

ATTACHMENT A

**NEW IDEAS FOR OLD BUILDINGS:
FINDINGS OF THE CREATIVE SPACES AND
THE BUILT ENVIRONMENT FORUM**

New Ideas for Old Buildings

Findings of the Creative Spaces and the Built Environment Forum

City of Sydney
Town Hall House
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Discussion Paper March 2016



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Executive Summary

Cities all over the world are working to adapt 20th century building and planning laws to suit the economic and cultural needs of the 21st century. The way we use our cities has changed, and the way we regulate them must change accordingly.

The City of Sydney regularly receives feedback suggesting that current building regulations produce insurmountable barriers for small creative enterprises by making it costly and difficult to use existing buildings for new cultural purposes.

Our challenge is to support these activities with smarter regulations that maintain high safety, amenity and access standards, but also provide clear, cost-effective ways to adapt older buildings to suit the needs of a 21st century creative city.

This discussion paper proposes actions to produce a regulatory environment that better supports small creative enterprise. We invite feedback from industry, government, small business, our creative communities and residents on these actions.

The creative sector is vital to Sydney's future. The NSW Government's 2013 *Creative Industries Economic Profile* found New South Wales is home to 40 per cent of the nation's creative industries workforce, contributing \$1.4 billion to the state economy. The bulk of this is concentrated in the City of Sydney area.

Small art galleries, performance spaces and music venues, as well as co-working spaces, startups, and social enterprises, are incubators for Sydney's creative life. They diversify the night-time economy, attract tourists, and provide places for people to produce and engage with local culture.

However, the NSW Government's *Creative Industries Action Plan* found the "current Building Code of Australia, health and safety and fire regulations provide unreasonable financially prohibitive restrictions on new venues to operate, particularly in Sydney."¹

Similarly, when developing the *Creative City Cultural Policy and Action Plan*, the City of Sydney received widespread feedback that building regulations produced serious barriers for establishing new creative spaces.

To address these issues, in June 2015, the City worked with the University of Sydney and the Live Music Office to host a forum, *Creative Spaces and the Built Environment*. We brought together stakeholders from the building, planning, and creative sectors to discuss the challenges they face, and identify a pathway to a better regulated city.

Forum participants found smaller creative enterprises often have to negotiate a highly ambiguous system designed for larger projects. For example, a small theatre occupying a former warehouse may be assessed against standards designed for the construction of a new stadium or major public hall. Navigating these regulations can be expensive, time consuming and confusing.

¹ NSW Trade and Investment, *NSW Creative Industries Economic Profile*, Sydney, NSW Government, 2013, p.5

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However, building and planning laws exist to prevent fire, ensure safety and enhance access for people with a disability. They are primarily produced and controlled at Federal and State level, and interpreted and implemented at a local level. Reform is not just a matter of 'cutting red tape', but of understanding the needs of small creative enterprises, and designing suitable and effective regulation. This is a difficult task requiring policy makers to seek out innovative responses. It cannot be undertaken by a single government, industry or community agency, but will require dialogue amongst a variety of stakeholders.

Following from the *Creative Spaces and the Built Environment* forum, the City of Sydney aims to improve its own performance as a regulatory authority and encourage positive discussion with our stakeholders so as to develop better systems for the creative sector.

This discussion paper outlines the forum's findings and proposes six actions the City can take to produce a better regulatory environment for small creative enterprises.

These include developing processes to help adapt existing buildings for new, creative purposes, providing more resources for the creative sector, and engaging with other local, state and Federal government stakeholders.

We invite feedback from federal and state government agencies, those within the building, planning and insurance industries, the cultural and creative sectors, disability advocacy groups, and the wider business and artistic community.

Proposed Actions

Research

Action 1: Increase understanding of the challenges faced when adapting existing buildings for new creative uses by:

- Researching economic, regulatory and other factors, such as the supply of fit-for-purpose buildings, impacting on the small to medium creative sector
- Continuing to produce case studies of creative uses of the built environment
- Developing methods to assess risk profiles of building types for creative uses
- Identifying appropriate and affordable risk management options for small to medium creative spaces

Cross-Sectoral Engagement

Action 2: Strengthen relationships for a solution focused dialogue by:

- Leading further forums, discussions and working groups
- Making case studies, research and best practice models available for wider stakeholder review
- Investigating an ongoing forum of local, state and Federal government policy makers and regulators
- Working with relevant state and local government agencies, to develop a protocol for regulating frameworks for small to medium creative spaces

Policy Development

Action 3: Promote participation of people with a disability as artists and audience members by:

- Working with access experts to establish model best practice guidelines specific to small to medium creative spaces

Action 4: Develop and implement processes to support the adaption of existing buildings for new, creative purposes by:

- Continuing to develop and implement regulatory processes within the current legislative framework specific to interim and temporary use
- Develop and implement internal processes, such as a model adaptive re-use guidelines and model alternative solutions, to facilitate effective, appropriate compliance solutions for short and long term creative uses of existing buildings.

Information Resources

Action 5: Provide resources that clarify the regulatory environment associated with creative spaces, such as:

- Detailed and relevant information resources that address issues including identifying suitable buildings, risk management, enhancing access and ancillary use provisions
- Continued liaison services to the creative sector

Advocacy

Action 6: Advocate to NSW and Federal government stakeholders for clearer regulatory pathways for small and low-risk creative enterprise by:

- Advocating for appropriate changes to relevant policy frameworks, such as State Environmental Planning Policies.
- Advocating for consistent, state wide approaches to regulating the use of existing buildings by creative enterprise.

Your feedback

The City welcomes feedback on this discussion paper from the cultural sector, relevant government agencies and the broader community. Your responses will help guide the City in considering how best to regulate and support small to medium creative spaces.

Feedback is particularly welcome on the proposed actions. Some topics that could be considered in forming responses include:

- Detail on specific sector needs
- Experience of barriers and costs
- Best practice approaches and methodologies for risk management
- Potential partnerships and forums for stakeholder engagement
- Areas for further research

Submissions can be made by email to Ianto Ware, Strategy Advisor – Culture, at iware@cityofsydney.nsw.gov.au, by 5PM Friday April 29 2016.

Background

The regulation of the built environment plays a vital, yet often overlooked, role in the cultural and economic life of our cities. Codes, standards and policies governing the construction and use of buildings have been immensely important in reducing the risk of fire, increasing accessibility, and ensuring minimum levels of building quality and safety.

However, their impact extends beyond health and safety concerns. In her 2005 study, the University of Connecticut's Professor Sara Bronin noted, "building codes are not neutral documents." She writes:

"They establish economic biases towards particular materials and construction methods and they impact urban layouts. Perhaps most significantly traditional building codes have the negative effect of deterring rehabilitation; the improvement of older buildings through repair, reuse, preservation, or restoration. Few jurisdictions specifically address older buildings in their codes, instead subjecting most rehabilitation projects to the same standards as new construction. Applying such standards can make building a new structure less expensive than rehabilitating an old one, thereby discouraging beneficial rehabilitation projects."²

Our regulation of the built environment influences not only how buildings are constructed, but how easily existing buildings can change their function in response to cultural and economic trends. This has become a particular issue as Australia continues to grow its cultural, knowledge and creative sectors. New business models are emerging which do not easily fit into existing planning and building classifications, placing new pressures on our current regulatory framework.

In Australia, our use of the built environment is managed primarily through a 'model code', called the Building Code of Australia (BCA). This is part of the National Construction Code, which was designed to provide "a uniform set of technical provisions for the design and construction of buildings and other structures throughout Australia."³ The code outlines minimum construction requirements for different types of building 'use'. For example, the construction standards required of a warehouse differ from those of a shopping centre.

In the past, each state designed their own building codes, but it was felt that this produced inconsistencies across state lines, creating confusion amongst local governments, developers and building professionals. The BCA ensures a single model of 'best practice' requirements, maintained and updated regularly by the Australian Building Codes Board.

The code only becomes law when adopted at the state and territory level through relevant building and planning policies. In this way, each state has a level of discretion as to how and when it is applied. The code was designed for the construction of new buildings, but state laws contain clauses allowing building professionals to divert from it when assessing old buildings undergoing renovation or a change in the way they're used.

² Bronin, Sara. 'Rehabilitating Rehab Through State Building Codes', *Yale Law Journal*, v.115, 2005, pp.1744-1281.

³ Australian Building Codes Board, *National Construction Code Series: Building Code of Australia 2011 Class 2 to Class 9 Buildings*, v.1, Australian Building Codes Board, Canberra, 2011, p.7.

For instance, the NSW Environmental Planning and Assessment Regulations include the following statement:

“[A] consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.”⁴

For a consent authority, such as a local council, identifying when it is ‘appropriate’ to exercise discretion can be extremely difficult. The NSW Government recently commissioned a review of the Building Professionals Act, which found:

“... in many cases there is insufficient information about existing buildings (including alternative solutions that apply to them; indeed, many older buildings may have no documentation whatsoever) and their safety measures to allow the responsible persons to undertake their full responsibilities.”⁵

While it is possible to divert from the code and find alternative solutions for existing buildings, there are no other models to outline suitable safety standards. Trying to define acceptable standards through which an old building can be used for a new purpose requires building professionals and local government building certifiers to assess fire risk, structural factors, disability access, environmental impact and a host of other elements with no clear guidelines.

For the creative sector, this is a particular problem. Beyond the major arts organisations, creative enterprises have always relied on older buildings as they cannot afford to undertake new construction. As the American urban studies theorist Jane Jacobs noted in 1961:

“[F]or really new ideas of any kind—no matter how ultimately profitable or otherwise successful some of them might prove to be—there is no leeway for such chancy trial, error and experimentation in the high-overhead economy of new construction. Old ideas can sometimes use new buildings. New ideas must use old buildings.”⁶

In recent years, some building regulation reforms have been undertaken to address these issues. For example, in response to concerns about the decline of live music in licensed venues, the NSW Government produced a building code variation allowing pubs and bars to host live performance under a retail, or ‘Class 6’, building consent, rather than upgrading to the ‘Class 9b’ category designed for theatres, public halls and other large assembly buildings. A similar variation has since been adopted in Victoria.

More broadly, in 1991, the City of Melbourne released a *Guideline for Dispensations* to “permit the City Building Surveyor to grant dispensations from various regulations of the Victoria Building Regulations and the Clauses of the Building Code of Australia.”⁷ These dispensations played a major part in the revival of Melbourne during the ‘90s by lowering the cost of renovating older buildings to suit the needs of new tenants.

⁴ NSW Government, Part 6, Division 8, Clause 93, *Environmental Planning and Assessment Regulation 2000*, Part 6, Division 8, Clause 93, NSW Legislation, <http://www.legislation.nsw.gov.au/viewtop/inforce/subordleg+557+2000+cd+0+N/?dq=Regulations%20under%20Environmental%20Planning%20and%20Assessment%20Act%201979%20No%20203>

⁵ Lambert, Michael, *Independent Review of the Building Professionals Act 2005: Discussion Paper 2015*, NSW Government, New South Wales, 2015, p.43

⁶ Jacobs, Jane, *The Life and Death of American Cities*, Random House, New York, 1993 p.245

⁷ City of Melbourne, *Guideline for Dispensations*, Melbourne, 1991, p.i

Overseas, model building codes have been developed specific to existing buildings. These codes provide clarity to consent authorities and applicants seeking to undertake upgrades or renovations. In a 2007 study undertaken at the University of Pennsylvania, Adrian Seward considered the impact of these 'reuse' codes on US cities:

“Particularly in older cities, the number of buildings which do not meet current codes is significant. Nationally, 28% of residential and 20% of commercial buildings are over 50 years old. Many of these buildings are desperately in need of repair or adaptation to a new use. The reuse of such buildings could curb sprawling growth and help revive moribund neighborhoods.”⁸

As he notes, when the first of these codes was introduced in New Jersey, it contributed to an 89 per cent increase in work on existing buildings in Jersey City, compared to a wider state level of 7.7 per cent.

Of course, the issue isn't so much about the buildings as what happens within them. In 2015, a project led by the UK-based National Endowment for Science Technology and the Arts (NESTA) released an audit of more than 30 international cities regarding the capacity to support innovation. They found that:

“High-performing cities are finding ways to accommodate innovative new business models into their local economy. This does not mean crudely deregulating markets, nor does it involve using regulation to protect incumbents. Rather, it is about taking measures to make sure that regulations keep up to date with new ideas and technologies.”⁹

This is the challenge facing our city today. Regulation directly impacts on our capacity to harness the creative energy, ideas and agency of Sydney's diverse communities. We need systems that allow new activities to take place, without lowering standards of safety or increasing risk. To do this isn't a matter of deregulation, but of producing smarter, effective and efficient regulations designed for the creative city of the 21st century.

⁸ Seward, Adrian, *New Codes for Old Buildings: Comparing Rehabilitation Codes and Evaluating Their Effects*, Masters Thesis, University of Pennsylvania p.3

⁹ NESTA, Accenture and Future Cities Catapult, *CITIE Framework*, <http://citie.org/framework/>

The Forum



Panel 1 (L-R): Kerri Glasscock (Sydney Fringe), Jon Perring (Tote Hotel), Penelope Benton (National Association of Visual Artists/Red Rattler), Greg McTaggart (Opera House)

Photo: Craig Lyons

Context

On 12 June 2015, the City of Sydney, in collaboration with the University of Sydney's Faculty of Architecture, Design and Planning and the Live Music Office, presented the Creative Spaces and the Built Environment forum. This was a commitment within the *City's Live Music and Performance Action Plan*, released as part to the *Creative City Cultural Policy and Action Plan*, calling on the City to "invite representatives from the Australian Building Codes Board, the City of Sydney, NSW Department of Planning and Environment and the creative sector to investigate compliance and affordability issues for live performance in small to medium venues."¹⁰

The forum responded to a common concern raised during consultation for the City's *Creative City Cultural Policy and Action Plan*. The policy notes:

"Regulatory processes continue to be cited as deterring cultural initiative, highlighting the City's dual role in helping creative teams navigate difficult regulatory processes and elevating relevant regulatory controls to a policy review agenda."¹¹

In her introductory speech to the forum, Lord Mayor Clover Moore said:

"Our cultural life is vital to Sydney's future. Australian cities need regulatory frameworks which balance new creative activity with the need to maintain a safe and accessible built environment."

The event moderator, State Registrar of Architects Tim Horton, also argued that regulation must allow for innovation and produce pathways through which experimental and new activities can reach maturity. In opening the forum, he remarked:

"It's easy to talk of pop-up and place making... but the hard stuff is moving from the temporary and the transient into making pop-up permanent."

One of the problems, he noted, was that discussion in this area has often been reactive, with heated public debate surrounding the closure of popular music and

¹⁰ City of Sydney, *Live Music and Performance Action Plan*, City of Sydney, Sydney 2014, p.46

¹¹ City of Sydney, *Creative City Cultural Policy and Action Plan*, City of Sydney, Sydney 2014, p.64

arts venues. However, as Horton continued, “Innovation doesn’t work in the absence of a problem.”

The forum used four practical case studies presented by experienced managers of creative spaces. This was followed by an analysis by four policy experts, who gave context to the surrounding regulatory frameworks, their history, and the challenges faced nationally by the shift towards a creative and knowledge-based economy.

Participants took part in an afternoon panel, arranged into working groups with an equal mix of building, planning and cultural expertise. These groups provided a summary of the problems they had heard and potential solutions.

The findings of the forum are summarised below. A detailed summary of the forum’s two key panels, case studies, and the outcomes of the workshop, are contained with Appendices 1, 2 and 3.

Forum findings

Five clear themes emerged from the forum. These all related to the process where an existing building is used for new, creative purposes:

- **There is a pressing need to adapt existing buildings to suit creative activity.** Creative entrepreneurs noted an absence of fit-for-purpose buildings designed for performance, studio and rehearsal activities. It was also noted that newer business models, such co-working, hub and multipurpose facilities, needed to adapt existing buildings as they could not afford to build custom-made facilities, and rarely met the conditions of existing building approvals.
- **Many creative projects did not fit into building or planning classifications, or met multiple classifications at different times.** A creative hub hosting a gallery, café, artist studios and office space was given as an example of a project that had struggled in this respect, requiring significant investment in planning and building consultancies. It was suggested that this was an inevitable result of innovation moving faster than regulation.
- **Creative enterprises seeking to adapt existing buildings need to obtain planning approval for a ‘Change of Use’.** This requires assessment of a building’s suitability for a proposed activity. Without fitting into existing categories of ‘use’, it was difficult for both regulators and creative tenants to identify how best to manage risk, or what building upgrades were required.
- **Small creative spaces are required to comply with regulations designed for much larger activities.** Most creative spaces must comply with the ‘Class 9b’ or ‘Assembly Building’ category within the Building Code of Australia. This category is defined as a building used for:
 - (a) Civic, theatrical, social, political or religious purposes including a library theatre, public hall or place of worship.
 - (b) Educational purposes in a school, early childhood centre, preschool or the like.
 - (c) Entertainment, recreational or sporting purposes including:
 - (i) A discotheque, nightclub or bar area of a hotel or motel providing live entertainment or containing a dance floor.
 - (ii). A cinema.
 - (iii). A sports stadium, sporting or other club.

- (d) Transit purposes including a bus station, railway station, airport or ferry terminal.¹²

Many forum participants questioned the suitability of applying construction standards designed for airports and stadiums to small galleries or pop-up theatres. It was noted that both New South Wales and Victoria had adapted variations exempting bars, clubs and pubs, which can now host live music under a 'Class 6' or 'retail' consent. However, some forum participants noted that this encouraged the adoption of an alcohol-focused business model, as the compliance standards or 'Class 6' retail spaces are easier to meet. It was suggested that this produced a counter-intuitive outcome by making it easier to set up a bar with a performance space, than a performance space that occasionally serves alcohol.

- **Regulatory frameworks are highly flexible but also highly ambiguous.** This was noted by both building professionals and those running creative spaces. To overcome this, applicants seeking building approval are required to assess the risks involved in their use of a building and identify measures to manage it. This requires advice from experts in building compliance, fire safety, access, and other engineering issues. Due to the degree of expertise required, and the high liability associated with it, the cost of obtaining such advice was highly prohibitive to smaller enterprises.

Through the forum's workshop session, several probable solutions were outlined. These included improved dialogue between stakeholders, increased understanding of the way creative projects use buildings, reviewing planning policies to treat smaller-scale, low risk creative projects as 'exempt' or 'complying' development, and the formation of model guidelines offering alternative solutions to managing risk in existing buildings.

Applicants also noted that it was difficult to separate building from planning regulations. Categorisations as to the type of activity, the triggers for upgrades, and the permissibility of specific types of use in certain types of buildings, required an approach that simultaneously dealt with planning and building regulations.

It was strongly felt that further dialogue across local, state and sector stakeholders is required to better understand creative uses of the built environment, the policy levers available to support it, and the best possible approach to facilitate safe, accessible spaces.

Notably, none of the forum's speakers or workshop participants argued that the current approach was suitable. With the combined impact of rising rents, a shifting economy, changes in creative practice and a growing population, forum participants uniformly asserted that a shift in regulatory activity was required to handle new uses of the built environment.

Uniformly, the proposed solutions hinged on reducing the cost, time and uncertainty of the consent process by developing clearer systems specific to the risk posed by small and medium creative spaces. It was suggested that this could be achieved by identifying elements common to low risk building uses, such as limited capacities, availability of exits, and limitations on public access. It was felt that this would allow both creative tenants and regulators clarity as to when, and how, a building could be safely used for creative, cultural or community activities.

¹² Australian Building Codes Board, National Construction Code Series: Building Code of Australia 2011 Class 2 to Class 9 Buildings, v.1, Australian Building Codes Board, 2011, p.19.

Table 1: Summary of Workshop Findings and Potential Responses

| Challenges | Suggested Solution | Aligned City Strategies | Potential Responses |
|---|---|--|--|
| <p>1. Absence of suitable 'fit-for-purpose' buildings</p> | <p>Urban design principles incorporating small to medium art and performance spaces into new development.</p> | <p>Creative City Cultural Strategy Live Music and Performance Action Plan</p> | <p>Incorporate consideration of small to medium spaces in the delivery of Action 3.23 (Develop a Cultural Infrastructure Plan) of the <i>Creative City Cultural Policy and Action Plan</i>.</p> <p>Ensure small to medium creative sector is considered in City of Sydney urban planning and renewal activities.</p> |
| | <p>Greater information for creative projects seeking to identify suitable buildings.</p> | <p>Creative City Cultural Strategy Live Music and Performance Action Plan Economic Development Strategy Inclusion (Disability) Action Plan 2014-17</p> | <p>Continue to provide guidance via a liaison service to the cultural and live music and performance sectors.</p> <p>Ensure information guides for the creative sector specifically address the importance of identifying suitable buildings prior to tenancy, as well as possible building upgrades.</p> |
| | <p>Clearer pathways to adapting existing buildings to new uses.</p> | <p>Creative City Cultural Strategy Live Music and Performance Action Plan Economic Development Strategy</p> | <p>Develop a model guideline for the adaptive re-use of existing buildings for small to medium creative spaces.</p> <p>Work with other local government agencies, in consultation with state agencies, to develop a protocol for the adaptive re-use of small to medium creative spaces.</p> |

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| | | | | <p>Advocate to the NSW Government for the development of a state wide model adaptive reuse guideline.</p> |
| <p>2.</p> | <p>Difficulty reconciling new types of creative activity with existing planning and building classifications.</p> | <p>The adoption of a 'sui generis' classification akin to that used in the English Town and Country Act.</p> <p>Clearer advice as to which planning and building classifications best suit multipurpose creative spaces.</p> | <p>Creative City Cultural Strategy Live Music and Performance Action Plan</p> <p>Creative City Cultural Strategy Live Music and Performance Action Plan OPEN Sydney</p> | <p>Develop and publish research into common forms of creative building use to inform the definition and assessment of risk profiles.</p> <p>Develop a model methodology to define and assess risk profiles of small to medium creative spaces.</p> <p>Establish guidelines for creative enterprise to inform the identification of suitable buildings, building upgrades and approaches to risk management.</p> <p>Establish model guidelines for regulators to facilitate the appropriate assessment of creative uses of existing buildings.</p> |
| <p>3.</p> | <p>Identifying suitable compliance standards when a building 'changes use' to a creative purpose.</p> | <p>Further forums, workshops and events designed to encourage cross-sector stakeholder dialogue and understanding.</p> <p>Research, particularly case studies, into multidisciplinary creative spaces to increase understanding of their use of the built environment</p> | <p>Creative City Cultural Strategy Live Music and Performance Action Plan OPEN Sydney</p> <p>Creative City Cultural Strategy Live Music and Performance Action Plan Economic Development</p> | <p>Present a biannual cross-sector event to continue discussion relative to creative activity and the built environment.</p> <p>Present information sessions to enhance capacity within the creative sector.</p> <p>Develop and publish research into common forms of creative building use and to inform the definition and assessment of risk profiles.</p> |

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| | | | <p>Alterations to the State Environmental Planning Policy Exempt and Complying Development Codes to allow low-risk creative projects to occur as exempt and complying development.</p> | <p>Strategy Inclusion (Disability) Action Plan 2014-17</p> | <p>Develop a methodology to define and assess risk profiles of small to medium creative spaces to identify activity which could be treated as ancillary, exempt or complying development.</p> <p>Advocate for SEPP reform where necessary.</p> |
| | | <p>Clarify the compliance required for small and short-term use of existing buildings.</p> | <p>Alterations to the State Environmental Planning Policy Exempt and Complying Development Codes to allow low-risk creative projects to occur as exempt and complying development.</p> | <p>Creative City Cultural Strategy Live Music and Performance Action Plan Economic Development Strategy</p> | <p>Develop and publish research into common forms of creative building use and to inform the definition and assessment of risk profiles.</p> <p>Establish guidelines for creative enterprise to inform the identification of suitable buildings, building upgrades and approaches to risk management.</p> <p>Establish model guidelines for regulators to facilitate the appropriate assessment of creative uses of existing buildings.</p> |
| 4. | <p>Suitability of 'Class 9b' Building Classification for small to medium creative spaces.</p> | <p>Clarify ancillary use provisions for creative activity.</p> | <p>Creative City Cultural Strategy Live Music and Performance Action Plan Economic Development Strategy</p> | <p>Creative City Cultural Strategy Live Music and Performance Action Plan Economic Development Strategy</p> | <p>Publicise existing materials identifying the scope of 'ancillary use.'</p> <p>Ensure 'how to' guides incorporate clear information regarding ancillary use.</p> |

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| | | | <p>Strategy OPEN Sydney</p> | <p>Develop a model guideline for ancillary use of existing buildings.</p> <p>Work with other local government agencies, in consultation with state agencies, to develop a protocol for ancillary use of existing buildings.</p> <p>Advocate to the NSW Government for the development of a state wide ancillary use guideline.</p> <p>Investigate international precedents.</p> <p>Work with the ABCB, NSW Government and other capital city councils to explore the feasibility and effectiveness of a new building code category.</p> <p>Research alternate approaches within the existing system actionable by local government.</p> |
| | <p>5. Ambiguity in assessment and inconsistency in interpretation of suitable</p> | <p>A new BCA category designed for small creative spaces.</p> <p>Leverage provision within the Environmental Planning Assessment Act and Regulations regarding the assessment of building compliance for existing buildings.</p> <p>Develop adaptive reuse guidelines to reduce the need for consultancies and provide certainty in risk assessment.</p> | <p>Creative City Cultural Strategy Live Music and Performance Action Plan</p> <p>Creative City Cultural Strategy Live Music and Performance Action Plan</p> <p>Creative City Cultural Strategy Live Music and Performance</p> | <p>Develop a model guideline for the adaptive re-use of existing buildings for small to medium creative spaces.</p> |

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| compliance requirements. | Development of model alternative solutions for small to medium buildings, potentially at the local government level. | Action Plan Economic Development Strategy | Work with other local government agencies, in consultation with state agencies, to develop a protocol for the adaptive re-use of small to medium creative spaces. Advocate to the NSW Government for the development of a state wide model adaptive reuse guideline. |
| | Development of 'interim' and 'temporary use' processes to facilitate low-risk use with no or minimal building upgrades. | Creative City Cultural Strategy Live Music and Performance Action Plan Economic Development Strategy OPEN Sydney | Continue to develop and implement regulatory systems specific to interim and temporary use. Work with other local government agencies, in consultation with state agencies, to develop a protocol for regulating interim and temporary use. |
| | Formalise relationship between regulatory bodies. | Creative City Cultural Strategy Live Music and Performance Action Plan | Investigate the establishment of a cross government forum to progress building and planning reforms relevant to the small to medium creative sector. |

Appendix 1 - Panel One: Case Studies of Creative Spaces

The purpose of the first panel was to provide real-world examples for discussion throughout the rest of the forum.

Panellists consisted of four highly-experienced managers of creative spaces who summarised their use of the built environment, common regulatory barriers, and the associated costs of identifying and reaching suitable compliance standards.

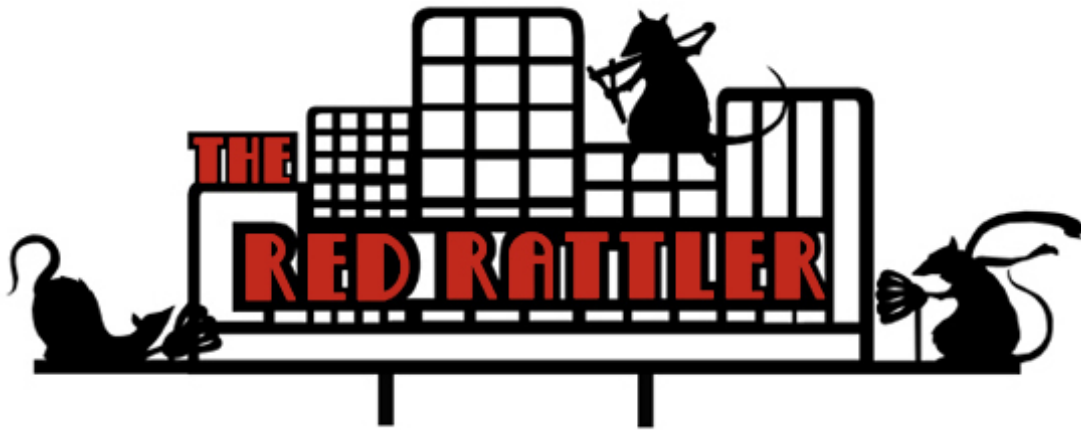
These case studies were selected because they represented common themes amid a variety of business models; temporary small-scale performance spaces, a community venue in a former warehouse, a pub focused on live music and the nation's most iconic arts venue. Notably, their problems were all remarkably similar, emerging from the application of the BCA's Class 9b classification for 'Assembly Building' to an existing building.

Panellists included: (Further details in Appendix 1)

- **Penelope Benton** - General Manager, National Association of the Visual Arts, founding director Red Rattler
- **Jon Perring** - Owner, Tote Hotel, Music Victoria, Victorian Live Music Roundtable
- **Greg McTaggart** - Director, Building Development and Maintenance, Sydney Opera House
- **Kerri Glasscock** - Director, Sydney Fringe Festival, Venue 505, City of Sydney Live Music and Performance Taskforce

A summary of their case studies is provided in the following pages.

Case Study One: The Red Rattler - Penelope Benton, General Manager, National Association of the Visual Arts



The Red Rattler is a creative space on Faversham Street, Marrickville, opened in 2009. Run by artists and activists, it comprises a large performance space, a licenced bar, two non-residential artist studios and a rooftop garden. The space operates on a not-for-profit basis with a tiered fee structure being charged to community users to cover regular outgoings. It also has a strong sustainability focus which the communities using the space must respect via an eco-plan.

The formation of the Red Rattler emerged from five people who had taken part in cultural events, which were, at that point, being held in informal warehouse spaces in the city and inner west. As these venues were shut down, they began seeking a more stable alternative. It was felt that the costs and bar quotas associated with hiring other established venues, such as existing pubs, was not suitable or sustainable for community and creative activity. Due to the high costs of compliance, it was decided to establish an incorporated not-for-profit entity, made up and funded by the original collective of five, who would buy a building to create an accessible, compliant venue that prioritised support for artists and community projects.

Building Details:

Site: 6 Faversham, St Marrickville

Purchased: February 2008

Price: \$687,500

Received Keys: April 2008

Floor Space: 331m² (Ground) 110m² (Level 1) 441m² (Total)

Organisational Structure: Volunteer, not-for-profit, DIY

Conversion: 300 capacity venue with licenced bar on ground floor, three non-residential artist studios and open garden on second floor



The building at 6 Faversham Street, Marrickville, prior to renovation as The Red Rattler.

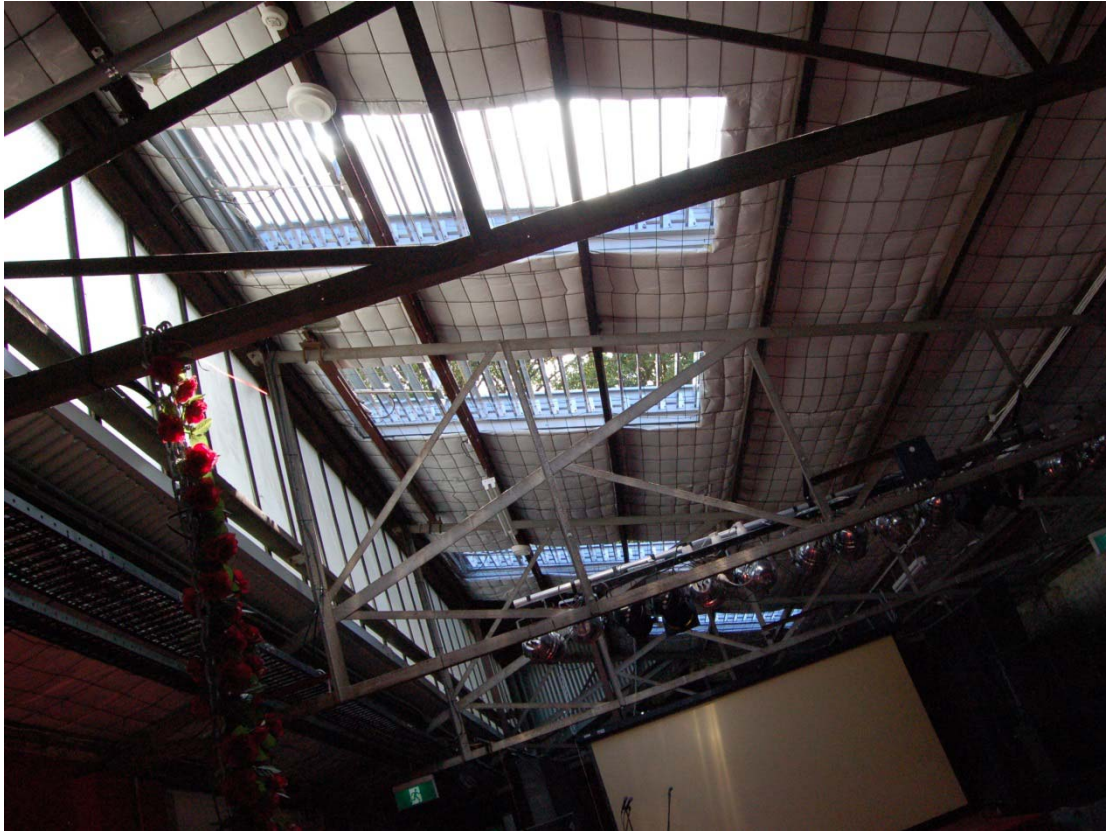
Photo: Penelope Benton

Costs Associated With Compliance

| | |
|--|------------------|
| Consultancy (Planning, BCA, Fire, Disability) | \$10,000 |
| Roof replacement (inc. sound insulation) compliance | \$40,000 |
| Smoke Extractor Vents | \$40,000 |
| Other fire safety (sprinklers, fire panel, back-to-base monitoring, fire-rated partition between floors, fire-rated glass and bricking up other windows, boundary walls) | \$40,000 |
| Toilets to comply with BCA and licencing | \$15,000 |
| other Licencing Costs | \$10,000 |
| Fees (Lodgement of planning and building approvals, insurances, etc.) | \$10,000 |
| Total Compliance | \$165,000 |

Other General Set Up Costs

| | |
|--|-----------------|
| Second-hand sound/video/LED lights | \$18,000 |
| Furnishings | \$10,000 |
| Water tanks | \$5,000 |
| Waterproofing rooftop garden, plumbing | \$12,000 |
| Paint, décor, etc. | \$5,000 |
| Total General Set Up | \$50,000 |



The venue's ceiling, demonstrating noise insulation and smoke extractor vents
Photo: Penelope Benton

The Issues:

- **The length of the building:** For a venue with a length of 30 metres, the BCA requires two exits. Besides the front entrance, the only other access point to the building was via a public park, which Marrickville Council would not initially approve as an access point. This was rectified with strict provisions for emergency-only access.
- **Inconsistent and contradictory advice from consultants, specialists and council:** The venue had to install sound insulation in the ceiling to comply with flight path noise regulation. This noise regulation was to ensure that aircraft noise did not penetrate the building. It was not related to containing noise from live music. Installation of this insulation cost \$40,000. Subsequently, the venue was required to install smoke extractor vents in the ceiling, which made the noise insulation entirely ineffective.
- **Finding the right language to speak to regulators:** As a multipurpose venue, Red Rattler proved difficult to categorise, causing confusion among regulators.
- **No funding avenues to support compliance measures:** While project funding does exist for arts activity, there are no support or funding mechanisms for establishing creative venues.
- **Section 94 contributions for traffic management:** Prior to opening, the Red Rattler was required by its local council to repair Faversham Street, which was in a state of disrepair due to a lack of maintenance over the previous decade. The Red Rattler's board contested this requirement and it was ultimately removed.

ATTACHMENT A

- **Wheelchair Access:** It was difficult to engineer fire-compliant exits that had wheelchair access. This was solved by making the door open outwards instead of inwards.
- **Difficulties Reconciling Compliance Across Agencies:** After obtaining approval from Council to occupy the building, the Red Rattler's liquor licence was objected to by Council as the change in direction of the front door meant that the door opened 10 cm over the boundary.



*Penelope Benton of the Red Rattler, bringing a doorframe into compliance with conditions required for Council for the issue of a liquor licence.
Photo: Penelope Benton*

Case Study Two: The Tote Hotel - Jon Perring, Co-owner, Tote Hotel



The Tote Hotel
Photo: Jon Perring

The Tote Hotel, in the inner northern Melbourne suburb of Collingwood, is one of the nation's most iconic music venues. It has been a venue since 1981, runs three stages (main stage, front bar, small upstairs venue) and hosts around 2,500 individual performances a year.

The building is a classic late 19th century hotel, consisting of brick construction and wooden floors. The rear area (the main band room) was constructed around 1978 for use as a bistro area, which was then converted for music use. The venue is licensed for 409 patrons until 3am (Thurs – Sat), 1am (Mon-Wed) and 11pm (Sun).

The Tote closed in 2010 due to spiralling costs of security and licensing compliance. This was because of a change in licensing conditions automatically linking live performance with a 'high-risk' rating, requiring high compliance conditions. This resulted in 4,000 people spontaneously occupying the intersection where the pub is located, followed by a rally of 20,000 people in the city of Melbourne. Perring bought the Tote after its closure and committed to keeping music at the venue.

As part of a review of the licence, The Tote was required to undergo a change of use, from a retail or 'Class 6' building classification to an Assembly Building or 'Class 9b'. This requirement was identified by the local council, following an assessment by a local government building inspector. In their assessment, the building required upgrades prior to council approvals necessary to facilitate the transfer of the liquor licence.

The rationale for this appears to have been a perception that the venue's existing consents, lodged in 1962, were for a 'residential hotel' and therefore didn't expressly allow for live music or 'place of assembly' uses. At that time, the building and planning classification systems were vastly different and do not appear to have contained express consents for creative activity. Accordingly, the venue had been hosting live music under a retail consent for 30 years. It was felt contemporary

building policy required a primary purpose music venue to alter its consents to conform with those designed for Assembly Buildings.

Notably, the venue's business practice did not change. The complexity arose, in essence, because the compliance standards and classifications had changed over time. The projected costs of bringing the pub up to conformity with 'Class 9b' compliance standards were hard to ascertain. Simply identifying the areas for upgrades proved extremely difficult.

The Issues:

- **Disability Access:** The building only required one small ramp. However, to ensure access to upstairs the building would have required an elevator, impacting on its structure and heritage status. A disabled toilet was installed.
- **Timber Floor:** The venue had to cut holes in the floor to assess the steel beams underneath for load bearing capacity. This required certification by an engineer.
- **Fire Rating of the Boundary Walls:** Due to the age of the 19th century boundary walls, it was difficult to upgrade the fire rating. The venue also sits on two titles with a boundary down the centre of the site.
- **Sprinklers and fire hydrants:** A fire engineering consultant was engaged at a cost of \$12,000 to identify alternative solutions for fire compliance. This was achieved. Certifiers required a monitored fire alarm and upgrading of the emergency electrical services (such as lights, signs and alarms, which had been upgraded to 'Class 6' compliance when the pub changed hands). Establishing the fire rating of curtains and carpet was extremely difficult.
- **Smoke extraction:** Any smoke extraction equipment would render any sound proofing void.
- **Noise Amenity and Safety:** Engineering and manufacturing of an instrument that would mute the PA/Front of House Speakers in the event of an emergency.

Overall, the Tote spent approximately \$200,000 on consultancies and upgrades. It has relied heavily on alternative solutions as the building cannot be bought into conformity with the BCA. In constructing these solutions, consultancies were required from the following sources:

- Building Surveyor
- Architect
- Structural Engineer
- Electrical Engineer
- Mechanical Engineer (Mechanical services)
- Fire Engineer
- Access Consultant

The Tote's compliance issues were brought to the wider attention of policymakers as a result of the substantial community support for the venue. It was noted that an alternative to undergoing upgrades would be to simply cease hosting music. This would allow the venue to continue operating with the same capacity and consent conditions it had held since 1962.

Perring subsequently sat on the Victorian Government's Live Music Round Table, which undertook a case study of a pub of a similar size and age. Three engineers provided quotes of the upgrades to allow it to transition from a 'Class 6' retail building to a 'Class 9b' assembly building, with estimates ranging from \$0 to \$450,000. This ambiguity was recognised as an inhibitor to the cultural life of Melbourne. As a result

ATTACHMENT A

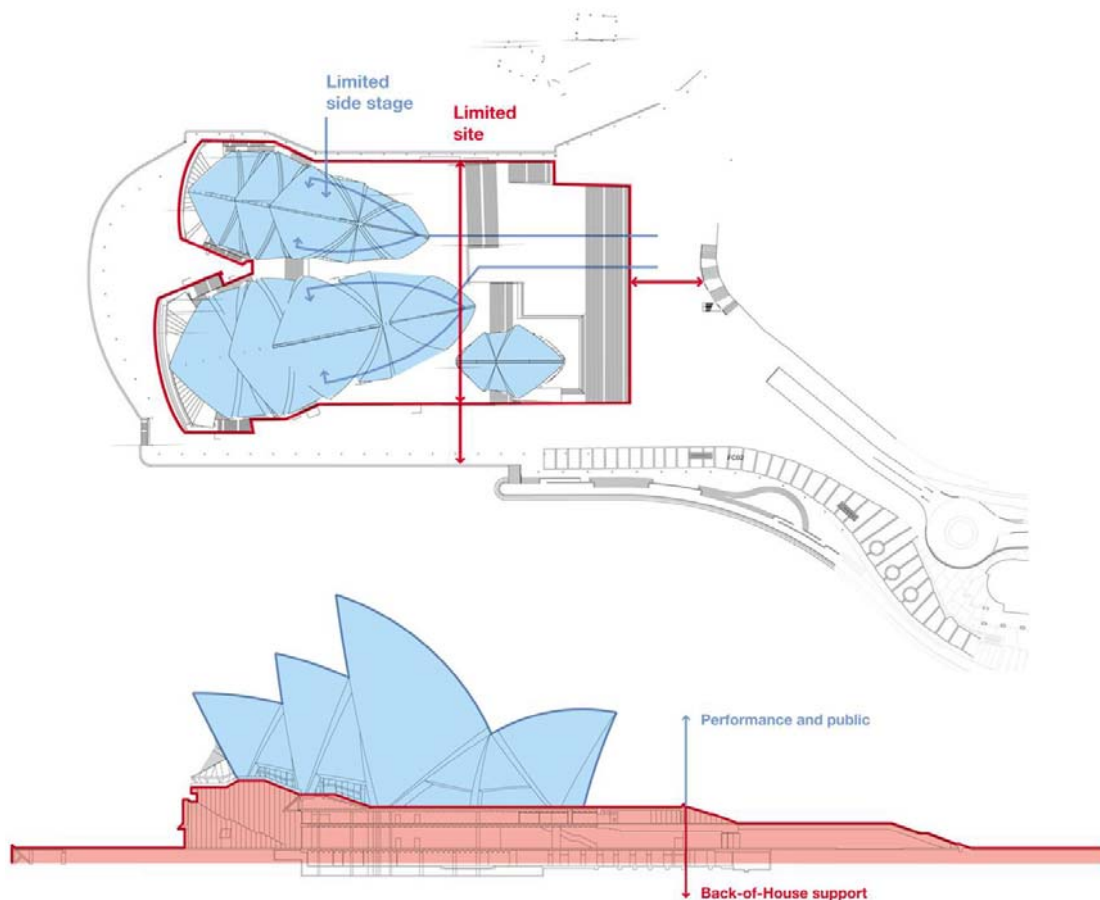
of this study, Victoria altered state building regulation to allow 'Class 6' retail buildings under 500m² to host creative activity without reclassification to 'Class 9b' assembly building.

Case Study Three: The Sydney Opera House - Greg McTaggart, Director, Building Development and Maintenance, Sydney Opera House

The Sydney Opera House is an iconic landmark building, with State, National and World Heritage listings. It receives 8.2 million visitors per year, hosts 2,400 performances and operates 24/7, 363 days per year. It contains seven theatres and ten restaurants or bars.

While the Opera House may exist at the 'other end of the scale' from the other creative spaces discussed at the forum, it proved to have many similarities when it comes to negotiating building compliance. Director of Building Development and Maintenance, Greg Taggart, focusing primarily on bringing the site into compliance with the Premises Standards, which connect the Building Code to the Disability Discrimination Act. The purpose of the Premises Standards is to ensure the built form is as accessible as possible.

The origin of the Opera House's compliance problems are inherent to its original design. All of the area contained within the podium was envisaged to be back-of-house support for the two main theatres. Although there are now three venues in this area, the majority of the space within the podium is for back of house use. This makes achieving equitable, mainstream public disability access extremely difficult as there are no pathways in the ground floor public space that can connect to a position which can provide vertical access to all levels.



**Original public/private divide in the Sydney Opera House
(Image courtesy of Greg McTaggart and Sydney Opera House)**

There are 25 lifts in the building, but only one is publicly accessible. The publicly accessible lift was provided as part of the Accessibility and Western Foyers Project,

opened in 2009 at a cost of \$38 million. To provide the horizontal public access to the location selected for the lift, a tunnel was dug underneath the building, below water level.



Jan Utzon and Louise Sauvage in the new Lower Concourse entrance, August 2009.
(Photo Jack Atley - courtesy of Sydney Opera House)

It was also extremely difficult to ensure access from the Box Office Foyer to the Concert Hall and Joan Sutherland Theatre due to a heritage requirement that views into and out of the building and up the main stairs could not be interrupted. Finding a horizontal pathway to potential lift positions is also difficult due to structural and building services constraints. Because of this, a satisfactory solution for installation of lifts to these areas has not yet been developed. Escalators were installed for those with limited mobility, but this has not allowed full wheelchair access, which is provided via an escorted back of house route. In order to obtain heritage approval, a granite wall to hide the escalator and manage the transition between the different rake of the stairs and the escalator was proposed by architect Jorn Utzon. Following full size, on site prototyping of this solution, the escalators were eventually given approval.

The Opera House has also worked to improve the experience of the building for people with access difficulties through non-structural means. These include the development of accessible performances, including:

- Oddysea, an interactive sensory theatre program for children with special needs
- Vivid Sydney audio-described tour: A tour guide describes the light shows around Circular Quay for vision-impaired guests
- Closed-captioning and Auslan interpreters for many performances

The Bennelong restaurant has proven a difficult accessibility challenge. A new type of lift, developed by Sesame Access (<http://www.sesameaccess.com/>), was imported and employed as part of the recent refurbishment of the restaurant.

The Opera House is also in the process of developing a complete renewal plan with an Accessibility Master Plan as its centrepiece. This has led to a re-examination of the vertical and horizontal pathways required to install equitable mainstream access, leading to a 'bowl of spaghetti' type approach to access pathways.

Notably the resources available to the Opera House to pursue compliance are substantially higher than those of other spaces discussed as part of the forum. However, even with these resources, McTaggart has found that it is unlikely the building will be fully compliant due to the nature of its design.

The Issues

- **Disability Access:** The building was designed long before existing standards around disability access. Identifying suitable access solutions has proved extremely difficult due to the structure and form of the building itself.
- **Heritage Requirements:** Upgrade considerations for access had the potential to impact on elements of the building that were protected by heritage and conservation considerations. It was not always possible to reconcile these two different requirements.
- **Upgrade Costs:** The cost of upgrades, estimated at \$38 million for the Western Foyers Project, are well beyond the projected annual income of all other venues considered during the forum.

Case Study Four: The Sydney Fringe Festival - Kerri Glasscock, Director, Sydney Fringe Festival

AT THE CLUB

See what's on



505

CELEBRATING 10 YEARS

LIVE MUSIC 6
NIGHTS A WEEK
280 CLEVELAND ST
SURRY HILLS

Photo: Kerri Glasscock

Kerri Glasscock is the director of the Sydney Fringe, a not-for-profit organisation that has been operating for six years. In 2014 it hosted more than 300 productions in 50 venues, with a focus on supporting local artists, developing new audiences and building a stronger, sustainable performance industry in the Sydney area. Fringe does not produce work but collates and promotes the work of individual artists, companies and producers. It facilitates their work by providing support with promotion, advertising, booking and finding suitable venues.

As Fringe has expanded, the volume of performances has begun to exceed the available performance spaces. Given most of the applicants are presenting new, experimental or community-focused work, the demand is primarily for small venues with capacities of between 20 and 150.

Currently in Sydney there are nine available independent theatre spaces, all of which have curatorial conditions attached to them. This means there are no theatre spaces for artists or emerging companies to present new and untried work. All of the available spaces charge from between \$880 to \$5000 per week, making it difficult to present work without a guaranteed audience. In light of these concerns, short-term leases on retail sites have been considered an option.



Example Property: 642 King Street, Newtown. \$590pw rental, \$500 temporary lease fee. Total weekly rental for five-week hire: \$3450
(Photo: Kerri Glasscock)

The limited number of existing small performance spaces indicates the barriers to establishing new spaces, as distinct from a lack of market demand. Limited suitable building stock, high property costs and the increased volume of residential zoning has decreased the amount of readily available space for performance venues.

Similar issues are evident in other sectors. For example, a trend towards pop-up restaurants has begun to occur, with short-term projects often operating 'under the radar' and without necessary consents. From an industry perspective, these ventures allow experimentation, the formation of new audiences and the testing of new ideas without the pressures and expenses of a long-term lease. While regulatory consents are required, the costs of negotiating the building approvals process for small-scale and short-term uses is widely felt to produce costs that cannot be recouped commercially.

Short-term leases, or partnerships with existing businesses, are approaches that have been used as part of Fringe festivals in Adelaide and Edinburgh. This has led to the activation of high streets and unconventional spaces as temporary 30-60 seat performance spaces. In Sydney, it was felt that this could provide variety to the City's nightlife, add value to the night economy and help fill the sizeable gap in the local venue eco-system without a major infrastructural investment.

Estimated Minimum Compliance Costs for Pop-Up Performance Spaces

| | |
|----------------------------|-------------------|
| BCA Consultant | \$220 |
| Council Inspection Fee | \$320 |
| Mandatory Inspection | \$320 |
| Issue of Building Approval | \$572 |
| Registration Fee | \$36 |
| Additional consultant fees | \$312 |
| Planning notification | \$535 |
| Other professional advice | \$220 |
| Total Per Site | \$2,519.20 |

The Issues

- **Timeframes for Consent:** The timeframes required to assess a building, identify suitable building upgrades and negotiate both planning and building approvals often made temporary-use projects unviable. This relates to the 'opportunistic' nature of access, which is often arranged in-between commercial tenancies or while a site awaits redevelopment.
- **Consultancy Costs:** The cost of hiring building, fire and other consultants to assess complex sites and produce alternative solutions was highly likely to exceed the net return of a short-term project, particularly in those instances where alcohol is not being sold.
- **Absence of Fit-for-Purpose Building Stock:** There are virtually no small-scale buildings with existing consents as 'Class 9b' assembly buildings. Pop-Up theatres interstate and overseas traditionally rely on temporary use of retail and other locations, which is not legal in NSW.
- **Upgrade Costs:** While the risk profile of a short-term performance space may be the same or similar to a permanent retail space, compliance requirements often demand things like fireproofing, the installation of additional toilets and the provision of access requirements, such as lifts and ramps.

Appendix 2: Panel Two - Building, Planning and Culture



Panel 2 (L-R): Neil Savery, Michael Wynn-Jones, Kate Shaw, Shane Homan (Photo: Craig Lyons).

For the second panel, experts in the fields of building, fire and planning discussed the case studies and located them within wider historical and regulatory context. The panel aimed to give participants in the afternoon's workshops a broad understanding of the issues surrounding the morning's case studies.

Panellists included: (Further details in Appendix 2)

- **Associate Professor Shane Homan**, Head of Communications and Media Studies, Monash University.
- **Neil Savery** - General Manager, Australian Building Codes Board.
- **Dr Kate Shaw** - Urban Geographer and Planner, University of Melbourne.
- **Michael Wynn-Jones** - Formerly Deputy President of the NSW Building Professionals Board, chair of the Board's Accreditation Committee and deputy chair of the Policy and Access Advisory Committees.

A summary of their contributions is provided in the following pages.

Associate Professor Shane Homan: History of Relevant Regulation

Using research from his 2003 book *The Mayor's a Square*, Shane Homan outlined the historical formation of building and planning law as it is applied to creative spaces, with specific reference to performance venues. He noted a shift in regulatory activity in the post-war era, driven by an interest in public safety but unavoidably interwoven with incentivising and disincentivising certain business models. Particularly, he explained the history of the 'Class 9b' assembly building criteria and its connection with the New South Wales Theatres and Public Halls Act.

Homan argued that, beyond the politically neutral management of health and safety issues, regulatory trajectories have inevitably had profound cultural and economic impacts. Homan's presentation mapped a shift between the relatively lax regulation of live music performance through the 'Golden Age' of pub rock, through to the stricter regulatory frameworks that emerged in the '90s. This related particularly to the development and application of the 'Class 9b' assembly building classification within the Building Code of Australia and its application to creative uses.

As Homan noted, until the late '50s, the music sector had relied on local town halls as six o'clock closing made pubs economically unviable. In the late '50s, the use of town halls for dances and musical events came under scrutiny due to the moral panic associated with Rock and Roll. This came to a head in 1958 when Johnny O'Keefe was banned from playing at Parramatta Town Hall as the local council had passed a motion prohibiting the lease of the venue for Rock and Roll. O'Keefe responded by reframing his music as 'Modern Rhythm' and the proposed event as one of 'Teenage Hops'. Regardless of its title, the genre was effectively banned from town halls.



Cumberland Argus, August 6 1958, reacting to Johnny O'Keefe's Parramatta ban.

As other councils followed suit, the emerging Rock and Roll scene began to seek new venues. With the repeal of early closing in 1955, pubs became an obvious choice.

Following from this, many pubs developed solid music programs to encourage patronage later into the evening. By the '70s, this model had proven so successful, pubs were building auditoriums or designating specific 'band rooms'. Homan noted that this shift in business model produced complications. Larger audiences, noise

and amenity impacts and a series of incidents including arson attacks led to a reform of the NSW Theatres and Public Halls Act. In 1977, the Act was altered to expand the “definition of public entertainment to include theatre, restaurants, discos and striptease clubs.”¹³

This shifted the focus of the Act slightly, moving from principally governing a type of space (theatres and large halls) to governing their content, particularly alcohol consumption and creative activity. When the current national code was developed, it took a similar approach, with the presence of creative activity seen as a trigger for retail uses, such as bars and clubs, to be treated as assembly buildings.

As Homan argued, the perception of creative activity, particularly music and live performance, as a trigger to higher building compliance appears to have expanded. The ‘Class 9b’ classification is now often applied to enterprises such as small galleries, artist studios, small community facilities and spaces that in the past may have been categorised differently.

Michael Wynn-Jones: The Role of Local and State Government

As Michael Wynn-Jones pointed out, current NSW law does not inherently require the Building Code of Australia to be applied to existing buildings. Discretionary clauses exist within the State Environmental Planning and Assessment Regulations, under clauses 93 and 94, which include the following:

“This clause applies to a development application for a change of building use for an existing building where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building.

In determining the development application, the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building’s proposed use.”

And:

“In determining a development application to which this clause applies, a consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.”¹⁴

These clauses give opportunity for both applicants and consent authorities to produce and leverage alternative solutions when assessing building safety. For example, an application for development approval may include an additional report outlining elements of a building which do not comply with the BCA, with proposed alternative approaches to managing safety, access and the like.

However, Wynn-Jones noted the development of alternative solutions was difficult as:

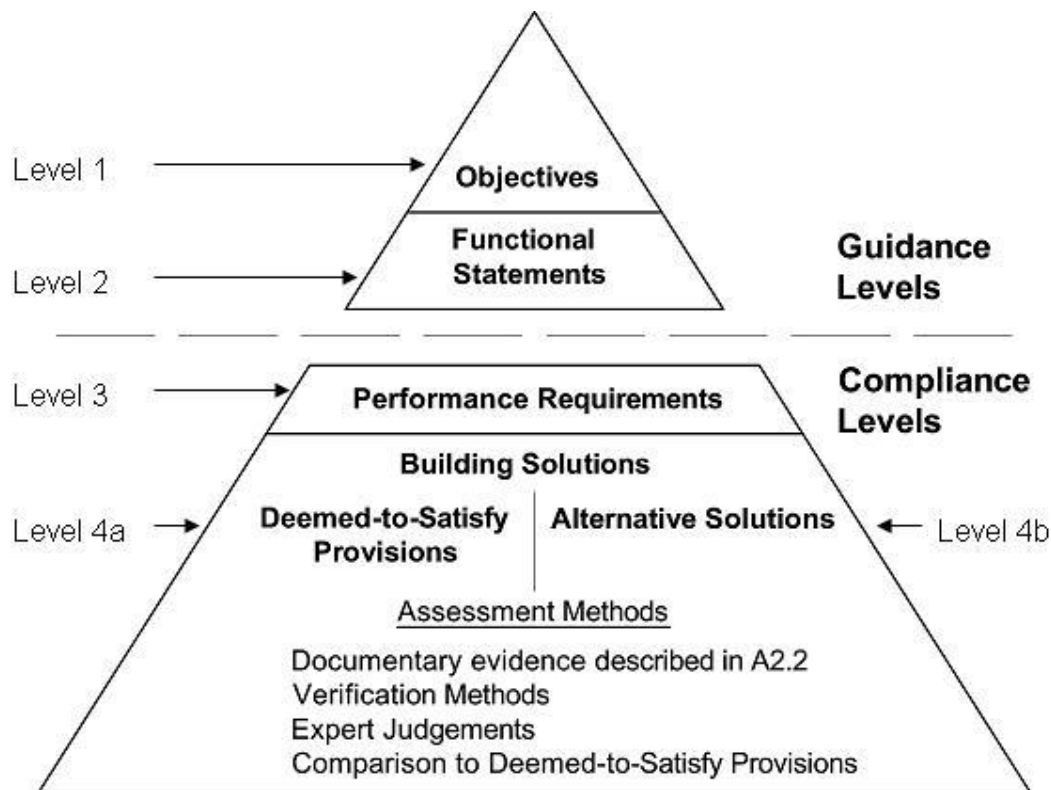
¹³ Homan, Shane, *The Mayor’s a Square*, p. 112.

¹⁴ NSW Government, Part 6, Division 8, Clause 93, *Environmental Planning and Assessment Regulation 2000*, Part 6, Division 8, Clause 93 & 94, NSW Legislation, <http://www.legislation.nsw.gov.au/viewtop/inforce/subordleg+557+2000+cd+0+N/?dq=Regulations%20under%20Environmental%20Planning%20and%20Assessment%20Act%201979%20No%20203>

- (a) Liability and risk assessment systems tended to rely on the BCA as the only established system against which to evaluate building safety.
- (b) The costs associated with hiring experts to develop alternative solutions was highly prohibitive to smaller enterprises.
- (c) Establishing and assessing alternate approaches produced substantial time and cost delays on both applicants and consent authorities.

In relation to the case studies, Wynn-Jones considered that the categorisation as 9b Assembly Buildings did not inherently produce a difference in terms of risk from comparable uses, such as a shop. He noted that smaller and existing buildings could be used relatively easily provided a pathway could be identified to establish a suitable level of compliance.

Wynn-Jones illustrated the process whereby this interpretation was able to produce suitable standards, regardless of the building's classification, through the following diagram, taken from the Australian Building Code.



Performance Hierarchy of the Building Code of Australia (Source: abcb.gov.au)

Using the case studies, he explained that compliance standards appeared to have been more commonly pursued through ‘deemed-to-satisfy’ provisions within the Building Code itself. This was, he noted, a “prescribed method” of compliance. The alternative approach, of producing other possible solutions, was he argued, far better suited to existing buildings, allowing for the management of risk through custom-made solutions.

However, he reinforced that this approach was costly, time-consuming and likely to clash against interpretations relying on a stricter reading of the BCA. An applicant may employ consultants to establish alternative solutions only to have them rejected by a consent authority.

As neither Section 93 or 94 of the Environmental Planning and Assessment Act imply that development must comply with the Building Code, the question emerged as to whether the problem faced by the case studies lay in the Building Code itself, or the way that it was relied upon by consent authorities and building certifiers.

Wynn-Jones raised a point which would come to dominate subsequent discussion, namely the potential of local and state governments to develop proactive solutions, tools and guidelines to support the adaptive reuse of existing business and reduce the cost on applicants to develop alternative solutions for small and low-risk creative projects.

Dr Kate Shaw: Changes in Land Use Associated with Cultural Activity

While her background is in planning, as distinct from building and policy, Dr Kate Shaw's extensive research into creative enterprise helped locate the case studies within the broader regulatory framework and raised real-world examples of negotiating access to space amid economic and regulatory restraints.

It was noted that a key issue was the extreme ambiguity and complexity involved in identifying clear regulatory pathways. Both the BCA and its interpretation were, she argued, operating at a level of complexity beyond most applicants, with limited resources or support systems in place. She considered the commercial costs associated with identifying regulatory pathways were above the capacity of small and start-up creative enterprises.

In light of this, Shaw argued that there are key structural changes that could be applied within the regulation of the built environment to create greater access for creative uses. She outlined four specific proposals as a basis for discussion:

1. Definitions of key terms
2. Operation of planning systems
3. Operation of Building Code of Australia
4. Application of disability access standards

These were further expanded as follows:

Definitions of Key Terms: As the case studies suggested, artistic and cultural practices are evolving rapidly, with increased merging of activities typifying most creative events in contemporary cities. This creates a major problem for regulatory systems that try to segment and compartmentalise use. Shaw suggested the creation of a broad definition of artistic, cultural and creative use within both planning and building legislation, with the only difference being based on size. It was suggested this could be built into the BCA as well as state-based planning legislation. In many ways, this was reflective of the 'sui generis' class used in England, which makes provision for types of activity that cannot be readily classified.

Operation of Planning Systems: As most analysis of building use begins with zoning through the planning system, Shaw suggested land use tables should better reflect arts and creative uses as a broad category, permissible within commercial and industrial zones as an 'as of right' or permitted use.

Operation of BCA: Dr Shaw suggested a classification of small, creative venues within the BCA itself. This has been partly achieved in Victoria through an effective state-based variation to the BCA (implemented through Victorian building

regulations) and follows reforms in New South Wales. It was suggested the same measure should be extended to other states.

Application of Disability Access Standards The application of the BCA requires, in most instances, compliance with a secondary set of building standards specific to disability access. Dr Shaw noted numerous examples where upgrades had proven prohibitively expensive or extremely difficult to achieve, such as installing lifts with turning circles, ramps, accessible bathrooms and widened entrances. While hardship exemptions exist, Dr Shaw noted that these were inaccessible to smaller enterprises due to the cost of applying exemption and identifying alternative solutions. This led to an unsatisfactory policy outcome whereby smaller spaces either didn't open or operated 'under the radar', leading to a lower level of access overall.

Neil Savery: The Role of the Building Code of Australia

As the final speaker, the Australian Building Codes Board General Manager, Neil Savery, considered the role of the model code and how it would be understood by state and local governments. Savery noted that Australia has one of the highest safety records for occupants in buildings and in this respect the National Construction Code was clearly successful. However, he also acknowledged that the issues raised through the case studies related primarily to existing buildings which, unless they are under-going a change of use or building works that require a building approval, are not required to comply with the current requirements of the BCA.

Like Michael Wynn-Jones, Savery noted that the BCA is not a retrospective document and there is no Federal law that requires old buildings to be brought up to contemporary code requirements. The problems arise when a change of use occurs, triggering the potential for application of the BCA to other parts of the building, typically at the discretion of the building certifier. This is an issue specific to state and local government policy.

Savery reflected that there is a high degree of variance in interpretation of the BCA across states in regards to the application of the BCA to existing buildings. On top of this there is likely to be variance in the interpretations given by private certifiers.

Savery also provided detail on the role of the Australian Building Codes Board, remarking that it handled issues across all the states and territories and acted on their combined direction. Beyond this, he noted local governments have been known to add higher compliance levels through local planning regulations. In negotiating these various stakeholders, the development of a model code is a balancing process, aiming to provide a uniform, nationally applicable minimum performance based technical standard that meets differing state and territory needs.

Savery noted a consistent theme across all the speakers of the second panel was the difficulty in connecting regulation to ever-changing human behaviour. He provided an overview of building policy as a product of politics, economics, creative activity, geography and the broader administrative environment in which it operates. From this perspective, he argued that a national body lacked the flexibility to adapt to every single change identified at a local level. While a performance-based code allows flexibility for people to come up with case-by-case solutions, he argued there was greater potential at the state and local level to ensure these solutions could be produced quickly and without excessive cost.

Appendix 3: Workshop Recommendations

More than 100 people attended the afternoon workshop, which was split into seven working groups, each assigned a case study. Participants included staff from local and state government, academics, advocacy and industry groups, venue operators, access experts, students and those working within the arts, creative and community sectors. Some participants attended from interstate, including state government employees, artists and venue managers.

Within each working group, participants were encouraged to identify common themes and suggest actions that might support creative spaces. Seating for each working group was arranged to ensure an equal mix between those operating creative spaces, those using them and experts in the fields of building and planning compliance.

Notably, building and planning staff from key local government councils, including the City of Sydney, Marrickville Council and Leichardt Municipal Council helped clarify the issues and connect them to the current regulatory framework.

Each group undertook moderated discussion, with notes being taken to capture key points. A summary of workshop findings is included in Table 1 and Appendix 4.



***Associate Professor Kurt Iveson moderating the workshop session
(Photo: Craig Lyons).***

The notes from individual groups, taken by table moderators, are as follows:

Table 1A

Example: Tote Hotel

- We need to think through the economic as well as the cultural need.
 - Most cultural spaces need to sell alcohol to survive. This triggers a perception of risk that may often be unwarranted.
 - Lockouts have increased the concentration of licenced premises and increased risk in certain areas, making it ironically harder to start cultural spaces that might diversify the night-time economy.
- We should connect building and planning systems to allow cultural activity in industrial zones.
- It is accepted that the process will always be hard and rigorous.
 - There will always be a cost for these types of venues.
 - Can we facilitate ways to lower these costs for smaller venues?
- Can we codify standards to allow more self-regulation?
- “We have the tools in local government” but they are not being fully used.
 - We can develop guidelines at the local level to make compliance easier by providing a recipe and reducing the cost of consultancies.
 - City of Sydney has already done this for things like Footway Dining. A locally developed policy is now in use in other areas across the State. If the City set a template for adaptive reuse and temporary use, it could be used elsewhere.
 - City of Sydney is resourced to undertake this work in a way smaller councils are not and has more ‘hands-on experience’ than State Government.
- There will always be conflicts among stakeholders, but clear standards help us manage these.

Table 1B

Example: Tote Hotel

- We could exploit the flexibility of the current system far better.
- There needs to be better communication across systems.
 - This could take a more formalised approach between all stakeholders.
- Top-down leadership is required to drive things across stakeholder groups.
 - This is driven by clear political vision.
- A proactive and evidence-based approach should be applied to risk management.
- There are similar initiatives in place in regards to liquor licensing – we should look towards those models for guidance.

Table 2

Example: Sydney Opera House

- Access: Hardship exemptions and alternative solutions exist but these are effectively unattainable for small enterprises.
- Currently there is an all or nothing approach. Spaces stay ‘under the radar’ rather than engage with the disability sector or look for access solutions as it is felt they will be closed down or face insurmountable costs.
- Accordingly, realistic approaches to increasing access do not exist.

- There are not enough available buildings meeting modern compliance standards for people to simply be more selective in choosing a suitable space. Spaces do not exist.
- Is there a value in looking at a 'spectrum of compliance', allowing access solutions to be adopted gradually over time?
- Better and cheaper information resources are required, but for this to happen interaction would need to occur with the disability sector to establish viable, rather than ideal, solutions.
- Disability access is a moral issue connected strongly to human rights law. It cannot be ignored, but we need to better understand what is 'practical' to increase access.
- The current approach is to view it as an extreme-risk, leading to lower access.

Table 3A

Example: Sydney Fringe

- The risk involved in small-scale temporary theatres may be no different from a small retail space or bar. The issue is about perception.
- A guideline for spaces under 350m² would help regulators respond to this more productively.
- Local governments could produce a guideline for the use of finegrain buildings.
- Local governments could modify consents to allow cultural activity in sites with certain conditions as standard. This reduces the costs for applicants.
- This requires a clear definition of cultural activity as a category of use.
- Parramatta City Council does something similar to this already, although it appears they do so informally.

Table 3B

Example: Sydney Fringe

- Could short-term and interim use serve as a spearhead for longer-term use?
 - We felt it could, as it would help analyse and understand real, as distinct from perceived, risk levels for the creative use of buildings.
- All the issues raised relate to risk and the perception that cultural activity produces risk. The problem arises from where we expect risk management to sit and who holds what risk.
- Multiple levels of government and multiple stakeholders don't communicate. More events and forums would help establish a productive dialogue.
- We need an ongoing, cross-governmental, cross-stakeholder body to manage interactions and help us understand better the risk associated with cultural activity and how to manage it fairly.
 - There is a similar arrangement in place for liquor licencing.
- Access to information: it is difficult to get affordable information for a process that reviews sites case-by-case. Generic information may not be useful, as bespoke advice is required for bespoke solutions.

- A short-term guideline for temporary use could be put together in three months. Creating the guideline is easy – getting stakeholders to agree to it would be the challenge.
- Operators would like certainty and there is willingness on behalf of the creative sector to work with government.

Table 4A

Example: Red Rattler

- Even for those well-versed in the system it is very complex – even for trained architects, builders, engineers, etc.
- The ‘cost of innovation is high’; alternative solutions through the BCA are required to handle new and unexpected uses, but these are extremely expensive.
- We could use a bank of established models and precedents to provide a guideline and socialise these innovations.
- More dialogue and events would help increase understanding of the creative sector’s use of the built environment.
- We need to come to an understanding that this is a political question – often venues will contact local members or councilors to make things happen. In a sense politicians can ‘champion’ initiatives in a way that bureaucracy can’t.
- Access Canberra provides a single point of compliance contact to help navigate the system.
- A change will need to be driven top-down.
- ‘Experimental Zonings’ as a land use category where temporary exempt development provisions apply could be worth looking at.
- The planning system extends beyond the BCA. How the planning system handles building at the state level is vital.

Table 4b

Example: Red Rattler

- It is extremely hard for operators to get clear advice.
- Suggestion of something like the post-war Small Homes Service, which provided advice to people building houses on newly zoned land to reduce the need for consultancies, provided clarity and helped people build their own houses.
- Need for a ‘champion for change’, something akin to the Small Business Commissioner but with a focus on regulation.
- Need for an ‘Audit of Conflict and Contradiction’ to identify clashing sections of the regulatory environment.
- An investigation of ‘cultural tectonics’.
 - Applicant side – knowing which parts of the regulatory sphere to engage with.
 - Approver side – knowing which other parts of the regulatory sphere have already engaged with this project.

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- How do consent authorities tell what has been approved? How can it be established that all the boxes have been ticked? Communication is often inconsistent and leaves the onus on the applicant to ensure all stakeholders have all information.
- More forums and events are required:
 - This should have been a three-day event.
 - It should be annual.
 - The discussion paper (and future discussion papers and pilots) will be vital to progressing this issue.

Appendix 4 - Panellist Biographies

Panel One

Penelope Benton

General Manager, National Association of the Visual Arts, Red Rattler

Penelope Benton is a practicing artist working across sculpture, performance and installation. She was one of the Co-Founders/Directors of The Red Rattler, a volunteer-run warehouse in Marrickville NSW for artists and activists, completed a two-year directorship at Firstdraft Gallery in 2008 and was Co-Artistic Director of Art Month Sydney 2013. She has a BA in Visual Arts from the University of Newcastle, Masters in Art Administration from UNSW, Graduate Diploma in Arts Management from UTS and is a current Masters of Fine Arts candidate at UNSW.

Jon Perring

Owner, Tote Hotel, Music Victoria, Victorian Live Music Roundtable

Jon Perring has a long-standing involvement in music, planning, licencing and building policy through his work as a founding board member of Music Victoria and positions on the Victorian Live Music Roundtable and City of Yarra Live Music Working Group. He has also worked with advocacy groups FairGo4LiveMusic and Save Live Australian Music and is the co-owner of iconic venues The Tote, Yah Yah's and Bar Open. He has been central to Victorian State Government reforms to support music venues, providing industry and policy expertise on agent of change reforms, a State BCA variation and liquor licencing laws.

Greg McTaggart

Director, Building Development and Maintenance – Sydney Opera House

Greg McTaggart is a qualified engineer and has worked at the Sydney Opera House since 2003. Greg has had responsibility for the planning and delivery of all major building projects at Sydney Opera House since 2003, including the Utzon Room, Western Colonnade, Western Foyers, external lighting and the Vehicle Access and Pedestrian Safety project. In his current role as Director of Building Development and Maintenance he also has responsibility for the maintenance and conservation of the building, emergency planning and response, food and beverage and planning for future capital works projects. Greg is a member of the Sydney Opera House Conservation Council.

Greg has been involved in the delivery of public infrastructure and building projects for over forty years. He has worked on a diverse range of projects including schools and hospitals, water supply and sewerage infrastructure, grain handling facilities and major sporting venues including ANZ Stadium, Sydney Athletic & Aquatic Centres and the Regatta Centre at Penrith Lakes. For more than a decade Greg worked on the planning, construction and operational activities associated with the Sydney 2000 Olympic and Paralympic Games.

Kerri Glasscock

Director, Sydney Fringe Festival, Venue 505, Member City of Sydney Live Music and Performance Taskforce

Kerri Glasscock has worked in various roles in the Sydney arts scene for the past 18 years. In 2004 she co-founded the underground performance space Venue 505 in Surry Hills, opening a second venue, the Old 505 Theatre, in 2011. She sits on several boards and committees including live music taskforces in Sydney, Leichhardt

and Marrickville. Kerri was included in the *Sydney Morning Herald's 100 Most Influential and Inspiring People List of 2011*, while Venue 505 has been included as one of the top 150 Jazz Clubs in the world by Downbeat magazine (USA) for the past three years.

Panel Two

Associate Professor Shane Homan

Shane Homan is Head of Communications and Media Studies at Monash University. Through memberships in various organisations (Music Australia; Australian Research Council Cultural Research Network; FairGo4Live Music) his work has engaged with the industrial and policy contexts of music production and consumption. Shane has also been Chair of the Australia-New Zealand branch of the International Association for the Study of Popular Music (IASPM) and General Secretary of its international executive. He is currently a member of the Victorian Live Music Roundtable and formerly sat on the City of Sydney's Live Music Taskforce. Shane has completed reports on the music industries for City of Melbourne, Arts NSW and the Australia Council. He has been a project leader and chief investigator on several Australian Research Council grant projects, such as *Policy Notes: Local Popular Music in Global Creative Economies* (2010-2012). Shane has been active in achieving legislative reform across a range of issues relating to music activity, including reform of laws applying to live music in Australia.

Neil Savery

Neil Savery was appointed General Manager of the Australian Building Codes Board in 2013. He has extensive experience as a senior public sector administrator, having previously held positions as the Victorian Deputy Building and Plumbing Industry Commissioner, Chief Executive of the ACT Planning and Land Authority and Executive Director of Planning in South Australia. He has qualifications in town planning, urban design and ecologically sustainable development. He was formerly Chair of the National Planning Officials Group, Adjunct Professor in Urban Design at Canberra University and National President of the Planning Institute.

Dr Kate Shaw

Dr Kate Shaw is an urban geographer and planner at the University of Melbourne. Her research focuses on the cultures of cities and the political-economic and social processes that shape them. Kate's background is in alternative cultural practice; she now works with governments and local campaigns on regulatory reforms necessary for equity and diversity in the city. She is Deputy Chair of the City of Melbourne's Creative Spaces working group, a member of the Victorian state government live music roundtable and participated in the City of Sydney's live music taskforce.

Michael Wynn-Jones

Michael was formerly Deputy President of the NSW Building Professionals Board, chair of the Board's Accreditation Committee and deputy chair of the Policy and Access Advisory Committees. He worked as a consultant to the NSW Department of Planning and Infrastructure on various projects associated with the built environment, including the Complying Development Code and the Federal Premises Standards and assisted the NSW Government with the introduction of private certification in 1997. He has developed building regulation, fire engineering and bushfire courses at postgraduate level and taught at multiple universities. He is currently a Conjoint Professor at the University of Newcastle and an Associate at the

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UTS Centre for Local Government. He is also an A1 private certifier with more than twenty years' experience providing consulting and education services.

Appendix 5: Note on Documentation

Event documentation, including notes from forum workshops, were obtained through dedicated scribes from the University of Sydney and the City of Sydney. Summary of panellists presentation is drawn directly from panellists speech notes and presentations. This discussion paper was prepared by Ianto Ware (City of Sydney) and Craig Lyons (University of Sydney).

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