislation for managing potential amenity impacts and explain how it works. Not to do so suggests this is not a genuine consultation. It is therefore recommended that a new document be prepared and advertised which lists the legislation which it is proposed will manage potential amenity impacts, explains its provisions and that the closing date for the consultation be deferred.

### **Recommendation 2**

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Yours sincerely  
Duncan Leys  
President

Ian Stephenson  
Planning Convenor