

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Friday, 20 October 2023 2:05 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Fri, 20/10/2023 - 14:04

Submitted by: Anonymous

Submitted values are:

Submission Type

I am submitting on behalf of my organisation

Name

First name

██████

Last name

██████

I would like my name and personal contact details to remain confidential

Yes

Info

Email

██

Suburb/Town & Postcode

██████

Please provide your view on the project

I support it

Submission

I'd love to see more outdoor seating for food premisses. Business is tuff enough and anything that makes it wadierfor themis welcomed. I also love live music so I'd be happy to see much more of it.

I agree to the above statement

Yes

[REDACTED]

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Friday, 20 October 2023 2:08 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Fri, 20/10/2023 - 14:08

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

[REDACTED]

Last name

[REDACTED]

I would like my name and personal contact details to remain confidential

Yes

Info

Email

[REDACTED]

Suburb/Town & Postcode

[REDACTED]

Please provide your view on the project

I support it

Submission

I support outdoor dining and music, this will be fantastic for our community.

I agree to the above statement

Yes

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 23 October 2023 11:17 AM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Mon, 23/10/2023 - 11:16

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

██████████

Last name

██████████

I would like my name and personal contact details to remain confidential

Yes

Info

Email

██

Suburb/Town & Postcode

██

Please provide your view on the project

I support it

Submission

Outdoor dining & support for local music is vital. More support for people to learn music affordably eg. discounts on acoustic guitars & other musical instruments. There's not enough buskers which would bring people to the shops & restaurants. Also local artist work in shop windows. Would love to see incentives for musicians to play from recycled or upcycled instruments - I could teach how to make some if a music teacher to teach them to play. People used to play combs, gum leaves, spoons, make shakers filled with unwanted recycled items. I've had a hip replacement operation & difficult to get around. There is a lack of public transport for those with disabilities in Yamba especially at night & weekends. It would be wonderful to be picked up from the door to attend the venues as I am using a walker & walking stick. Would like more daytime music too. Coffs Harbour has a Busbot for older people to get around but Yamba doesn't. There needs to be shuttle buses between West Yamba & Yamba CBD & beaches. Why not have musicians playing on public transport! Older people & disabled with travel restrictions don't see live music. Have musicians playing on the back of a truck driving around the streets like the Salvation Army used to. It was a highlight for all ages & always looked forward to. Showcase & support local creatives!

I agree to the above statement
Yes

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 23 October 2023 12:10 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Mon, 23/10/2023 - 12:10

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

██████████

Last name

██████████

I would like my name and personal contact details to remain confidential

Yes

Info

Email

██

Suburb/Town & Postcode

████████████████████

Please provide your view on the project

I support it

Submission

I support these changes

I agree to the above statement

Yes

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 23 October 2023 12:17 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Mon, 23/10/2023 - 12:16

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

██████████

Last name

██████████

I would like my name and personal contact details to remain confidential

Yes

Info

Email

██

Suburb/Town & Postcode

████████████████████

Please provide your view on the project

I support it

Submission

The proposed reforms to outdoor dining would help stimulate the local food and dining economy, and bring a cultural vibrancy to the city. As a resident, I would greatly welcome these reforms.

I agree to the above statement

Yes

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 23 October 2023 12:39 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Mon, 23/10/2023 - 12:38

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

██████

Last name

██████

I would like my name and personal contact details to remain confidential

Yes

Info

Email

████████████████████

Suburb/Town & Postcode

████████████████████

Please provide your view on the project

I support it

Submission

I love Europe and it's alfresco bars and cafe culture. Outside cafes improves the general atmosphere.

I'm also a dog owner so more outdoors places is a bonus.

I think even inside there should be dogs allowed especially during winter months in cold areas like the Blue Mountains.

I agree to the above statement

Yes

Kristina Argiropoulos

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 23 October 2023 2:48 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues
Attachments: objection-to-eie-23-10-23.pdf
Categories: Logged

Submitted on Mon, 23/10/2023 - 14:45

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

██████████

Last name

██████████

I would like my name and personal contact details to remain confidential

Yes

Info

Email

██

Suburb/Town & Postcode

Balmain NSW 2041

Please provide your view on the project

I object to it

Submission file

[objection-to-eie-23-10-23.pdf](#)

Submission

I propose that any reform allows outdoor dining in non-residential areas only. The existing provisions have allowed Council to approve an outdoor dining and drinking area for a pub to be positioned next to residential properties and near a primary school.

I agree to the above statement

Yes



[REDACTED]

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 23 October 2023 4:08 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Mon, 23/10/2023 - 16:08

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

[REDACTED]

Last name

[REDACTED]

I would like my name and personal contact details to remain confidential

Yes

Info

Email

[REDACTED]

Suburb/Town & Postcode

[REDACTED]

Please provide your view on the project

I support it

Submission

Please support hospitality and creative industries!

I agree to the above statement

Yes

Submission re:

Proposed amendments -

1. **State Environmental Planning Policy (exempt and Complying Development Codes) 2008**
2. **Principal instrument – Principal Local Environmental Plan 2006**

Preamble

The Department of Planning and Environment has invited submissions in respect to proposed amendments to planning law for outdoor dining on private land and registered clubs that would allow planning “bonuses” in the form of floor space and height requirements.

The proposed amendments appear to be a companion piece to the recently introduced 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023 and 24-Hour Economy Commissioner Bill 2023.

The amendments appear to give preference to the interests of the Liquor industry over everyone else.

To the extent that the promotion of “live music” is anything more than a pretext for these amendments, it is a poor one.

Hotels

The Hotel Industry has been in decline for about 50 years. The decline has accelerated with the increase in the numbers of licenced premises. There are about 18,727 licenced premises in NSW, including about 2500 in the Sydney LGA. In my suburb, Glebe, there are about 90 licenced premises, only 26 of which predate 2000.

Over the last 30 years or so, there have been a number of so-called reforms intended to advantage the Hotel industry. These included Sunday trading, extending hours of operation and allowing Hotels to have gaming machines. There are 1181 Hotels in NSW with up to 30 poker machines each. In the 6 months to 30 June 2023, Hotels derived \$1,669,746,720 in net profits from poker machines. Most gambling profits, whether from clubs or pubs, are derived from the poorer parts of Sydney.

The local pub, the Friend in Hand in Glebe, recently changed hands for about \$11M, or the value of the 19 poker machines that were on the premises at the time of purchase (estimated at \$600,000 each). The liquor trading & dining side of the business was evidently valued at nil.

Those premises were built by Tooths in the mid 1930s and could, like many Hotels, be repurposed as residential accommodation or other types of business premises, for which there is strong demand.

On Street Dining

Licensed premises in the Sydney LGA are permitted to trade on the footpath and to extend their trading operations onto the roadway. The Hotels keep their doors and windows open during trading hours and the neighbourhood is inundated with amplified music and noise from patrons. The Sydney LGA is characterised by high density residential development cheek by jowl with

licenced premises. For the many thousands of neighbourhoods us who live close to Hotels, we are made to feel as though we are living in the front bar. On the other hand, Hotel interiors these days appear to be under utilised.

Unless effective measures are taken to control the noise generated by licenced premises, the proposed amendments will create further unacceptable impacts on the amenity of residents. One obvious measure would be to confine trading to the premises, rather than having the operation spill onto the street.

The 24-Hour Economy amendments propose procedural requirements for a complaint that demonstrate a strong bias in favour of licenced premises. These include that a complaint by a person in the neighbourhood may only be made by way of statutory declaration, supported by 4 other persons who live or work in the neighbourhood, and only after the complainant has attempted to address the complaint directly with the licensee. The legislation introduces an “order of occupancy” favouring the licenced premises when it has operated as licenced premises for longer than the complainant has lived or worked in the neighbourhood.

This provision overlooks the fact that many residential premises were constructed well before the licenced premises were constructed or licenced. For example, the Friend in Hand Hotel operates from premises constructed in the 1930s. Its current licence dates back to November 1955. Most of the residential premises in the surrounding streets were constructed in the late 19th – early 20th centuries, but most of the residents took up occupancy after 1955.

If there is to be an order of occupancy, it should be on a level playing field and the question – how long has the premises held a licence, be changed to: when did the current owners and/or licensee move into the neighbourhood? In the case of the Friend in Hand, the current owners purchased the Hotel in May 2022. The order of occupancy would favour persons who have lived and worked in the neighbourhood since before May 2022.

The assumption that a single complainant whose amenity is being destroyed is not worth hearing from evidences a strong bias in favour of the liquor industry, and the procedural complexity of making a complaint contrasts strongly with the streamlining process available to the licensee. It is difficult to avoid the conclusion that the proposed amendments are intended to discourage complaints.

Further, no thought appears to have been given to the impact of the proposed amendments on existing performance venues, many purpose built and having appropriate sound modulation.

Instead, the residents are expected to put with unrestrained street noise, while the premises responsible are rewarded with bonus hours of operation and encouragement in the form of floor space and height requirements.

Rats

On street dining is popular with rodents. They can be seen in all parts of the city and surrounding suburbs.

Health & Welfare

The proposed amendments will not enhance creativity. This is a mere pretext to sell more alcohol. We know the harm that excessive alcohol consumption causes. It contributes to poor health, crimes of violence and reduced productivity in the real, day time, economy.

The NSW Crime Statistics for the June Quarter 2023 show the following increases in violent crime in the Sydney and Inner South statistical area over two years to June 2023:

Non domestic violence related assault	24.5%
Sexual assault	31.6%
Robbery	62.3%

Conclusion

The proposed amendments represent an attack on persons living in proximity to licenced premises. They are intended to promote alcohol consumption at the cost of health, increased crime and reduced residential amenity. Cities should be liveable spaces and the effect of these amendments will be to make the city unliveable.

Notwithstanding the broad legislative powers of the NSW Parliament, it is doubtful that the proposed amendments reach the “peace welfare and good government” threshold of legislative competence.

Dated: 28 October 2023

[Redacted signature block]

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From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 30 October 2023 2:15 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Mon, 30/10/2023 - 14:14

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

■

Last name

■

I would like my name and personal contact details to remain confidential

Yes

Info

Email

■

Suburb/Town & Postcode

■

Please provide your view on the project

I am just providing comments

Submission

Please see responses to various arts of the EIE:

"To strike a balance, the department proposes to allow an increase in patrons at the premises without the need to provide additional car parking, so long as the existing number of parking spaces at the venue are retained. This restriction aims to ensure there continues to be parking for staff, patrons, deliveries and performers without displacing this demand onto surrounding streets, accessible paths of travel and amenity."

This is not a balance. It is creating an imbalance as the additional patrons will have nowhere to park but the surrounding streets, accessible paths of travel and amenity. That is assuming the existing parking provisions are adequate for the venue's uses – not always the case. In addition, an increase in patronage may trigger an upgrade of intersection treatment which would not be captured through a CDC.

"Must not include smoking areas or gaming machines."

Smoking areas must be located such that outdoor dining is not impacted in any wind direction.

"Businesses will not have to notify neighbours if they receive approval for outdoor dining areas as complying development. This in keeping with the notice requirements for complying development under the Environmental Planning and Assessment Regulation 2021. We encourage businesses to speak with their neighbours about any new proposal for outdoor dining."

Reducing neighbourhood amenity through increased patronage (traffic, parking), increased deliveries, rubbish collection, LTW (grease trap cleaning schedule) is not acceptable. Particularly where current dining establishments are impacting residential amenity.

"A floor space bonus will make providing the creative space an attractive and feasible proposal for developers including commercial and residential properties."

Ensuring parking requirements are extended for any additional increase in patrons attracted through the bonus. In addition, an increase in patronage may trigger an upgrade of intersection treatment or temporary traffic management measures – particularly for events that attract maximum occupancy.

I agree to the above statement

Yes

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Wednesday, 8 November 2023 6:56 AM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Wed, 08/11/2023 - 06:55

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

[REDACTED]

Last name

[REDACTED]

I would like my name and personal contact details to remain confidential

Yes

Info

Email

[REDACTED]

Suburb/Town & Postcode

[REDACTED]

Please provide your view on the project

I support it

Submission

No additional information. I just support the change and encourage easier use of outdoor spaces

I agree to the above statement

Yes

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Wednesday, 8 November 2023 8:16 AM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Wed, 08/11/2023 - 08:16

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

[REDACTED]

Last name

[REDACTED]

I would like my name and personal contact details to remain confidential

Yes

Info

Email

[REDACTED]

Suburb/Town & Postcode

[REDACTED]

Please provide your view on the project

I object to it

Submission

As an adjacent long term resident of a licensed premises, I see the effects first hand of noise and anti social behaviour from licensed premises. This policy change is more than just about incentivising to encourage outdoor dining and live music, it's about protecting local amenity, reducing anti social behaviour, intoxicated persons, and vandalism to adjoining property. It's also about protecting amenity of the surrounding residential neighbourhoods. There are many licensed premises which are surrounded by commercial precincts to which this policy is absolutely

fine, but where you have a licensed premises in a small and quiet residential precinct surrounded by residential homes, it's more sensitive to noise and continual light overspill etc. We need to protect residential amenity and appreciate that not all residential precincts need to be vibrant and dynamic and offering a nighttime economy and outdoor dining and live music.... Some residential precincts need to be protected as that - a place to rest relax and be away from the hum drum of the world. Live music needs to have suitable protective measures in place to protect the acoustic amenity of nearby residents, particularly when the residents have been there far longer and the music and licensed premises has gradually crept in.

I agree to the above statement

Yes

[REDACTED]

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Wednesday, 8 November 2023 11:39 AM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Wed, 08/11/2023 - 11:39

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

[REDACTED]

Last name

[REDACTED]

I would like my name and personal contact details to remain confidential

Yes

Info

Email

[REDACTED]

Suburb/Town & Postcode

[REDACTED]

Please provide your view on the project

I support it

Submission

This sounds like a good initiative and has the advantage of already being trialled for some time.

I agree to the above statement

Yes



Council Ref: Planning & Place Division
23/209330

13 November 2023

NSW Department of Planning & Environment
Locked Bag 5022
PARRAMATTA NSW 2124

To Whom it May Concern

RE: Proposed reforms to outdoor dining on private land and live music venues

Woollahra Council welcomes the opportunity to comment on the *proposed reforms to outdoor dining on private land and live music venues*. Whilst we support the concept of simplifying the planning pathways for registered clubs and food and drink premises, we have the following fundamental concerns with the proposals as exhibited:

- The establishment of a new fast-track approval pathway with limited development standards is not supported and is inadequate/insufficient in terms of adequately addressing and maintaining the amenity of surrounding residents.
- The proposed threshold test of 'maintaining the amenity for surrounding residents' is too subjective and the recommended development standards are generic in nature, and have no regard to the proximity of the outdoor dining area(s) to neighbouring properties.
- The prescribed development standards are deficient for the following reasons:
 - They principally only relate to vehicular and pedestrian access
 - There is no standard which relates to noise criteria
 - The total allowable floor area calculation for outdoor dining at 100% on RE2 zoned land is excessive.
 - The operational condition stating "*the use of the outdoor dining area must not exceed the hours of the operation for the premises it is associated with*" will enable existing DA consents which contain specific conditions with varying hours of operation for indoor dining and outdoor dining to be overridden by the SEPP without any adequate assessment
- The parameters set relating to the "potential increase in the number of patrons" is generally dictated only by compliance with the BCA, and principally sanitary facilities. This will potentially lead to venues (with the benefit of this SEPP) increasing their current capacity of sanitary facilities via a DA with the future aim of then being able to facilitate an increase in patrons for outdoor dining. This is not a transparent approach to planning. Further, the guidelines will also allow an increase in patrons at the premises without the need to provide additional

parking. This is not acceptable as the potential resultant impacts of traffic and car parking demand on the surrounding road network are not assessed. These potential impacts alone seem to contradict the initial threshold test of the SEPP being, maintaining the amenity for surrounding residents.

Thank you for the opportunity to comment. If you require any further information about our submission please contact [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 November 2023

Dear Sir/ Madam,

RE: Concerns Regarding Proposed Changes to Complying Development SEPP

I am writing on behalf of Strathfield Council Officers to express our concerns about the proposed changes to the *State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008* in their current form. We support the importance of supporting live music and encourage vibrant night time activities, it is vital to balance the need to preserve the amenity of nearby residents.

Our main concern is the potential negative impact on nearby residential areas due to noise from outdoor dining and live music. Also the reliance on reactive measures like regulation under *Protection of the Environment Operations Act 1997* will put undue burden on council staff and not be a strong enough control to protect residential amenity.

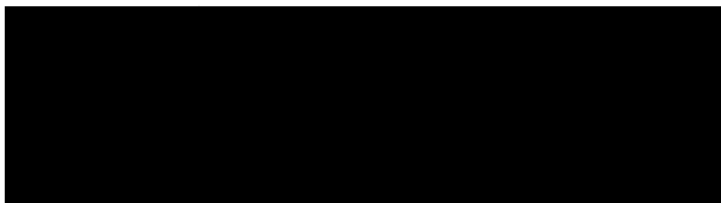
In the current development process, businesses are required to submit acoustic assessments before engaging in activities that could create noise. This proactive approach helps identify and address potential issues upfront, ensuring that measures are in place to prevent disturbances, especially when in close proximity to residential receivers.

Our recommendation is to include acoustic assessments as a mandatory part of the complying development process when residential areas are nearby. This proactive measure would help prevent noise issues early on and maintaining the quality of life for our residents.

We believe that a preventative approach to noise management is more effective in finding a balance between commercial activities and residential harmony. We appreciate your consideration and hope for a collaborative solution that benefits both businesses and residents in our community.

Thank you for your consideration of this matter.

Yours faithfully,



From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Thursday, 16 November 2023 9:00 AM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Thu, 16/11/2023 - 08:59

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

[REDACTED]

Last name

[REDACTED]

I would like my name and personal contact details to remain confidential

Yes

Info

Email

[REDACTED]

Suburb/Town & Postcode

[REDACTED]

Please provide your view on the project

I support it

Submission

x

I agree to the above statement

Yes

Council Reference: 31157E (D23/466082)
Your Reference:

15/11/2023

Submitted via Planning Portal

Attention: NSW Department of Planning and Environment

Dear Sir / Madam

Submission - Proposed reforms to outdoor dining on private land and live music venues

Thank you for the opportunity to provide comments on the proposed changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) and proposed optional *Standard Instrument - Principal Local Environmental Plan 2006* (SI LEP) clause. Given the short comment period, the views in this submission are those of Council staff, not the elected Council.

Council is generally supportive of the proposed changes and appreciates the NSW Government's desire to simplify the planning and approval framework and provide communities and creatives across the state with more vibrant, dining, performance and leisure destinations and experiences.

Further comments on the proposed changes are provided below.

Proposed changes to the Codes SEPP - Outdoor dining as complying development on private land and for registered clubs

Shoalhaven already features a strong tourism and visitor economy and we would generally support an outdoor dining complying development pathway that enables venues to increase their patronage, particularly during peak season, and further stimulate trade (subject to compliance with the BCA and other relevant standards).

The Explanation of Intended Effect (EIE) includes a number of proposed development standards and operational conditions to ensure that matters like existing car parking, vehicular access, pedestrian access, disability access, trading hours, proposed scale of increase and amenity are not impacted or are appropriately managed. These proposed standards and conditions seem reasonable. A key issue, which appears to be addressed in the EIE, would be to ensure that there are no undesirable impacts on existing car parking arrangements.

Floor space bonus to incentivise music venues – proposed optional SI LEP bonus floor space/density clause

Firstly, it is noted and appreciated that adoption of the proposed clause will be 'optional'. This approach is usually preferable to mandating provisions for a council's LEP without input or dialogue. We acknowledge that the uptake of such a clause will need to be preceded and underpinned by appropriate strategic planning and community consultation to determine suitable locations, land uses and corresponding numerical bonuses. Pending the outcome of such investigations, we anticipate that the floor space and building height bonus provisions have the potential when done correctly to help facilitate further opportunities and spaces for Shoalhaven's already strong and vibrant creative industries sector.

It is further noted that the target of the floor space and building height bonus provisions are developments aligning with the *creative industry*, *entertainment facility* and *information and education facility* land use definitions. A DA for a development proposing to take advantage of the bonus provisions in the clause will need to include a nominated "benefitting" land use in the development. One concern that should be further considered is the potential of the "benefitting" land use either ceasing, not commencing in the first place or being the subject of a change of use after development consent to the DA is granted. Further provisions or guidance could be provided to ensure the bonuses ultimately achieve what is intended.

We appreciate the opportunity to comment on the Explanation of Intended Effect for the proposed reforms to outdoor dining on private land and live music venues. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NSW Department of Planning & Environment

Date:

14 November 2023

To whom it may concern

PROPOSED REFORMS TO OUTDOOR DINING ON PRIVATE LAND AND LIVE MUSIC VENUES

Thank you for the opportunity to comment on the proposed reforms to outdoor dining on private land and live music venues currently on exhibition. Wollongong City Council is generally supportive of reforms to simplify planning approval processes to support business.

We have reviewed the Explanation of Intended Effect and FAQs documents and provide the following feedback for your benefit.

OUTDOOR DINING APPROVED AS COMPLYING DEVELOPMENT

We raise the following queries and concerns regarding outdoor dining proposed to be approved as complying development.

- i. The rationale for removing the exempt development pathway and requiring a complying development certificate (CDC) for outdoor dining is unclear. The exhibited documents state the reason is to give businesses certainty, however this could be achieved by simply removing the trial period clause under the Codes SEPP resulting in less red tape. We would be interested in understanding whether DPE has any information regarding significant issues (complaints register etc) related to outdoor dining areas that have prompted the reforms.
- ii. We have concerns about the cost and resource implications for businesses looking to pursue outdoor dining under the reforms via a CDC as opposed to simply making them exempt. The costs for CDC's are not insignificant for small business. For example, CDC from Council could cost in the order of \$733 for an application for 20m² of outdoor dining. We have received feedback from businesses that administration costs of this magnitude affect the feasibility of operating outdoor dining. In recent years Council has waived outdoor footpath dining fees in an effort to support businesses and encourage vibrancy in commercial centres. We have concerns that the cost and administration required of any CDC process may have the unintended effect of reducing the take up of outdoor dining.
- iii. We have concerns regarding the rationale for the percentage allowance / limitations on outdoor dining areas under the reforms. The distribution of percentages across the land use zones may not reflect or account for local conditions and Local Environmental Plans (LEP) Zoning Maps. For example, Wollongong LGA does not include a SP5 Metropolitan Centre Zone and operators/sites located in the E3 Productivity Support and E4 General Industrial Zone are not necessarily suited to maximum outdoor dining area percentages. Tenancies within E4 General Industrial Zones (100%) often benefit from large tenancies (with large GFA), whereas tenancies in E2 Commercial Centre (50%) and MU1 Mixed Use Zones (25%) are often operating from smaller tenancies, reducing potential outdoor dining areas. The percentages would appear to disproportionately benefit those operating within areas not strategically identified for food & drink businesses and vitality related to outdoor dining. Rather than outdoor dining areas being based on GFA and zoning alone, it is also essential to consider other variables including residential interfaces, landscaped areas, adjacent zones etc.

- iv. The wording is unclear in the EIE whether the percentage includes any existing approved outdoor dining and should clarify whether a venue can only have up to X% outdoor dining in total.
- v. To date there have been issues with interpretation of the Codes SEPP with regard to placement of seating in areas that may restrict vehicular or pedestrian access to an entry to a building or comply with DDA legislation. It would assist all stakeholders if clarity could be provided as to what constitutes restricting access and whether this is applicable to vehicle loading / unloading and servicing areas.
- vi. Consideration of noise impacts on any nearby residential areas appears to be minimal. Ability for venues to operate needs to be balanced against impacts on neighbours, a proposed CDC pathway does not allow for any merit assessment.
- vii. The proposed reforms would result in hours of operation for outdoor areas consistent with those approved for the related food and drink premises in locations where sensitive receptors (dwellings etc) are in close proximity, therefore restricting outdoor dining hours will be paramount. This approach would be consistent with Wollongong CBD Night Time Economy Policy, where hours of operation are restricted by two (2) hours when the site is subject to a residential interface e.g. business trades until 2am and related outdoor area closes at 12am (midnight).
- viii. The reforms propose that patron capacity for food and drink premises may be increased through d CDC. This may lead to conflicts with any development consent related to the food and drink premises. Further, the calculation of patron capacity should be consistent with WCC's approach in terms of BCA compliance including amenities, egress widths, gross floor area etc.
- ix. Regarding seating related to Registered Clubs, Council notes that it is proposed to allow venues to have more patrons if the venue remains compliant with standards. Many existing registered clubs are located adjacent to residential areas and requirements for parking servicing etc are already stretched. Many of these clubs were approved years ago under previous planning controls when community views and expectations were quite different. Depending on the context of the site, the statement within the EIE that existing standards and the venue's approvals make sure neighbouring residents and surrounding land uses are not negatively impacted, is misleading and inaccurate.
- x. With respect to car parking impacts and access generally WCC would like to encourage promotion of active transport (bicycle infrastructure etc) where possible in the reforms and requirements for outdoor dining.
- xi. Regarding environmental risk – it is unclear if there has there been consideration of natural hazards (e.g., bushfire prone and/or flood prone land) and the implication of intensifying a use via a CDC pathway. Consideration should be given to the reduction in the percentage of additional outdoor dining area accessible via this pathway in bushfire or flood prone areas.

FLOOR SPACE BONUS TO INCENTIVISE MUSIC VENUES

We raise the following queries and concerns regarding the floor space bonus to incentivise music venues.

- i. With the exception of a few historic purpose-built buildings, the Wollongong Live Music Experience to date has been that creative industries tend to occupy existing tenancies within existing buildings not within new development which are often more expensive with potentially incompatible floor plates and adjacent land uses (*shop top housing*).
- ii. The reforms indicate the bonuses would apply to *creative industry, entertainment facility and information and education facility* land uses, however the experience in Wollongong to date is that live music often occurs as ancillary to other land use e.g., *pubs, small bar*, temporary uses (events etc). Have the reforms considered how to further incentivise such activities, where not part of new development that would benefit from bonuses?

- iii. We seek clarity around what type of development DPE anticipates encouraging through the proposed bonus e.g., mixed use / *shop top housing* with live music on ground floor, or additions to existing building to facilitate performance space, conversion of areas previously not counted as GFA to performance space etc.
- iv. Will this optional clause be supported by design guidance/strategy to ensure facilities are fit for purpose and provide the types of spaces the arts industry requires in a range of settings/scales/price points?
- v. Would a *shop top housing* development be eligible for a bonus if live music was proposed at ground floor level? We note the land use definitions referenced in the reforms are not *commercial premises* or *health services facilities*.
- vi. Is it intended for bonuses to accumulate for development that encompasses multiple eligible development types i.e., affordable housing project with live music component? Council has concerns should this be the case.
- vii. We are concerned over the practice of “bonus hunting”, where a developer may include a development type in order to gain a height or density bonus to facilitate a less desirable development type and profit from the endeavour. The overall development may proceed whilst the desired development type (live music tenancy) may remain unoccupied for a substantial period of time. Has the DPE considered this scenario and what safeguards are intended to prevent this?
- viii. Has consideration been given to impacts on car parking and waste servicing requirements for higher GFA developments within increasingly dense commercial centres, where bonuses are most likely to be applied and traffic and access to public transport may already a concern?
- ix. The EIE notes “A floor space bonus will make providing the creative space an attractive and feasible proposal for developers including commercial and residential properties”. The EIE does not provide information on what engagement has been undertaken with the development and creative industries to understand what the barriers are to delivering additional spaces. It is unclear how bonuses will provide long term appropriate spaces for the arts sector. The EIE lacks detail or supporting information on any feasibility analysis, high level or otherwise, that might have informed this proposed clause.
- x. Does the DPE have any information (studies etc) that substantiate that such bonuses are an effective incentive for creative industry?

Considering the scale of many live music venues and operators, more direct financial incentives / assistance may be effective e.g., Liquor licence fee waiver, Contribution Levy waiver, Development application fee waiver etc.

As a Council that values the night time economy, we would welcome further discussions with the Department on the matters raised above to ensure that any provisions strike the right balance between business and community needs without overly complicating the process.

Please contact me should you require further information.

[Redacted]

[Redacted]

16 November 2023

Our Ref: 2023/610040
File No: X100799

By website: <https://www.planningportal.nsw.gov.au/draftplans/exhibition/proposed-reforms-outdoor-dining-private-land-and-live-music-venues>

Dear [REDACTED],

Submission - Explanation of Intended Effect - NSW Vibrancy reforms - Outdoor dining on private land and floor space incentives for live music venues

Thank you for the opportunity to comment on the Explanation of Intended Effects (EIE) to support outdoor dining and incentivise music venues.

We provide the following comment and recommendations for your consideration.

Outdoor dining on private land as complying development

Hours of approval

The EIE proposes that outdoor hours will match the approved indoor hours.

Licensed venues that open late are designed to contain the noise within their building. This is true for both the noise from live music but also from large gatherings of patrons at later hours, where such noise would be incompatible with the neighbourhood context.

The City issues development consents for late night trading and up to 24-hour operations for licensed premises in some precincts. However, earlier hours are imposed for outdoor areas as there are very limited options to manage impacts from noise with an outdoor venue.

For instance, in our Late Night Management Areas, Sydney DCP 2012 sets maximum at 24 hours for indoor areas and 1am for outdoor areas. The proposal in the EIE would allow 24-hour trading for outdoor areas, without any consideration of impacts, and later than could be approved through a development application.

The proposal is out of step with the Codes SEPP's change of use provisions which cap trading hours at 7pm or 10pm depending on the use.

Base trading hours should be set to ensure impacts are reasonable. The hours could be set at midnight for SP5 Metropolitan Centre zone and other business-only zones and 10pm for other zones with additional hours possible through a development application.

Recommendation 1

Sets base operating hours for outdoor areas (not to reflect indoor hours) to enable reasonable impacts based on land use zones. An example would be 10.00pm.

Floor space bonus to incentivise music venues

The City has included incentives for cultural and creative uses within its planning controls for the Oxford Street precinct. The proposed model clause set out in the EIE is similar in its overall aim and the City supports the nominated suite of incentivised uses – *entertainment facility, creative industry, and information and education facility.*

Ensuring the delivery of creative production and presentation spaces

The proposal set out in the EIE is described as an incentive for music venues. It then nominates three land use terms that the bonus can be applied to - *entertainment facility, creative industry, and information and education facility.* Taken together the three land use terms are much broader than music venues. The City supports this broader incentive – as noted in our submission to the NSW Arts, Cultural and Creative Industries Policy, the shortage of suitable spaces for creative production and presentation is a critical issue inhibiting growth of the sector.

In formulating the bonus floor space incentive, care must be taken to ensure that it delivers purpose-built facilities for creative production and presentation. There is a risk that for instance the office space for a graphic design company or advertising agency could fall under the definition of *creative industry* and be eligible for the incentive at the expense of performance space.

Recommendation 2

Care should be taken to ensure that the floor space incentive delivers spaces targeting specifically performance, rehearsals, production and presentation.

Minimum amount of incentivised uses

The EIE gives no indication of how much of the incentivised use needs to be included for the bonus to be applied. The proposal at Table 2 could allow the bonus to be achieved for a token provision of creative industry within a more substantial overall development.

Recommendation 3

Any model clause should allow Councils to set a minimum amount of identified development before the bonus FSR or height can be achieved.

Incentivised uses should not have to be time-limited

The proposed model clause set out in the EIE suggests that the incentivised uses should be time limited. While this approach might be appropriate in some circumstances, it could discourage councils from making use of the model clause. The City's Oxford Street provisions do not include a time limit for the use, as the increase in height and FSR provided as an incentive are permanent.

Recommendation 4

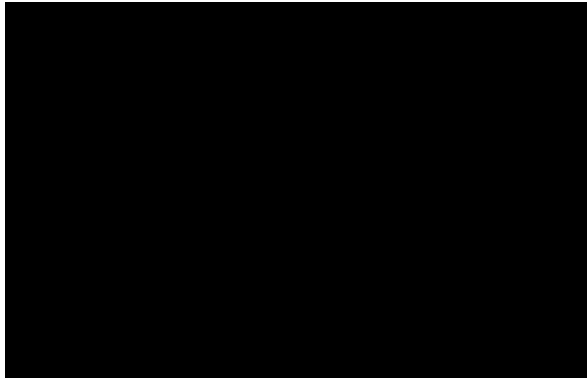
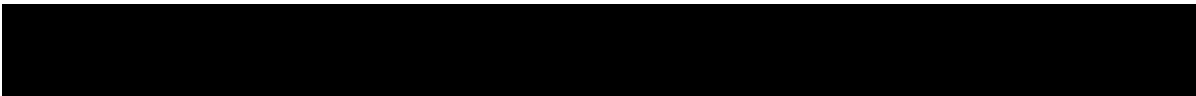
The model clause should not stipulate that the incentivised use is time-limited. Councils should have the option to time limit if appropriate.

Securing the incentivised uses

Councils will be concerned that it will be difficult to secure the incentivised use in a way that is transparent and satisfies the consent authority. There is also the possibility that the incentivised use could be changed through exempt or complying development, noting that creative industry can change to another type of light industry (other than artisan food and drink) as exempt development.

Recommendation 5

DPE should make clear, through the clause, that the incentivised use can be secured by covenant in order to satisfy 1.20(2)(b) of the Codes SEPP



16 November 2023

[REDACTED]

**Canterbury-Bankstown Council Submission –
Proposed changes to incentivise music venues**

Thank you for the opportunity to comment on the Explanation of Intended Effect, which proposes a new LEP optional model clause that would allow Council to identify a floor space and/or height bonus that could be used in developments that contain music venues and other performance/cultural uses (page 11).

The following issues are raised in relation to the model clause:

- The model clause must remain an optional clause in the LEP to allow Council to determine its application and conduct the necessary studies for implementation.
- The model clause must not permit the floor space and/or height bonus to be combined with other State policies that offer floor space and/or height bonuses. This is to prevent a situation where multiple bonuses can be stacked on top of each other, distorting the planning controls designed by Council.
- The model clause must ensure the proposed uses continue to operate on the site in perpetuity. This is to prevent the incentive from being used to secure a permanent density increase while only providing creative spaces for a limited time. If not, it would counteract the intended goal of this policy, which is to support the creation of more venues and rejuvenate the arts sector.
- The model clause must ensure the floor space and/or height bonus cannot be achieved unless the consent authority is satisfied that the proposed development complies with a development control plan prepared for the land, particularly in relation to acoustic privacy, hours of operation and late night trading controls.

This submission is prepared by Council officers and does not reflect the views of the Councillors.



[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[REDACTED]

16 November 2023

[REDACTED]

Sent by online submission portal

Submission on proposed reforms to outdoor dining on private land and live music venues

Thank you for the opportunity to comment on the Explanation of Intended Effect (EIE) that has been prepared to provide details on the proposed planning reforms on outdoor dining and live music venues to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)* and *Standard Instrument Principal Local Environmental Plan 2006*.

Given the short timeframe to provide a submission, there has been no opportunity to report to Council, which is normally our standard practice, therefore these comments are provided without endorsement from Council. On review of the exhibited EIE by Council officers, the intent behind the proposed amendments and their overall purpose to enhance and encourage activities that support the Night time economy in relation to outdoor dining and live music is supported. Council officers also broadly support the intention to simplify the approval process for outdoor dining and live music venues.

However, the amendments don't include appropriate provisions for development standards that align with our development controls, internal processes and strategically planned densities across Penrith Local Government Area. The proposed planning pathway for outdoor dining undermines Council's current planning controls and the authority to assess development in the local context and in consideration of our community now and into the future. The below submission table provides details on all concerns and subsequent recommendations.

Please find attached our submission table with our concerns and proposed amendments for your consideration.



[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Penrith City Council
PO Box 60, Penrith
NSW 2751 Australia
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penrith.city



Proposed reforms within the Explanation of Intended Effect (EIE)	Consistent with Council's Position	Comments
State Environmental Planning Policy – Exempt and Complying Development Codes (2008) (Codes SEPP)		
<ul style="list-style-type: none"> • New complying development pathway for outdoor dining on private land and at registered clubs under Part 5 - Industrial and Business Alterations Code of the Codes SEPP allowing: <ul style="list-style-type: none"> ○ An increase in patrons at the premises without the need to provide additional car parking at the premises. ○ Businesses to operate outdoor dining during normal trading hours. ○ Neighbour amenity to be protected under existing legislation such as <i>Protection of the Environment Operations Act 1997</i>. ○ Use of the existing space as outdoor dining only and does not allow for any building works to occur. 	Neutral	<ul style="list-style-type: none"> • Council officers support the intent behind encouraging activities that will support and grow our Night-time economy for all current and future residents aligning with outcomes in Penrith's Night Time Economy Strategy and in addition supporting actions within Penrith's Local Strategic Planning Statement 2020. • The proposed provision for businesses to operate outdoor dining during the existing approved trading hours for the premises as part of their existing development is supported. • However, Council officers do not support a statewide complying development pathway, recognising that a one-size-fits-all approach may have adverse impacts on local amenity and adjoining land uses where the expanded development is not suitable in certain local settings, in particular residential zones. • Whilst Council officers are supportive of outdoor dining overall as it encourages activities that enhance our Night-time economy, there are suitable locations where Council seeks to encourage and support night-time economy activities to minimise privacy and amenity impacts on nearby land uses. • The reforms will enable small scale outdoor dining premises to expand and operate in employment zones which typically have a strong interface with residential zones and land uses, thus creating noise implications for neighbouring residents. • Council requires Noise Impact Statements prepared by suitably qualified acoustic consultants to be submitted alongside Development Applications

Proposed reforms within the Explanation of Intended Effect (EIE)	Consistent with Council's Position	Comments
		<p>(DA's) where the proposed development includes noise-generating activities and extended trading hours in accordance with legislative requirements.</p> <ul style="list-style-type: none"> • Parking is a significant issue across Penrith city with residents being heavily reliant on vehicles as a means of travel. The proposed reforms would therefore cause additional pressure on our city's pre-existing parking issues. In particular, for zones where 100% of the internal gross floor area can be used as outdoor dining, thus the increase in patrons and added pressure on car parking facilities. • The reforms do not address do not address principles relating to Crime Prevention Through Environmental Design (CPTED) and therefore may increase anti-social behaviour, particularly in locations where lighting may be poor, and the potential to impact neighbour amenity on adjoining residential land uses. • Once these reforms are operational, Council's would in effect be responsible for the ongoing regulatory outcomes as a result of the development under the complying development pathway. Noting that the intention of this pathway is to introduce a simplified development approval process, if not implemented correctly it can create significant administrative burdens for local Councils. • In addition to the above, the reforms have the potential to create significant workload amongst our compliance teams as they will be responsible for monitoring the development that has bypassed our approval processes.

Proposed reforms within the Explanation of Intended Effect (EIE)	Consistent with Council's Position	Comments
		<p>Recommendations:</p> <ul style="list-style-type: none"> • Council officers recommend this to be an optional pathway to allow Councils to be involved in the decision-making process of selecting areas where outdoor dining is deemed appropriate based on adjoining land uses. • It is strongly recommended that the DPE introduce additional provisions to ensure any impacts to residential amenity are minimised, particularly surrounding noise. In particular, we recommend a Noise Impact Statement prepared by a suitably qualified acoustic consultant to assess any noise implications as a result of the increased development to be included as a requirement within the pathway. • It is also strongly recommended that additional parking provisions be a requirement within the complying development pathway to account for the increase in patrons and reduce any pressure on our existing parking issues. Although Council officers support the provision of not being able to decrease parking, this does not go far enough to accommodate for additional patrons as a result of the development. • It's also recommended that there are additional controls relating to Crime Prevention Through Environmental Design (CPTED) to ensure anti-social behaviour is effectively monitored and managed, in particular locations that are adjacent to residential development uses.
Standard Instrument – Principal Local Environmental Plan (2006)		
Introducing an optional model clause to allow Floor Space and Height bonus initiatives for live music venues.	Neutral	<ul style="list-style-type: none"> • Council officers support the mechanism to be involved in the decision-making process as to where the bonuses shall be available in certain areas within our city, allowing us to strategically plan densities for certain zones and local neighbourhoods.

Proposed reforms within the Explanation of Intended Effect (EIE)	Consistent with Council's Position	Comments
		<ul style="list-style-type: none"> • However, whilst Council officers are supportive this clause being optional to allow Council the mechanism to undertake strategic planning, we are concerned that this creates pressure for us to implement and in addition creates false hope for developers to calculate potential yield when purchasing land. • The introduction of increased densities and building scales will impact the carefully considered strategic planning undertaken by Council. As an example, Council's strategic planning work to manage growth and change in St Marys over the next 20 years is well underway. The strategic planning work already carried out (and currently underway) for St Marys Town Centre is grounded by a strong evidence base, is place based, informed by community engagement and is a design led process. The proposed bonus density increases have not been tested as part of Council's comprehensive St Marys strategic planning pathway, which includes public infrastructure and capital works, as such this will have implications for the St Marys Town Centre Master Plan currently underway. • The proposed increased density bonuses will complicate planning and levying for infrastructure and services. Increased densities above what was planned for by Council will increase demand on public infrastructure and services, beyond what has been nominated in Council's Development Contribution Plans and will require immediate work to consider and amend Plans. • Building heights and FSR need to be carefully aligned to work with DCP controls, to ensure that development delivers appropriate amenity, fits within the context of the area and provides certainty for all stakeholders on the potential build form outcome.

Proposed reforms within the Explanation of Intended Effect (EIE)	Consistent with Council's Position	Comments
		<ul style="list-style-type: none"> • The misalignment of development standards with site capability and capacity, strategic vision and DCP controls will impact the development assessment process. This could result in protracted assessment times, the potential for increased appeals to the Land & Environment Court or development that is not consistent with the vision, character or amenity sought by Council. • The expanded bonus may increase the land values for application development sites. Where the full bonus may not be able to be achieved, this could result on impacts the feasibility and may restrain development rather than incentivise it.



Your ref:
Our ref: 8198108

16 November 2023

Att. Outdoor Dining Reforms team
NSW Department of Planning and Environment

Submission lodged via NSW Planning Portal

Dear Sir/Madam

Submission to the NSW Government on the proposed reforms to outdoor dining on private land and live music venues

Please find enclosed a submission on the Proposed reforms to outdoor dining on private land and live music venues currently open for consultation until 16 November 2023. This submission has been prepared by staff on behalf of City of Coffs Harbour.

The City thanks the NSW Government for the opportunity to provide input into this matter. The attached submission contains several matters which the City requests be taken into consideration by the NSW Department of Planning and Environment prior to finalising this matter.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

PROPOSED REFORMS TO OUTDOOR DINING IN PRIVATE LAND AND LIVE MUSIC VENUES

Submission by City of Coffs Harbour

16 November 2023

This submission has been prepared by staff of the City of Coffs Harbour (the City) in response to exhibition of the proposed reforms to outdoor dining on private land and live music venues (proposed reforms). This submission has been prepared following review of the exhibition documents.

A. GENERAL COMMENTS

The City makes the following general comments about the proposed reforms:

- The proposed reforms are better suited for metropolitan councils that have larger high-density areas of commercial activity. Metropolitan councils also have access to greater resources to undertake enforcement under the Protection of the Environment Operations Act 1997 (POEO) that the proposed reforms rely on.
- The proposed reforms need more guidelines and parameters if they are to be implemented in a regional city. Regional cities have limited resources for enforcement and smaller areas of commercial zones that directly neighbour residential zones and therefore at a greater risks of land use conflicts.

B. SPECIFIC COMMENTS

The City makes the following specific comments and requests they be taken into consideration:

- The proposed reforms enable the expansion of outdoor dining and music venues and removes the ability for the City to assess potential impacts from live music and patron noise on sensitive neighbouring receivers.
- The proposed reforms rely heavily on compliance under the POEO and will rely on local governments to manage the impacts through POEO enforcement tools.
- This will greatly increase the workloads of Environmental Health officers and Compliance officers and regional councils such as ours, do not have the resources to undertake investigative measures to resolve such issues when they occur.
- This will result in no immediate relief or resolution to those effected by the impacts of these reforms and an increase in land use conflicts.



16 November 2023

Office of the Chief Executive Officer

Reference File: F00678 (23/236572)

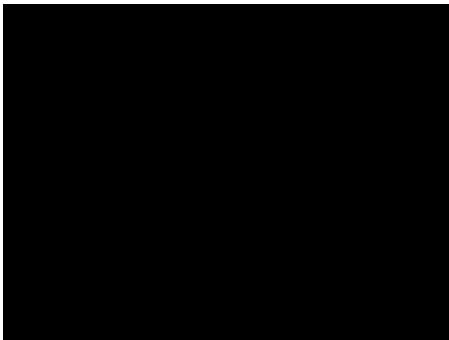
Department of Planning and Environment
Via online submission portal

Dear Sir/Madam,

**SUBJECT Submission on proposed reforms to outdoor dining and
live music venues**

Thank you for the opportunity to provide feedback on the proposed reforms to outdoor dining and live music venues.

Please see attached Blue Mountain City Council submission on the proposed amendments.



Submission on proposed reforms to outdoor dining and live music venues

Blue Mountains City Council

Thank you for the opportunity to provide feedback on the proposed planning reforms to outdoor dining on private land, and the promotion of live music venues, currently on exhibition. Blue Mountains City Council reiterates general support for innovative planning policy that facilitates economic opportunities at the local level for the hospitality and creative industries. The proposed reforms are supported in principle, based on and subject to the measures outlined in the Explanation of Intended Effect (EIE), further discussed below.

Outdoor dining through a complying development pathway

It is understood that the proposed reforms seek to amend State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) to establish a new complying development pathway for outdoor dining on private land and at registered clubs. This will replace the temporary exemption for outdoor dining introduced during the COVID-19 pandemic.

No issues are raised with this proposal provided that the development standards and operational conditions included in the EIE are adopted in the final amendment. Some of the elements of the proposed amendments, including the opportunity for patron numbers to increase beyond those required by the existing development consent, could have the potential to impact on adjoining neighbours if amenity provisions are not protected. It is noted that the amendments would include the following to protect amenity, and our support is based on these being maintained:

- No reduction in car parking spaces as a result of outdoor dining, or restrictions on pedestrian or vehicular access.
- The requirement for compliance with Clause 1.18 of the Codes SEPP, which specifies that the development must be compliant with the requirements of the Building Code of Australia (BCA). It is noted that the EIE outlines that compliance with the BCA requirement for sanitary facilities would reasonably manage overall patron numbers for venues.
- Businesses to operate during normal business hours, as determined by existing development consent.
- Neighbour amenity will be protected under existing legislation, including the *Protection of the Environment Operations Act 1997*.

Floor space and density bonuses for developments that include music venues

It is understood that the proposed reforms seek to introduce a new clause within the Standard Instrument LEP, which would permit additional floor space and/or height for new developments that include music venues. This clause would be optional for councils to adopt within their own LEPs, with councils to determine the extent and nature of the bonuses.

No issues are raised with this proposal provided that the clause is incorporated as outlined in the EIE, which specifies that:

- The clause will be an optional inclusion for councils
- Councils will determine the specific criteria and numerical standards that the clause would apply to, and that this would be informed by local strategic planning and community consultation.

Council acknowledges the challenging environment faced by local businesses and creative practitioners as a result of the COVID-19 pandemic, and the need to support hospitality and creative industries to create vibrant and successful centres. Council therefore supports the proposed amendments outlined in the EIE, subject to the measures outlined in this submission.

16 November 2023



I write in relation to the Explanation of Intended Effect covering outdoor dining and incentives for live music and creative industries, which has been released for public comment by the NSW Department of Planning and Environment (DPE).

The Property Council of Australia (NSW) understands that the new planning provisions will be enacted through amendments to following planning policies:

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* covering outdoor dining; and
- *Standard Instrument – Principal Local Environmental Plan 2006* to promote venues to support live music and creatives spaces.

The Property Council supports great cities, stronger economies, and sustainable communities. We work with key stakeholders to create a thriving property industry by advocating for and unlocking opportunities that build prosperity, create jobs, that shape the future of our cities, towns, and communities.

We support less red tape and the streamlining of planning rules and assessment processes to reduce cost and delays. Targeting red tape reduction can help lift productivity, encourage innovation, and reduce the time and cost of doing business. With the right reforms, we can help deliver the economic gains that Australia is looking for.

The Property Council is aware that there has been a significant change in the way we recreate which arose during the Covid pandemic, which resulted in a greater need and demand for outdoor dining. With the Covid space restrictions now lifted, it presents an opportunity to capitalise on how we use our cities as locations of recreational enjoyment and cultural enrichment. We also acknowledge that the NSW Government is committed to the creative economy and the opportunity to further grow this industry in the post-Covid area.

Recommendations

We provide the following recommendations for consideration by DPE to inform the final preparation of the policy and its implementation in the short term.

- 1) **We support adequate oversight by DPE** of the implementation of the new framework to prevent a “set and forget” approach and respond to any moves by local councils to restrict implementation of the new provisions.

- 2) **We support establishment of an industry reference group**, especially during the early stages of implementation, to track progress and address any key issues that may arise. This will help refine the policy and address any potential shortcomings.
- 3) **We support the expanded use of car parking areas for outdoor dining**, especially during quieter or weekend periods. This should be allowed without the need for an approval from council and could occur under agreement for a set number of times throughout the year.
- 4) **We support the expanded use of outdoor dining in E5 Heavy Industrial zones**, especially on weekends and times which are outside of typical industrial type operations during the week. This essentially could allow breweries to operate outdoor dining areas and provide a food option to patrons. A situation which presently occurs at many inner-city breweries located in industrial areas of Marrickville, Sydenham and Alexandria.

The Property Council supports the proposal by DPE to further enhance outdoor dining and encourage the creative industry through amendments to key planning provisions. Quicker approval processes with less red tape and incentives to allow new creative spaces at suitable locations will ensure more diverse range of recreational experiences across Sydney and the faster re-emergence of the creative industry which suffered during the Covid pandemic.

We request that the recommendations we have raised in relation to outdoor dining receive proper consideration prior to DPE finalising the policy and enacting the proposed changes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



27 September 2023

Department of Planning and Environment

Byron Shire Council - reforms to outdoor dining on private land and live music venues

Byron Shire Council has reviewed the Explanation of Intended Effect, and the subsequent proposed changes to make outdoor dining permanently available.

Whilst Council generally supports the introduction of these changes, Council would like to make the following submission on the documents exhibited by the Department of Planning and Environment. Council would be pleased if you would take the below points into consideration:

Standard instrument – floor space bonus to incentivise music venues.

As this has been proposed as an optional clause, it should remain opt-in clause so that Council may further investigate if a Special Entertainment Precinct is suitable.

It is unclear how the draft LEP clause would prevent the immediate change of use from a creative industry, entertainment facility or information and education facility within the period that would be specified by Council, under either the current exempt or complying development provisions.

Outdoor dining as complying development.

The controls would also apply to rural land use zones. Expansion of the proposed outdoor dining areas for a restaurant on a rural zone would have greater impacts than those in other zones. These controls should be excluded from rural zones and be managed through the Development application process.

Noise impacts & hours of operation.

In some instances, due to the age of the original development approvals, there are no approved hours of operation in a development consent. Controls should be included to ensure that where hours of operation are not specified within a development consent, these should follow those permitted either by complying or exempt development to limit noise impacts.

Council would be pleased if you would take these submissions into consideration in the review of the exhibited documents. Thank you for the opportunity to provide feedback on this matter.

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

RE: Proposed reforms to outdoor dining on private land and live music venues

Thank you for the opportunity to make a submission on the proposed reforms to outdoor dining on private land and live music venues.

Port Stephens Council (Council) understands that the NSW Government proposes to:

1. Amend State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) to create a new fast-track approval pathway for outdoor dining on private land and at registered clubs
2. Make changes to the Standard Instrument – Principal LEP 2006 to include a new floor space bonus for new developments to include music venues.

Council supports both proposals and provides the following comments and suggestions.

Outdoor dining on private land and at registered clubs

The proposed planning changes will allow food and drink premises and registered clubs to use adjacent private land for outdoor dining through a complying development pathway, rather than having to submit a development application.

This development pathway will be available for any lawful food and drink premises across NSW, such as a: restaurant or café, a pub or small bar, a registered club, takeaway food and drink premises, and artisan food and drink industries. The maximum allowable floor area for outdoor dining will be based on the zoning and a percentage of the size of the inside of the existing venue.

Council supports the proposed changes as it, offers residents unique experiences, supports business, creates more jobs, attracts more visitors and creates lively places and spaces.

Consider inclusion of RU1 and RU2 zones and cellar door premises use

The Explanation of Intended Effect proposes for the Codes SEPP changes to apply to a range of Local Environmental Plan (LEP) zones and permitted uses. However, it does not specify why certain zones and uses were selected for this amendment.

Council made some recent changes to the Port Stephens LEP with the objective to facilitate a variety of tourist and visitor-orientated land uses that complement and promote a stronger rural sector, appropriate for the area.

Our LEP now permits, with consent, a range of additional uses within the RU1 Primary Production and RU2 Rural Landscape zones. Some of these uses may benefit from the new development pathway for outdoor dining, including:

RU1 Primary Production	RU2 Rural Landscape
artisan food and drink industries	artisan food and drink industries
cellar door premises	cellar door premises
	restaurants and cafes

Council request the inclusion of RU1 and RU2 zones and the inclusion of cellar door premises use in proposed Codes SEPP amendment.

Inclusion will support economic development in rural areas, and support business growth and tourism development. In addition, these premises are likely to have larger minimum lot size requirements and may therefore have sufficient space to accommodate extra patrons.

Support for the intended development standards and operational conditions

Council supports the principles of the Explanation of Intended Effect (EIE), including, but not limited to:

- No changes will be made to the Codes SEPP's exempt process for businesses using the footpath, road or public open space. These businesses will continue to obtain a permit through their local council.
- Outdoor dining is not allowed in car parks to ensure sufficient parking is available for patrons.
- The subject building would need to meet the requirements of the Building Code of Australia for such things as bathroom facilities and emergency exits.
- Venues must continue to operate in line with their development consent and their liquor licence.

Council would support the inclusion in the Codes SEPP of an operational condition regarding potential amenity impact being regulated under existing legislation.

New floor space bonus clause for developments including music venues

The proposed changes aim to encourage vibrant and diverse night time activities and to support live music. The NSW Government proposes an optional model clause to be included in the Standard Instrument – Principal LEP 2006 which offers floor space and/or height bonuses that can be used for developments that include music venues.

The change is expected to help councils to attract investment in creative spaces, particularly in areas where this may be otherwise priced out by other uses. Following consultation with their communities, councils will set the standards for bonus floor space amounts, type and location of facilities.

Council supports the intent to make this change optional and for each council to decide if and how to incorporate the proposed changes into their LEP. The proposal, as intended, provides sufficient flexibility for councils to include place specific locational requirements and at a time this matter becomes relevant for inclusion in the LEP.

Clarity about land uses to be part of a new development

The Explanation of Intended Effect (EIE) suggests that for the bonus to apply to a development, one or more of the following land uses must be proposed as part of the new development: creative industry, entertainment facility, and information and education facility.

The above uses provide a range of possible future uses like artist studios, cinema, library, gallery and museum. Although the EIE states that the aim is to incentivise music venues, it seems that potentially other uses could be eligible for a floor space bonus and/or height bonus. For example, a development proposal for a new library (information and education facility), without a music-related venue, could also attract a bonus.

Council recommends that the future objectives and controls clarify if this is the intent of the proposed change, or if there is a requirement for a bonus to apply that a new development is to include a clear music-related land use.

Summary

Council supports the proposed reforms to outdoor dining on private land and live music venues and recommends for the future Codes SEPP amendment to consider:

- Inclusion of RU1 and RU2 zones
- Inclusion of cellar door premises use
- Inclusion of an operational condition regarding potential amenity impact being regulated under existing legislation.



Council supports the proposed reforms to live music venues and recommends for the future amendment to the Standard Instrument – Principal LEP 2006 to consider:

- Inclusion of objectives and controls about the requirement for a new development to specifically include a music-related land use.

[REDACTED]

[REDACTED]



[REDACTED]

16 November 2023

[REDACTED]



DRAFT SUBMISSION ON
PROPOSED REFORMS TO

OUTDOOR DINING & LIVE MUSIC VENUES

November 2023





Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

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Proposed reforms to Outdoor Dining on Private Land and Live Music Venues

INTRODUCTION

As the peak body for local government in NSW, representing NSW general purpose councils and related entities, Local Government NSW (LGNSW) welcomes the opportunity to comment on the proposed reforms to outdoor dining on private land and live music venues.

LGNSW supports the intent of the changes to encourage more permanent outdoor dining opportunities and to encourage live music venues, provided they can do so in a way that protects the amenity of local communities, both current and future.

In responding to the Explanation of Intended Effect (EIE) and the proposed changes, LGNSW is also cognisant of current readings of the 24-hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023 (the Bill) in the Legislative Council of the Parliament of NSW. Indeed, the tabling of the Bill and consultation for the EIE were released on the same day (19 October 2023) as an indicator of the broad suite of reforms to come for encouraging the 24-hour economy. It is within this broader context for the direction of cognate legislative reform primarily under the *Gaming and Liquor Administration Act 2007* and the *Liquor Act 2007* that we raise the following concerns for discussion.

This submission is informed by the policy positions of LGNSW and consultation with councils. The submission is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

LGNSW POSITION ON COMPLYING DEVELOPMENT

Councils support the creative, cultural and economic vibrancy of their communities through sensible land use planning, place management and activation and through encouraging investment for their cultural and visitor economy. In doing so, they also seek to ensure that any new provisions strike the right balance between local amenity and economic development.

As population and density increases, the expansion of state-wide complying development policies can heighten the potential for land use conflict and adverse impacts on liveability and amenity. Some councils will be concerned that the proposals in the EIE may create amenity impacts on immediate neighbours, particularly around noise issues.

While provisions in the Standard Instrument Local Environmental Plan (SILEP) or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) may suit the specific needs of some parts of some local government areas (LGAs), state-wide one-size-fits-all approaches fail to recognise or account for the specific needs and local context of diverse communities.

Likewise, while some councils may welcome the opportunity to streamline approval pathways for certain activities to encourage social and economic development, for others this might result in highly adverse impacts on environment, infrastructure, adjoining land uses and the local community.

There can be marked differences between regional and metropolitan areas, and even within metropolitan areas there are significant differences between inner and outer areas. Complying development precludes councils and communities determining important location and design considerations and tailoring conditions of consent for development. LGNSW therefore opposes blanket state-wide changes that stifle flexibility for councils to tailor to the local context.

For these reasons, LGNSW generally supports flexible arrangements which allow councils to opt-in, rather than blanket state-wide provisions. Taking an opt-in arrangement would also ensure that where the council and community determine that the adverse impacts on local amenity or adjoining land uses would outweigh the social and economic benefits, a development assessment pathway would be more appropriate.

EIE PROPOSAL: Outdoor dining as complying development

The EIE proposes to create a permanent complying development pathway to allow outdoor dining on private land and at registered clubs, by amending the Codes SEPP.

The changes will:

- Enable a business (e.g. restaurant or café) that has already been approved to add an outdoor dining area without submitting a new development application or a modification.
- Allow the number of patrons to increase by as much as 100% in some cases, noting that the venue must remain compliant with standards and provisions of the Building Code of Australia (BCA).
- Not permit outdoor dining in car parking spaces as complying development
- Not permit outdoor dining on rooftops as complying development

- Not change the current Codes SEPP's exempt process for businesses using the footpath, road or public open space. These businesses will continue to obtain a permit through their local council.

LGNSW comment

LGNSW is broadly supportive of the intent of this proposal, however the proposal to introduce a permanent complying development pathway that potentially allows a significant increase in patronage does raise several questions for councils, as discussed below.

Land use conflict

Where outdoor dining and live music venues are adjoining or co-located with residential and even commercial business uses, amenity impacts on nearby occupants and those within the same development have the potential to create land use conflict. This is not to say that the uses are necessarily incompatible but there needs to be consideration of unintended consequences that may arise over time, such as noise and traffic impacts.

The long-term legacy of developments combining such inherently different uses may erode the future amenity for occupants, to the detriment of the economic success of an area or its desirability as a place to live. It is within the remit of planning controls to ensure that uses are combined to be harmonious and not set-up initially to be in conflict with each other.

Recommendations

1. *That appropriate consideration is given to potential amenity impacts on adjoining and nearby land uses and how they can be minimised through the complying development pathway.*
2. *That the provisions allow councils the ability to 'opt-in' to be able to exercise planning controls that significantly increase the area of outdoor dining or introduce music venues in certain areas of their LGA.*
3. *That the Department of Planning and Environment (DPE) develop explanatory information and FAQ sheets regarding the changes and make these available to the community to coincide with their introduction.*

Noise and amenity impacts

The inherent nature of a place of social gathering (for either outdoor dining or a music venue) is at particular risk of noise nuisance and/or amenity impacts with a potential doubling of the number of patrons as proposed in the EIE. This is especially acute where residential uses are located above or adjoining these premises.

The EIE states that amenity impacts will be "managed under existing legislation, such as the *Protection of the Environment Operations Act 1997*(POEO Act)". It is not clear who will be responsible for managing any increased noise complaints. In the current Bill

before NSW Parliament on the 24-hour Economy (Vibrancy Reforms)¹, it is also intended that the POEO Act and the *Environmental Planning & Assessment Act 1979* (EP&A Act) will be 'turned-off' and the *Liquor Act 2007* will prevail for investigating noise nuisance complaints.

In the context of the proposals in the Bill that is currently before Parliament, LGNSW seeks clarification as to how noise nuisance complaints arising from outdoor dining and live music venues would be managed.

The regulation of the external impact of noise generated from licensed venues (offensive noise complaints) has historically been regulated by the development approval conditions which can be enforced under the EP&A Act. The Bill proposes to remove the EP&A Regulation 2021 powers from licensed premises and seeks to redefine *noise* as *sound*, with further guidelines to be developed on noise criteria. The protections of the EP&A Act are designed to be consistent with and are linked to the uses approved under the same Act; removal of this nexus erodes the EP&A Act considerations in enforcement of amenity considerations.

With regard to the current EIE, the potential doubling of floor space could double or exacerbate noise nuisance and if the Bill were to pass, LGNSW understands there would no longer be any EP&A Act based protections for managing noise emissions from venues. Combined with the Bill's proposed removal of POEO Act provisions governing noise pollution, there could be unintended consequences of removing scientific assessment of noise via noise monitors and dBA measurements as an impartial measure of noise impact. The amenity of surrounding residents and occupants may be impacted, with councils often being the first port of call about noise complaints.

The current 24-Hour Economy (Vibrancy Reforms) Bill 2023 also proposes, amongst other reforms, extended standard operating hours. This may have the unintended consequence of patrons all leaving venues at the same time and creating noise and street nuisance in the same way that the 'lock-out laws' caused in some areas of Sydney a decade ago. Again, if the EP&A Act powers to enforce conditions on noise impacts are removed as proposed under the Bill, there is limited ability to moderate these externalities from the permitted use. The reliance on NSW Police or Liquor and Gaming officers would be a reactive solution, not proactive avoidance of such a problem arising.

Recommendation

4. *Any pre-existing conditions of approval with regard to noise and trading hours should remain in place, regardless of expansion of floor space.*

Compliance with other standards and requirements

¹ [24-Hour Economy Legislation Amendment \(Vibrancy Reforms\) Bill 2023 \(nsw.gov.au\)](https://www.nsw.gov.au/legislation/bills/2023/24-hour-economy-legislation-amendment-vibrancy-reforms-bill-2023)

A significant increase in patron numbers as proposed in the EIE may have knock-on impacts for compliance with other standards. Requirements for bathroom facilities or fire egress (as defined under the National Construction Code) and arrangements for management and disposal of waste and trade waste and the like all cater to a scaleable solution for appropriate venue management. If the scale and intensity of a use increases, it is appropriate that standards and requirements are re-assessed by way of planning approval, similar to businesses using footpath, road or public open space requiring permission from their local council.

Further, the EIE states that a business may increase its patron numbers with their expansion to outdoor dining if they meet the standards in the Building Code of Australia (BCA) in relation to toilets etc. However, it is unclear from the current information what the position will be for businesses approved prior to the introduction of the BCA which have been grandfathered from meeting the BCA requirements. This will require clarification in the proposed amendments and supporting documentation.

LGNSW welcomes the EIE proposal to continue existing arrangements for businesses using the footpath, road or public open space, whereby these businesses will continue to obtain a permit through their local council.

Recommendation

- 5. It is recommended that where standards and regulations require variation, the application of exempt and complying development is not appropriate and a development application is required.*

EIE PROPOSAL: Floor space bonus to incentivise music venues

The EIE proposes to introduce an optional floor space and height bonus for new developments to encourage investment in music venues, by introducing changes to Standard Instrument – Local Environmental Plan 2006.

The clause will allow councils to identify a floor space and/or height bonus that can be used in new developments that contain music venues. The type of developments that the clause will apply to will be decided by each council informed by its strategic planning process.

A bonus floor space area will enable developers to apply for a larger building footprint. This will provide more space and opportunities for businesses to develop music venues.

LGNSW comment

The general wording of the EIE suggests that the floor space and/or height bonuses can be granted for commercial and residential development incentives, rather than a primary focus on the provision of a music venue.

Despite the title, the information contained in the EIE suggests the proposed provisions will be more broad ranging than just music venues. The proposals provide for bonus provisions for developments that include creative industry, entertainment and information and education facilities. The definitions of each of these three aspects need to be carefully constructed to ensure that they meet the desired purpose of these proposals of encouraging a vibrant local creative industry, and do not have unintended consequences. For example, ensuring the definition of 'information and education facilities' does not result in a proliferation of private coaching colleges or a few 'pamphlet information' stands rather than the establishment of genuine creative performance or exhibition spaces.

LGNSW also seeks to ensure that developer incentives introduced under the Outdoor Dining and Music Venues EIE are not misused to simply increase density or gain additional residential or commercial height and floorspace without councils' support for and control over such incentives. There are other recently announced Housing SEPP (Social and Affordable Housing) reforms that are intended for this purpose which also propose development bonuses and incentives.

Further, with different SEPP mechanisms being proposed, each of which separately allow bonuses and incentives that will increase development density, there is a risk that the cumulative impact could have unintended consequences for local infrastructure capacity and local amenity.

Recommendation

- 6. Amendments to allow floorspace bonuses should be carefully constructed to ensure they meet the desired purpose of these proposals of encouraging a vibrant local creative industry and do not have unintended consequences.*
- 7. LGNSW supports the proposal in the EIE that councils will determine any decisions about the type of development and the nature of any floor space and/or height bonus that can be used for provision of a music venue, informed by their strategic planning process.*

LGNSW appreciates the opportunity to comment on the proposed reforms to outdoor dining on private land and live music venues. Should you like further information on LGNSW's position, please contact Jane Partridge, Strategy Manager, Planning on [REDACTED] or [REDACTED]

Recommendations

1. That appropriate consideration is given to potential amenity impacts on adjoining and nearby land uses and how they can be minimised through the complying development pathway.
2. That the provisions allow councils the ability to 'opt-in' to be able to exercise planning controls that significantly increase the area of outdoor dining or introduce music venues in certain areas of their LGA.
3. That the Department of Planning and Environment (DPE) develop explanatory information and FAQ sheets regarding the changes and make these available to the community to coincide with their introduction.
4. Any pre-existing conditions of approval with regard to noise and trading hours should remain in place, regardless of expansion of floor space.
5. It is recommended that where standards and regulations require variation, the application of exempt and complying development is not appropriate and a development application is required.
6. Amendments to allow floorspace bonuses should be carefully constructed to ensure they meet the desired purpose of these proposals of encouraging a vibrant local creative industry and do not have unintended consequences.
7. LGNSW supports the proposal in the EIE that councils will determine any decisions about the type of development and the nature of any floor space and/or height bonus that can be used for provision of a music venue, informed by their strategic planning process.

NSW Department of Planning & Environment
Policy Team
c/o codes@planning.nsw.gov.au

16 November 2023

Dear Sir/Madam,

WOLLONDILLY COUNCIL SUBMISSION TO PROPOSED REFORMS TO OUTDOOR DINING ON PRIVATE LAND AND LIVE MUSIC VENUES

Thank you for the opportunity to provide feedback on the explanation of intended effect for proposed changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and to the *Standard Instrument – Principal Local Environmental Plan 2006*.

The proposed amendments seek to provide a streamlined avenue for outdoor dining approvals through the CODE SEPP and provide new incentives for live music through local environmental plans.

We support the proposed complying development pathway for outdoor dining on private land and at registered clubs.

Although no changes are proposed to outdoor dining on footpaths, roads or public open spaces we would like to flag that the governance infrastructure is still not presently in place to support Councils to implement a streamlined process.

This issue was raised in our submission on the Draft Fun SEPP which was provided to the NSW Department of Planning, Infrastructure and Environment via the NSW Planning Portal on 30 November 2021 which deals with similar proposed reforms identified in the recent Explanation of Intended Effects (EIE) for the Proposed Reforms to Outdoor Dining on Private and Live Music Venues published on the Department's website in 16 October 2023.

The proposed amendments to insert a new optional clause into the Standard Instrument LEP that will allow councils to identify a floor space and/or height bonus that can be used in developments that contain music venues is generally supported.

However, the use of incentives that can be earned by delivering planning outcomes in developments is becoming increasingly prevalent and we have concerns for the potential cumulative impact of utilising multiple bonuses may have on achieving the objectives of the controls.

[REDACTED]

[REDACTED]

16 November 2023

Our Ref: SF23/7840

[REDACTED]

[REDACTED]

Via email: codes.submissions@planning.nsw.gov.au

Dear Ms Fishburn,

**RE: Proposed Reforms to Outdoor Dining on Private Land and Live Music Venues
Bayside Council Submission**

Bayside Council welcomes the opportunity to provide a submission in response to the proposed reforms to outdoor dining and live music venues. Please note that this is a draft submission, which will be considered by Council at the next available Council meeting.

Council broadly supports initiatives that encourage vibrant spaces, economic activity and night-time activation. In achieving these outcomes, there needs to be a balance to avoid unreasonable impacts on residential amenity, or unintended impacts on the economic viability or other businesses and the safety of customers. The comments provided below are intended to highlight a number of issues that Bayside believes require further refinement to achieve this balance.

Outdoor Dining on Private Land

The need for temporary outdoor dining provisions was evident as part of the response to the Covid-19 pandemic. These temporary provisions have allowed many businesses to provide new experiences to their customers and provided new activity to our streets and centres. Council does not wish to see this reversed, but this submission notes areas of concern which should be addressed before any changes are made more permanently.

Blurring Land Uses

Takeaway Food and Drink Premises is included in 'specified development'. We note that *Takeaway Food and Drink Premises* are defined as "...predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises." The proposed outdoor dining changes would allow for the expansion of on-premises food consumption in ways that fundamentally conflict with the definition.

Postal address

PO Box 21, Rockdale NSW 2216
ABN 80 690 785 443

Bayside Customer Service Centres

Rockdale Library, 444-446 Princes Highway, Rockdale
Westfield Eastgardens, 152 Bunnerong Road, Eastgardens

E council@bayside.nsw.gov.au

W www.bayside.nsw.gov.au

T 1300 581 299 | 02 9562 1666

Traffic and Parking

The expansion of outdoor dining is likely to increase the number of patrons accommodated on site, as the only limit to patron numbers is the BCA requirement for toilets. Increases to outdoor dining areas will increase demand for car parking. Unmet demand for on-site parking will take up often scarce street parking, contribute to conflicts with traffic and lead to adverse impacts on the locality.

The large allowable floor area for outdoor dining as a percentage of internal gross floor area in the E3 and E4 zones, which are primarily for industrial uses, will create a significant demand for parking, which is often not catered for in industrial areas. The percentage of allowable outdoor dining area should be reconsidered and reduced.

Operational conditions should also consider limiting the maximum number of patrons to that approved in the most recent development consent.

Additionally, where food and drink premises are co-located with other industrial premises, safe access and manoeuvring for vehicles such as trucks and other loading vehicles has not been adequately considered in the proposed development standards.

Operational and Land Use Conflicts

The proposed Complying Development provisions do not consider existing conditions of consent. Such conditions are often imposed to address amenity, safety and environmental impacts. Consideration should be given to the carryover of wording from development standard 2.40D(a)(iv) in Subdivision 20B Outdoor dining—general of the current temporary exempt provisions to the proposed Complying Development standards.

The draft provisions also do not give sufficient consideration to the appropriate location of outdoor dining, with the only restriction being that it must not be located on rooftops. Additional controls in relation to the location of outdoor dining should be included to ensure that it does not reduce landscape areas, dedicated staff recreation areas (such as in industrial areas) or occupy areas dedicated for services / loading for the site.

The Industrial and Business Alterations Code is not subject to land-based restrictions such as environmentally sensitive land or land that is significantly contaminated. The proposed outdoor dining provisions should therefore contain additional tests to ensure that the land is safe for use.

Amenity Impacts on Sensitive Receivers

The EIE proposes that impacts on neighbours be left to regulation under the *Protection of the Environment Operations Act 1997* (the PoEO Act) and regulations. This places an additional regulation burden onto Councils and the Courts when it could be proactively addressed by the planning system.

To encourage co-location of noisy activities so that additional amenity impacts are minimised, consideration should be given to including provisions requiring new outdoor dining areas to be directly connected and adjacent to existing indoor dining areas.

For premises adjacent to a residential use or zone, or other sensitive receivers, any expansion of outdoor dining should be excluded from the Complying Development pathway, to ensure that the amenity of adjoining development is preserved and adequate opportunity is provided to neighbours to comment on proposals. This allows Council to undertake adequate assessment of the development and impose relevant conditions to manage any potential adverse impacts.

Undermining the Role of Industrial Areas and the International Trade Gateway

Bayside Council contains some of Australia's most important industrial land, supporting the International Trade Gateway, which accommodates Port Botany and Sydney International Airport. This land is critical to Australia's national and international economic competitiveness. Food and drink businesses were permitted in these zones to serve the needs of workers, but are now competing with industries for land and premises, which could disrupt land available for warehousing and logistics operations.

The proposed outdoor dining provisions create an advantage for food and drink premises operating in industrial areas by allowing them to expand their outdoor dining area by more than businesses operating in established centres. The diffusion of food and drink premises into industrial areas (together with the other issues raised above) creates a conflict with the primary function of the zones. Considering the well-publicised shortage of industrial land in Greater Sydney, the proposal should be reconsidered in the E3 and E4 zones.

Ban on Smoking

Council supports the continued ban on smoking in outdoor eating areas, but notes that the State's enforcement activities are not sufficiently resourced.

Transition from the Temporary Provisions

The Department should undertake a communication and education campaign to help small businesses transition into the new rules and seek appropriate approvals. This will help to reduce the amount of compliance action for Councils to undertake.

Live Music Venues

The clause might perversely lead to more noise complaints within an entertainment precincts, undermining the venues within it. Live music venues tend to require larger floor plates, late operating hours, greater parking requirements, and generate more noise than many other land uses. There appears to be a fundamental conflict between these characteristics and increased residential density, given that the nominated uses are permissible in zones where residential development is also permissible.

The proposed clause requires the consent authority to be satisfied that the part of the building will be used for one of the identified purposes for a minimum period. Restricting the use of a premises to a very limited number of uses will increase the risk that it is not used at all. Developers may include such uses in a tokenistic manner to take advantage of the FSR and height bonuses. There is likely to be difficulty in securing tenants for these uses if included in areas that do not have a market demand for these uses, leading to increased vacant spaces and a poor planning outcome. This is already a common problem with commercial space in recent mixed-use developments in the Bayside LGA.

We thank you for the opportunity to provide comments in relation to this matter. A final submission will be provided to DPE following Council's consideration of this draft submission at the next available Council meeting.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

20 November 2023



Our Ref: 2023/755267

Dear [REDACTED],

Submission to exhibited Draft Explanation of Intended Effect (EIE)

Thank you for the opportunity to comment on the exhibited EIE to specifically amend the following instruments:

- Standard Instrument – Principal Local Environmental Plan 2006 (SI LEP) to introduce a floor space/ density ‘bonus’ clause for new developments comprising venues that support live music.
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to support the approval of outdoor dining on private land including registered clubs.

Council strongly supports measure to provide communities and creatives across the state with more vibrant, dining, performance and leisure destinations and experiences. We agree that providing a simpler planning and approval framework will encourage businesses and venues to set up and be successful.

The release of the new bonus clause into the SI LEP is timely for Council to consider in coming months as it continues to prepare its new Local Environmental Plan for the Northern Beaches. Given the lack of clarity about how this may work it is imperative that this clause is optional when it is introduced. At this time, there are too many unknowns for Council to adequately consider the appropriateness of what is being proposed regarding:

- the likely future impacts on its community,
- the implementation and monitoring of impacts, and
- how it fits in with the full package of the Government’s Vibrancy Reforms.

With regard to the Outdoor Dining on private land, Council raises the following matters for your consideration:

Council notes there are currently similar provisions in place, albeit on a temporary basis, as part of the COVID 19 economy recovery initiatives that expire on 31 December 2023. The timing of the implementation of the permanent controls needs to

be clear and widely communicated to ensure sufficient time for effective implementation and transition (where applicable).

Clarity is required to confirm the 'private land' accommodating the outdoor dining area. Is it on the same parcel as the lawful food and drink premises or if adjacent to, then is that property boundary abutting the property upon which the lawful food and drink premises is sited?

Council requests inclusion as a specified development, that the location of an outdoor dining area does not result in reduction of designated or approved loading or servicing area.

We note the operational condition relating to approved operating hours, however for older consents there may not be a specific development consent condition. The SEPP contains 'Hours of operation and trading' as exempt development and suggest the trading hours are replicated for the outdoor dining area on private land based on the zoning of the land. In this way, it would read as follows (changes proposed in red text):

- The use of the outdoor dining area must not exceed the hours of operation for the premises it is associated with, **unless there is no specific consent condition then the following hours are to apply:**
 - (a) in Zone E1, E2 - 6am–10pm,
 - (b) in SP3 Tourist, SP5 Metropolitan Centre —,
 - (c) in RE2 – 6am–7pm if the outdoor dining area is within 50 metres of a residential premises, otherwise 6am–10pm.
 - (b) in Zone MU1—6am–7pm,
 - (c) in Zone E3 Productivity Support, E4 General Industrial — 6am–7pm.

A statement is required clearly articulating that the serving of alcohol in the new outdoor area will require an application to Liquor and Gaming NSW to have the liquor licence boundary approved to include their outdoor dining areas.

Council also recommends additional operational conditions to ensure the management of waste, food safety and pollution control and outdoor dining furniture by the operator of the lawful premises associated with the proposed outdoor dining area.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 November 2023

Our Ref: D23/156553

To Whom it May Concern

EIE Amendments to the Codes SEPP for outdoor dining on private land and the Standard LEP to include a music venues incentive clause.

The City of Ryde Council (Council) staff are pleased to make a submission on the Explanation of Intended Effects (EIE) on the amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* for outdoor dining on private land and at registered clubs, and the *Standard Instrument – Principal Local Environmental Plan 2006* to include a new floor space bonus clause for new developments to include music venues.

Council staff are supportive of the proposed amendments, in principle. However, staff have identified the following matters of concern:

Outdoor dining complying development

The option of using private certifiers for the Complying Development Certificate (CDC) approval for the expansion of outdoor dining on private land is problematic. It is the view of Council staff that any issues or concerns raised by the public over the operation of a new outdoor dining areas, that Council will be perceived by the community as the “approver” regardless of whether, in fact, it was approved by a private certifier. As such, any issues relating to the approval by a private certifier will likely lead to Council suffering reputational damage. Consideration needs to be given to whether the use of private certifiers is appropriate, or whether the private certifier should be required to give notice of their assessment to surrounding businesses and residents.

Significant risks exist for the community if private certifiers do not ensure compliance with Building Code of Australia (BCA) for toilet, disability access, emergency exits and fire safety requirements. Added to these risks are the potential increased noise nuisance for surrounding residents as there is no requirement in the EIE for appropriate noise assessment. Consideration needs to be given to whether it is appropriate for private certifiers to issue approvals in situations where there needs to be strict compliance with the BCA and the potential for noise nuisance exists. A requirement for private certifiers to consult with neighbours and the Council and act on relevant issues would be a reasonable step to reduce community risk in these circumstances.

The EIE states that as part of the proposed new fast-track CDC approval pathway new development standards will provide opportunities for businesses. The new standards referred to should be fully described in the EIE for transparency and accountability. It is requested that councils are consulted over the new standard before the Codes SEPP is amended. It is unclear whether the standards will go beyond what is stated in the EIE.

Additional parking to accommodate an increase in the number of patrons using expanded outdoor dining areas at a premise are not required as part of the CDC approval process. This is not supported as the cars from patrons and employees may overflow into adjoining residential areas and displace customers of other businesses that may be using on-street or off-street parking. Parking for additional patrons and staff should be provided for where possible and the State Government should play a role in some areas in Ryde. In centres where the State Government provides commuter car parking (e.g., West Ryde and Eastwood), it is requested that those restricted parking areas be opened after hours for additional parking to support all dining premises, including those with expanded outdoor dining approved areas.

Music Venues Floor Space Incentive

The proposal to insert a new optional clause into the Standard Instrument LEP that will allow Council to identify a floor space and or height bonus is supported subject to limits being placed on its application. More clarity over whether the bonus applies only to floor space or height, or both, is needed and whether the Council will have the option to choose either, or both.

It is appreciated that the clause is optional allowing the Council to set the standards for the amount, type and location of facilities. Implementing the clause will place a burden on the Council to prepare a strategy to establish planning principles, objectives and standards for different forms of performance and cultural spaces in appropriate locations. If Council adopts the bonus clause, a strategy needs to be in place to resist the inevitable developer offers to build facilities of questionable value and location as contributions to the Ryde community to offset against other more critical contributions such as land for public open space. Consideration should be given to including in the clause a requirement that the incentive is only available when a council has adopted music/performance strategy in place. Assistance from the State Government to councils to prepare a strategy for the location of appropriate performance and cultural space is requested to support the use of the proposed incentive clause.

The lack of detail for the bonus clause on the amount of floor space and height to be made available and how the venues will exist in perpetuity is also of concern. A reasonable guarantee of the venue use being maintained into the future needs to be inserted into the clause. It is requested that the DPE consult with Council on the practical limits to the application of the bonus. A clause that has a pro rata component for increased floor space and height based on the gross floor area of the performance and/or cultural space provided should be considered and drafted in consultation with interested councils. The clause should also include objectives that a proposal aligns with the Council's music venues and cultural spaces strategy and the overall development outcome results in an urban form, mass scale, and scale that is compatible with the desired future character and land uses of the surrounding land.

The State Government's undertaking to "explore opportunities to embed cultural space in State Significant Developments" is supported. To provide confidence that this statement is being actively pursued, the Government should specify the changes that it proposes to introduce into its State Significant Development (SSD) assessment process "to support visitor attraction and increased private investment" to demonstrate its commitment to incentivising the construction of music venues. As a minimum the government should ensure that the Secretary of the DPE requires music venues and cultural spaces to be incorporated into all Secretary's Environmental Assessment Requirements (SEARS) responses for SSDs as part of a broader strategic entertainment policy.



In conclusion, if the State Government proceeds with making the outdoor dining and music venue changes to the Code SEPP and Standard Instrument LEP, respectively, the issues and requests described in this submission should be addressed. The proposed complying development certificate approval by certifiers for outdoor dining areas poses risks to patrons and the public that could be avoided. The proposed optional music venues clause in the Standard Instrument LEP requires further detailed improvement to ensure that it is a targeted incentive. The State Government should also commit to supporting the creation of new music venues by incorporating its consideration into its SEARS and SSD assessment processes. It is requested that the Department work collaboratively with all interested councils to achieve the planning and community outcomes envisaged in the EIE.



BUSINESS NSW

16 November 2023

Department of Planning and Environment
4 Parramatta Square
12 Darcy St, Parramatta NSW 2150

Outdoor dining and live music venues

As NSW's peak business organisation, Business NSW has almost 50,000 member businesses across NSW. We work with businesses spanning all industry sectors including small, medium, and large enterprises. Operating throughout a network in metropolitan and regional NSW, Business NSW represents the needs of business at a local, state, and federal level.

We support creating a simple planning pathway for outdoor dining on private lands. Business NSW has long advocated for the removal of red tape to ensure that businesses are allowed to do what they do best, running their business. This flexibility allows businesses to continually innovate and experiment with dining options to allow their customers the best experience.

Creating permanency to the already existing state-wide exemptions is welcome, the hospitality and ancillary industries found these changes at the time of immense benefit to them. It's a fantastic first step in ensuring that Sydney continues to increase its vibrancy and appeal both for its residents but also as a world class tourist attraction for both interstate and international visitors.

Furthermore, these reforms are complimentary to the Liquor and Gaming's proposed vibrancy amendments 2023, and the NSW State Government's overall vibrancy reforms.

[Redacted signature block]

Yours Sincerely,

[Redacted signature block]



22 November 2023

[REDACTED]

Our Ref: FP58, FP85

Dear [REDACTED],

Explanation of Intended Effect – Outdoor Dining Reforms and Incentives for Music Venues

Thank you for the opportunity to comment on the Explanation of Intended Effect (EIE) for proposed amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP) to support the approval of outdoor dining on private land including registered clubs, as well as amendments to the *Standard Instrument – Principal Local Environmental Plan 2006* (the Standard Instrument) to introduce an optional density bonus clause for new developments comprising venues that support live music.

The comments provided herein have regard to the policy framework provided by Council's Community Strategic Plan, Local Strategic Planning Statement (LSPS), Productivity and Centres Strategy and previous submissions considered by Council in relation to Complying Development and Employment Zone reforms. However, this submission itself has not been reported to the elected Council given the timeframe available for submissions and as such represents officer-level comments only.

The Hills Local Strategic Planning Statement was made on 6 March 2020 and sets planning priorities and corresponding actions for the next 5 years. It is supported by a Productivity and Centres Strategy adopted by Council on 22 October 2019 that provides the strategic context for management and protection of the Shire's economy, centres and employment related land uses. Council has also recently adopted an Economic Growth Plan that provides a direction for economic development, jobs and investment within the Shire.

It is acknowledged that a vibrant and safe night-time economy will enhance the social and recreational needs of communities across Greater Sydney. Planning for a night-time economy in centres includes supporting a range of small businesses such as retail, arts and cultural enterprises and events. It is agreed there is considerable potential to grow the night-time economy across NSW and within The Hills – particularly in our three Strategic Centres (being Castle Hill, Norwest and Rouse Hill). Our Productivity and Centres Strategy articulates that potential mechanisms to achieve this could include a review of permissible land uses, review of hours of operation, review of outdoor dining policy, public domain planning and place-making opportunities. It also requires Council to investigate measures to promote a low-impact night-time economy, which we are continuing to do.

1. Outdoor Dining on Private Land

It is recognised that outdoor dining has become increasingly popular with the community, enables businesses to offer new experiences, revitalises under-used space and draws people to visit new neighbourhoods. It is noted that the NSW Government committed to permanently relax the rules for outdoor dining to allow food and drink premises to take advantage of private space outside their venues. In particular, it is noted that a new fast-track approval pathway is proposed for outdoor dining on private land, including registered clubs.

While Council officers commend the Department's intent to encourage business activity and create a night-time economy, some further consideration is requested to ensure that the application of the complying development pathway is suitably clear and the allowance for outdoor dining space does not come at the expense of appropriate design and amenity outcomes.

The following comments are provided to assist your further review of the proposed changes:

- *Application of changes* – The intended application of the changes is unclear, making it difficult to gauge the potential implications. The pathway needs to be clear and straightforward, to ensure appropriate implementation by private certifiers and avoiding the need for any costly compliance action where there is ambiguity around what is allowed. In this regard, the EIE indicates that the proposed changes will be added to Part 5 Industrial and Business Alterations Code of the Codes SEPP however it does not specify the zones or land uses that it is intended to apply to (nor are relevant zones currently specified in this Part of the Codes SEPP). Whilst the FAQ indicates the complying development pathway will be available for any lawful food and drink premises, registered clubs and artisan food and drink industries permitted with consent under the relevant councils LEP, it is questioned whether this is intended to allow a complying pathway in rural zones. Under The Hills LEP 2019 restaurant and cafes and artisan food and drink industries are permitted with consent in certain rural zones. In such locations, the potential impacts of the proposed changes would arguably warrant the more detailed consideration of a development application pathway.
- *Potential amenity impacts* - The potential amenity impacts have not been clearly explained nor has the rationale for different size allowances for outdoor dining areas based on land use zones. Within the Hills Shire the E1 Local Centre zone was applied to small neighbourhood centres (as well as town and village centres) as part of the Government's recent employment zone reforms. These are small scale centres generally located within low density residential neighbourhoods and it is not clear why the proposed changes would allow for a greater proportion of outdoor dining area, and likely increase in the number of patrons, in such locations. Conversely a lesser proportional allowance is identified for locations zoned MU1 Mixed Use, which in the Hills Shire context, currently apply to the larger strategic centres of Castle Hill and Rouse Hill. Concern is raised generally that the allowable floor areas for outdoor dining are quite high (up to 100% of internal floor area of the premises) and could result in circumstances where the developed portions of site are significant and encroach into setback or landscaped areas, required to address streetscape or amenity objectives.
- *Operational matters* - There is a lack of detail on the proposed operational matters. For example, while the FAQ outlines the relevant floor area, it does not detail how many seats can be provided in the area. Further, the increase to number of patrons appears to be based on BCA compliance – it is considered that this may be a complicated system which requires further detailed assessment beyond a complying development application.
- *Consultation with adjoining owners* - Concern is raised that consultation with adjoining landowners will not be required under the legislative changes. While the FAQs note that this is encouraged, it is likely that this will not be undertaken in many circumstances if not legislatively required.

- The Department's intent to retain the exempt process within the Codes SEPP for businesses using the footpath, road or public open space is supported. It is agreed that it is appropriate for these types of applications to be considered by Council prior to a permit being granted.
- It is noted that the EIE proposes to allow additional patronage and music at venues during their approved trading hours. Concern is raised that the EIE does not set any additional operational conditions with the advice that neighbour amenity may be controlled under existing legislation (specifically the Protection of the Environment Operations Act 1997). We are concerned that this will create a large burden for Council to investigate ongoing noise complaints that may not be easily resolved.

In light of the abovementioned comments, it is suggested that additional standard operational conditions be incorporated to assist in maintaining an appropriate acoustic environment. Such a condition would limit hours that music can be played, the duration of music and the noise limit in dB(A) when measured outdoors at a noise-sensitive area. There are some examples in Victoria that could potentially be adapted and appropriate for use in New South Wales.

2. Live Music Venues

It is acknowledged that the recent COVID-19 Pandemic has resulted in the closure of many music venues across NSW or resulted in significant economic losses. The EIE articulates that it is proposed to insert a new optional clause into the Standard Instrument that will allow councils to identify a floor space and/or height bonus that can be used in developments that contain music venues. The Department's commitment to reinvigorating the night-time economy is commended, however the suitability and appropriateness of achieving this through incentivised density clauses is questioned. The Department is urged to establish more stringent criteria to ensure that there is a robust framework in place to guide these types of developments.

It is recognised that the EIE states that the bonus provisions will detail the extent of the bonuses, the locations where it applies and the benefits it incentivises. However, upon reviewing the draft clause provided on page 13 of the EIE, concern is raised that adequate details are not provided on these fundamental factors. There is no subclause that provides for a council to identify zones or locations where the clause would apply. It is also unclear how the bonus will be applied to developments where only a small proportion of the development might be a music or entertainment venue. If the clause is to be taken up further guidance on the intended relationship with other LEP incentive clauses would also assist. It is suggested that further clarification be included on these matters as well as any case studies, if available.

The EIE references the NSW Government's intent to explore opportunities to embed cultural space in State Significant Developments to support visitor attraction and increased private investment in the precinct and surrounding areas. The EIE currently lacks detail on what this entails. It is requested that further consultation be undertaken with local councils regarding these changes prior to finalisation of the reforms.

I welcome the opportunity to provide input on the proposed changes as they are further developed and should you require any further information or wish to discuss any aspect of this submission, please contact Jessie Wiseman, Strategic Planning Coordinator on 9843 0122.

[REDACTED]

Reference: 8061647

22 November 2023

Via email: codes.submissions@planning.nsw.gov.au

Dear Planning Team

CITY OF NEWCASTLE SUBMISSION – PROPOSED REFORMS TO OUTDOOR DINING ON PRIVATE LAND AND LIVE MUSIC VENUES

City of Newcastle (CN) thanks you for the opportunity to provide feedback on the proposed reforms to outdoor dining on private land and live music venues.

Newcastle's night-time economy plays an important role in creating a diverse, vibrant and creative city. Newcastle's Night-time Economy Strategy—*Newcastle After Dark* seeks to promote the Newcastle live music scene while steering growth in licensed premises density toward low impact venues and ensuring an appropriate mix of venue types including non-alcohol-related entertainment options.

CN supports the promotion of outdoor dining and live music. We also support the 24 Hour Economy Legislation and appointing a Commissioner to drive reform in these areas.

CN understands the proposed reforms will result in amendments to:

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 for outdoor dining on private land and at registered clubs; and
- Standard Instrument—Principal Local Environmental Plan (2006) to include a new floor space bonus clause for new developments to include music venues.

CN's comments focus on the key changes proposed as part of these reforms.

Outdoor Dining

CN supports changes to simplify the planning process for outdoor dining on private land. The temporary measures introduced for outdoor dining on private land and at registered clubs (ending 31 December 2023) have not led to additional outdoor dining. Over the three-year period, CN had one application which was only recently approved for a 'pop up' food event on a CN carpark associated with a multicultural festival.

The only enquiries we had during this time were for the use of land from pubs who wanted to use CN's carparks to extend their beer garden for ongoing temporary events such as Anzac Day, sporting finals or to attract live music. The ongoing temporary use of the land could not be easily facilitated in this way and no formal applications were received.

Land owned by CN and used for a carpark is generally classified as 'community land' under the Local Government Act 1993. A development application is required for ongoing temporary uses on 'community land' compared to land classified as 'operational land'. CN recommend the legislation around land classification be reviewed to assist in streamlining approvals if these types of events are to be encouraged on a regular basis.

Several issues are common to such events, and we recommend a standard framework or guideline for event management. For example, requirements for security, waste, noise, electricity, toilets, insurance, food safety, liquor licenses, disabled access, traffic and transport impacts, and road closures need to be considered. Expanding the exemptions to allow outdoor dining on private land to continue as complying development will have little benefit as the take up was low and complying development is a confusing pathway that is difficult to navigate.

CN recommends the data be shared with councils on the 192 approvals from L&GNSW for amended liquor licenses on private land. It would be interesting to see what local government areas these have been approved in and if there are any patterns with the data as CN has only approved one application and this did not involve a liquor licence.

CN received more positive feedback about the Streets as Shared Spaces Program we implemented on Darby St, Cooks Hill. This was part of the Governments Alfresco Restart Package which offered grants to install temporary measures to extend the dining area and remove parking spaces from the street. This program was more successful in activating outdoor dining than the exemptions of planning approvals. This program led to many operators requesting CN implement this in different areas. This program proved more effective in adding vibrancy to streets compared to encouraging the closure of carparks.

Specific comments on the proposed development standards are included in the table below.

Table 1: Proposed development standards for outdoor dining on private land and at registered clubs

Proposed	Notes/Concerns for Submission
<i>Specified development</i>	
<p>Must be undertaken on private land, if the use is associated with lawful food and drink premises such as a restaurant or café, a pub or small bar, a registered club, takeaway food and drink premises and artisan food and drink industry.</p>	<p>CN supports encouraging more outdoor dining in a variety of spaces. However, the use of this land must be considered in conjunction with parking demand, noise, live music, location and amenity impacts.</p> <p>We support current trends of adapting bowling greens for dining and live music, but it impacts the amenity of local areas and can cause conflict between uses. The provisions do not address issues from additional trade with the loss of bowling greens and the impact on local streets from reduced parking and increased noise. While we encourage such uses, compliance issues and potential neighbourhood disputes must be recognised. The potential for such uses to morph from approved recreational uses to entertainment facilities, could increase appeals and disputes with the planning complexities. These amenity issues would need to be considered and addressed with appropriate conditions.</p>

Must not be located on rooftops.	Supported, a development application is the more appropriate pathway.
Must not include smoking areas or gaming machines.	Supported
Must not be in the E5 Heavy Industrial Zone.	Supported
<i>Development standard</i>	
Must not restrict any vehicular or pedestrian access to or from the building or land.	Supported
Must not be in or restrict access to a car parking space.	Supported
Must not reduce the existing access for people with a disability.	Supported. It is also important to ensure that the furniture is suitable for persons with a disability.
<p>The total allowable floor area for outdoor dining is calculated as a percentage of the internal gross floor area of the premises, as follows:</p> <ul style="list-style-type: none"> - The total allowable floor area for outdoor dining is calculated as a percentage of the internal gross floor area of the premises, as follows: - in an E1 Local Centre or E2 Commercial Centre – 50% - in a MU1 Mixed Use or any other zone – 25%. 	<p>The additional parking demand on the conversion of a bowling green to outdoor dining area can be significant. Combined with the additional patron numbers that can be achieved as complying development, this does not allow for the assessment on the amenity impacts of the venue to be considered and can also potentially conflict with existing conditions of consent.</p>
<i>Operational conditions</i>	
The use of the outdoor dining area must not exceed the hours of operation for the premises it is associated with.	<p>This is problematic as some older clubs and venues do not have restricted hours of operation. A review is needed of the EPA's Noise Guide for Local Government and related legislation. For example, should an exceedance of background noise levels from entertainment venues start at 10pm or midnight.</p> <p>Kitchen operation hours should also be considered if the area is for dining. Patrons should be moved into the building after kitchen close hours to minimise noise impacts, particularly for venues in and adjoining residential areas.</p>
Potential increase in the number of patrons provided the venue remains compliant with standards i.e., Building Code of Australia	The Building Code of Australia compliance pathway for bathroom facilities is complicated. It involves applicants engaging a Building Surveyor as calculations cannot be done by Council staff for transparency reasons. This does not make the process streamlined or cheaper for the applicant or for Councils with limited building surveyors.

Live Music Venues

Table 2: Proposed Floor space bonus to incentivise music venues

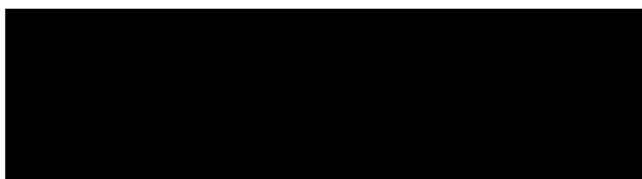
Proposed	Notes/Concerns for Submission
<p>The optional bonus floor space/density clause is proposed to be inserted under Part 5 Miscellaneous provisions of the SI LEP.</p> <p>Control</p> <ul style="list-style-type: none"> • A building may exceed the maximum permissible floor space ratio and/or height [standards to be developed by councils] that is otherwise allowed under the provisions of this LEP if the development includes any of the following land uses: <ol style="list-style-type: none"> i. creative industry ii. entertainment facility iii. information and education facility • The consent authority must be satisfied that the part of the building that is used for one of the purposes above for a minimum period of – [council to insert specific provisions] 	<p>The inclusion of a bonus clause does not guarantee a music venue will be built. If the development proceeds, a condition of consent requiring the use to be maintained for a number of years is no guarantee that the use will remain. If the building is unviable or a use cannot be attracted after it is built, there is no mechanism to retrieve the approved bonus floor space.</p> <p>It is unclear how this provision would work with other planning mechanisms such as inclusionary zoning for affordable housing (eg the Housing SEPP is proposing a 30% FSR and height bonus) and variations for design excellence. Clause 7.5 of the Newcastle LEP 2012 allows a 10% height and FSR bonus. Cumulative impacts from these various ways for additional height and FSR need to be considered as well as the public's interest. Also, how does the contribution framework apply to planning for the additional impacts of the floor space and height.</p> <p>Using a planning incentive bonus should not be the only way to encourage investment in live music. Other issues should be investigated first, primarily how music venues can operate in harmony with mixed use residential areas. This requires investigating legislation around noise and improving the connections and safety between venues or planning for entertainment precincts. It is important to engage with the community about what venues are currently lacking in the area and what places people would go to if they were available.</p> <p>There is ongoing conflict with venues in mixed use developments adding pressure on planning and compliance staff. Residents in these areas do not expect live music venues or restaurants at the ground floor of buildings (even if approved) so this is a constant battle. A review of current legislation, appeals, and best practices would help navigate how councils can encourage and support more venues with less community opposition. Government resources in this area would be more valuable than a planning mechanism in an LEP.</p>

[REDACTED]

[REDACTED]

[REDACTED]

23 November 2023



By Email: codes.submissions@planning.nsw.gov.au

Dear Department of Planning and Environment,

RE: Proposed Changes to Support Outdoor Dining & Live Music

We thank you for the opportunity to provide a submission regarding the proposal to change the State Environmental Planning policy to support businesses access expanded opportunities for outdoor dining and live music.

About Us

The Restaurant and Catering Industry Association (R&CA) is a national industry body representing the interests of over 57,000 restaurants, cafes, and catering businesses in Australia. The café, restaurant & catering sector is vitally important to the national economy, generating over \$37 billion in retail turnover each year as well as employing 450,000 people. Over 92 per cent of businesses in the café, restaurant and catering sector are small businesses, employing 19 people or less.

R&CA delivers tangible outcomes to small businesses within the hospitality industry by influencing the policy decisions and regulations that impact the sector's operating environment. R&CA is committed to ensuring the industry is recognised as one of excellence, professionalism, profitability, and sustainability. This includes advocating the broader social and economic contribution of the sector to industry and government stakeholders, as well as highlighting the value of the hospitality experience to the public.

Scope of the Proposal

The Department of Planning is proposing to amend the State Environmental Planning Policy (Codes SEPP) to allow outdoor dining on private land and at registered clubs.

The Department is also proposing that the Principal Local Environmental Plan be amended to introduce floor space and height increases for new developments to encourage greater investment into venues that can accommodate live music.

Our Response to Amending Codes SEPP

The R&CA supports the amendment of the Codes SEPP to allow for outdoor dining on private land and at registered clubs to occur without the need for planning approval. This will permanently enact the NSW Government's temporary outdoor dining exemptions which were of immense benefit to our sector during the COVID-19 Pandemic.

According to a 2021 survey by OpenTable on the dining habits and preferences of Australian customers, 81% of respondents believed that expanded outdoor dining should become 'a mainstay.'¹

Additionally, an outdoor dining trial among hospitality businesses in The Rocks and Darling Harbour proved to be a successful and model initiative, with businesses reporting a 33% increase in business turnover and a 27% increase in patrons over the first eight weeks of the trial.²

In our 2022 Industry Benchmarking Report, which is conducted by the R&CA annually to record the challenges, opportunities, and overall positioning of the sector, found that 60% of hospitality operators believed red tape and compliance factors including the application process, council restrictions and other requirements were the most significant impediments in operating their outdoor dining precinct effectively. By removing such regulatory obstacles, hospitality businesses will be incentivised to expand their dining space to accommodate more customers and to contribute to the state's overall appeal and vibrancy.

Our Response to Incentives for Live Music Venues

The R&CA supports the proposal to amend the Principal Local Environmental to allow floor space and height density increases for new developments that accommodate live music. This will provide councils with the tools to undertake long-term commercial planning and strategise the introduction of special entertainment precincts within their LGA.

¹ Open Table (2021) The Future is Now Down Under: How Australia Can Tell Us What's Next for Restaurants

² NSW Government (2021) Media Release: Alfresco Dining a Taste of Things to Come

The R&CA applauds the State Government's efforts to foster an appealing and vibrant 24-hour economy to boost productivity and incentivise further growth and investment in New South Wales's Tourism and Hospitality sector.

Additionally, the R&CA believes these reforms are complimentary to the Liquor and Gaming's Vibrancy Amendments that are also in conjunction with NSW State Government's overall commitment to revitalize the state's night-time economy. We refer to our submission provided to the Department of Enterprise, Investment and Trade on September 29 (Annexure A). We draw your attention to our response outlined below for Reform 31, 35 and 36.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Annexure A:

29th September 2023

Liquor & Gaming NSW | Hospitality & Racing
Department of Enterprise, Investment and Trade



[REDACTED]

Dear Department of Enterprise, Investment and Trade,

**Re: Proposed vibrancy amendments 2023 – Liquor Act 2007, Liquor Regulation 2018,
Gaming and Liquor Administration Act 2007**

The Restaurant and Catering Industry Association ('R&CA') is a national industry body representing the interests of over 57,000 restaurants, cafes, and catering businesses in Australia. The café, restaurant & catering sector is vitally important to the national economy, generating over \$37 billion in retail turnover each year as well as employing 450,000 people. Over 92 per cent of businesses in the café, restaurant and catering sector are small businesses, employing 19 people or less.

R&CA delivers tangible outcomes to small businesses within the hospitality industry by influencing the policy decisions and regulations that impact the sector's operating environment.

R&CA is committed to ensuring the industry is recognised as one of excellence, professionalism, profitability, and sustainability.

This includes advocating the broader social and economic contribution of the sector to industry and government stakeholders, as well as highlighting the value of the hospitality experience to the public.

The R&CA welcomes the proposal to modernise the application of liquor & gaming regulation to support cultural vibrancy and enterprise in New South Wales. The R&CA makes the following comments and recommendations upon the basis of relevancy to our sector. For ease we have chosen to only include the reform categories and responses in our recommendations outlined below.

Reform	R&CA Position
1. Remove the pre-application 30-day consultation period for liquor applications	The R&CA supports the substitution of a CIS with a Statement of Risk of Harm and Other Potential Impacts. We believe this will provide applicants with the same level of consideration to the wider community as a CIS, but without the need to conduct community consultation before lodging and application.
4. Standard Trading Period	The R&CA supports the amend to standard trading to be aligned on all days of the week.
5. Small bar liquor trading Period	The R&CA supports the trading period for small bars to commence at 10am.
6. Remove on premises consumption restriction on Christmas Day and Good Friday	The R&CA supports the introduction of standard trading for Christmas Day and Good Friday.
8. Remove licensing requirements for alcohol-free and ultra-light beer and spirits	The R&CA supports the removal of licensing requirements for alcohol-free and ultra-light beer and spirits, in line with other jurisdictions.
9. Allow the continuation of take-away alcohol for restaurants, and bars under certain conditions	The R&CA strongly supports the extension of same-day delivery to on-premises and small bar license holders. The R&CA believes these laws should be aligned with the same-day takeaway alcohol requirements in Victoria and recommends that the limitations are in conjunction with the quantity of food purchased rather than a per transaction basis.
15. Enabling managers/licensees to re-enter the industry within 3 years with licensee training rather than a full RSA	The R&CA does not support the following reform. In order for the RSA to be fit for purpose, managers and licenses must complete full RSA when reentering the industry to maintain consistency and high standards for RSA holders.
18. Remove ID scanner requirements	The R&CA supports the removal of ID Scanner requirements.
20. Remove risk loading for Kings Cross and Sydney CBD venues	The R&CA supports the removal of risk loading for Kings Cross and CBD venues.
23. Improvement notices	The R&CA supports the use of improvement notices.
24. Incident register- within 24 hour window for reporting	The R&CA believes that is the duty of the license holder, that when an incident takes place, they must report within the appropriate timeframe (within 24-hours).
25. RSA suspension time period	The RCA does not support the suspension time period to be influenced by the date of expiry rather the severity of the contravention.
26. RSA disqualification	The R&CA supports the Authority to declare orders disqualifying individuals from holding

Reform	R&CA Position
	a recognised competency card, when this is within the interest of community safety.
27. RSA revocation – broadening of grounds	The R&CA supports the broadening of grounds for RSA revocation.
28. RSA suspension once show cause is issued	The R&CA supports RSA suspension once show cause is issued.
31. Increase trading extensions from the current 60 minute to 2 hours for venues classified as live music and live performance venues	The R&CA supports trading extensions to incentivises businesses to host live music and performances.
32. Expand one hour of extended trading every day of the week for incentivized event venues	See above.
35. Continue fee reductions for live music and performance venues	The R&CA supports continued incentives for venues who host live performances and special events.
36. Make outdoor dining provisions permanent	The R&CA believes that introducing permanency for outdoor dining is an essential element in supporting
37. On-premise licenses does not need to specify business activity	The R&CA supports this reform.
38. Caterer’s license is only to be exercised for private hire	The R&CA supports this reform.
40. Limitations for offences to be 12 months	The R&CA supports this reform.
41. L&GNSW to undertake noise regulation	The R&CA supports this reform.
42. Disturbance compliant requirements reform	The R&CA supports this reform.
43. Order of Occupancy reform	The R&CA supports this reform.
44. Mediation with venue	The R&CA supports this reform.
45. Secretary guidelines for disturbance complaints	The R&CA supports this reform.
46. Number of complaints to be 5	The R&CA supports this reform.
47. Switching off POEO Act for Licensed Premises	The R&CA supports this reform.
48. Police Direction power to move from POEO to the Liquor Act	The R&CA supports this reform.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
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[REDACTED]



Australian Acoustical Society

ACN : 000 712 658

ABN : 28 000 712 658

T/as: Australian Acoustical Society NSW Division

23 November 2023

NSW Department of Planning Environment
C\ Online Submission
Email: codes.submissions@planning.nsw.gov.au



Re: Proposed reforms to outdoor dining on private land and live music venues – Submission to from the NSW Division of the Australian Acoustical Society

To Whom it May Concern,

Thank you for seeking public submissions on your proposed changes to exempt and complying developments for outdoor dining and live music venues.

The Australian Acoustical Society aims to promote and advance the science and practice of acoustics in all its branches to the wider community and provide support to acousticians.

The Australian Acoustical Society (NSW Division) notes that a range of our members will be impacted by the proposed changes, as many of our members work day-to-day with local and State government planning and environmental guidelines, and those of Liquor and Gaming NSW, in assessing noise related issue for dining and entertainment venues in both metropolitan Sydney and regional New South Wales.

We are supportive of providing a simpler exempt and complying development planning pathway to activate outdoor areas, however, we have some reservations as to whether the changes as currently proposed will help to achieve the intended outcomes.

The experience from our membership has been consulted and the following comments are provided for your consideration:

- It is unclear if an acoustic assessment is required. The FAQ states the submission involves a "*simple complying development application*", which might mean an assessment is not needed, however elsewhere it states: "To get a Complying Development Certificate, a business must show that it complies with all the relevant development standards in the Codes SEPP".

Please note, NSW does not have specific criteria for patrons and entertainment noise. There is a need to understand whether acoustic assessments will be required for approval. If required, there needs to be confirmation of what criteria should be applied, and if the NSW Environment Protection Authority *Noise Policy for Industry* (NPfI) is used (which the conditions associated with Part 5 stipulates), then clear guidance on how it should be applied to patron and entertainment noise should be provided. The NPfI was designed for industrial type noise rather than patron and music noise and includes a range of considerations not appropriate for this type of noise.

If acoustic assessments are still required, the process may still be quite involved. However, counter to this is the risk that if assessments are not required, complaints would be used to evaluate amenity impacts, which raises a range of associated issues including those of impartiality and objectivity.

The AAS suggests that simpler noise criteria could be developed based on fixed planning zones.

- The AAS considers that if no acoustic assessment is required as part of the application, this reform will result in approvals that result in complaints and the acoustic consultants work may well shift from pre-Development Application/CDC assessments to complaint assessments for either complainant/Council or

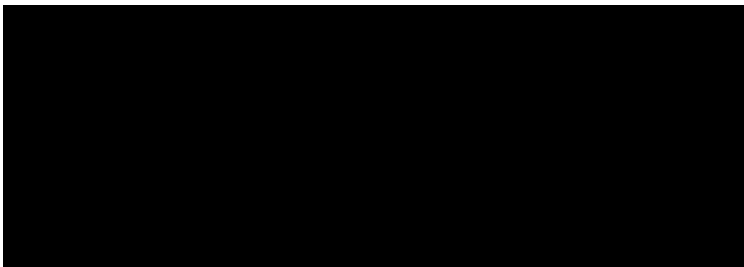
the applicant. This would typically be more difficult and costly as it requires both Council and the applicant to undertake additional work. It also provides a less certain pathway for applicants as the approval could potentially be more easily contested if the requirements are unclear. Is this the intent of reforms?

- The AAS is concerned that certifiers may not be equipped to assess the noise impacts from proposals. Is an independent certifier able to confirm that the requirements of the POEO act will be met, to the satisfaction of the local council? This could either lead certifiers to ask for acoustic assessments for all proposals, or they will assume all proposals are adequate and this may result in many complaints. Is it proposed to educate certifiers to deal with acoustic issues?
- Could a clearer set of requirements, that could be checked and approved by a certifier, be established based upon desired acoustic outcomes? This would provide a clearer and simpler approval approach that could be implemented by a certifier.
- To deal with general noise issues prescriptively, the AAS recommends that consideration be given to objective requirements/limits (either on patron and/or music noise levels or patron numbers) based on zoning, or simple provisions such as 10 pm close for outdoor dining and live music to limit the number of nighttime noise complaints (unless an acoustic assessment demonstrates otherwise).

The AAS and its members would be happy to provide assistance to the NSW Government, if they would like to explore or expand on any of the above items that have been identified.

Please do not hesitate to contact me for further clarification or additional comments.

Yours faithfully,



27 November 2023

NSW Department of Planning and Environment
By email: codes.submissions@planning.nsw.gov.au

Dear Sir/Madam

Subject: Lake Macquarie City Council Staff Submission - Proposed reforms to outdoor dining on private land and music venues

Lake Macquarie City Council (Council) appreciates the opportunity to provide feedback on the proposed amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP), and the *Standard Instrument-Principal Local Environmental Plan 2006* (SI LEP).

Council staff have reviewed the proposed changes as described in the associated Explanation of Intended Effect (EIE) and have prepared the following comments for consideration as part of the consultation process.

Council staff support proposals which aim to provide communities and creatives with more vibrant, dining, performance and leisure destinations and experiences.

It is understood that the draft instruments seek to:

- allow for a complying development (Codes SEPP) pathway for businesses to obtain approval for outdoor dining on private land
- introduce an optional model clause in the SI LEP that will allow councils to identify a floor space and/or height of building bonus that can be used in developments that contain music venues.

1. Outdoor Dining as Complying Development

Potential increase in the number of patrons

The proposed changes allow the number of patrons to increase if the venue remains compliant with relevant standards. Regarding the relevant standards, the EIE provides the following explanation:

Clause 1.18 of the Codes SEPP sets out general requirements for complying development. This clause specifies that for development to be compliant it must meet the provisions of the Building Code of Australia (BCA). The BCA establishes guidelines for sanitary facilities (bathroom facilities), including the number of toilets, urinals and wash basins, that must be provided based on the patron capacity of a venue. The need to meet the bathroom facilities requirements under the BCA is likely to restrict the capacity of an outdoor dining area, as otherwise the business may need to provide additional toilets to accommodate an increase in patrons.

Council suggests the BCA guidelines may not be a suitable measure for restricting venue patron capacity on a site-by-site basis because the BCA does not adequately consider the context in which the venue operates, and its current approved capacity.

For instance, an existing operation may meet all the relevant BCA guidelines for a proposed increase in venue patron capacity. However, other factors, such as proximity to residences or other sensitive receivers, may mean that a large increase in venue patron capacity may not be suitable for assessment and approval under a complying development pathway.

There is an opportunity to strengthen requirements which otherwise may result in an outcome that is not desirable for a given location. A potential solution could be to include requirements in the Codes SEPP that limit increases to patron capacity. This limitation could be based on a flat rate increase per square metre of floor area, or on a percentage increase to the existing approved patron capacity of the venue.

2. Floor space and/or height bonus to incentivise music venues

Proposed land uses

As described in the EIE, for the bonus clause to apply to a development, one or more of the following land uses must be proposed as part of the new development:

- ***Creative industry*** includes a building or place with the principal purpose to produce or demonstrate arts, crafts, design or other creative products, and includes artists' studios, recording studios, and set design and production facilities
- ***Entertainment facility*** includes a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club
- ***Information and education facility*** includes a building or place that provides information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

Council considers that there is an opportunity to investigate expanding the listed land uses to include the following:

- ***function centre*** means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

The EIE describes the objective of the proposed clause as being to increase opportunities for development that will assist in boosting the NSW live music, entertainment, and creative industries. The inclusion of 'function centre' as a land use applicable to the proposed clause is justified as function centre developments provide for a wide range of uses which support vibrant and diverse night-time activities.

Methodology to determine bonuses

It is noted that the proposed bonus floor space/height of building clause will be optional, with a council having the ability to nominate the extent of the bonuses, the locations where they apply, and the benefits they incentivise. This bonus floor space/height of building clause will be predicated on the outcome of a council's own strategic planning investigations and findings.

For example, councils may decide that the bonus should be available in certain areas such as Special Entertainment Precincts, in or around transport nodes or other strategic centres where there is a need for greater entertainment, cultural and creative offerings.

The EIE offers minimal detail regarding the extent of the bonus and when the bonus could be accessed. Council suggests there needs to be more guidance for minimum requirements for both the entertainment floor space and the extent of the floor space/height of building bonus. For example, a 30 per cent floor space ratio bonus where 15 per cent of the proposed floor space in the new development is dedicated to a prescribed entertainment use.

If a prescriptive approach to the extent of the bonus is not desired, then it would be useful to provide further information and guidance to councils regarding appropriate methodology or criteria to be used to determine the bonus floor space ratio and/or height standards. This would ensure that the SI LEP bonus clause is interpreted and applied consistently across the state, while also allowing flexibility in its application across unique local government areas.

Conditions of consent

The "*proposed optional SI LEP bonus floor space/density clause*" in the EIE specifies the following control:

The consent authority must be satisfied that the part of the building that is used for one of the purposes above for a minimum period of – [council to insert specific provisions]

It is uncertain whether compliance with the relevant conditions of consent can be ensured. It would be helpful to clarify if there is any intention to issue State-led standard condition/s, or whether it is expected that each council will determine a standard condition when permitting development under the bonus floor space/density clause.

The monitoring and enforcement of the ongoing use of part of an approved building for a specific purpose, over a period, is not emphasised in the proposal and would be difficult for council compliance staff to undertake.

Further engagement

[Redacted]

Yours sincerely

[Redacted]

CLUBSNSW SUBMISSION

OUTDOOR DINING ON PRIVATE LAND AND REGISTERED CLUBS

ClubsNSW welcomes the opportunity to comment on the Explanation of Intended Effect (EIE) on the proposed amendments to the *Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

ClubsNSW represents over 1,200 not-for-profit clubs across the state. Clubs provide a range of service offerings to members and guests, including food and beverage services. Consumer demands and preferences for dining are evolving, and clubs across the state are diversifying their food and beverage offerings to adapt to these changes.

RECOMMENDATIONS

- Amend the Codes SEPP to permanently establish a new complying development pathway for outdoor dining on private land and at registered clubs.
- Continue existing pathways for clubs to use car parks and rooftops for outdoor dining.

PERMANENTLY ENABLE STREAMLINED OUTDOOR DINING PROCESS

Before COVID-19, clubs offering outdoor dining had to modify their development consent, which was costly, burdensome and, in some instances, deterred clubs from having outdoor dining.

The initial reforms to permit outdoor dining on footpaths and public areas did not benefit clubs, given the physical characteristics of clubs, such as the entry point acting as a stronger barrier. ClubsNSW subsequently worked with the NSW Government on outdoor dining arrangements more suitable to clubs, including in private car parking spaces and bowling greens.

The changes supported clubs across to set up outdoor dining swiftly and keep trading while providing a safe environment for patrons and staff. Outdoor dining also supported clubs in attracting a wider customer base through the diversification of their service offerings.

Clubs have benefited from these changes. The Leichhardt Bowling & Recreation Club has transformed the outdoor area of the Club to a thriving outdoor bar and dining facility. This has become a popular dining choice for patrons.

ClubsNSW supports the proposed amendments to the Codes SEPP to establish a permanent fast-track approval pathway on private land at clubs. Making these changes permanent will give clubs certainty in installing outdoor dining support diversification in clubs.

ClubsNSW also notes that this proposal aligns with the NSW Government's recent Vibrancy Reforms, which are designed to remove red tape in the industry and encourage diversification. ClubsNSW has collaborated with the Government in developing these reforms.

ClubsNSW supports amending the Codes SEPP to permanently establish a new complying development pathway for outdoor dining on private land and at registered clubs.

USE OF CAR PARKS & ROOFTOPS FOR OUTDOOR DINING

As discussed earlier, clubs do not have the same opportunities as other hospitality businesses to install outdoor dining facilities in public areas that are adjacent to the club premises. These limitations are due to the characteristics of clubs' physical premises as well as laws requiring sign-in at the entry of clubs. Due to these characteristics, clubs do not have free-flowing movement between indoor and public outdoor areas of the premises, as necessary to have outdoor dining.

Expanding the temporary outdoor dining laws to include private car parks and other private outdoor areas reflected the Government's desire to give clubs opportunities to explore innovative outdoor dining opportunities and diversify their business.

Clubs have succeeded in having outdoor dining in car parks and rooftop areas. Requiring clubs to obtain development consent to have outdoor dining in car parks and rooftops will negate the benefits of a quick and streamlined process.

The EIE highlights that increasing patron capacity at venues while decreasing parking spaces may cause parking shortages. However, many clubs operate large venues with a high patron capacity. These clubs may not need to increase patron capacity to accommodate outdoor dining, which means that a new outdoor dining will not strain the available parking spaces. In these circumstances, there is no rationale for depriving these clubs of a quick and streamlined process.

On this basis, we recommend that clubs wishing to use parking spaces for outdoor dining be able to opt against increasing the patron capacity, and thereby retain the streamlined outdoor dining process. Where a club wishes to increase the patron capacity to accommodate a new outdoor dining area, we recommend a mechanism to assess whether the available parking spaces can reasonably accommodate the patrons.

Regarding rooftops, we recognise the unique risks for rooftop dining. However, the model adopted through the proposed changes – with limitations and rules imposed by development standards – appears to be capable of accounting for these risks.

ClubsNSW supports continuing existing pathways for clubs to use car parks and rooftops for outdoor dining.

CONTACT INFORMATION



Department of Planning and Environment

Via email submission:

codes.submission@planning.nsw.gov.au

Your Reference	N/A
Our Reference	F2023/00024
Contact	[REDACTED]
Telephone	[REDACTED]
Email	[REDACTED]

20 November 2023

Dear Sir / Madam,

RE: Proposed changes to the planning system to support outdoor dining as complying development

City of Parramatta Council (Council) thanks the Department of Planning and Environment (Department) for the opportunity to comment on these reforms to provide businesses and communities certainty about where outdoor dining can take place. This letter should be read in conjunction with Council's separate submission regarding the changes to the planning system to support live music.

This submission has been prepared by Council officers and has not been endorsed by Council, nonetheless, is consistent with Council-endorsed policy.

The intent of the reforms aligns with Council's position of streamlining process and supporting our local businesses and is consistent with an objective within our Economic Development Strategy of having a safe, thriving and diverse nighttime economy.

The proposed draft reform to enable outdoor dining on private land or as part of a registered club via a complying development pathway **is supported** - on the basis that Council's understanding of how the reform will be applied aligns with the following:

- A venue must not be in a heritage conservation area or on a heritage item.
- A venue must have an existing development consent for the use.
- The use of the new outdoor area must be consistent with the existing conditions of the development consent for the use of the site.
- The conditions of the development consent include the following:
 - Restrictions on the number of patrons based on car parking requirements and Building Code of Australia Requirements for sanitary facilities and emergency exits.

Contact us:

council@cityofparramatta.nsw.gov.au | 02 9806 5050
@cityofparramatta | PO Box 32, Parramatta, NSW 2124
ABN 49 907 174 773 | cityofparramatta.nsw.gov.au

- Defined hours of operation and maximum noise emissions including playing of music.

These requirements are necessary to provide certainty and transparency for businesses and communities whilst protecting the amenity of the surrounding neighbourhood.

If you have any enquiries regarding this submission please contact

[REDACTED]

[REDACTED]

Department of Planning and Environment

Via email submission:

codes.submission@planning.nsw.gov.au

Your Reference	N/A
Our Reference	F2023/00024
Contact	[REDACTED]
Telephone	[REDACTED]
Email	[REDACTED]

20 November 2023

Dear Sir / Madam,

RE: Proposed changes to the planning system to support live music

City of Parramatta Council (Council) thanks the Department of Planning and Environment (Department) for the opportunity to comment on these reforms to encourage live music, entertainment and creative industries within new developments. This letter should be read in conjunction with Council's separate submission regarding the changes to the planning system to support outdoor dining as complying development.

This submission has been prepared by Council officers and has not been endorsed by Council, nonetheless, is consistent with Council-endorsed policy.

Council **supports the draft reform** to incentivise music venues through an optional floor space bonus for the following reasons:

1. The intent of the reforms aligns with Council's policy position in the Night City Framework particularly Parramatta as a centre of late-night business, leisure and culture; and Parramatta as a leading night City.
2. Inclusion of the reform bonus FSR is optional, and this empowers councils to make an assessment about the suitability for inclusion in their local environmental plans, and to decide on the specific criteria within the clause such as where the bonus will apply and the numerical standards.

Potential issues with the application of the optional floor space bonus for the Department's consideration are identified as follows.

Contact us:

council@cityofparramatta.nsw.gov.au | 02 9806 5050
@cityofparramatta | PO Box 32, Parramatta, NSW 2124
ABN 49 907 174 773 | cityofparramatta.nsw.gov.au

Issue 1: Integration with other FSR bonuses, sliding scale, height limits and GFA take-up.

- **Existing FSR bonus provisions** in Parramatta PLEP 2023 include:
 - Clause 7.5 for additional commercial FSR (2:1 and 4:1)
 - Clauses 6.13 and 7.15 Design Excellence (15% or 25%)
 - Clause 7.25 for environmental performance (5%)
 - Clause 7.26 for additional commercial uses (5%), and
 - Clause 7.28 for additional office space (unlimited).
- How another FSR bonus would be integrated with these existing bonuses needs to be carefully assessed before Council commits to adopting the optional Standard Instrument LEP bonus floor space/density clause.
- **Existing FSR sliding scale requirement** for the Parramatta City Centre (Clause 7.3) in Parramatta PLEP 2023 ensures built form is proportional to the site area. The existing FSR bonuses outlined above are based on the mapped FSR, not the resulting FSR based on the site area. The appropriateness of another bonus based on the mapped FSRs needs to be understood before Council commits to this new clause.
- **Height limits** in Parramatta LEP 2023 have 'hard' limits on FSR through such limits as aerospace operations surfaces (Clause 7.9) or solar access planes (Clause 7.7) in the Parramatta CBD. Another FSR bonus needs to be carefully understood in relation to height limits. In these instances, should an FSR bonus be available, no height bonus would be made available to accommodate the density.
- **Density controls such as GFA limits** exist for some areas in Parramatta where there is no mapped FSR. This includes Wentworth Point. How an FSR bonus would be applied in these circumstances needs to be understood and guidance is required from the Department on how the bonus would be applied in these circumstances.

Issue 2: Councils must be supported to uphold the intent of the bonus clause when challenged by developers.

- Council has existing bonus FSR provisions to encourage office and commercial uses within the commercial centre and mixed-use zones (Clauses 7.26 and 7.28) in the Parramatta CBD.
- There have been instances where developers have received a development consent that incorporates the commercial or office bonus and then later come back with a modification application to change the use of this floor space to more profitable land uses ie residential.
- The intent of the floor space bonus reform is to make development for entertainment, cultural or creative a more feasible proposal where this may be otherwise priced out by other uses.
- It is critical that councils be supported to uphold the intent of the bonus clause, particularly when density bonuses quickly become 'baked into' local land markets as an out-of-right expectation, and developers seek to change the use of the bonus floor space within the minimum time period (as determined by Council and specified in the clause).

Opportunities for the State Government

Council concerns have previously been raised with the State Government about the **erosion of the commercial core** with residential uses resulting from the reforms to the planning framework to incentivise Build-to-Rent housing.

This reform to encourage non-residential uses within the commercial centre through a bonus FSR is welcomed, and as part of our consideration of the intent of the reforms, Council officers have identified an opportunity for the State Government to contribute and lead the way for the revitalisation of the arts and cultural sector and to encourage vibrant and diverse nighttime activities and support live music through its role as an approval authority and land owner.

Opportunity 1: The State Government should require floor space for live music, entertainment and creative industries within Build-to-Rent housing in commercial zones.

Build-to-Rent housing *within* the commercial core is expected to have a long-term strategic impact on employment opportunities and economic growth, and the weakening of the role of the commercial centre as the centre of business, retail, community and cultural activity. Introducing a requirement for floor space within Build-to-Rent housing for live music, entertainment and creative industries that is in the commercial core zones would have the following benefits:

- Encourage investment in the commercial core
- Offset some of the loss of commercial capacity
- Support the night time economy.

Opportunity 2: The State Government should require floor space for live music, entertainment and creative industries within State Significant Development applications and on State Government redeveloped land where appropriate.

As an example, in the Parramatta CBD the State Government is proposing to redevelop the land above the Metro site. Conditions on the development application to require a specified amount of the floor space within a development to be used for live music, entertainment and creative industries would demonstrate leadership and encourage vibrant and diverse nighttime activities.

In summary, Council officers support the draft FSR bonus reforms to incentivise live music, entertainment and creative industries and support the State Governments approach to allow councils to determine the appropriateness of the clause for areas in the LGAs, and the amount of the bonus and minimum time period the use allowed by the bonus FSR must be in place for. Council officers request a meeting to discuss the issues raised in this submission with relevant DPE teams before, during and after the gazettal of any resulting amendment. Ongoing collaboration will be the most effective way to work together towards sustainable, balanced and well considered approaches to improving the implementation of this proposed reform through council controls.

[REDACTED]

[REDACTED]

[REDACTED]

THE HON. PAUL SCULLY, MP
PARLIAMENT HOUSE, MACQUARIE STREET
SYDNEY NSW 2000
VIA SUBMISSION PORTAL
SUBJECT: SUBMSSION ON OUTDOOR DINING PROPOSAL

20 OCTOBER, 2023

Dear Minister Scully, *Paul*

I am writing to strongly support the proposed changes to outdoor dining on private land and live music venues. These proposed changes signal a proactive approach towards creating a more vibrant and dynamic community atmosphere in NSW, particularly concerning outdoor dining and live music venues. We welcome and look forward to more common sense policies of this calibre, delivered by a competent and invigorating Minns Labor Government.

The temporary provisions made during the COVID-19 pandemic showcased the positive impact of outdoor dining on the community. It provided a lifeline for many businesses during these unprecedented times. It helped rejuvenate several neighbourhoods and spaces, enriching the overall dining and social experience for locals and visitors alike. By proposing a fast-track approval pathway for outdoor dining on private lands and registered clubs, the NSW Government has demonstrated a clear understanding of the evolving needs of our society and the significant benefits that such initiatives bring to our communities' economic and social fabric.

Moreover, the proposal to introduce a floor space/density 'bonus' clause for new developments supporting live music is timely and crucial. With numerous music venues having suffered due to the previous Government's poorly planned and woefully destructive lockout laws, this initiative will undoubtedly play a pivotal role in revitalising our night-time economy and supporting the arts and entertainment sectors, which are integral to the state's cultural identity and prosperity.

Encouraging outdoor dining spaces and incentivising music venues is essential to creating a balanced, inclusive, lively urban environment. This approach addresses our immediate economic challenges, making Sydney a desirable place to live for highly valued workers and businesses. It lays the foundation for a more vibrant and interconnected community in the future.

I commend the NSW Government for these forward-thinking proposals. I hope these changes and the broader series of modifications planned across various government agencies will receive the requisite support and speedy implementation. Such efforts resonate with the aspirations of communities and creatives across the state, ensuring NSW remains a leading example of urban development that places people, culture, and society at its core.

Thank you for considering my views on this matter. Please find detailed submissions on the following pages. I am optimistic about the future and the positive changes these proposals will usher in for the state of NSW.

Yours Faithfully,



George Tulloch
Director

Proposed Changes Regarding Outdoor Dining

The initial exempt pathways served their purpose as a temporary measure during the pandemic, and I commend the government for recognising the potential of these pathways as more permanent fixtures in our business landscape. The streamlined, fast-tracked approval pathway will undoubtedly relieve many businesses, eliminating the sometimes burdensome modification to their development application (DA).

Furthermore, the proposal to make the streamlined Liquor & Gaming NSW temporary liquor licence boundary approval pathway permanent will significantly benefit the hospitality sector. The figures from L&GNSW suggest the success of this initiative, and I believe a permanent solution will provide stability and predictability for businesses.

While I applaud the standards and conditions set out in Table 1 to ensure the responsible development and operation of outdoor dining spaces, I would like to suggest that the government might consider going even further in a few areas:

1. E5 Heavy Industrial Zone Restrictions: While I understand the concerns about potential land use conflict and public safety in heavy industrial areas, there may be instances where carefully regulated outdoor dining could coexist with industrial operations. A more nuanced approach, with case-by-case evaluations by an empowered Local Government, could allow for limited and safe outdoor dining in these areas.
2. Rooftop Dining: Restricting rooftop dining as complying with development might limit innovative urban dining solutions. Rooftop spaces can offer unique dining experiences. While safety, noise, and privacy concerns are valid, a comprehensive set of guidelines for rooftop dining could enable its safe and responsible implementation without overburdening businesses with the DA process.
3. Car Parking Spaces: While the current proposals don't allow outdoor dining in car parking spaces, metropolitan areas with vital public transport could benefit from such conversions. An evaluation system, perhaps based on public transport accessibility and existing parking solutions, could allow for a more flexible approach.

Proposed Changes to Incentivise Music Venues

The proposed changes by the NSW Government to provide floor space bonuses to developments that incorporate music and creative spaces are commendable and visionary. For the longest time, the arts sector has struggled to find a space within urban developments, often overshadowing more commercially lucrative projects. Thus, this proposal recognises the cultural importance of music and the arts and attempts to integrate them into our urban fabric strategically.

Firstly, using floor space and density bonuses as incentives isn't new to the NSW planning system. They've been used successfully in other sectors, such as in achieving design excellence and heritage conservation. The extension of this system to encourage creative spaces is a logical and innovative progression, bringing arts to the fore of urban planning considerations.

By linking these bonuses to strategic planning decisions by councils, the proposal ensures a tailored approach that respects each local area's unique character and needs. This grassroots approach means that the needs and desires of local communities will be pivotal in deciding where and how these creative spaces emerge. It's a recognition that while the broader objective may be state-wide, its manifestation is inherently local and supportive of workers.

However, while these proposed changes are steps in the right direction, it may be worth considering even more holistic measures.

1. **Integrated Design:** A collaborative approach to designing these spaces with artists and musicians would be ideal rather than just providing space for music venues and creative hubs. This could result in truly innovative, dynamic, and community-oriented areas, which might be a magnet for residents and tourists.
2. **Support Systems:** Apart from the physical space, emerging artists and musicians need support in training, mentorship, and networking opportunities. The government might partner with established artists, music schools, and institutions to create a support ecosystem around these new spaces.
3. **Green Spaces:** Any development, especially those focused on community engagement, should consider integrating green spaces. Not only do they enhance the overall appeal, but they also provide spaces for open-air performances, installations, and exhibitions.

Kristina Argiropoulos

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 23 October 2023 3:03 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Mon, 23/10/2023 - 15:02

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

Helen

Last name

Matthews

I would like my name and personal contact details to remain confidential

No

Info

Email

jeht6767@gmail.com

Suburb/Town & Postcode

2230

Please provide your view on the project

I support it

Submission

Great idea to get people out enjoying themselves after all we are an outdoor lifestyle country, so makes sense, , gives an added vibe They do it all over Europe its so good for people in communities to hang out especially for our mental health and well being Hopefully people can set up dining on wharves on our rivers too.

I agree to the above statement

Yes

Kristina Argiropoulos

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 23 October 2023 7:52 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Mon, 23/10/2023 - 19:51

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

Bec

Last name

Ho

I would like my name and personal contact details to remain confidential

No

Info

Email

becstaaar@gmail.com

Suburb/Town & Postcode

2111

Please provide your view on the project

I support it

Submission


This is a great outcome for communities and businesses

I agree to the above statement

Yes

[Home](#) > [Administration](#) > [Structure](#) > [Webforms](#) > [Draft Plans - Outdoor Dining](#) > [Results](#) > **Proposed reforms to outdoor dining on private land and live music venues: Submission #29**

Proposed reforms to outdoor dining on private land and live music venues: Submission #29

View	
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HTML
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Plain text
Data (YAML)

The **View** page displays a submission's general information and data. [▶ Watch video](#)

[< Previous submission](#)

[Next submission >](#)

Submission information

Submission Type

I am making a personal submission

Name
First name Penny
Last name Marriott

I would like my name and personal contact details to remain confidential

No

Info

Email

marriott.pen@gmail.com

Suburb/Town & Postcode

2131

Please provide your view on the project

I am just providing comments

Submission file

{Empty}

Submission

The way current no smoking where food is served laws have been implemented by venues to ban eating from alfresco areas no ban smoking. How will these proposed changes prioritise eating outdoors our smoking outdoors.

I agree to the above statement


Yes

{Empty}

[Home](#) > [Administration](#) > [Structure](#) > [Webforms](#) > [Draft Plans - Outdoor Dining](#) > [Results](#) >

Proposed reforms to outdoor dining on private land and live music venues: Submission #32

Proposed reforms to outdoor dining on private land and live music venues: Submission #32

View	
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HTML
Table
Plain text
Data (YAML)

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Submission information

Submission Type

I am making a personal submission

Name
First name Gina
Last name Woodward

I would like my name and personal contact details to remain confidential

No

Info

Email

ginamwoodward@gmail.com

Suburb/Town & Postcode

2627

Please provide your view on the project

I support it

Submission file

{Empty}

Submission

It's a solid idea / make it easier, enhance atmosphere and give more people the chance to dine outdoors.

I agree to the above statement

Yes

{Empty}

Kristina Argiropoulos

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Wednesday, 25 October 2023 7:04 PM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Wed, 25/10/2023 - 19:03

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

Jessica

Last name

Harris

I would like my name and personal contact details to remain confidential

No

Info

Email

jessicalharris31@gmail.com

Suburb/Town & Postcode

Beaumont Hills 2155

Please provide your view on the project

I support it

Submission

Agree to the project concept as this will provide additional employment opportunities in multiple industries as well as long term community development

I agree to the above statement

Yes

Kristina Argiropoulos

From: Planning Portal - Department of Planning and Environment
<noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 30 October 2023 10:47 AM
To: DPE PS ePlanning Exhibitions Mailbox
Cc: DPE PS Codes Submissions Mailbox
Subject: Webform submission from: Proposed reforms to outdoor dining on private land and live music venues

Categories: Logged

Submitted on Mon, 30/10/2023 - 10:46

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

First name

Michael

Last name

Jarvin

I would like my name and personal contact details to remain confidential

No

Info

Email

MJ@AdvancedMM.com.au

Suburb/Town & Postcode

2028

Please provide your view on the project

I support it

Submission

I strongly advocate for the permanent establishment of outdoor dining in public spaces, a reform that has proven to be a beacon of hope during the COVID-19 pandemic. This initiative not only rekindled and strengthened community connections that had been waning for far too long but also unlocked the potential of our fabulous and unique climate.

The ability to offer outdoor dining is crucial, but making it a permanent fixture is even more vital. Our communities deserve the opportunity to savor the benefits of al fresco dining year-round. During the pandemic, we witnessed how regulations curtailed our ability to utilize public spaces intelligently. However, the reintroduction of outdoor dining breathed new life into these areas, transforming them into vibrant and essential hubs that provide immense benefits to our communities.

Moreover, this reform promises to alleviate the regulatory obstacles that have long perplexed both businesses and patrons. By offering a smoother pathway to outdoor dining, we can not only stimulate economic growth but also promote a greater sense of community and well-being. This is an opportunity to enhance our urban landscape, foster stronger community ties, and create an atmosphere where both businesses and individuals can thrive. Let us unite in support of this reform and continue to enjoy the beauty of outdoor dining year-round, harnessing the full potential of our public spaces and climate.

I agree to the above statement

Yes

16th 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 19th 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

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).

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.

Yours sincerely

Duncan Leys

President

Ian Stephenson

Planning Convenor

16 November 2023

Changes to Outdoor Dining and Live Music Acoustic Response RTA

Codes Submissions

NSW Department of Planning and Environment

Dear Codes Submissions,

Proposed Changes to Exempt and Complying Developments for Outdoor Dining and Live Music Venues - Acoustic Comments

Introduction

Thank you for seeking public submissions on your proposed changes to:

- Part 5 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the "Codes SEPP") to support the approval of outdoor dining on private land including registered clubs, and
- the Standard Instrument – Principal Local Environmental Plan 2006 ("SI LEP") to introduce a floor space/density 'bonus' clause for new developments comprising venues that support live music.

Renzo Tonin & Associates has worked with local and State government planning and environmental guidelines, and those of Liquor and Gaming NSW. We have applied these guidelines and policies to a range of dining and entertainment venue projects in both metropolitan Sydney as well as regional New South Wales. This experience has given us a good understanding of the process of assessing and managing patron and entertainment noise. We are therefore well placed to provide feedback on the proposed changes to the Codes SEPP and SI LEP.

Many of our consultants performed an independent review of the Codes SEPP and SI LEP. Our key concerns about and comments on the proposed changes are summarised below. More detail about each concern is provided in the following sub-sections.

- The Codes SEPP does not define noise emission limits for patron (and music) noise. The Codes SEPP pathway could potentially permit noise emissions significantly out of keeping with industry practice with respect to noise emitted from such premises.
- The proposed changes are to be added to Part 5 Industrial and Business Alterations Code. Part 5, Division 2, Section 5.25 states that "A complying development certificate for development

specified under this code must be issued subject to the conditions specified in Schedule 8." Under Schedule 8 Part 4 Operational requirements, section 22 Noise, requires that the development must comply with the Noise Policy for Industry 2017 "NPfl". It is highly unusual and not appropriate for patron (and music) noise to be assessed under the NPfl.

- It is unclear if existing conditions of consent imposed on the site would also apply to the new area approved under the Codes SEPP pathway.
- Applications would be reviewed by a certifier who is unlikely to have experience in acoustic assessment and may not consider the cumulative noise impact of existing noise with new noise associated with development approved via the pathway.
- It is reasonable to consider changes to noise emission requirements with a view to increasing vibrancy of development. In our view the proposed changes will:
 - Create a high risk of excessive noise impact on nearby residents.
 - Create uncertainty that may lead to difficulties in evaluation and enforcement.
- A relevant industry body (Australian Acoustical Society ("AAS") or the Association of Australasian Acoustical Consultants ("AAAC")) should be consulted given the significance of noise to the operation of outdoor dining areas and live music venues. This could include creation of alternative noise emission criteria to those currently adopted to encourage greater vibrancy.
- It is an excessive risk to place the responsibility of the assessment of an application on someone untrained to do so, particularly in the absence of there being any prescriptive acoustic criteria.

Outdoor Dining

Lack of Clear Guidelines

From an acoustic perspective, the implementation of *objective* acoustic criteria is essential in providing a framework of certainty both for business operators and their nearby neighbours. The intended vibrancy should be supported by the objective criteria. An appropriate balance point needs to be struck with input from acoustic consultants, Council and operators of implicated premises.

The proposed changes are unclear how many of the key considerations should be evaluated for a given proposal, for example:

- Hours of operation for the outdoor area.
- Days on which the use is proposed (every day vs only at weekends).
- Whether or not the area is to be licensed and serve alcohol.
- Whether music will be amplified or live performance.
- The size of the outdoor area, the density of population in that area and the proximity and number of sensitive receivers.
- The zoning of the subject site and nearby sensitive receivers.

DPIE have proposed that the existing footpath dining provisions (under Subdivision 20A of the Codes SEPP) would remain. Subdivision 20A of the Codes SEPP does not define numerical criteria for noise emissions from footpath dining. Nor does section 125 of the Roads Act 1993 or section 68 of the Local Government Act 1993 which are referenced in Subdivision 20A. Application of the provision has proved difficult in the past as it is unclear how numbers of patrons and times of use should be considered.

DPIE has identified their intention to utilise existing policies such as the Protection of the Environment Operations Act 1997 (the "offensive noise" test) to manage potential amenity impacts from outdoor dining areas under the amended Codes SEPP. This would potentially lead to the need for applicants to undertake an acoustic assessment under the "offensive noise" test, which has too much uncertainty and difficulty with enforcement. Whilst certifiers are equipped to interpret expert reports, there are subjective elements to the "offensive noise" test which need to be interrogated by acoustic experts. Most certifiers are generalists rather than acoustic specialists.

In addition to the above, if the space were associated with a licensed premises, we understand that Liquor and Gaming NSW ("L&GNSW") can apply their "special noise condition" (sometimes referred to as the LA10 criteria) to a license. The framework for application of the special noise condition is not clear. We note that the special noise condition does not appear on all licenses and is only enforceable when it is stipulated in the license conditions for the licensed premise.

Cumulative Noise from Existing Site Operations

In setting numerical limits in the Codes SEPP for noise from outdoor dining areas, DPIE would need to be clear whether the outdoor dining should be assessed in isolation, or cumulatively with the existing noise emissions from the premise. This applies to both venues with objective controls set by Council in the consent for the use of the existing premise and for licensed premises where the existing premise could be subject to the L&GNSW "special noise condition".

The simplest approach would be to assess in isolation. Where noise emission conditions apply, a licensed premise is usually designed to comply with the numerical limits. This does not allow for a noise budget for hypothetical future sources. As such, if cumulative assessment were required, one would need to go back and add additional treatments to the existing premise to ensure the noise budget can be achieved. Those treatments may trigger a modification to the existing development consent, which contradicts the simple streamlined approach sought by the proposed changes to the Codes SEPP.

If the outdoor dining area is to be assessed in isolation, consideration should be given to how tests for compliance may be done, assuming that there could be some noise emission contribution from the existing premise. For long standing premises, there may be no numerical limit on their noise emissions in their Development Consent or Liquor License (as applicable).

Numerical Noise Targets

We support the proposal to streamline the process for new outdoor areas associated with existing food and drink premises through amendments to the Codes SEPP. As part of this we recommend the development of numerical noise targets to provide clear guidance for both applicants and assessing authorities. The targets would support the State's intention to improve vibrancy, help businesses to offer unique experiences, breathe new life into under-used spaces, and attract more visitors to various neighbourhoods whilst protecting the surrounding acoustic environment.

The L&GNSW special noise condition (LA10 criteria) is not suitable if the State's objective is to improve vibrancy. The spectrum assessment is onerous and difficult to comply with in urban areas where the outdoor space is often overlooked by receivers in multi-storey buildings. Historically this has been used for licensed premises operating up to midnight, and some past midnight. DPIE should consider whether more relaxed controls might be appropriate for outdoor dining areas under the amended Codes SEPP.

If the criteria set via the Codes SEPP are less onerous than the L&GNSW special noise condition or the "standard" criteria of a Council, a decision would need to be made as to which takes precedence.

The EIE notes that rooftop areas will not be considered due to privacy, safety, noise etc., With careful siting and design placing outdoor areas on the rooftop of a building can be the best place, from an acoustic perspective.

Renzo Tonin and Associates would be willing to contribute to a working group which can assist DPIE in the determination of appropriate limits.

Live Music

We support the provision of a GFA bonus for developments incorporating a live music component. However, a live music venue with residential/commercial adjacency is likely to create very complex acoustic issues (sound transmission through walls etc). The need for scrutiny of design from an acoustic perspective is likely to increase.

In our experience, a major impediment to a successful live music venue is risk associated with complaints from new development in close proximity to existing venues (eg – Annandale Hotel).

Clear guidance when evaluation of noise impacts, *taking into account the order of occupation* will provide greater certainty for both venues and developers/residents.

The NSW Government seeks to provide communities and creatives across the state with more vibrancy, and more performance and leisure destinations and experiences. The EIE notes that many music venues in NSW have closed or experienced significant economic losses as a result of previous lockout laws in the Sydney CBD and the COVID-19 pandemic. Live music venues were being closed before the lockout laws came into play (the Annandale Hotel featured heavily in the media). There are many long-standing live music venues that have been shut down or had their operations significantly reduced due to acoustic concerns.

The EIE proposes that offering floor space and density bonuses for new developments that comprise music venues will assist with the reinvigoration of the night-time economy. It is not clear how that will support the existing operators, or whether the proposed changes can achieve the desired effect.

Under the existing acoustic controls, such as the L&GNSW standard noise condition, and "standard" acoustic criteria from local Councils, inclusion of live music venues is an acoustic challenge. Further, Councils, often being the recipients of complaints from constituents, are inherently conservative (in our experience). As such, state level controls, which take precedence over local Council controls, are more likely to be able to improve vibrancy and choice when it comes to live music venues.

New live music venues in large greenfield sites or redevelopment of precincts could get a benefit of increased GFA, however it is likely that music venues would only be implemented if the value of the bonus space outweighed the increased construction cost required for internal amenity within the building and external noise emissions to neighbours (which is significant). There seems to be appetite for the approach from developers. Again, having the controls defined by the state will avoid the absurd scenario of sites on opposite sides of a road having different opportunities.

We anticipate that relaxation of existing noise emission controls might be a more efficient way to entice existing venues to reinvigorate their live music scene, at least in the short term. Those amended controls could also be applied to future developments. DPIE might like to consider the frequency, duration and timing of events in implementing new objective controls for live music, given their significant benefits to social and cultural diversity.

There are not current state policies for the assessment and management of noise emissions from live music venues. Criteria are often taken from the old Noise Control Manual, or proposed by the suggestion of the acoustic consultant, for review and approval by Council. This does not lead to a simple and clear framework where the obligations of the live music venue are known and the acoustic consultant can determine mitigation measures to achieve compliance. This can result in longer development application review timeframes, and associated costs for both the applicant and the Council.

In summary, developers may consider including new live music/entertainment facilities in their future projects, provided the bonus area makes sense commercially. That said, getting entertainment venues to comply with the external noise emissions to neighbours, as well as internal acoustic amenity within the building is likely to be most successful if the controls consider the social and cultural benefits of those developments and allows relaxation of the existing acoustic controls. We recommend the implementation of numerical criteria so that it is clear both to applicants and to assessing authorities. To that end, we would be willing to contribute to a working group which can assist DPIE in the determination of appropriate limits (or DPIE could seek input from the AAS or AAAC on this issue).

We would welcome the opportunity to discuss our submission with the DPIE. Our experience on a wide variety of development projects incorporating or impacted by outdoor dining areas and live music would provide valuable input into the proposed changes to the Codes SEPP and the SI LEP.

Regards,

Hilary Pearce, MAAS

Senior Engineer, on behalf of Renzo Tonin & Associates

Hilary.Pearce@renzotonin.com.au