

Public Exhibition - Planning Proposal - Open and Creative Planning Reforms and Draft Sydney Development Control Plan - Open and Creative Planning Reforms

File No: X009155

Summary

Globally, successful cities provide a wide range of opportunities to create or experience the city's cultural life and its leisure and entertainment options. They strike a rich balance between private and public activities and attract a diversity of ages, lifestyles, and cultures throughout the day, evening and night.

Evidence shows that a diversity of options leads to a stronger, more connected and resilient community, creates a more inclusive and vibrant nightlife, improves safety and reduces crime. This report proposes changes to the City's planning controls to support the night time economy and cultural and performance activities.

While these changes arise from the City's long-term commitment to the night time and cultural sectors, they will also assist businesses and cultural producers to recover following the Covid-19 pandemic. They will help to re-activate the City's night time economy, which has been greatly impacted, with businesses forced to close and others struggling to survive with social distancing restrictions in place. The changes will remove regulatory burden from businesses wanting to trade later, provide alternative venues for cultural activities, certainty regarding the future management of new live music venues, and allow a greater range of creative uses in local centres.

In October 2017, Council endorsed 'An Open and Creative City: planning for culture and the night time economy' discussion paper for public exhibition. The discussion paper was prepared in response to actions in the City's OPEN Sydney Strategy and Action Plan, Creative City Policy and Action Plan and Live Music and Performance Action Plan.

These actions aim to improve the City's planning and regulatory framework to support a strong cultural and diverse night time economy and thriving live music and performance industry. The discussion paper included proposals to make it easier for shops and businesses to open later in the City's business precincts, support small scale cultural uses in existing under-used buildings and provide a clear and fair approach to managing entertainment sound from venues, by applying the 'agent of change' approach.

Strong support for the proposals was received from the creative sector and community with over 1,300 pieces of feedback received through an online survey, submissions and a deliberative workshop. This consultation has informed the further development of the discussion paper proposals into changes to the City's planning controls.

This report seeks approval to publicly exhibit changes to the planning controls in the Sydney Local Environmental Plan 2012 (the LEP) and Sydney Development Control Plan 2012 (the DCP). The City's Nightlife and Creative Sector Advisory Panel has provided input to the changes, supporting reduced regulatory burden for late opening shops and allowing small scale cultural activities to occur without a new development consent.

They also support the fair management of entertainment sound to better address performance activities across the city, including in mixed use areas. Other minor changes are proposed to increase the community and cultural use of Erskineville Town Hall and allow current and future creative maker spaces to locate in local centres.

The proposed changes are:

- (a) Allow shops and local businesses in areas with an established retail character to extend their opening hours without a further development consent from 7am to 10pm, seven days per week, subject to meeting certain criteria.
- (b) Allow minimal impact small scale cultural uses without development consent (exempt) to take place in existing office, business, retail and community facility buildings subject to meeting certain criteria.
- (c) Establish new planning controls specifically for cultural uses that need assessment through the development consent process, to provide better planning guidance and greater certainty.
- (d) Establish new planning controls that enable the fair management of entertainment sound to protect live music and performance venues and the community from potential adverse impacts.
- (e) Allow creative and maker tenants and owners to operate in local centres and reduce barriers for future uses.
- (f) Extend the current community and cultural uses available for Erskineville Town Hall to include entertainment uses such as theatre, cinema, music and dance.

The report recommends Council approve a Planning Proposal for submission to the Department of Planning, Industry and Environment with a request for Gateway Determination and place the Draft DCP on public exhibition.

Recommendation

It is resolved that:

- (A) Council approve the Planning Proposal - Open and Creative Planning Reforms, shown at Attachment A to the subject report, for submission to the Department of Planning, Industry and Environment with a request for a Gateway Determination;
- (B) Council approve the Planning Proposal - Open and Creative Planning Reforms for public exhibition in accordance with any conditions required in the Gateway Determination;
- (C) Council approve the Draft Sydney Development Control Plan: Open and Creative Planning Reforms, shown at Attachment B of the subject report, for public exhibition with the Planning Proposal;
- (D) Council approve the Draft Technical Guidelines - Small Scale Cultural Activities in Spaces less than 500 square metres, shown at Attachment C to the subject report, for public exhibition with the Planning Proposal;
- (E) Council seek authority from the Department of Planning, Industry and Environment to exercise its delegation under section 3.36 of the Environmental Planning and Assessment Act 1979 to make the amending Local Environmental Plan; and
- (F) authority be delegated to the Chief Executive Officer to make minor changes, including any changes required by the Department of Planning, Industry and Environment as a condition of the Gateway Determination to the Planning Proposal: Open and Creative Planning Reforms, and minor changes to the Draft Sydney Development Control Plan: Open and Creative Planning Reforms and Draft Technical Guidelines Small Scale Cultural Activities in Spaces less than 500 square metres to prepare them for public exhibition.

Attachments

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| Attachment A. | Planning Proposal Sydney Local Environmental Plan 2012: Open and Creative Planning Reforms |
| Attachment B. | Draft Sydney Development Control Plan: Open and Creative Planning Reforms |
| Attachment C. | Draft Technical Guidelines - Small Scale Cultural Activities in Spaces less than 500 square metres |
| Attachment D. | Appendix A of the Draft Sydney Development Control Plan – Open and Creative City Planning Reforms Entertainment Sound Management Maps |

Background

1. This report seeks Council approval to exhibit proposed changes to the LEP, the DCP and other supporting guidance which encourage later opening shops, more small scale cultural uses and the fair management of entertainment sound levels. They also encourage more creative work spaces on village high streets and make permissible entertainment uses in the Erskineville Town Hall.
2. These proposals have been informed by research and consultation on the options for change included in the Discussion Paper 'An Open and Creative City - planning for culture and the night time economy', which was endorsed by Council for public exhibition in October 2017.
3. The proposed changes seek to achieve the City's vision for a city with a strong cultural life, diverse and safe night time economy and thriving live music and performance industry, established in the OPEN Sydney Strategy, Creative City cultural policy and Live Music and Performance action plans. The changes address actions included in these plans to investigate improvements to the planning and regulatory framework to support the city's cultural life and night time economy.

Covid-19 response

4. Creative and cultural industries face significant challenges in light of the Covid-19 pandemic, with businesses forced to close and others struggling to survive with social distancing restrictions in place. This is particularly concerning for an industry with a critical role to play in supporting wellbeing during and after the pandemic.
5. The proposals aim to strengthen the city's cultural life and night time economy and assist in addressing the significant challenges that creative and cultural businesses face from Covid-19. They intend to reactivate the night time economy and make it easier for businesses to trade later into the night, for artists to use spaces for cultural activities and to provide greater certainty for performance venues by fairly managing the sound of live music and performance spaces. The proposed changes will complement the City's late night trading controls approved by Council in 2019.

City Strategies

6. Historically, the city's late night economy has been characterised by licensed premises, such as hotels, pubs, bars, entertainment venues and restaurants. City strategies developed in consultation with industry and the community signal a new vision for the night time economy, which includes a diversity of late night, performance and cultural activities.
7. The OPEN Sydney Strategy adopted in 2013 after extensive consultation with the community and business, establishes the City's vision for its night time economy. The strategy forms the basis for decisions about Sydney's night time including actions for making Sydney at night better connected, more diverse, inviting, safe and responsive to change. One of the five key objectives is the diversification of the night time economy and increasing the amount of night time entertainment options.

8. Action 3.1.1 of the strategy encourages non-alcohol based businesses to extend their operating hours further into the evening and Action 3.1.2 promotes later trading cultural venues and creative spaces. Action 3.1.5 proposes new uses for night time and fine grain spaces to focus on evening oriented activation of underutilised spaces in the city, especially from 6pm-10pm. Action 3.2.3 proposes to investigate planning controls which require future residential developments in later trading areas to have acoustic measures.
9. Other City strategies, such as the Creative City Cultural Policy and Live Music and Performance Action Plan include actions to review the planning controls to support live music, performance and cultural activity. Action 3.5.4 of Creative City and 1.2.1 of the Live Music and Performance Action Plan propose a review of planning controls to streamline approval processes for small scale and temporary live music and performance activity and consider expanded exempt and complying development provisions in the LEP. Action 1.6.1 of the Live Music and Performance Action Plan includes an action to consider the order of occupancy approach in the management of entertainment sound and develop improved criteria for assessing 'offensive noise' in respect of complaints against live music venues.

The cultural sector, night time economy and Covid-19 impact

10. A strong cultural life and economy has the potential to strengthen Sydney's global competitiveness as a productive, liveable and inviting city. It can provide a wide range of social, cultural and entertainment opportunities to match the needs of a growing population of residents, workers and visitors and attract a diversity of ages, lifestyles and cultures throughout the day, evening and night. Evidence shows this diversity of options leads to a stronger, more connected and resilient community, creates a more inclusive nightlife, improves safety and reduces crime.
11. The city's night time economy represents the heart of Sydney's social, cultural and leisure opportunities, comprising food, drink and entertainment industries, including creative and performing arts activities. It produces over \$4 billion in revenue per year, involving almost 4,900 businesses and employing more than 35,000 people in the City of Sydney local government area. This includes over 19,000 jobs in cafes and restaurants, over 4,000 jobs in small bars and pubs and over 3,000 in creative and performing arts activities (Ingenium Research report 2017/18). The broader night time economy contributes over \$21 billion and more than 85,000 jobs encompassing retail, accommodation, supply and other businesses which contribute to a vibrant nightlife.
12. The night time economy and the creative sector have been heavily impacted by Covid-19 pandemic, with only 47 per cent of arts and recreation industries operating in the week commencing 30 March 2020 (Australian Bureau of Statistics Business Indicators). Early research undertaken by the City in partnership with industry organisations notes the significant and almost immediate impact of Covid-19 on the cultural sector, with MusicNSW noting over 25,000 workers affected by the loss of work in the City within the first week of the outbreak.
13. The City's late night planning provisions in the DCP encourage economic activity in the context of Sydney as a growing global 24-hour economy, the gateway to greater Sydney and the importance of performance, cultural and creative spaces to the city's fabric. The DCP encourages a greater diversity of jobs in the night time economy, later opening shops and businesses in late night trading areas after 10pm, and performance provisions and later opening hours for venues in the city centre and local areas.

14. The creative sector is vital to Sydney's future. Small art galleries, performance spaces and music venues, as well as co-working spaces, start-ups and social enterprises, and individual experimentation are incubators for Sydney's creative life. They diversify both the day and night time economy, attract tourists and provide places for people to produce and engage with local culture.

Response to Discussion Paper

15. Early consultation through the Discussion Paper 'An Open and Creative City - planning for culture and the night time economy' was undertaken from 25 October to 13 December 2017. The proposals in the Discussion Paper included:
 - A diverse evening economy – allowing shops and businesses to extend trading hours in Central Sydney and the village centres to between 7am and 10pm, seven days a week without an additional approval.
 - Small scale cultural uses – allowing small scale cultural uses with minimal environmental impact to take place in existing buildings without an additional approval.
 - Fair management of entertainment sound – introducing the agent of change principle which requires new development to manage and respond to the sound conditions in their neighbourhood.
16. Consultation activities included a Sydney Your Say page and online survey, community deliberative process, stakeholder and industry briefings. An invitation to participate in the consultation was sent to 484 stakeholders and 33 residents were randomly selected to attend a community deliberative workshop on the proposals held over two evenings. Around 44 people attended stakeholder briefings, representing 29 organisations, 1,303 online surveys were received from the community and 20 submissions were received from industry stakeholders and a further three from individuals. A summary engagement report and reports summarising the online and written submissions and the deliberative workshops are available to read at <https://bit.ly/3dYcHpD>
17. Key themes arising from the consultation included:
 - support for small scale cultural activities with minimal impacts and without development consent;
 - support for more flexible rules for small scale cultural uses, including the limit on patrons and frequency of events, but also concern about potential sound impacts on nearby residents;
 - support for shops and local business to trade until 10pm without development consent in established retail areas; and
 - strong support for the 'agent of change' principle where new residential development located near existing live music performance venues would need to be designed and built to manage the existing sound conditions in their neighbourhood.

Other consultation

18. In 2018 and 2019, City staff consulted with the City's Nightlife and Creative Sector Advisory and Retail Advisory Panels to obtain their views on potential changes to the planning controls.
19. The Retail Advisory Panel supported later trading for shops until 10pm and reducing the regulatory burden on businesses by removing the requirement for development consent for extended hours for shops.
20. The Nightlife and Creative Sector Advisory Panel supported:
 - (a) small scale cultural activities occurring without consent, seeking further clarification of the thresholds for activities to ensure that events are viable; and
 - (b) the approach for the fair management of entertainment sound and new sound criteria that is based on the area's existing sound environment, time of day and type of development proposed and affected to consider the city's diverse and mixed use character.
21. City staff have had multiple discussions with Inner West Council and have shared approaches to achieve consistent outcomes. City staff have also presented the draft proposals to NSW Liquor and Gaming, NSW Health Alcohol and other Drug Prevention and Harm Minimisation team and the NSW Night Time Economy Taskforce.

Key Implications

22. The proposed changes to the LEP are located at Attachment A and include:
 - (a) making 'light industry' a use permitted with consent to allow creative and maker spaces to operate in the B2 Local Centre zone;
 - (b) additional permitted uses for Erskineville Town Hall; and
 - (c) two new exempt development provisions, one for later opening shops and the other for small scale cultural uses.
23. The proposed amendments to the DCP are included at Attachment B and include:
 - (a) a new section for cultural activities, including objectives and guidance on low impact activities, other cultural activities, fire safety and plan of management considerations;
 - (b) new controls allocating responsibility to manage entertainment sound to new development that proposes to change the conditions of the area including:
 - (i) new sound criteria to establish acceptable sound levels for entertainment sound generating venues and affected development;
 - (ii) minor amendments to Section 3 of the DCP to clarify the application of the proposed sound criteria to entertainment sound generating and affected development;

- (iii) a new schedule containing technical guidance and the methodology for assessing entertainment sound; and
 - (iv) new DCP maps identifying areas where entertainment sound management is a consideration.
- 24. Technical guidelines separate to the DCP are included at Attachment C. This guidance provides advice on alternative fire safety and building compliance solutions for cultural activities taking place in spaces of less than 500sqm.
- 25. The rationale for the key changes to the LEP and DCP and supporting guidance is discussed in the following sections.

More diverse evening economy

- 26. The planning proposal encourages later opening hours for unlicensed shops and businesses, reducing costs and regulatory burden on businesses by removing the requirement for development consent for businesses wishing to extend trading until 10pm. Later opening shops or businesses will become exempt development in the LEP. This means they must only have minor impacts. If they meet the criteria for exempt development, they will not need a development approval for the extended hours from the City or an accredited certifier.
- 27. This is proposed in areas with an established retail character, such as the city centre or village high streets, where later opening times after 6pm can be accommodated without creating significant impacts on neighbours. The extended hours without development consent will not apply to outdoor trading.
- 28. Eligible shops and businesses will contribute to the liveability, vibrancy and safety of an area, and not create unacceptable sound impacts or encourage anti-social behaviour. They will include shops selling clothing, books, stationery and homewares, or businesses such as drycleaners, banks and hairdressers. Exempt development will not include licensed or food and drink premises. Later trading hours for these uses requires assessment through a development application as they may have different impacts that could affect local amenity.
- 29. The proposed criteria will limit the opportunity to shops and businesses in areas zoned B2 Local Centre, B3 Commercial Centre and B8 Metropolitan Centre as shown in Figure 1. Many of these zones include 'activity streets' as identified in the City's Local Strategic Planning Statement, where most services and infrastructure are located and which are daily destinations for community, retail and commercial activity. Objectives of these zones include providing a range of retail, business, office and entertainment uses to support local communities. Making it easier for businesses to trade later and provide for the needs of the community and visitors supports the objectives of the zones.
- 30. To ensure there is only a minor impact on surrounding amenity, other criteria will require the additional hours not contravene any existing condition of the active development consent relating to noise, car parking, loading and waste management.

31. The proposals may help meet the City's target for more retail businesses to be open after 6pm. They may make it easier for shops and businesses to respond flexibly to changing retail opportunities, such as local festivals and longer summer evenings and provide opportunities for people to shop at their convenience after work. Longer and more flexible trading hours, without the need for additional approval, may assist in supporting the viability of businesses during and after the Covid-19 pandemic.
32. The proposals may encourage a mix of uses and help attract a wider range of people out at night for different activities. It is broadly accepted that attracting a more diverse crowd at night can increase safety and surveillance, potentially reducing crime and anti-social behaviour.
33. Allowing later opening shops until 10pm without an additional approval will support the late night planning DCP provisions. The late night provisions encourage later opening shops after 10pm and require the impact of these later hours to be assessed in a development application.

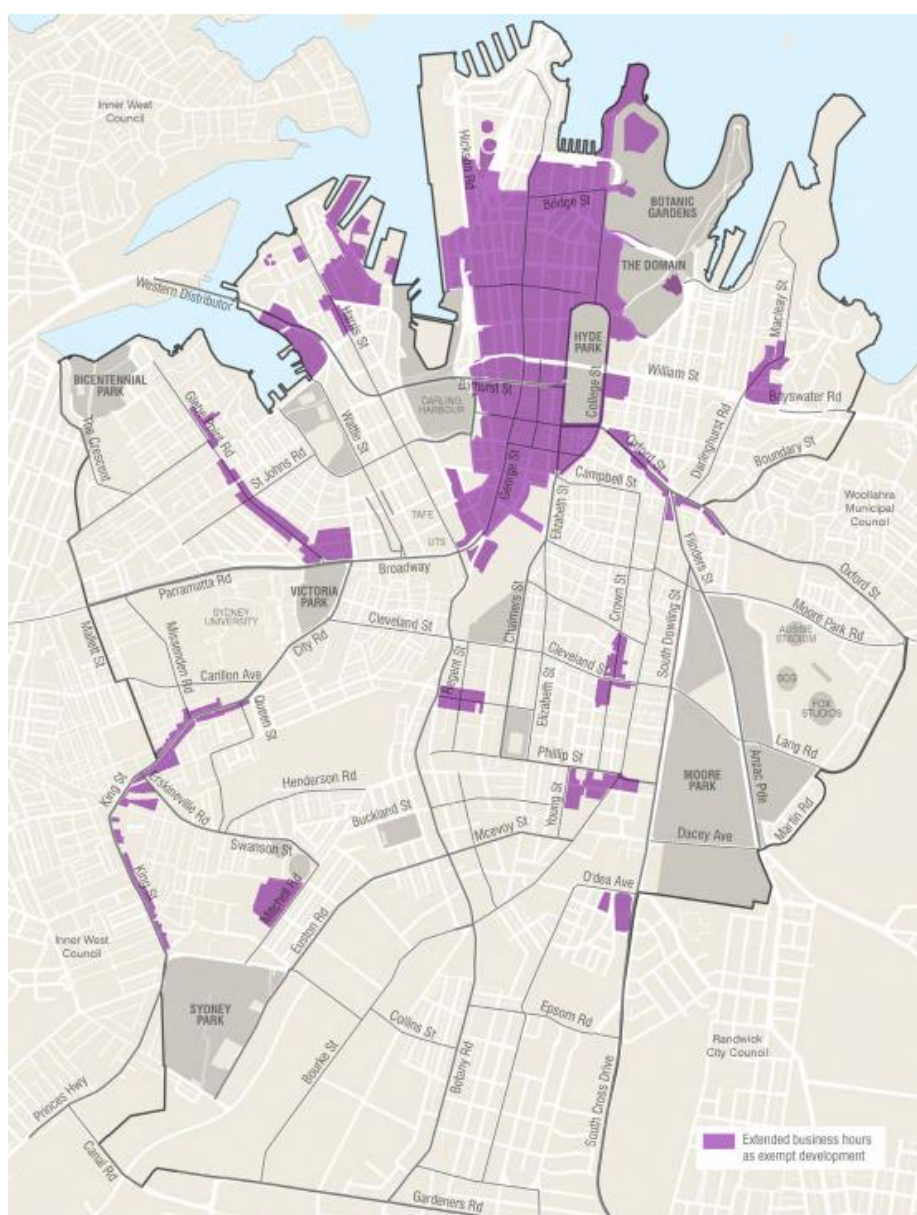


Figure 1 Areas where shops and businesses could open until 10pm without an additional approval

Small scale cultural activities

34. Small scale cultural activities involve making or presenting creative content, such as film, music, art, craft or performance, as well as talks, seminars, social gatherings or community events. They can be free, entry-by-donation or ticketed and are often irregular or one-off events. Allowing for cultural activities in existing spaces provides a lower cost opportunity compared to developing a permanent performance or entertainment venue. There are opportunities for small scale cultural activities to happen in older retail, office or business buildings, where there are no works and activities are limited by their size, duration and frequency to manage impacts. They do not necessarily have the same safety or neighbourhood amenity risks as permanent licenced venues, major theatres or public halls with regular performances and events.
35. The proposal will encourage the re-use of existing night time and fine grain space through activation of underutilised spaces for small scale cultural activities. It may assist existing businesses hosting temporary cultural activity, creative entrepreneurs wishing to utilise existing buildings for short periods of time and new cultural and community spaces, such as an artist studio or social enterprise, seeking approval for an ongoing activity in an existing retail, office or warehouse building.
36. Research for the City's Creative City Cultural Strategy identified that there are a number of underused retail, office and warehouse buildings in Sydney that could host cultural events, and there are many operators keen to make use of these opportunities. It also identified that there is significant demand for spaces suitable for small scale cultural events, but there are regulatory barriers to using these spaces. These barriers mean many small scale activities either become unviable or very costly to host, or may not proceed with the appropriate approvals.
37. One of the key issues faced by the sector is that temporary cultural activities can be difficult to categorise within the NSW building and planning classifications and as a result they are often subject to assessments and costly building code requirements designed for much larger and permanent venues. For example an artist studio wishing to host public lectures may need fire safety upgrades to a standard intended for a major function centre.
38. Approvals for these activities often require advice from experts in building compliance, planning and environmental health to manage issues like fire safety and residential amenity. While requirements for extensive specialist advice may be appropriate for permanent and regular activities, they can be barriers to small scale temporary activities with lesser safety and amenity impacts. Obtaining this advice can be costly and time consuming for a sector which provides significant benefits to the city but does not have a lot of financial capacity.
39. The Planning Proposal aims to make it easier for minor impact temporary small scale cultural activities to take place in existing retail, office, business and community buildings located in business zones by removing the requirement for development consent. The reduction of cost and regulatory burden from operators of activities with only minimal impact may remove one of the barriers that discourage cultural activities in under-used buildings.

40. The proposed controls and guidelines assist the establishment of permanent spaces for cultural activities, by providing clearer guidance about appropriate spaces and issues to be considered when selecting them. This will reduce unknown costs and provide more certainty for producers developing permanent spaces.
41. For the purposes of the proposal, a cultural activity will be defined as:
- live entertainment, (being an event at which one or more persons are engaged to play or perform live or pre-recorded music, or a performance at which at least some of the performers are present in person) including the presentation or rehearsal of music, film, theatre, spoken word, comedy or dance; or
 - the production, or an event in association with an exhibition of art, craft, design, media, image or immersive technology; or
 - teaching or discussion associated with the above.
42. The exempt provision will be used for activities that are not ancillary to the primary use of a building but are an additional activity within an existing retail, office, industrial and community facility. Ancillary uses are related to a primary use and can happen lawfully in association that primary use.
43. The proposed criteria to ensure minor environmental impact are described below and address the application of the provision, activity, density, frequency, duration, fire safety, amenity, amplified music and alcohol service.

Activity

44. Exempt development must only have minor impacts and does not need consent as long as it meets certain criteria. Exempt temporary small scale cultural activities will not involve building works, unless they are other exempt or approved development. The use of pyrotechnics, theatrical smoke or dangerous goods will not be permitted.

Application

45. Small scale cultural activities exempt from consent will only be permitted in buildings approved for retail, office, business or community use. Exempt activities will not be permitted in buildings in residential zones (R1 and R2) because of potential impacts on amenity. This means small scale cultural activities will be able to occur without approval in business and industrial zones as shown in Figure 2.

Density

46. Exempt small scale cultural activities will be limited to one person per square metre of floor space used for the activity and accessible by patrons, and a maximum of 70 people including staff and performers. This will limit amenity impacts and ensure the spaces are safe.

Frequency and duration

47. The frequency and duration of the activity will be limited to allow a balance between the activity and neighbour amenity and maintain the temporary nature of the activity. Small scale cultural activities will be permitted to occur without development consent:
- between 7am and 10pm, Monday to Sunday;
 - for no more than four hours on any one day, not including event set up and pack down; and
 - up to 26 days a year and no more than four days a week and eight days in a month.

Fire safety

48. The safety of events of this size can be managed when the right fire measures are in place. Small scale cultural activities may only occur in an office, retail, business and community facility premises with a current Annual Fire Safety Statement which enables the occupation of the building for its approved use. To further reduce fire risk, activities exempt from consent are limited to the ground floor of buildings. This is because some first floor or basement spaces may not be appropriate for increased patron capacity and should not be used without the City's approval.

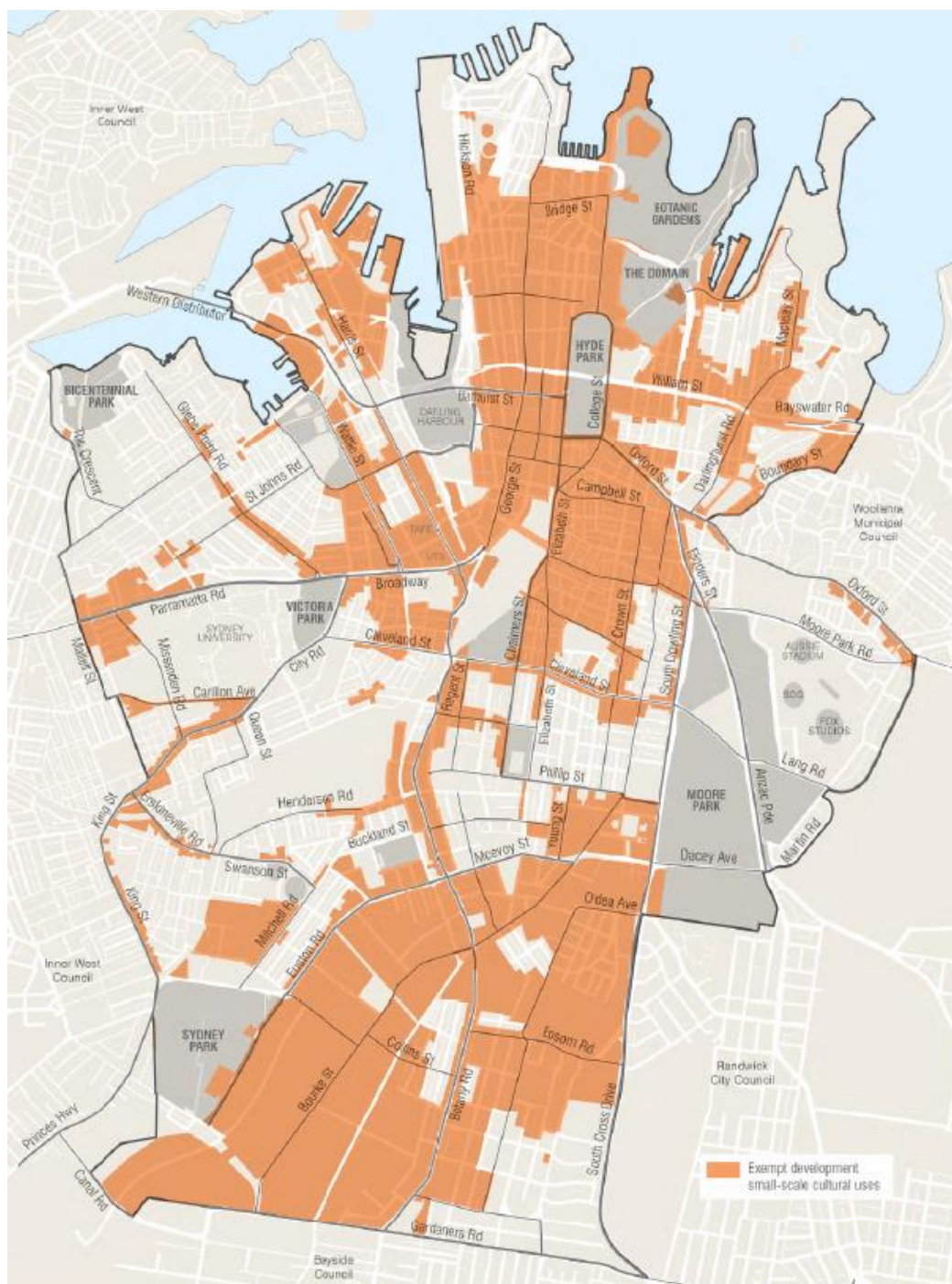


Figure 2 Areas where small-scale cultural activities could happen without approval

Service of alcohol

49. The service of alcohol may have the potential to cause additional impacts, and will only be allowed as exempt development when there is an existing license or a caterer using an off-premises authorisation under the Liquor Act 2007.

Amplified music

50. Amplified music may have the potential to cause impacts on neighbours, and will only be allowed as exempt development when the activities are taking place in areas with less residential development, such as in Central Sydney or industrial and business only zones as shown in Figure 3. If a small scale cultural activity such as a seminar or talk is occurring outside of these areas, the use of background music and a microphone will be permitted.

Amenity

51. While the exempt criteria have been set to minimise impacts on neighbours, relevant provisions of the Protection of the Environment (Operations) Act 1997 will still apply and persons undertaking exempt activities will need to ensure 'offensive noise' is not created.
52. Other proposed criteria will require that small scale cultural activities not contravene any existing condition of the active development consent for the main use of the building relating to car parking, vehicular movement, traffic generation, loading and waste management. If there is no waste condition on an existing consent, waste will be required to be removed from the premises and not placed on the public way. This will ensure the main retail, office, business or community use of the building is not affected, and the cultural activity does not impact on neighbours.
53. Criteria will ensure there is adequate access to sanitary facilities and that signage about the event and contact details of the person responsible is displayed in a publicly visible place inside of the premises five to seven days before and during the event.
54. The proposed exempt provision will enable the temporary reuse of vacant spaces, for example ground floor shops, for small scale cultural uses. This will only be permitted if all of the exempt criteria described above are satisfied. The requirement for a current Annual Fire Safety Statement will ensure the vacant space remains serviced and able to be safely occupied for the base office, retail, industrial or community use.

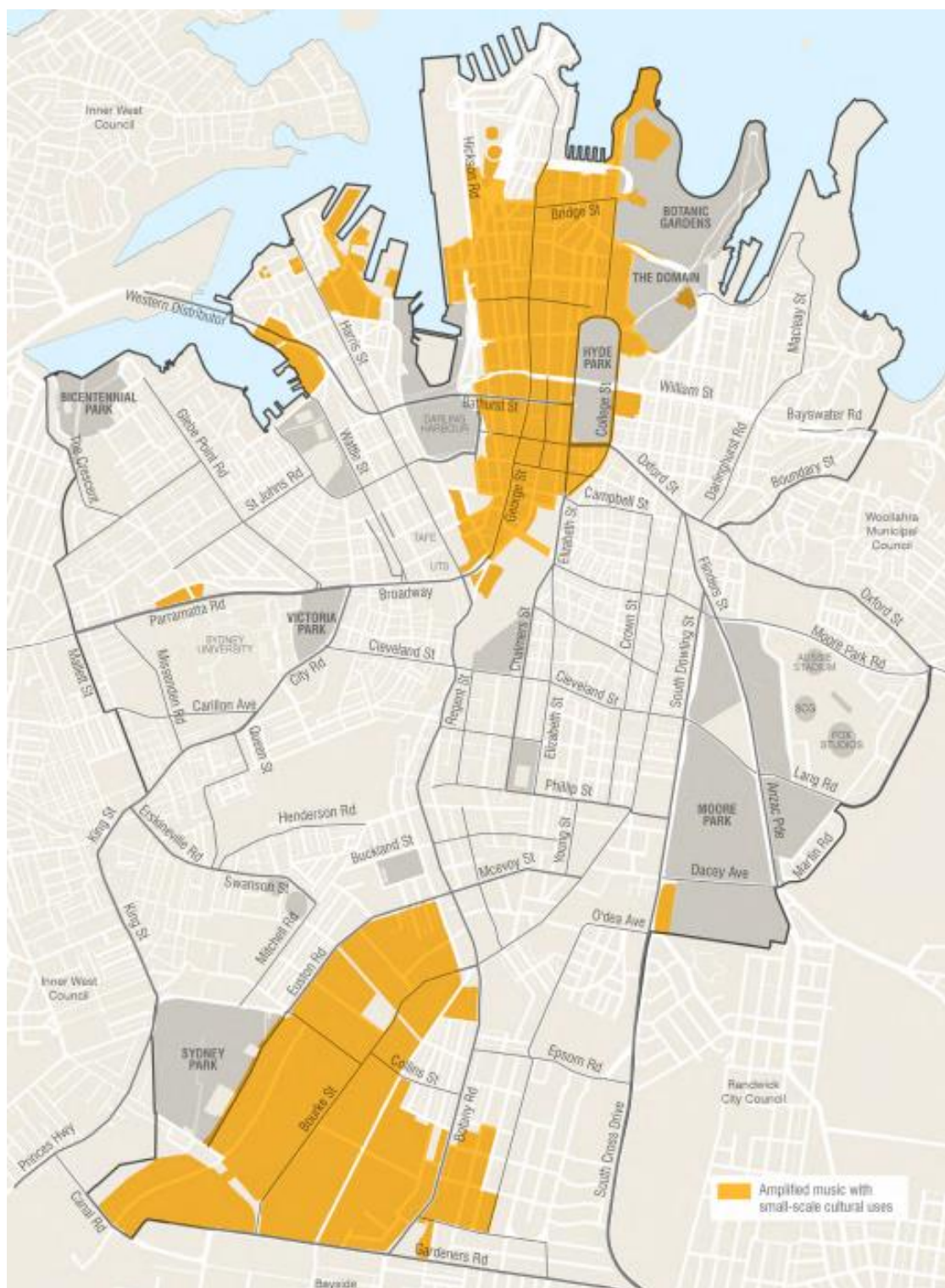


Figure 3 Areas where small scale cultural activities that do not need approval from Council can have amplified music

Development Applications for small scale cultural activities

55. The draft DCP proposes new planning provisions for cultural activities that do not satisfy exempt criteria and require a development application, for example those which propose more frequent activities. The provisions aim to guide and provide certainty for the community and cultural producers about how to obtain the necessary planning and building approvals and choose and design spaces suitable for events.
56. The draft DCP includes criteria to set the thresholds of activity which the City considers to be low impact, and which are unlikely to require further detailed assessment. If an application satisfies this low impact criteria, the City's assessment may focus on the site-specific impacts of the proposal on neighbourhood amenity, such as sound generation. The proposed criteria identifies low impact activity as that which:
- accommodates less than 120 patrons;
 - occurs in a building with approval to operate as a retail, office, business or community facility;
 - occurs in a building with a current annual fire safety statement which enables the occupation of the building for its approved use;
 - complies with the alternative technical solutions to ensure compliance with the National Construction Code;
 - occur no more than 52 days a year, no more than eight days a month and no more than four consecutive days a month;
 - is no longer than four hours in duration and finishes by 10pm in B2 Local Centre, B8 Metropolitan Centre or B4 mixed use zones, or by midnight in non-residential business or industrial zones;
 - provides adequate access to sanitary facilities;
 - includes the supply of alcohol only if there is an existing liquor license or caterers authorisation;
 - does not include amplified music and limits amplified sound to background music and/or the use of a microphone, and
 - is subject to a Plan of Management.
57. Activities which do not meet one or more of these criteria may be subject to more detailed assessments in relation to the non-compliance, including the submission of an acoustic report if one is considered necessary.
58. This guidance provides more certainty to producers about the type, scale, nature and frequency of activities which are considered to have lesser and manageable impact and aims to reduce the time taken to assess development applications.

Guidance for other cultural activities

59. The draft DCP proposes guidance for other activities which require development consent and do not meet the low impact criteria described above. Currently the DCP does not include guidance on the matters to be considered in applications for larger events, involving live entertainment or performance, exhibitions, seminars or social or cultural gatherings, which may have longer durations or finish later than other small scale events. These activities may be located in mixed use zones, involve larger patron numbers, be one-off, or irregular temporary events, or those which are more permanent and regular.
60. The proposed matters for consideration include the location and context of premises and proximity to residential and other sensitive land uses, the nature of the event, impacts on amenity and from patron dispersal, Plans of Management, safety measures and accessibility to public transport.
61. This guidance will assist producers in preparing applications for larger activities and provide certainty to producers about how their applications will be assessed.

Guidance on Plans of Management

62. The draft DCP proposes guidance about the matters to be addressed in Plans of Management which may be required to accompany and be approved concurrently with applications for cultural activities. The guidance acknowledges that it is the responsibility of the producer to facilitate a well-managed event and display sensitivity about the impact of the premises on the liveability of neighbourhoods.
63. Plans of Management are required with an application for cultural activity which has the potential to impact on amenity and neighbourhood safety. The draft DCP requires Plans of Management to include information about the primary use and proposed cultural activity to be undertaken in the premises, hours of operation, capacity of the event, staffing and security arrangements, access to sanitary facilities, liquor licensing, food service, crowd management, location of sound generating equipment, signage, notification of neighbours and complaint management.
64. This guidance provides more certainty and ensures producers have considered and addressed any potential impacts that may arise from their operation, as well enabling the City to effectively assess any impacts of a proposal.

Technical guidance on fire safety upgrades

65. The draft DCP includes advice on undertaking small scale cultural activities in existing buildings without a building upgrade. Some cultural activities may require building upgrades or costly expert advice to provide alternative solutions to meet the National Construction Code (NCC). These requirements are usually associated with larger and more permanent spaces.
66. City staff have developed guidance to reduce uncertainty in the renovation and adaptation of older buildings for small scale cultural uses. It will assist operators in choosing the right types of buildings and minimise the need for works to make them suitable.

67. The Draft Technical Guidelines - Small Scale Cultural Activities in Spaces less than 500 square metres at Attachment C provides advice for cultural producers about how they can reduce the costs of adapting buildings while maintaining compliance with the requirements under the NCC and the Environmental and Planning and Assessment Act 1979. The checklist applies to spaces that are less than 500 square metres and includes specifications for occupancy, floor space, travel distances between exits, escape routes, fire safety systems, exit capacities, stage size and sanitary provision, stairways and ramps. Certifiers will be responsible for deciding whether a proposal complies with the building code and whether to apply this advice or whether upgrades or alternative solutions are needed.
68. There may be situations where the checklist may not be applied due to unacceptable levels of fire risk. It will not override the City's statutory obligations to ensure fire protection and structural capacity.
69. The proposed changes to the planning controls for cultural activities are summarised in Table 1 below.

Small scale cultural activities – minimal impact	Other small scale cultural activities – low impact	Other cultural activities
Must meet all LEP criteria to be exempt and not need a DA	<ul style="list-style-type: none"> Do not meet LEP exempt criteria and need a DA Must meet DCP criteria to be low impact 	<ul style="list-style-type: none"> Do not meet LEP exempt criteria and need a DA Do not meet DCP criteria to be low impact Proposals are assessed on merit
<u>LEP exempt criteria</u> <ul style="list-style-type: none"> max 70 patrons (including staff) max 26 days a year, 4 days a week and 8 days a month max 4 hours (excluding setup and pack down) between 7am and 10pm amplified music in non-residential business zones other zones microphone and background music no offensive noise no building works on ground floor only in business and industrial zones 	<u>DCP criteria</u> <ul style="list-style-type: none"> max 120 patrons (including staff) max 52 days a year, 8 days a month, or 4 consecutive days a month max 4 hours (excluding set up and pack down) Finishes by 10pm in B2 Local Centre or B4 Mixed use zones Finishes by midnight in non-residential business and industrial zones no amplified music, can use background music and a microphone in spaces less than 500sqm, complies with alternative building and fire safety solutions 	<u>DCP guidance</u> <p>Matters to be considered in applications for cultural activities:</p> <ul style="list-style-type: none"> location and context nature of activity impact on amenity opening and closing times safety, security, waste management and crime prevention measures accessibility and frequency of public transport Plans of Management

Small scale cultural activities – minimal impact	Other small scale cultural activities – low impact	Other cultural activities
<ul style="list-style-type: none"> • no pyrotechnics theatrical smoke, or dangerous goods • not contravene some existing consent conditions • signage about event 5-7 days prior and during event • orderly egress and egress • approved retail, office, industrial premises or community facility • liquor licence or caterers authorisation • Annual Fire Safety Statement • adequate access to sanitary facilities 	<ul style="list-style-type: none"> • Plan of Management • approved retail, office, industrial premises or community facility • liquor licence or caterers authorisation • Annual Fire Safety Statement • adequate access to sanitary facilities <p><u>Other DCP guidance</u></p> <p>Matters to be included in a Plan of Management</p> <p><u>Technical Guidelines</u></p> <p>Alternative building and fire safety solutions for activities in spaces less than 500sqm</p>	

Table 1: A summary of the proposed changes to the Sydney LEP 2012 and Sydney DCP 2012 for cultural activities.

70. The proposed changes support community well-being in the recovery, by increasing opportunities to access cultural activity in the city. They encourage the re-use of vacant and existing retail, office, business and community facility buildings as alternative venue space for cultural activities. This may assist cultural producers struggling to find venue space as a result of closures and support the re-opening of creative and cultural businesses in the recovery following the COVID-19 pandemic.

Fair management of entertainment sound

71. Under the current framework, managing entertainment sound is solely the responsibility of development that generates it - such as live music and performance venues. This means when a new sensitive development such as a residential building comes into an area, an existing venue may need to reduce its events, volume or sometimes stop operating. This uncertainty for ongoing performance has contributed to the decline in the number of venues across the city and has become barrier to the growth of the night time economy. In particular, this issue has affected areas with strong traditions of live music and performance that are increasingly becoming more diverse and mixed with new residential development occurring near existing venues.
72. While the live music and performance industry is a significant part of the City's cultural and economic profile, entertainment sound from venues needs to be well-managed to prevent unreasonable impacts on nearby residents, which can affect health.

73. The proposed fair management of entertainment sound reforms places the responsibility for managing entertainment sound impacts on new development that changes the conditions in the area. This involves providing better and consistent guidance on acceptable sound levels that must be met by all new development that either generates or is affected by entertainment sound. This fair and equitable approach in managing entertainment sound can give greater certainty to both venue operators and to residents. The sound management responsibility of this approach is illustrated in Figure 4 below:

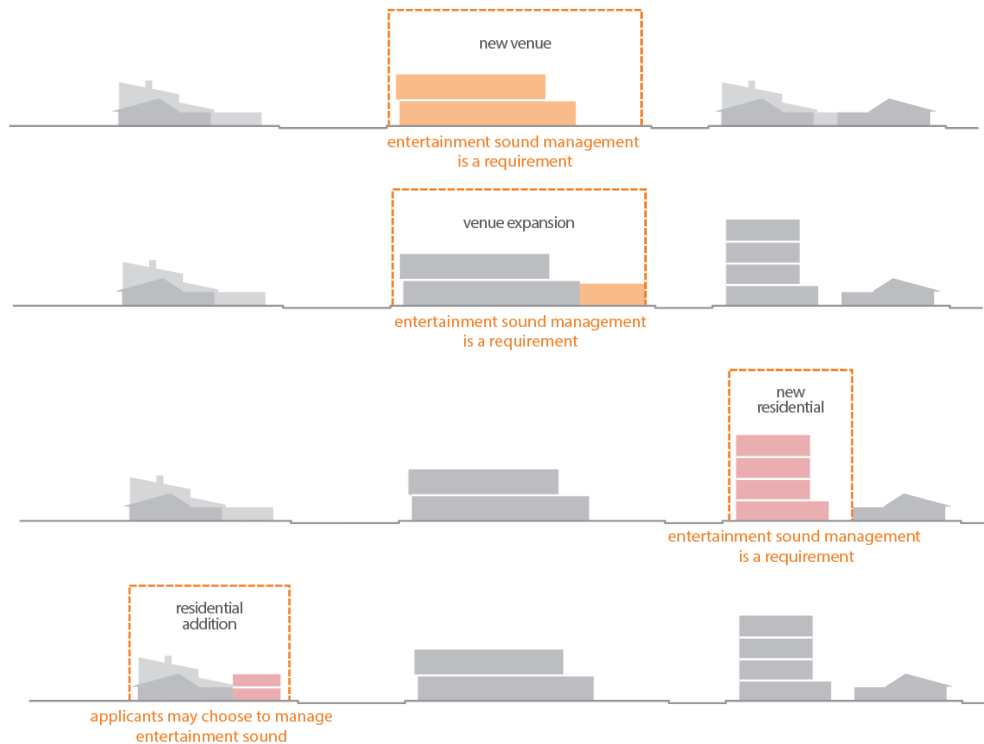


Figure 4 Allocation of entertainment sound management responsibility

74. Similar to the current planning approach, the new DCP controls will require all new development that generates entertainment sound, such as a live music and performance venue to be designed, constructed and operated to protect existing residents from unacceptable sound impacts from its operations. This also applies to a proposed expansion of a venue that may result in an increase of entertainment sound. This will give residents certainty that they can continue to have an acceptable level of neighbourhood amenity with the new or expanded venue in the area.
75. The proposed DCP controls will require new sensitive development, such as residential buildings, on land that is likely to be affected by entertainment sound, to be designed and constructed to meet acceptable internal sound levels. These new controls will give existing development that generates entertainment sound, such as live music and performance venues, certainty that they can continue to operate when a new residential building moves in nearby if they operate within their approved noise conditions. Future residents in new residential buildings can also be assured that they will have an acceptable level of amenity within their homes, while being in an active and lively urban area.

76. The new DCP controls will also encourage applicants for alterations and additions to existing sensitive development on land that is likely to be affected by entertainment sound to consider noise attenuation measures. This is to give applicants the option to also incorporate measures to meet the sound levels specified in the DCP and manage the implications of any approved or existing entertainment sound-generating development within its vicinity. This will also ensure that smaller projects such as minor alterations and additions to existing residential dwellings are not unnecessarily burdened by the new requirements.
77. Land that is likely to be affected by entertainment sound is identified in the DCP maps included in Attachment D. The map includes the DCP late night management areas, which are Central Sydney, Oxford Street, Darlinghurst Road, part of Kings Street, Newtown and North Alexandria. It also shows 173 venues that host live music or performance regularly and is part of their core activities. The venues have been determined based on the City's floor space employment survey 2017, Australian Performing Rights Association Data from 2019 and a review of existing activities. A 50 metre buffer is shown for each area and venue. Development within an area or the buffer will need to be assessed against the proposed entertainment sound management controls in the DCP.
78. The draft DCP will provide sound criteria and requirements to manage entertainment sound, based on the nature of new developments and the surrounding context. The new provisions will establish acceptable sound levels that must be met by new sensitive development and development that generates entertainment sound.
79. The draft DCP will provide a 'primary design criteria' for new stand-alone development with an entertainment sound-generating activity and a 'secondary design criteria' for new development with an entertainment sound-generating activity that share a boundary with a sensitive development. Both criteria will be supplemented by a low frequency noise criteria and vary based on the type of sensitive development it affects, the time of day and the nature of its surrounding acoustic and urban environment. The sound criteria responds to the nature of new developments and whether they are in a quiet or high-activity area, as mapped in Figure 5, with more stringent criteria proposed for quiet areas. This approach addresses the city's diverse and mixed use character where live music and performance venues are generally dispersed across the city in areas with a long-standing mix of uses rather than being concentrated in precincts.
80. The primary or secondary design criteria for venues will determine a fixed entertainment sound level a venue can generate, which will be imposed as a condition in the venue's development consent. This sound level will be a fixed decibel level and will remain the same, independent of future changes to background sound levels and future development within its vicinity. This will provide greater certainty for venues that their performance and entertainment operations can continue as planned and approved.
81. New sensitive development, such as residential buildings on land that is likely to be affected by entertainment sound, must meet a fixed internal sound level and the low frequency noise criteria. These criteria vary depending on the development type and time of day. Through the development process, conditions will be placed on the development consent issued for a sensitive use to make sure it is constructed to meet acceptable internal sound levels. This will ensure residents can enjoy an acceptable level of amenity in their homes while balancing the need for long-term certainty for venue operators.

82. While the proposals still require new venues to design to protect residents, the provision of objective sound criteria will assist venues once they have been established, by protecting their right to make sound to an approved level. This right will be in place whether or not a business is operating or closed, as the rights are associated with the maps in the DCP and the consent on the property, rather than the specific tenant or operation.

Proposed DCP Schedule

83. The draft DCP Schedule (see Attachment B of this report) contains technical information on how to address the new sound criteria for entertainment sound-generating activity and sensitive development in a development application. It will assist operators, acoustic engineers and others to prepare Noise Impact Assessment reports and understand design and other mitigation measures required to accompany development proposals. This will ensure new development is built for purpose and appropriately addresses the acoustic environment and urban character of the area through good design.

Managing offensive noise complaints

84. Offensive noise is governed by the Protection of Environment Operations Act 1997 (POEO Act) and covers other noise sources beyond entertainment sound such as patron noise. The test for offensive noise in the Act is subjective, in that it relies on judging whether a noise is harmful or interferes unreasonably with a person's comfort or rest. No scientific noise measurements are required when making the judgement on whether noise is considered offensive. This can create significant challenges for venue operators, even when they are operating within their approved noise levels.
85. The City will review and refine its approach to managing offensive noise complaints relating to entertainment sound following the adoption of the new controls. This will aim to ensure City officers consider any sound level imposed on a venue in its consent or the sound levels in the planning controls if one is not specified in the consent. This inclusion of fixed and quantitative tests will help make the assessment of offensive noise for entertainment sound more objective and consistent and improve certainty for venue operators and residents.

Creative work spaces

86. Creative and maker tenants and owners include visual art and craft studios, printing, furniture making and repair, instrument repair and production, jewellery, ceramics kilns, 3D printing, glass blowing/cutting and fashion/sewing/pattern making.
87. Many creative and maker industries require a shop front and retail function and are best located close to their market to provide more diversity and create employment opportunities in local centres. The LEP however classifies creative and maker spaces as light industrial uses, which are not permitted in B2 Local centre zones.

88. The Planning Proposal amends the uses permitted with consent in the B2 zone to include light industrial uses so existing and future creative and maker spaces are able to locate in village high streets. B2 zones are located in Pyrmont, Glebe, Redfern, Waterloo, Darlinghurst, Newtown, Kings Cross, Surry Hills, and Zetland. The planning proposal will also amend the Business-Residential Zone on the Central Park site on Broadway, Chippendale.
89. Light industrial uses are permissible in the majority of the City's other business zones. It is appropriate to include these uses in the B2 Local Centre zone because they are consistent with the objectives of the zone, to encourage employment opportunities in accessible locations and provide a range of retail and business uses that serve the needs of people who live in, work in and visit the local area. The definition of Light Industry in the LEP provides a list of considerations to reduce potential amenity impacts on the neighbourhood such as noise, vibration, smell, fumes, smoke, vapour, steam or dust, which will support intended outcomes.
90. This proposal may encourage more creative spaces to locate in local centres. It will provide certainty to cultural producers and the community about the permissibility of these uses and assess any potential impacts on a case by case basis through applications for consent.

Erskineville Town Hall

91. The Erskineville Town Hall is located on land zoned B1 Neighbourhood Centre where entertainment uses are prohibited, which prevents its use for community uses such as theatre, cinema, music and dance. This is not consistent with the intended use of this community facility, and or the use of other town hall spaces in the city where performance is permitted.
92. The Planning Proposal aims to allow entertainment uses as an additional use permitted with consent for the Erskineville Town Hall in the LEP. The proposal will provide certainty that theatre, cinema, music and dance are permitted with consent which improves the range of cultural activities that can take place in this community facility.
93. In light of COVID 19 and its impact on the cultural sector and creative spaces, the use of City owned spaces for cultural and performance activities has increased as a priority. Any potential impacts on neighbours will be assessed on a case by case basis through development applications.

Strategic Alignment

Eastern District Plan

94. The Eastern City District Plan prepared by the Greater Sydney Commission in March 2018 is a 20 year plan to manage growth in the context of economic, social and environmental matters. The District Plan identifies 22 planning priorities and associated actions that support a liveable, productive and sustainable future for the district. The proposals give effect to the District Plan by aligning with the following planning actions:
- (a) Actions under Liveability priority E3 aim to provide services and social infrastructure to meet peoples changing needs. The planning proposal and draft DCP encourage the provision of services and social infrastructure to meet needs of a growing and more diverse population such as later opening shops and cultural and creative uses across the city centre and in high streets.
 - (b) Actions under Liveability priority E4 aim to foster healthy, creative, culturally rich and socially connected communities. The planning proposal and draft DCP seek to facilitate opportunities for creative and artistic expression and with night time diversity on local high streets by minimising regulatory burden. It encourages the fair management of sound to ensure the protection of local amenity and live music venues.
 - (c) Actions under Productivity priority E7 aim to grow a stronger and more competitive Harbour CBD. The planning proposal and draft DCP strengthen the competitiveness of the Harbour CBD by providing economic, social and cultural opportunities to meet the needs of a changing and growing population. It encourages later opening shops, cultural and creative uses in areas across the city centre and in high streets.

Sustainable Sydney 2030

95. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This policy is aligned with the following strategic directions and objectives:
- (a) Direction 1 - A Globally Competitive and Innovative City. Extending night time shop trading until 10pm, encouraging more small scale cultural activities in existing buildings and protecting live music venues and the fair management of entertainment sound encourages a diverse late night time offering consistent with the City's vision and community's expectation for a global city.
 - (b) Direction 5 - A Lively and Engaging City Centre. Allowing shops to open until 10pm and enabling a range of small scale cultural activities without the requirement for development consent may diversify nightlife and encourage a lively and more engaging city centre and village high streets.
 - (c) Direction 7 - A Cultural and Creative City. The proposals encourage small scale cultural uses including performance, creative and cultural uses. The fair management of entertainment sound provisions seek to support the live music and performance sector and aim to allocate the responsibility for managing entertainment sound in a fair and equitable manner.

Local Strategic Planning Statement

96. City Plan 2036: City of Sydney Local Strategic Planning Statement (the Planning Statement) sets out a 20-year land use vision for the city through local planning priorities and actions. It gives effect to and links the Greater Sydney Commission's Region and District Plans to Sustainable Sydney 2030 with the City's local planning controls. It will also guide the review of the City's planning controls, inform decisions about infrastructure and set out how we will collaborate with relevant stakeholders in planning for the city's liveability, productivity and sustainability. The planning proposal and draft DCP give effect to the following priorities and actions of the Planning Statement.
- (a) Local Priority L1 'A creative and socially connected city'. The planning proposal responds to action L1.1 and contributes to the diversity and social life of the city by encouraging later trading of neighbourhood shops. It responds to L1.8 by seeking to remove barriers that inhibit cultural and creative uses from occurring in existing buildings. It may prevent the loss of creative, arts, cultural or performance space as required by action L.1.5. The proposal responds to action L1.7 by better managing entertainment sound while maintaining residential amenity and performance activity.
 - (b) Local Priority P2 'Developing innovative and diverse business clusters in the Sydney Fringe.' The planning proposal responds to Action P2.4 in enabling lively and thriving village economies by supporting a wide range of entertainment, live music and performance, retail, creative maker spaces and night time options. It also responds to Action P2.6 by protecting and enhancing entertainment, arts, performance and cultural role of areas and high streets, including those within the Eastern Creative Precinct.
 - (c) Local Priority P3 'Protecting industrial and urban services in the Southern Enterprise Area and evolving businesses in the Green Square-Mascot Strategic Centre.' The planning proposal responds to Action P3.1c by supporting growth of cultural activities and enterprise uses in appropriate locations in the Green-Square Mascot Strategic Centre.
 - (d) Local Priority S3 'Increasing resilience of people and infrastructure against natural and urban hazards'. The proposed reforms relating to entertainment sound management will help achieve improved outcomes for acoustic amenity.

Social / Cultural / Community

97. The Planning Proposal and draft DCP respond to issues raised by the community in early consultation about later opening shops, small scale cultural uses and the fair management of entertainment sound. The provisions aim to encourage more diverse social and cultural activities at night to match the needs of a growing and changing population. They protect live music and performance venues and the community from potential adverse impacts by enabling the fair management of entertainment sound.

Economic

98. The Planning Proposal and draft DCP supports the city's cultural sector which houses a third of Australia's creative industries contributing \$111.7 billion to the national GDP and \$1.4 billion to the State economy. It supports the core night time economy which has a turnover of more than \$4.1 billion and creates over 35,000 jobs within the City of Sydney.

99. The Planning Proposal and draft DCP will support businesses in these sectors facing significant challenges during and after the Covid-19 pandemic.
100. The proposed changes may strengthen Sydney's competitiveness and economic output, by creating more jobs and tourism, attracting longer hotel stays and the long term retention of younger people in the economy. The proposals seek to encourage business at night by reducing cost and removing the regulatory burden of a development consent to encourage shops and businesses to stay open later and small scale cultural uses to occur in existing underused retail, office, business or community buildings. They encourage the fair management of entertainment sound and provide greater certainty for the live music industry and performance in the city.

Relevant Legislation

101. Environmental Planning and Assessment Act 1979.
102. Environmental Planning and Assessment Regulation 2000.

Critical Dates / Time Frames

103. Should Council and the Central Sydney Planning Committee approve the Planning Proposal for exhibition and consultation, the proposal will be sent to the Department of Planning, Industry and Environment in accordance with s3.34 of the Environmental Planning and Assessment Act 1979 seeking a Gateway Determination. The Department will then provide a Gateway Determination to either proceed to consultation, with or without variation, or to resubmit the planning proposal.
104. Typical public exhibition timeframes for a planning proposal are 28 days. The Gateway Determination will specify any conditions for consultation and public exhibition as well as a date by which the Local Environmental Plan amendment should be finalised. A draft development control plan must be exhibited for 28 days.
105. Following public authority consultation and public exhibition, issues raised in submissions will be reported back to Council and the Central Sydney Planning Committee.
106. In October 2012, the then Minister for Planning and Infrastructure delegated his plan-making functions to councils to improve the local plan-making process. In December 2012, Council resolved to accept the delegation.
107. Council needs to receive an authorisation on a case-by-case basis to exercise the delegation. The authorisation is given through the Gateway process and means a faster plan-making process. This report recommends Council seeks authority to exercise this delegation.

Public Consultation

108. The public exhibition process and requirements will be informed by the Gateway Determination. It is proposed to publicly exhibit the Planning Proposal, draft DCP amendment and draft Technical Guidelines concurrently for a minimum period of 28 days with notification on the City of Sydney website, in newspapers that circulate widely in the area and in writing to relevant landowners, businesses, occupiers, relevant community groups and key industry stakeholders such as advocacy groups, industry organisations and government agencies.
109. Exhibition documents will be available for viewing on the City of Sydney website. Documents may be available at One Stop Shop at Town Hall House and Customer Service Centres depending where possible. In response to Covid-19 the NSW Government has enabled councils to undertake exhibitions without the need to provide physical copies of draft planning controls provided they are made available on council websites.

GRAHAM JAHN AM

Director City Planning, Development and Transport

Julie Prentice, Specialist Planner

Attachment A

**Planning Proposal – Sydney Local
Environmental Plan 2012: Open and
Creative Planning Reforms**

Planning Proposal Sydney Local Environmental Plan 2012: Open and Creative Planning Reforms

City of Sydney
Town Hall House
456 Kent Street
Sydney NSW 2000

May 2020





Contents

Executive Summary 2

Introduction 4

Part 1 - Objectives or Intended Outcomes..... 9

Part 2 – Explanation of the Provisions..... 9

Part 3 - Justification 19

Part 4 - Community Consultation..... 35

Part 5 – Indicative Project Timeline 36

Appendix 1 – Open and Creative City Planning Reforms 37

Executive Summary

A strong cultural life and economy has the potential to strengthen Sydney's global competitiveness as a productive, liveable and inviting city. It can provide a wide range of social, cultural and leisure and entertainment opportunities to match the needs of a growing population of residents, workers and visitors and attract a diversity of ages, lifestyles and cultures throughout the day, evening and night. Evidence shows that this diversity of options leads to a stronger, more connected and resilient community, creates a more inclusive nightlife, improves safety and reduces crime.

This planning proposal seeks a number of changes to the *Sydney Local Environmental Plan 2012* (Sydney LEP 2012), and other relevant LEPs which aim to strengthen the city's cultural and night life and create a more diverse evening economy.

It progresses the reforms proposed in the City's *Open and Creative City: planning for culture and the night time economy Discussion Paper* which was publicly exhibited in October 2017. The discussion paper was prepared in response to actions in the City's OPEN Sydney Strategy and Action Plan, Creative City Policy and Action Plan and Live Music and Performance Action Plan. These actions aim to improve the City's planning and regulatory framework to support a strong cultural and diverse night time economy and thriving live music and performance industry.

The discussion paper included proposals to make it easier for shops and businesses to open later in the City's business precincts and support more small-scale cultural uses in existing under-used buildings. Strong support for the proposals was received from the creative sector and community with over 1,300 pieces of feedback received through an online survey, submissions and a deliberative workshop.

This planning proposal explains the intent of and justification for the proposed amendment to the Sydney LEP 2012 and other relevant LEPs. It proposes to:

- make it easier for shops and business to trade in central Sydney and local centres from 7am to 10pm, seven days a week
- make it easier for small scale cultural activities to take place in existing office, industrial, retail and community facility buildings
- make it easier for creative and maker tenants to locate in B2 Local Centres, and
- maintain and extend the current community uses available for Erskineville Town Hall

The planning proposal has been prepared by the City in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* and the Department, Planning, Infrastructure and Environment's 'Guide to preparing planning proposals' and 'A guide to preparing local environmental plans.'

The planning proposal is for amendments to:

- a. Schedule 2 'Exempt Development' to include a new provision that specifies development with lawful consent to operate as a shop, kiosk or business premises which trades indoors until 10pm as development exempt from the

requirement for consent on the basis of meeting specific criteria, which address the activity, location, licensing and existing consent conditions

- b. Schedule 2 'Exempt Development' to include a new provision that specifies development with lawful consent to operate as retail, industrial, office or community facility which is a small scale cultural activity, as development exempt from consent on the basis of meeting criteria which address the activity, location, duration, frequency, density, fire safety, alcohol service, amplified music, existing consent condition and amenity matters
- c. the B2 Local Centre land use table to include 'light industry' as a use permitted with consent, to allow creative and maker tenants to operate in local centres, and
- d. Schedule 1 to include entertainment uses such as theatre, cinema, music and dance, as an additional permitted use with consent, and extend the current community and cultural uses available for Erskineville Town Hall.

The proposed LEP amendments described in this planning proposal will be supported by new provisions under the Sydney Development Control Plan (Sydney DCP) 2012 and other relevant DCPs which:

- (i) outline thresholds of activity for small scale cultural and performance activities which are considered low impact
- (ii) outline the matters to be addressed in Plans of Management for small scale cultural and performance activities
- (iii) permit the approval of cultural and performance activities without requiring full *National Construction Code* upgrades, provided that appropriate alternative solutions are implemented
- (iv) outline amenity requirements for new sound-generating entertainment development
- (v) outline amenity requirements for new entertainment sound affected development
- (vi) outline the methodology and matters to be addressed in a Noise Impact Assessment submitted with development applications for entertainment sound-generating uses, or noise-sensitive uses which may be affected by an existing adjacent sound-generating development, and
- (vii) includes new maps identifying land that may be affected by entertainment sound and the criteria for acceptable sound levels that must be met by development.

These proposed DCP provisions do not form part of this planning proposal.

Introduction

This planning proposal seeks a number of changes to the *Sydney Local Environmental Plan 2012* (Sydney LEP 2012) and other relevant LEPs which aim to strengthen the city's cultural and night life and create a more diverse evening economy by supporting late opening shops and more small scale cultural activities. It progresses the reforms proposed in the City's *Open and Creative City: planning for culture and the night time economy Discussion Paper* which was publicly exhibited in October 2017.

A clear vision for a city with a strong cultural and diverse night time economy and thriving live music and performance industry is established as a result of research and consultation on the City's *OPEN Sydney Strategy and Action Plan*, *Creative City Policy and Action Plan* and *Live Music and Performance Action Plan*. The planning proposal focuses on reforms to planning and regulation which contribute to the City's vision and are addressed in these action plans.

This planning proposal gives effect to strategies in the *Eastern City District Plan* (released by the Greater Sydney Commission in March 2018) and the City's *City Plan 2036: Local Strategic Planning Statement* (the Planning Statement). It is consistent with the planning priorities and actions included in the Eastern District Plan which address healthy, creative, and culturally rich and socially connected communities and the provision of services and social infrastructure to meet the changing needs of the community.

It has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (the Act) and the relevant Department of Planning, Infrastructure and Environment (DPIE) Guidelines including 'A Guide to Preparing Local Environmental Plans' and 'A Guide to Preparing Planning Proposals'.

An open and creative city

A strong cultural life and economy has the potential to strengthen Sydney's global competitiveness as a productive, liveable and inviting city. It can provide a wide range of social, cultural and leisure and entertainment opportunities to match the needs of a growing population of residents, workers and visitors and attract a diversity of ages, lifestyles and cultures throughout the day, evening and night. Evidence shows that this diversity of options leads to a stronger, more connected and resilient community, creates a more inclusive nightlife, improves safety and reduces crime.

The City's night time economy represents the heart of Sydney's social, cultural and leisure opportunities, comprising food, drink, cultural and entertainment industries. It is estimated to produce \$4 billion in revenue per year, involving 4,872 businesses and employing 35,000 people.

The City's late night planning controls in the *Sydney Development Control Plan 2012* encourage economic activity in the city, in the context of Sydney as a growing global 24-hour economy, as the gateway to greater Sydney and the importance of performance, cultural and creative spaces to the city's fabric. The DCP encourages a greater diversity of jobs in the night-time economy, later opening shops and businesses in late night trading areas, and performance provisions and later opening hours for venues in the city centre and local areas.

The creative sector is vital to Sydney's future. Small art galleries, performance spaces and music venues, as well as co-working spaces, start-ups 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.

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. While overall 27 per cent of Australia's creative jobs are in Greater Sydney, a large proportion of this is concentrated in the City of Sydney.

This planning proposal is for changes to the City's planning controls to support the City's cultural life and night time economy. The changes:

- make it easier for shops and business to trade in central Sydney and local centres from 7am to 10pm, seven days a week
- make it easier for small scale cultural activities to take place in existing office, industrial, retail and community facility buildings
- make it easier for creative and maker tenants to locate in B2 Local Centres, and
- maintain and extend the current community uses available for Erskineville Town Hall.

A more diverse evening economy

Research and public and industry consultation for the *OPEN Sydney* strategy indicated that people want shops and other businesses to open later. It showed there are limited non-alcohol based options after 6pm, with options including mainly restaurants, bars, clubs and pubs. It found that only 14 per cent of people out in the city after 10pm were aged over 40 years. These findings informed objectives in *OPEN Sydney* to support an evening economy that attracts people of all ages and interests by providing more unlicensed uses which do not create excessive noise or encourage anti-social behaviour.

There are considerable opportunities for extended trading hours for retail and service businesses in areas of the city serviced by good public transport, parking, destination marketing, events, night time signs and wayfinding. City surveys undertaken in March 2017 show there are significant numbers of potential customers on the streets in Glebe and Newtown well into the evening. Shops and businesses in these areas have opportunities for increased trading hours on weekdays and weekends. Glebe Point Road maintains high pedestrian numbers from 5pm to 11pm on weekdays and weekends though few retail and service businesses are open. King Street, Newtown also has a high level of pedestrians into the evening with few businesses staying open. There are more pedestrians on King Street between 7pm and 10pm than from 8am to 11am. Figure 1 shows the survey results for King Street, Newtown.

Figure 1a (below) King Street, Newtown pedestrian counts and shop/business premises trading hours, Monday to Thursday in March 2017

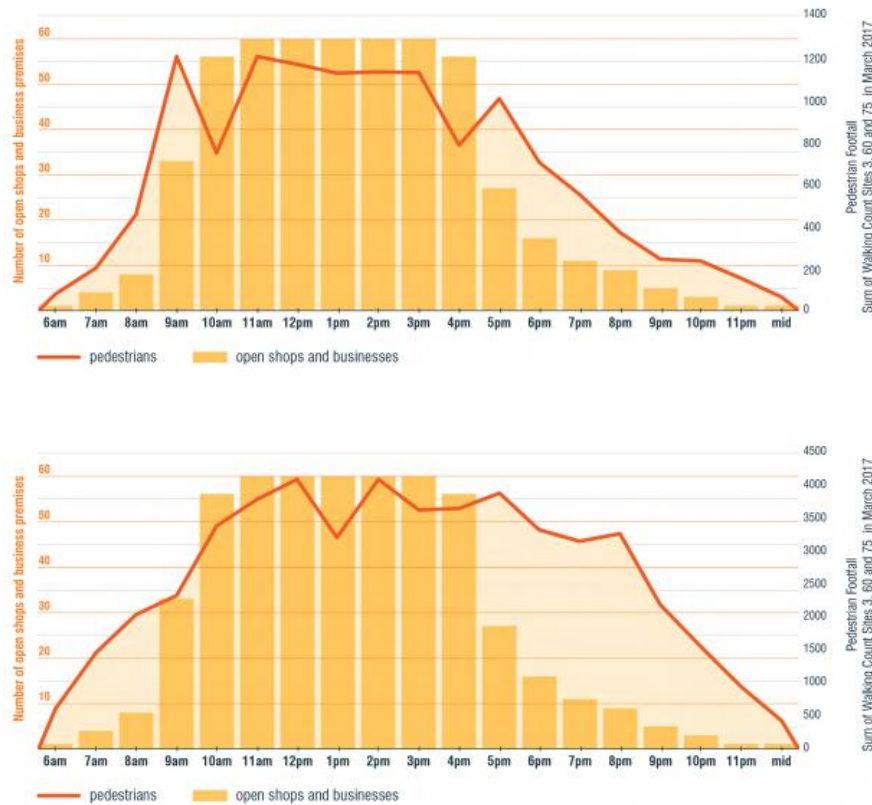


Figure 1b (above) King Street, Newtown pedestrian counts and shop/business premises trading hours, on Saturdays in March 2017

Extended trading hours for retailers and businesses in areas with high volumes of pedestrians in the evening could increase street activity and the sense of safety by attracting a greater diversity of people out at night. It could give businesses the flexibility to choose operating hours such as opening and closing later, enable business owners to take advantage of events and festivals and provide more opportunities for people to shop and attend appointments after work.

The planning proposal includes changes which make it easier for shops and businesses to trade in central Sydney and the village centres from 7am to 10pm, seven days a week.

More small-scale cultural activities

Small-scale cultural activities involve making or presenting creative content, such as film, art or performance, as well as talks or community events. They can be free, entry-by-donation or ticketed. They are often irregular or one-off events, which if held on a small-scale may not be suitable in one of the city's permanent theatres, galleries or entertainment spaces. Most small-scale cultural activities happen in older retail, office or industrial buildings, and involve no works. They do not necessarily have the same safety or neighbourhood amenity risks as permanent licenced venues, major theatres or public halls.

Cultural activities can prove difficult to categorise within our existing building and planning classifications. This means that cultural activity may be included in the broader classification of entertainment use, and so may be subject to building code requirements designed for much larger venues, with greater impacts. For example an artist studio wishing to host public lectures may need fire safety upgrades designed for a major function centre.

The City's planning controls and national building regulations provide enough flexibility for small and large scale cultural activities in many areas throughout the city. However, there is little guidance specific to cultural activities about what should be done to get an approval. Approvals often require advice from experts in building compliance, planning and environmental health to manage issues like fire safety and residential amenity. This advice can be costly and time-consuming for a sector which provides significant benefits to the City but doesn't have a lot of financial capacity.

The planning proposal includes changes to make it easier for small scale cultural activities to take place in existing buildings. It aims to address some regulatory barriers for three types of small-scale cultural activities:

- existing businesses hosting temporary cultural activity, such as small retail tenancies seeking to host an art exhibition or ticketed events and performances
- creative entrepreneurs wishing to utilise existing buildings for short periods of time. For example, a theatre group wishing to perform in a vacant shop, or a social enterprise wishing to use a warehouse for a community event, and
- new cultural and community spaces, such as an artist studio or social enterprise, seeking approval for an ongoing activity in an existing retail, office or warehouse building.

Creative work spaces

Global cities create a competitive advantage by retaining and growing creative production. Creative and maker tenants include visual art and craft studios, printing, furniture making and repair, instrument repair and production, jewellery, ceramics, 3D printing, glass blowing/cutting and fashion/sewing and pattern making.

Many creative and maker industries require a shop front and retail function. They are best located close to their market to provide more diversity and create employment opportunities in local centres. The creative and maker spaces are often characterised as a light industrial land use which is not presently permitted in the city's local centres zoned B2, preventing creative and maker spaces locating in village high streets.

The planning proposal includes a change to reduce barriers to creative and maker spaces uses by introducing "light industry" to the B2 Local Centre zone.

Erskineville Town Hall

The City intends to extend the range of community and cultural uses currently permissible for Erskineville Town Hall, including opportunities to host entertainment uses. The town hall is currently zoned B1 Neighbourhood Centre which prohibits entertainment facilities. The planning proposal includes a change to allow entertainment uses.

Associated DCP changes

The proposed LEP amendments described in this planning proposal will be supported by new provisions under the Sydney Development Control Plan (Sydney DCP) 2012 and other relevant DCPs which:

- (viii) outline thresholds of activity for small scale cultural and performance activities which are considered low impact
- (ix) outline the matters to be addressed in Plans of Management for small scale cultural and performance activities
- (x) permit the approval of cultural and performance activities without requiring full *National Construction Code* upgrades, provided that appropriate alternative solutions are implemented
- (xi) outline amenity requirements for new sound-generating entertainment development
- (xii) outline amenity requirements for new entertainment sound affected development
- (xiii) outline the methodology and matters to be addressed in a Noise Impact Assessment submitted with development applications for entertainment sound-generating uses, or noise-sensitive uses which may be affected by an existing adjacent sound-generating development, and
- (xiv) includes new maps identifying land that may be affected by entertainment sound and the criteria for acceptable sound levels that must be met by development.

These proposed DCP provisions do not form part of this planning proposal.

Response to Discussion Paper

The planning proposal has been informed by early consultation which was undertaken from 25 October to 13 December 2017. The proposals were presented in the '*Open and Creative City planning for culture and night time economy*' Discussion Paper on the Sydney Your Say web page. Other consultation activities included an online survey, community deliberative process, and stakeholder and industry briefings.

A total of 1,303 online surveys were received from the community; 33 residents were randomly selected to attend a community deliberative workshop on the proposals held over two evenings; 44 people attended stakeholder briefings, representing 29 organisations; 20 submissions were received from industry stakeholders and a further three from individuals. An invitation to participate in the consultation was sent to 484 stakeholders.

Key themes arising from the consultation included:

1. support for small-scale cultural activities with minimal impacts and without development consent.
2. support for more flexible rules to ensure the viability of small-scale cultural activities and take up of the exempt provisions, including the limit on patrons and frequency of events, but also concern about potential noise impacts on residents, and
3. support for shops and local business to trade until 10pm without development consent in established retail areas.

Part 1 - Objectives or Intended Outcomes

The objective of this planning proposal is to implement changes to planning controls in the Sydney LEP 2012 and other relevant LEPs:

- make it easier for shops and business to trade in central Sydney and village centres from 7am to 10pm, seven days a week
- make it easier for small scale cultural activities to take place in existing office, industrial, retail and community facility buildings
- make it possible for creative and maker tenants to operate in Local Centres, and
- increase the range of cultural activities that may be undertaken in the Erskineville Town Hall community facility.

These changes give effect to the vision set out in the City's *OPEN Sydney Strategy and Action Plan*, *Creative City Cultural Policy and Action Plan* and *Live Music and Performance Action Plan* of creating a City with a strong cultural life, diverse and safe night time economy and thriving live music and performance industry.

Part 2 – Explanation of the Provisions

The vision and objectives from City strategies for an open and creative city will be achieved by enabling shops, kiosks and businesses which trade until 10pm and small-scale cultural activities in approved retail, office, business and community facility buildings to be exempt development in appropriate locations, subject to certain criteria.

To achieve these intended outcomes, this planning proposal seeks to amend the following instruments:

- Sydney Local Environmental Plan (LEP) 2012
- Sydney LEP 2005
- Sydney LEP (Green Square Town Centre) 2013
- Sydney LEP (Green Square Town Centre Stage 2) 2013
- Sydney LEP (Glebe Affordable Housing Project) 2011
- Sydney LEP (Harold Park) 2011
- South Sydney LEP 1998
- South Sydney LEP No. 114 (Southern Industrial and Rosebery/Zetland Planning Districts).

The planning proposal does not seek to amend any other environmental planning instruments. As noted in Part 1 it will be supported by associated amendments to the Sydney Development Control Plan 2012 and other relevant DCPs which are addressed in a separate document and are not part of this planning proposal.

A more diverse evening economy – late opening shops and businesses

The proposed LEP provision will allow shop, kiosk or business premises with approved standard business hours to operate until 10pm without the requirement for further development consent. The extended hours without development consent will not apply to the operation of outdoor spaces.

Proposed exempt criteria to ensure minor impact

Criteria in the provision will limit this activity to shops and businesses in areas of the city zoned B2 Local Centre, B3 Commercial Centre and B8 Metropolitan Centre. It will apply to Central Sydney and local centres as shown in Figure 2 below.

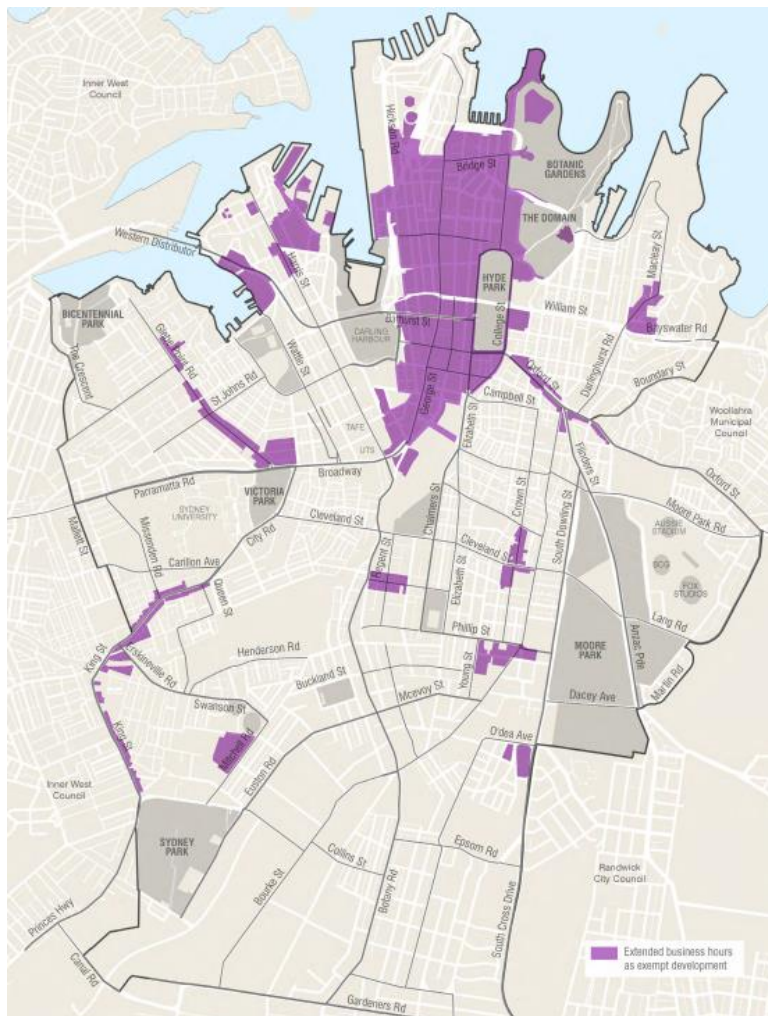


Figure 2: Areas where shops and businesses could open until 10pm without development consent

Other criteria will exclude licensed premises. It will not allow the contravention of an existing condition of an active development consent that applies to the premises relating to noise, car parking, loading or waste management.

Drafting instructions

Standard Instrument LEPs:

1. Amend Schedule 2 relating to Clause 3.1 and introduce a new provision that specifies development with lawful consent to operate as a shop, kiosk or business premises which trades until 10pm indoor (outdoor trading is not included) as exempt development, on the basis of meeting criteria.
2. Include exempt development criteria, that the shop or business use must:
 - be located on land zoned B2 Local Centre, B3 Commercial Centre or B8 Metropolitan Centre
 - not be a licensed premises in accordance with the definition under the Liquor Act 2007
 - not, as a result of the exempt development, contravene any existing condition of any active development consent that applies to the premises relating to noise, car parking, loading or waste management
3. The new provisions are to be inserted under Schedule 2 of the following instruments:
 - Sydney LEP 2012
 - Sydney LEP (Green Square Town Centre) 2013
 - Sydney LEP (Green Square Town Centre Stage 2) 2013

Pre-standard Instrument LEPs:

1. Insert new clause to apply Clause 3.1 and Schedule 2 to read:
 - “Clause 3.1 of, and Schedule 2 to the Sydney LEP 2012 (to the extent that they specify development with lawful consent to operate as a shop which trades until 10pm as exempt development) apply to development on land to which this plan applies in the same way as they apply to development on land to which that Plan applies”.
2. The new subclause is to be inserted under:
 - Part 3, Clause 16 of the Sydney LEP 2005
 - Schedule 3 of the South Sydney LEP 1998
 - Part 3, Clause 30 of the South Sydney LEP No. 114 (Southern Industrial and Rosebery/Zetland Planning Districts)

More small-scale cultural activities

The proposed LEP provision will allow temporary small scale cultural activities, to occur in office, retail, business and community facility premises as exempt development in specific locations across the local government area, subject to certain criteria.

Small scale cultural activities will be defined as activities including:

- live entertainment, (being an event at which one or more persons are engaged to play or perform live or pre-recorded music, or a performance at which at least some of the performers are present in person), including the presentation or rehearsal of music, film, theatre, spoken word, comedy or dance, or
- the production, or an event in association with an exhibition of art, craft, design, media, image or immersive technology, or
- teaching or discussion related to (a) or (b).

This definition will not include activities that are ancillary to the primary use of a building, because ancillary activities can happen lawfully without the need for development consent. Rather, they are an additional activity of a retail, commercial, business, industrial or community facility.

Proposed exempt criteria to ensure minor impact

Application

Small-scale cultural activities will be permitted as exempt development in the B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 Industrial Zone. It will not be permitted as exempt development in residential locations (zones R1 and R2). The areas where the exempt provision will apply are shown in Figure 3 below:

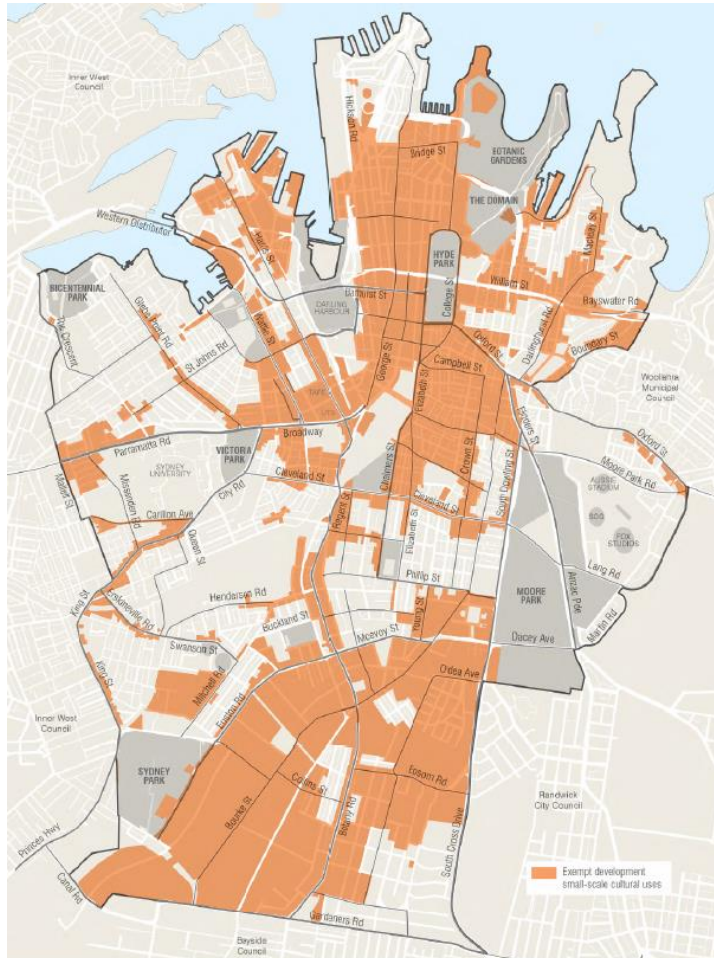


Figure 3: Areas where small-scale cultural activities could happen without approval

Activity

Exempt small scale cultural activities must not involve building works, unless those works are otherwise exempt or approved development. They must not include the use of pyrotechnics, theatrical smoke or dangerous goods.

Density

The patron capacity of exempt small scale cultural activities will be limited to 1 person per square metre of floor space accessible by patrons and to a total of no more than 70 people in total, including staff and performers.

Frequency

The exempt provision will limit how often and when the activity can happen. Exempt small scale cultural activities will be permitted to occur:

- between 7am and 10pm
- For no more than 4 hours on any one day, not including event set up and pack down
- Up to 26 days a year and no more than 4 days a week and 8 days in a month

Fire safety

The exempt provision will only permit activities to take place on the ground floor of office, retail, industrial and community premises with a current Annual Fire Safety Statement (AFSS). The AFSS must enable current occupation of the space in the building for its current approved use.

Amenity

Small-scale cultural activities will be required to comply with conditions of the active development consent for the main use of the building relating to car parking, vehicular movement, traffic generation, loading and waste management. If there is no waste condition, the provision will require that all waste generated as a result of the exempt development is removed from the premises and not placed on the public way.

The exempt provision will require the orderly entry and egress of patrons and that the exempt development not detrimentally affect the amenity of the neighbourhood.

The provision will require that signage be displayed in a visible place within the premises five to seven days before and during the event describing the activity and including contact details for the person operating the event.

Amplified music

Amplified music will be defined in the proposed clause and only be permitted as exempt development in Central Sydney or industrial and business only zones. These areas include the B3 Commercial Core, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 General Industrial zones as shown in Figure 4 below.

In areas outside of the zones where amplified music is allowed, the exempt provision will allow the use of background music and the use of a microphone for the duration of an event. This will support activities such as educational seminars, where the amplified sound is intended as an accompaniment rather than the main focus of the event.

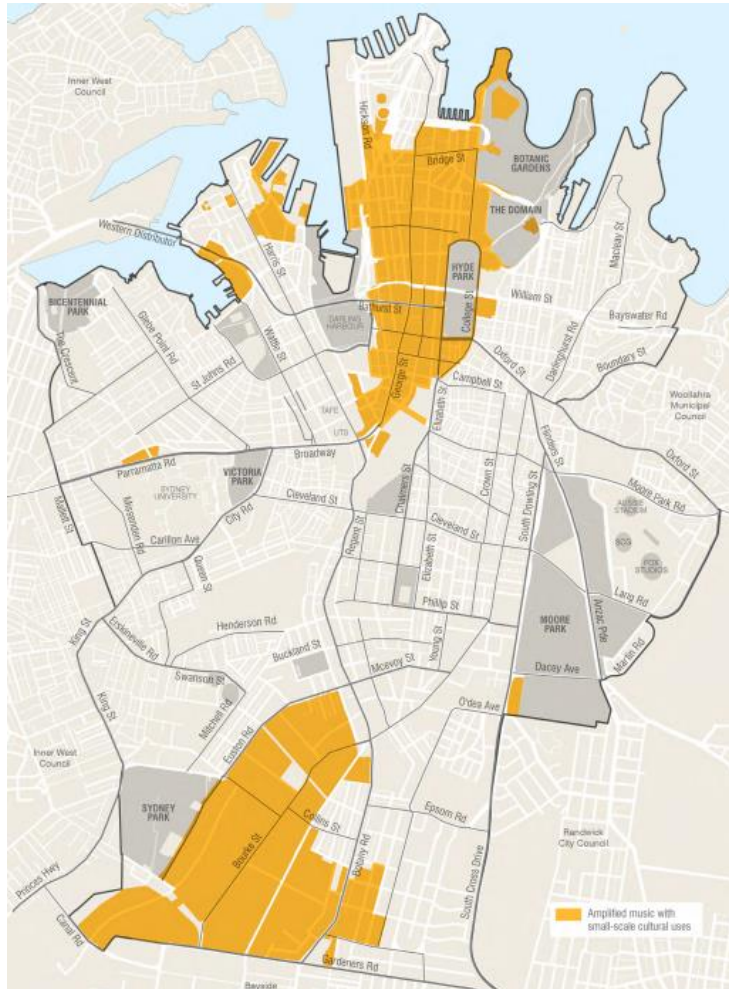


Figure 4: Areas where small scale cultural activities that do not need approval from Council can have amplified music

Alcohol service

The exempt provision will allow for the service of alcohol during small-scale cultural activities in limited circumstances. The first circumstance is where the premises already holds a liquor licence and is not a hotel or small bar. In these instances, alcohol can be served as long as it is consistent with the conditions of that liquor licence. These conditions will generally relate to the patron capacity of the premises, the areas where alcohol can be served and consumed, and the hours of service.

The second circumstance is where the operator engages an outside caterer to serve food or drinks. In this instance, the outside caterer is required to hold a liquor licence (an 'off-premises authorisation') which will also have conditions that must be complied with. The outside caterer will be required to notify Council and the local police at last two weeks before the event.

Sanitary provision

Exempt activities must include adequate access to sanitary facilities. This may include shared access to facilities within other venues in reasonable proximity to the small scale cultural activity.

Drafting instructions

Standard Instrument LEPs:

1. Amend Schedule 2 relating to Clause 3.1 and introduce a new provision that specifies small scale cultural activity occurring in a building with lawful consent to operate as a retail, industrial, office or community facility as development exempt from consent on the basis of meeting criteria.
2. For the purposes of this clause a temporary small scale cultural activity means:
 - live entertainment, (being an event at which one or more persons are engaged to play or perform live or pre-recorded music, or a performance at which at least some of the performers are present in person), including the presentation or rehearsal of music, film, theatre, spoken word, comedy or dance, or
 - the production, or an event in association with an exhibition of art, craft, design, media, image or immersive technology, or
 - teaching or discussion related to (a) or (b).
3. Include criteria which requires that temporary small scale cultural activities:
 - only take place in a building which can be lawfully used for the purposes of a retail, office, industrial or community facility
 - only take place on the ground floor of the retail, office, industrial or community facility
 - only take place in a building with a current annual fire safety statement which enables occupation of the building for its current approved use
 - not involve building works, unless those works are otherwise exempt or approved development
 - only take place on land in the B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 General Industrial zones
 - only occur between the hours of 7am and 10pm
 - have a maximum duration of 4 hours on each day, excluding set up and pack down
 - not occur more than 26 days in a 12 month period, 4 days in any single week and 8 days in any single calendar month
 - accommodate no more than 1 person per square metre in the area accessible by patrons, up to a maximum of 70 people, including patrons, staff and performers.
 - not include the use of pyrotechnics, theatrical smoke, or dangerous goods.
 - only include the service of alcohol if it is consistent with an existing liquor license issued under the *Liquor Act 2007*, or served under a caterers authorisation issued under the *Liquor Act 2007*
 - provide adequate access to sanitary facilities

- only have amplified sound if the activity is in a B3 Commercial Core, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre or IN1 General Industrial zone. For the purposes of this clause, amplified sound means sound which is generated, provided or aided through the use of any electrically powered device. This includes but is not limited to the following: use of a public address system, bullhorn/megaphone, loudspeaker or any speaker or subwoofer, power amplifier, stereo system .It includes both background music and foreground music
- may, outside of the B3 Commercial Core, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 General Industrial zones, include the use of a microphone through one small speaker and/or include background music for the duration of the event. For the purposes of this clause:
 - Background music means pre-recorded music played through no more than two electrically amplified speakers, which is intended as an accompaniment rather than the main focus of an audience/event. It is played at a soft, low volume / low amplification level which does not require persons to elevate their voices to hold conversations. It is not audible within any separate premises and does not create nuisance.
 - Foreground music means any music or sound, amplified or not, which is directly played as a primary source of entertainment.
- not contravene any existing condition of any active development consent that applies to the land relating to car parking, vehicular movement, traffic generation, loading or waste management. Where there is no condition relating to waste management, waste must be removed from the premises and not placed on the public way at any time, and glass is not to be emptied or transferred anywhere in a public place
- ensure the orderly entry and egress of patrons and not detrimentally affect the amenity of the neighbourhood, including queueing of patrons while ensuring adequate public access to other pedestrians on footpaths.
- five to seven days prior to the commencement and during the event, display in a clearly visible public place outside of the premises, a sign including following information in bold letters not less than 25mm in height on a contrasting background:
 - (a) the event name, including a description of the nature of the event, commencement, duration, and completion date
 - (b) the name and telephone number for contacting the person responsible for the event at all hours during which the premises is operating

While the exempt criteria has been set to minimise impacts on neighbours, relevant provisions of the Protection of the Environment Operations Act 1997 will continue to apply and persons undertaking exempt activities will have to ensure that offensive noise is not created

4. The new provisions are to be inserted under Schedule 2 of the following instruments:

- Sydney LEP 2012
- Sydney LEP (Green Square Town Centre) 2013
- Sydney LEP (Green Square Town Centre Stage 2) 2013
- Sydney LEP (Harold Park) 2011

Pre-standard Instrument LEPs:

5. Insert new subclause to apply the Clause 3.1 and Schedule 2 as described below:

“Clause 3.1 of, and Schedule 2 to, the Sydney Local Environmental Plan 2012 (to the extent that they specify development with lawful consent to operate as a retail, office, industrial premises or community facility which is a small scale cultural activity, as development exempt from consent on the basis of meeting criteria) apply to development on land to which this plan applies in the same way as they apply to development on land to which that Plan applies”.

6. The new subclause is to be inserted under:

- Part 3, Clause 16 of the Sydney LEP 2005
- Schedule 3 of the South Sydney LEP 1998
- Part 3, Clause 30 of the South Sydney LEP No. 114 (Southern Industrial and Rosebery/Zetland Planning Districts)

Creative work spaces

This amendment will allow creative and maker tenants to operate in local centres and reduce barriers for future uses. It amends the uses permitted with consent in the B2 zone to include light industrial uses so that existing and future creative and maker spaces are authorised to locate in village high streets.

Drafting instructions

Standard Instrument LEP:

1. Amend the Zone B2 Local Centre land use table to insert ‘Light Industry’ in 3 Permitted with consent.

Pre-standard Instrument LEPs:

2. Amend the Residential-Business zone to include ‘Light Industry’ as permitted with consent.
3. Include the amendment under clause 87 of the Sydney LEP 2005.

Erskineville Town Hall

The proposed LEP amendment will allow Erskineville Town Hall to extend its range of community and cultural uses, including entertainment uses such as theatre, cinema, music and dance. It will allow entertainment uses as an additional use permitted with consent.

Drafting instructions

Standard Instrument LEP:

Insert 'Entertainment facilities' as an additional permitted use with consent under Schedule 1 applying to Erskineville Town Hall (104 Erskineville Road, Erskineville being Lot 1 DP 664780 and Lot 14 DP 663317)

Part 3 - Justification

This section of the planning proposal provides the rationale for the amendments and responds to questions set out in '*A guide to preparing planning proposals*', published by the Department of Planning and Environment in December 2018.

A more diverse evening economy – late opening shops and businesses

The proposals aim to meet the targets in OPEN Sydney strategy to provide more non-alcohol based shops and businesses after 6pm, and attract a greater range of age groups and interests out at night. Providing a mix of uses and later opening times for non-food and drink uses may help attract a wider range of people out at night for different activities. It is broadly accepted that attracting a more diverse crowd at night can increase safety and surveillance, potentially reducing crime and anti-social behaviour.

Shops and businesses eligible to extend indoor trading hours for premises will contribute to the liveability, vibrancy and safety of an area, and not create noise or encourage anti-social behaviour. The category includes shops, for example those selling clothing, books, stationery and homewares, or businesses such as drycleaners, banks and hairdressers. They do not include food and drink premises, or licensed premises which sell, supply or allow the consumption of liquor on or off the premises. This is because later trading hours for these uses may have different impacts that have the potential to impact on amenity and require assessment through a development application.

The proposed provision applies to the B2 Local Centre, B3 Commercial Centre and B8 Metropolitan Centres zones, which include the city centre and local centres. In these zones, the principle and impacts of standard business hours for shop or businesses have been assessed in individual development approvals. Many of these areas include 'activity streets' or streets where most services and infrastructure are located and which are daily destinations for community, retail and commercial activity. The impact of longer trading hours and of the activation of shops and businesses on surrounding development will be minor.

The proposed requirement that there is no contravention of any existing condition of the active development consent relating to noise, car parking, loading and waste management will ensure that there are no unacceptable impacts on surrounding amenity.

The proposals will avoid imposing unnecessary regulatory costs on business owners. Later trading hours may give businesses the flexibility to choose to open

later, to participate in events and festivals and provide opportunities for people to shop at their convenience after work.

More small-scale cultural activities

The proposals aim to meet the objectives in the City's Creative City Cultural Policy to support more performance and cultural activity and review the planning controls to streamline processes for small scale and temporary live music and performance activity.

They aim to encourage the use of vacant or underused retail, office, business and community facility buildings that could host cultural events, but which are not used due to regulatory barriers which create costs and onerous requirements and discourage these temporary activities from occurring. Removing the need for development consent for temporary activities with only minor impacts, may reduce the cost and regulatory burden from operators of activities encourage more cultural activities in under-used buildings.

Application

The exempt provision will only be applied in business and industrial zones in the city, where the mixed use activity is already established. These areas include the B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 General Industrial zones.

Density, duration and frequency

To limit amenity impacts, such as noise and ensure that spaces are safe, the exempt provision will limit the capacity of exempt small scale cultural activities to 1 person per square metre of floor space and no more than 70 people in total, including staff and performers. This is considered the maximum number of patrons that can be present at a cultural activity without the need for development consent.

The provision limits how often and when the activity can happen to allow a balance between the activity and neighbour amenity and maintain the temporary nature of the activity. It allows up to a maximum of 26 days a year, and 8 days in a single month to ensure that impacts on neighbours are minimised. The provision allows a maximum of 4 consecutive days in any month which is the maximum typical run for a small theatre or arts projects. This period may assist in ensuring that have the opportunity to run to a workable schedule and remain viable.

The proposed 4 hour duration excludes set up and pack down to maximise the time available for the cultural activity. The proposed 4 hours will limit amenity impacts such as noise, and is a sufficient period to accommodate the range of activities permitted by the provision, such as performance, seminars or talks. The requirement for the activity to take place between 7am to 10pm will also ensure that any impacts on amenity are minimised.

Fire safety

The safety of events of this size can be managed when the right fire approvals are in place, so the exempt provision only permit activities to take place in office, retail, business and community facility premises with a current Annual Fire Safety Statement (AFSS). The AFSS must ensure that the proposed space can be

occupied safely for its approved base use, for example retail, office, industrial or community use, and does not apply to spaces where essential services are not up to date or functioning. This will minimise fire risk and encourage the reuse of vacant spaces, for example ground floor shops, warehouses and offices.

The exempt provision will require that small scale cultural activities only occur on the ground level of buildings to ensure that spaces are designed and approved with the appropriate fire safety measures and for an increased capacity, rather than the potential for first floor spaces that may not be appropriate or designed for that type of activity.

These proposals are supported by research commissioned by the City into fire safety measures required for the adaptation of an office, shop or warehouse building for use temporarily as a creative space. This research identifies upper occupancy, area and floor level limits to achieving a level of safety comparable to the BCA base use classes.

Amenity

So that the operation of the main use of the building is not affected and the cultural use does not involve any adverse impacts on neighbours, small-scale cultural activities will be required to comply with conditions of the active development consent for the main use of the building relating to car parking, vehicular movement, traffic generation, loading and waste management. If there is no waste condition, the provision will require that waste is removed from the premises and not placed on the public way.

The exempt provision only allows cultural activity to occur until 10pm, however to minimise impacts on neighbours criteria in the provision will require the orderly entry and egress of patrons and not detrimentally affect the amenity of the neighbourhood. The provision will require that signage be displayed in a visible place within the premises five to seven days before and during the event describing the activity and including contact details for the person operating the event. This will ensure that neighbours are aware of activities before they take place, and have a person to contact should any problems arise.

Exempt activities must provide adequate access to sanitary facilities. The constraints of some retail or industrial premises means that facilities may not be available to serve a maximum of 70 patrons attending a temporary cultural activity. Given the limited duration and temporary nature of the small scale cultural activity it is considered appropriate that shared facilities located within a reasonable distance may be utilised to serve the activity. This is appropriate as shared facilities can be approved under the *National Construction Code* for small bars and restaurants which have similar space constraints.

Amplified music may have the potential to cause impacts on neighbours, and so will only be allowed as exempt development in areas with less residential development, such as in Central Sydney or industrial and business only zones where the mixed use activity is already established. This means that amplified music will not be allowed in B4 Mixed Use zones, which includes residential development.

The provision defines amplified music and background and foreground music. Background music will be allowed outside business only zones, so that a microphone can be used and ambient music played at seminars, talks or training events where live music or performance is not the main focus.

Creative work spaces

The planning proposal aims to reduce barriers for future creative and maker spaces, which are currently classified in the Sydney LEP 2012 as light industrial uses, which are not permitted in B2 zones. The proposal to allow light industrial uses in the B2 zone will encourage a diversity of creative uses in the city's local centre areas.

Many creative and maker tenants include a shop front function. The incorporation of a retail component or shop front may increase employment opportunities in our local centres and contributes to a diverse range of services offered to local communities.

Although excluded from the B2 Local Centre zone, these light industrial uses are permissible in the majority of the City's other business zones. It is considered appropriate to include these uses in the B2 Local Centre zone because they are consistent with the objectives of the zone to encourage employment opportunities in accessible locations and provide a range of retail and business uses that serve the needs of people who live in, work in and visit the local area.

B2 zones are located on Harris Street, Pyrmont, Glebe Point Road, Glebe, Redfern Street, Redfern, Danks Street, Waterloo, Oxford Street, Darlinghurst, King Street, Newtown, Darlinghurst Road, Kings Cross, Crown Street, Surry Hills, and Defries Avenue, Zetland. The planning proposal will also amend the Business-Residential Zone on the Central Park site on Broadway, Chippendale.

The recent inclusion of artisan food and drink industry uses to the definition of Light Industry is also considered appropriate for local centres in the City of Sydney local government area.

The definition of Light Industry provides a list of considerations to reduce potential amenity impacts on the neighbourhood such as noise, vibration, smell, fumes, smoke, vapour, steam or dust which will support intended outcomes. Proposals for these uses will be assessed on a case by case basis through applications for development consent.

This proposal will encourage more creative spaces in local centres and provide certainty to cultural producers and the community about the permissibility of these uses and that any potential impacts on neighbours will be assessed through applications for consent.

Erskineville Town Hall

The proposed inclusion of entertainment uses as an additional use permitted with consent will increase the activities that may be undertaken in the town hall such as theatre, cinema, music and dance. This will better reflect the intended use of this community facility, and other town hall spaces in the city.

The inclusion of entertainment uses in Schedule 1 as an additional use permitted with consent will provide certainty that theatre, music, cinema and dance are permitted with consent and encourage the use of this space for these activities. Any potential impacts on neighbours will be assessed on a case by case basis through applications for consent.

Section A – Need for the planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

The planning proposal is a result of the *OPEN Sydney Strategy and Action Plan*, *Creative City Cultural Policy and Action Plan*, *Live Music and Performance Action Plan* and the City's *Open and Creative City Discussion Paper*. These strategies set out a vision and actions to create a city with a strong cultural life, diverse and safe night time economy and thriving live music and performance industry.

- The City's *OPEN Sydney Strategy and Action Plan* strategy forms the basis for how the City makes decisions about Sydney at night between now and 2030. The strategy includes actions for making Sydney's night-time economy better connected, more diverse, more inviting and safe, and more responsive to change. The City is committed to improving the functioning of the city at night to ensure night-time experiences are balanced with daytime activities, and are inclusive of the broader population. Achieving this is important as tourism markets, work practices and leisure patterns change. A thriving night-time economy is also an integral part of the City's social sustainability, providing an important role in social interaction and connection, and employment.
- The *OPEN Sydney Strategy* includes under Action 3.1.1 diverse options to consider policy options to encourage non-alcohol based businesses to extend their operating hours further into the evening. Action 3.1.5 proposes new uses for night-time and fine grain spaces to focus on evening-oriented activation of underutilised spaces in the city, especially from 6-10pm. Under Action 5.2 Cutting red tape to explore options within the "exempt and complying" development provisions to create a "multi-function" approval to encourage temporary, one-off or multiple events similar to a "function" licence for a one-off/multiple event or occasion, to enable businesses to provide diversity of activities within their premises.
- *Creative City Cultural Policy and Action Plan 2014-2024* supports the greater diversification of the night-time economy and details the vision and foundation principles for supporting Sydney's cultural life. It defines six strategic priorities and accompanying actions for implementation over the next 10 years, some of which address creativity in the public domain, new avenues for creative participation, sector sustainability, improving access and creating markets.

Strategic Priority 3 includes an action to review the City's planning controls to streamline approval processes for small-scale and temporary live-music and performance activity, including development of definitions for 'small to medium' live-music and performance. The action includes consideration of opportunities through the expansion of 'Exempt and Complying Development' provisions in Sydney Local Environmental Plan 2012.

1. *The Live Music and Performance Action Plan* focuses on the regulation of live music and the growth of night-time leisure and entertainment options in Sydney. The action plan commits the City to regulatory reform, advocacy, research and strategic projects across four areas: development controls and noise, National Construction Code, liquor licensing and audience and sector development.

It also includes an action to identify opportunities to streamline approval processes for small-scale and temporary live-music and performance activity,

through the Exempt and Complying Development provisions in *Sydney Local Environmental Plan 2012*.

- (1) The City's *Open and Creative City* Discussion Paper was circulated for public comment in October 2017. It proposes three separate regulatory reforms which form the basis of this planning proposal and aim to strengthen the city's cultural and night time economy. They propose to enable businesses to trade later into the night, make it easier for artists to open creative spaces, and balance the impacts of live music and performance venues.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A more diverse evening economy - Late opening shops and businesses

The planning proposal aims to amend the exempt provisions of the LEP to encourage shops in the city centre and on local high streets, in existing buildings to trade later until 10pm. Amendments to the Exempt and Complying Development SEPP which specify thresholds and criteria for the later opening shops until 10pm in specified zones, such as the B2, B3 and B8 zones, without the need for development consent would remove the need for amendments to the LEP. This would reduce the regulatory burden of local businesses wanting to open later and promote increased diversity, social connections and convenience for residents across NSW.

More small-scale cultural activities

The absence of State-wide regulatory pathways which exempt the requirement for consent for temporary cultural activities with minimal impact means that cultural producers are often required to prepare development applications for their proposals. This means that these temporary small scale cultural activities are often subject to building code requirements designed for 'entertainment uses' and much larger venues. This can be costly and time-consuming for a sector which provides significant benefits to the City but has limited financial capacity, and can mean that often small scale activities do not occur, or obtain the appropriate approvals.

While the City's proposed reforms aim to reduce barriers and encourage more small scale cultural activities to occur without development consent, far greater impacts could be achieved through changes to State Environmental Planning Policy. This could include amendments to the *SEPP Exempt and Complying Development* to include provisions which specify thresholds and criteria for the type of cultural activity that may take place in a venue, without the need for development consent. This would remove need for these provisions to be included in LEPs, reduce the regulatory burden on cultural producers and promote more small-scale cultural activities across NSW.

Erskineville Town Hall

For this amendment, three options were considered in relation to the intended outcomes. These are listed and discussed below:

Option 1: Rezone the Erskineville Town Hall site from zone B1 Neighbourhood Centre to zone SP2 Special Infrastructure

Numerous town halls and community centres in the Sydney local government area are zoned SP2 Special Infrastructure. Using the SP2 zone is consistent with the

zoning of other town halls. However, SP2 is a restrictive zone and entertainment uses would need to be assessed as incidental or ancillary to the purpose shown on the zoning map. This option would also require reclassification of the land from “operational” to “community” land and the preparation of a plan of management. It is considered that this option involves a lengthy process and that the desired outcomes could be achieved through a simpler planning approach.

Option 2: Add “entertainment facilities” to the B1 Neighbourhood Centre zone land use table

Option 2 would provide entertainment facilities uses for all land zoned B1 Neighbourhood Centre in the Sydney local government area. Neighbourhood centres have a limited ability to encourage employment opportunities, in addition to their current uses, and only have limited sites large enough to host entertainment facilities. This option may require consideration of potential impacts in relation to all impacted areas, i.e. neighbouring residential, traffic generation and pedestrian access. It is therefore not considered to be an appropriate means for facilitating the intended outcome for a specific site.

Option 3: Add a Schedule 1 Additional Permitted Use for the Erskineville Town Hall site

Option 3 is the preferred option and the most suitable pathway to achieving the desired outcome for the Erskineville Town Hall site. This option is the best means of achieving the objective to extend the range of community and cultural uses for the town hall as it will provide certainty that the intended use(s) are permitted with consent and potential impacts on residential areas surrounding neighbourhood centres can be managed through the development application process.

Section B – Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

A. Does the proposal have strategic merit?

The Eastern City District Plan prepared by the Greater Sydney Commission in March 2018 is a 20 year plan to manage growth in the context of economic, social and environmental matters. The District Plan identifies 22 planning priorities and associated actions that support a liveable, productive and sustainable future for the district. The proposals are consistent with the following planning actions from the Eastern District Plan:

Table 1 - Consistency with Eastern District Plan planning priorities

Eastern District Plan	Consistency
Liveability priority E3 – Provide services and social infrastructure to meet peoples changing needs	The proposal encourages the provision of services and social infrastructure such as later opening shops, cultural and creative uses in areas across the city centre and in high streets.
Liveability priority E4 - Fostering healthy, creative, culturally rich and socially connected communities	The proposals seek to facilitate opportunities for creative and artistic expression and participation in socially connected communities, with a

	minimum regulatory burden and to encourage a diversity of approaches to revitalise high streets.
Productivity priority E7 - Growing a stronger and more competitive Harbour CBD	The proposal strengthens the competitiveness of the Harbour CBD by matching the cultural and creative offer with the needs of a changing and growing population. It encourages later opening shops, cultural and creative uses in areas across the city centre and in high streets in Surry Hills and Darlinghurst, Potts Point and Kings Cross.
Productivity priority E8 - Growing and investing in health and education precincts and the innovation corridor	The proposal encourages later opening shops, cultural and creative uses in areas across the city centre and in high streets in Camperdown, Redfern, Pyrmont-Ultimo and Chippendale to support the worker and resident populations in the innovation corridor.
Productivity priority 11 - Growing investment, business opportunities and jobs in strategic centres	The proposal encourages later opening shops, cultural and creative uses in areas across the city centre and in high streets to support the worker and resident populations in the innovation corridor in the Green Square – Mascot strategic centre.

B. Does the proposal have site-specific merit?

Allowing later opening shops until 10pm without development consent in the city centre and on high streets will utilise existing infrastructure and services in the B2, B3 and B8 zones with established retail character.

In these zones, the principle and impacts of each use have already been assessed in individual development approvals. These premises, for example those selling clothing, books, stationery and homewares, or businesses such as drycleaners, banks and hairdressers contribute to the liveability, vibrancy and safety of an area, do not create noise or encourage anti-social behaviour. They are located in existing commercial areas where given the nature of the uses and the times permitted, it is considered that any environmental impact of longer trading hours and of the activation of these frontages on surrounding development will be minimal.

As the provisions to encourage more temporary small scale cultural activities meeting specified criteria to occur without the need for development consent, would only apply to existing buildings approved for office, retail, business or community use, it is unlikely that there will be any service or infrastructure demands arising from the proposal or impact on existing or future uses of land in the vicinity. The criteria limiting the size and extent of the use will ensure that environmental impacts from these temporary uses are minimal, and that there are no impacts on services or local infrastructure.

Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Sustainable Sydney 2030

Sustainable Sydney 2030 (SS 2030) provides the vision for sustainable development in the City of Sydney local government area to 2030 and beyond. It includes 10

strategic directions for a 'green', global and connected city of Sydney and sets targets, objectives and actions to achieve that vision.

Through the proposals to allow shops to open later up to 10pm and small-scale cultural uses as exempt development, the planning proposal gives effect to the SS2030 strategic directions outlined in Table 2.

Table 2 - Consistency with Sustainable Sydney 2030 Strategic Directions

SS2030 Strategic Direction	Consistency
Strategic Direction 1 – A globally competitive and innovative city	Consistent. Extending night time shop trading until 10pm and encouraging more small scale cultural activities in existing buildings encourages a diverse late night time offering consistent with the City's vision and community's expectation for a global city.
Strategic Direction 2 – A leading environmental performer	Consistent. The additional use of existing shops, business and community facilities for temporary cultural activities utilises existing infrastructure and reduces the need for new built space in the city..
Strategic Direction 5 – A lively and engaging city centre	Consistent. Allowing shops to open until 10pm and enabling a range of small scale cultural activities without the requirement for development consent will encourage a livelier and more engaging city centre and high streets and diversify the night-time offering in across the city.
Strategic Direction 6 – Resilient and inclusive local communities	Consistent. The proposals will enable a diverse range of businesses to operate while managing potential adverse impacts on local neighbourhoods. This will support local economies that support both housing and job opportunities.
Strategic Direction 7 – A cultural and creative city	Consistent. The proposals encourage small scale cultural activities including performance, creative and activities.
Strategic Direction 8 – Housing for a diverse community	Consistent. The proposals will ensure that future housing and venues are appropriately located to meet the needs of a diverse and growing population of workers, residents and visitors.
Strategic Direction 9 – Sustainable development, renewal and design	Consistent. The proposals encourage small scale cultural activities including performance, creative and activities. These activities encourage people to participate in social, civic and cultural life, which in turn promotes community health and wellbeing.

City Plan 2036: City of Sydney Local Strategic Planning Statement

City Plan 2036: City of Sydney Local Strategic Planning Statement (LSPS) sets out a 20-year land use vision for the city through local planning priorities and actions. It gives effect to and links the Greater Sydney Commission's Region and District Plans to Sustainable Sydney 2030 with the City's local planning controls. It will also guide the review of the City's planning controls, inform decisions about infrastructure and

set out how we will collaborate with relevant stakeholders in planning for the city's liveability, productivity and sustainability.

The planning proposal gives effect to the following LSPS local priorities and actions as outlined in Table 3.

Table 3 - Consistency with Local Strategic Planning Statement Local Priorities

LSPS Local Priority	Consistency
Local Priority I1 – Movement for walkable and liveable neighbourhoods and a connected city	Consistent – The planning proposal encourages more walkable neighbourhoods by allowing later trading of neighbourhood shops provide increased diversity, social connections and convenience
Local Priority I3 – Supporting community wellbeing with infrastructure	Consistent – The planning proposal will increase the permissibility of cultural and community uses at Erskineville Town Hall and extend retail opportunities for creative maker spaces in the B2 zone in local centres.
Local Priority L1 – A creative and socially connected city	Consistent - The planning proposal responds to action L1.8 and seeks to remove barriers that inhibit cultural and creative uses from occurring in existing buildings and support performance venues by reducing uncertainty and complexity. It encourages no net loss of creative, arts, cultural or performance space as required by action L.1.5. It also encourages later trading of neighbourhood shops to increase diversity, social connections and convenience.
Local Priority L2 – Creating great places	Consistent – Allowing later opening shops as exempt development may increase opportunities for businesses and service to provide the daily needs of local communities within an easy walking distance and is consistent with action L2.1.
Local Priority P1 – Growing a stronger, more competitive Central Sydney	Consistent – The planning proposal responds to the LSPS Action P1.2 by encouraging an appropriate mix of land uses including a range of retail, cultural, entertainment, live music and performance activities while maintaining appropriate amenity for sensitive uses including residential. Enhancing the night-time economy also supports employment growth, consistent with Action P1.1.
Local Priority P2 – Developing innovative and diverse business clusters in the Sydney Fringe	Consistent – The planning proposal responds to Action P2.4 in enabling lively and thriving village economies by supporting a wide range of entertainment, live music and performance, retail, creative maker spaces and night time options. It also responds to Action P2.6 by protecting and enhancing entertainment, arts, performance and cultural role of areas and high streets, including those within the Eastern Creative Precinct.
Local Priority P3 – Protecting industrial and urban services in the Southern Enterprise Area and evolving businesses in the Green Square-Mascot Strategic Centre	Consistent – The planning proposal responds to Action P3.1c by supporting growth of cultural activities and enterprise uses in appropriate

	locations in the Green-Square Mascot Strategic Centre.
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Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The consistency of the planning proposal with applicable State Environmental Planning Policies (SEPPs) and Regional Environmental Plans (deemed SEPPs) is outlined in Table 3 below.

Table 4 - Consistency with applicable State Environmental Planning Policies

State Environmental Planning Policy (SEPP)	Comment
SEPP No 1—Development Standards	Consistent – The planning proposal will not contradict or hinder application of this SEPP.
SEPP No 19—Bushland in Urban Areas	Not applicable.
SEPP No 21—Caravan Parks	Not applicable.
SEPP No 33—Hazardous and Offensive Development	Not applicable.
SEPP No 36—Manufactured Home Estates	Not applicable.
SEPP No 44—Koala Habitat Protection	Not applicable.
SEPP No 47—Moore Park Showground	Not applicable.
SEPP No 50—Canal Estate Development	Not applicable.
SEPP No 55—Remediation of Land	Consistent – The planning proposal does not propose to rezone land. The planning proposal will not contradict or hinder the application of this SEPP.
SEPP No 64—Advertising and Signage	Consistent – The planning proposal will not contradict or hinder application of this SEPP.
SEPP No 65—Design Quality of Residential Flat Development	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP No 70—Affordable Housing (Revised Schemes)	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP No 71—Coastal Protection	Not applicable.
SEPP (Aboriginal Land) 2019	Consistent - The planning proposal will not contradict or hinder the application of this SEPP.
SEPP (Affordable Rental Housing) 2009	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Building Sustainability Index: BASIX) 2004	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Coastal Management) 2018	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Concurrences) 2018	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Educational Establishments and Child Care Facilities) 2017	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Exempt and Complying Development Codes) 2008	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Gosford City Centre) 2018	Not applicable.
SEPP (Housing for Seniors or People with a Disability) 2004	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Infrastructure) 2007	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (State Significant Precincts) 2005	Consistent - The planning proposal will not contradict or hinder application of this SEPP.

State Environmental Planning Policy (SEPP)	Comment
SEPP (Sydney Region Growth Centres) 2006	Not applicable.
SEPP (Infrastructure) 2007	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Kosciuszko National Park— Alpine Resorts) 2007	Not applicable.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Not applicable.
SEPP (Miscellaneous Consent Provisions) 2007	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Rural Lands) 2008	Not applicable.
SEPP (Western Sydney Parklands) 2009	Not applicable.
SEPP (Western Sydney Employment Area) 2009	Not applicable.
SEPP (Kurnell Peninsula) 1989	Not applicable.
SEPP (Penrith Lakes Scheme) 1989	Not applicable
SEPP (Urban Renewal) 2010	Not applicable.
SEPP (Sydney Drinking Water Catchment) 2011	Not applicable.
SEPP (State and Regional Development) 2011	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Three Ports) 2013	Not applicable
Regional Environmental Plan (REP)	Comment
Sydney REP No 9—Extractive Industry (No 2—1995)	Not applicable.
Sydney REP No 16 – Walsh Bay	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
Sydney REP No 20—Hawkesbury- Nepean River (No 2—1997)	Not applicable.
Sydney REP No 24—Homebush Bay Area	Not applicable.
Sydney REP No 26 – City West	Not applicable
Sydney REP No 30—St Marys	Not applicable.
Sydney REP No 33—Cooks Cove	Not applicable.
Sydney REP (Sydney Harbour Catchment) 2005	Consistent - The planning proposal will not contradict or hinder application of this SEPP.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The Planning Proposal has been assessed against each Section 9.1 Direction. The consistency of the Planning Proposal with these directions is shown in Table 4.

Table 4 - Consistency with applicable Ministerial Directions under Section 9.1

No.	Title	Comment
1. Employment and Resources		
1.1	Business and Industrial Zones	Consistent. The planning proposal supports employment growth and the viability of the city's night time economy, including in identified centres.
1.2	Rural Zones	Not applicable
1.3	Mining, Petroleum Production and Extractive Industries	Not applicable
1.4	Oyster Aquaculture	Not applicable

1.5	Rural Lands	Not applicable
2. Environment and Heritage		
2.1	Environment Protection Zones	Consistent. The planning proposal does not affect environmentally sensitive areas.
2.2	Coastal Protection	Not applicable
2.3	Heritage Conservation	Consistent. Small-scale cultural activities and late opening shops will not be exempt development if it is on land containing a heritage item, within a heritage conservation area or special character area. Provisions relating to entertainment sound management do not contradict with provisions relating to heritage conservation.
2.4	Recreation Vehicle Areas	Consistent. The planning proposal does not relate to a recreation vehicle area.
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable
3. Housing Infrastructure and Urban Development		
3.1	Residential Zones	Consistent. The planning proposal allows for residential amenity to be balanced with diverse evening options including cultural uses, live music, entertainment and retail activities.
3.2	Caravan Parks and Manufactured Home Estates	Consistent. The planning proposal does not relate to caravan parks or manufactured home estates.
3.3	Home Occupations	Consistent. The planning proposal does not relate to home occupations.
3.4	Integrating Land Use and Transport	Consistent. The planning proposal will not affect integrated land use and transport.
3.5	Development Near Licensed Aerodromes	Consistent. The planning proposal will not affect licensed aerodromes.
3.6	Shooting Ranges	Consistent. The planning proposal will not affect licensed aerodromes.
4. Hazard and Risk		
4.1	Acid Sulfate Soils	Consistent. The planning proposal will not affect acid sulfate soils.
4.2	Mine Subsidence and Unstable Land	Consistent. The planning proposal does not affect provisions relating to mine subsidence and unstable land.
4.3	Flood Prone Land	Consistent. The planning proposal does not affect provisions relating to flood prone land.
4.4	Planning for Bushfire Protection	Consistent. The planning proposal does not relate to bushfire prone land.
5. Regional Planning		
5.1	Implementation of Regional Strategies	Consistent. The planning proposal will not affect implementation of regional strategies.
5.2	Sydney Drinking Water Catchments	Not applicable
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.8	Second Sydney Airport, Badgerys Creek	Not applicable
5.9	North West Rail Link Corridor Strategy	Not applicable
5.10	Implementation of Regional Plans	The planning proposal will not affect implementation of regional plans.

6. Local Plan Making		
6.1	Approval and Referral Requirements	Consistent. The planning proposal does not include any concurrence, consultation or referral provisions nor does it identify any development as designated development.
6.2	Reserving Land for Public Purposes	Consistent. The planning proposal will not affect reservation of land for public purposes.
6.3	Site Specific Provisions	Consistent. The planning proposal does not include site specific provisions.
7. Metropolitan Planning		
7.1	Implementation of A Plan for Growing Sydney	Consistent. The planning proposal is consistent with this direction and does not hinder the implementation of A Plan for Growing Sydney or the Greater Sydney Region Plan (A Metropolis of Three Cities)
7.2	Implementation of Greater Macarthur Land Release Investigation	Not applicable
7.3	Parramatta Road Urban Transformation Strategy	Not applicable
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not applicable
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable

Section C – Environmental, social and economic impact

Q7. Is there any likelihood that critical habitat or threatened species, populations, or their habitats, will be adversely affected as a result of the proposal?

The planning proposal is unlikely to adversely affect any critical habitat or threatened species, populations or ecological communities or their habitats.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

It is unlikely that the proposed amendments will result in development creating any environmental effects that cannot be readily controlled.

The proposal ensures minimal noise impacts from small scale cultural events on surrounding community and businesses by only allowing exempt activities to have amplified music only if they occur in areas with less residential development, such as in Central Sydney or industrial and business only zones. The proposal through the setting of criteria which restricts patronage, hours of operation until 10pm and frequency per week, month and year will limit the impacts of noise from the operation of the event even if there is no amplified music.

The proposal for later opening shops and businesses are proposed on existing high streets or Central Sydney or commercial only zones where later trading is considered appropriate. These land use zones already provide a range of commercial, business and retail uses to service a wide catchment area. They also include cultural and civic land uses that fit with the character of the local area, as well as some residential dwellings.

Q9. Has the planning proposal adequately addressed any social and economic effects?

The planning proposal responds to issues raised by the community in early consultation about the cultural and night time economy in the city. The provisions aim to encourage more diverse social and cultural activities at night to match the needs of a growing and changing population. They aim to balance the different needs of the community and business, by encouraging a diversity of smaller scale cultural events and later opening shops in suitable locations and without less regulatory burden.

The proposals supports the city's night time and cultural sectors which are worth \$4.1 billion and \$1.4 billion respectively. Increasing and diversifying nightlife in the City may strengthen Sydney's global competitiveness and economic output, by creating more jobs and tourism, attracting longer hotel stays and the long term retention of younger people in the economy.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

Yes. The planning proposal is unlikely to result in additional development capacity that would affect the demand on infrastructure currently planned for.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

In the preparation of the planning proposal, the City has consulted or used information from the following relevant state and commonwealth public authorities:

- Department of Planning, Industry and Environment
- NSW Environmental Protection Authority (EPA)
- Create NSW
- Liquor and Gaming NSW
- NSW Police
- Australian Prudential Regulation Authority (APRA)
- NSW Night Time Economy Taskforce
- NSW Health Alcohol and other Drug Prevention and Harm Minimisation team

Further consultation with relevant public authorities, including but not limited to the above, will be undertaken during public exhibition as required. This may include further consultation with the Department of Planning, Industry and Environment in relation to the *Night Time Economy Round Table Action Plan 2016* and Guide for Establishing and *Managing Night Time Economy Uses*.

Part 4 - Community Consultation

Public Exhibition

This planning proposal is to be exhibited in accordance with the Gateway Determination once issued by the Minister for Planning or delegate. It is anticipated for the Gateway Determination to require a public exhibition for a period of not less than **28 days** in accordance with Section 6.5 of *A guide to preparing Local Environmental Plans*.

Notification of the public exhibition will be via:

- the City of Sydney website
- newspapers that circulate widely in the area

Information relating to the planning proposal will be made available online and at all City of Sydney customer service centres, where possible.

Part 5 – Indicative Project Timeline

The anticipated timeframe for the completion of the planning proposal is as follows:

Action	Indicative Timeframe
Submission for Gateway determination	July 2020
Gateway determination	September 2020
Public Exhibition	September-October 2020
Consideration of submissions	November 2020
Post exhibition consideration of proposal	December 2020
Draft and finalise LEP	January 2021
LEP made (if delegated)	February 2021
Plan forwarded to the Department of Planning, Industry and Environment for notification	February 2021

Appendix 1 – Open and Creative City Planning Reforms

The report to the Transport, Heritage and Planning Committee on 23 March 2020 on the Open and Creative City Planning Reforms, and the Resolution of Council, will be inserted once determined by Council.

Attachment B

**Draft Sydney Development Control Plan:
Open and Creative Planning Reforms**

Draft Sydney Development Control Plan: Open and Creative Planning Reforms

City of Sydney
Town Hall House
456 Kent Street
Sydney NSW 2000

May 2020



Contents

The purpose of the Development Control Plan	2
Citation.....	2
Land covered by this Plan	2
Relationship of this Plan to other Development Control Plans	2
Schedule 1: Amendment to Sydney Development Control Plan 2012 Small scale and other cultural activities	4
Schedule 2 Amendment to Sydney Development Control Plan 2012 Entertainment sound management.....	10
Appendix A: Sydney Development Control Plan 2012 Entertainment Sound Management Map	28

The purpose of the Development Control Plan

- 1) The purpose of this Development Control Plan (DCP) is to amend various development control plans applying to the City of Sydney local government area by inserting provisions that:
 - a) define small scale cultural and performance activities
 - b) outline thresholds of activity for small scale cultural and performance activities which are considered to be low impact
 - c) outline the matters to be addressed in Plans of Management for cultural activities
 - d) provide guidance on alternative solutions for small scale cultural activities to meet the *National Construction Code*
 - e) outlines sound management requirements for new entertainment sound-generating development
 - f) outlines sound management requirements for new development that may be affected by entertainment sound
 - g) outlines the methodology and matters to be addressed in a Noise Impact Assessment submitted with development applications for entertainment sound-generating uses, or noise-sensitive uses which may be affected by an existing adjacent sound-generating development
 - h) includes new maps identifying land that may be affected by entertainment sound and the criteria for acceptable sound levels that must be met by development.

Citation

- 2) This amendment may be referred to as *Sydney Development Control Plan 2012: Open and Creative Planning Reforms*.

Land covered by this Plan

- 3) This amendment applies to the City of Sydney Local Government area.

Relationship of this Plan to other Development Control Plans

- 4) This plan amends *Sydney Development Control Plan 2012* as follows:
 - a) At the end of section 4.4 - insert new section 4.4.X *Small scale and other cultural activities* containing new objectives, definitions and provisions as shown at Schedule 1
 - b) Amend section 4.2.3.11 'Acoustic privacy' and insert a new section 3.18 'Entertainment sound management' under General Provisions as shown at Schedule 2.
 - c) Includes new Entertainment Sound Management maps 1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23 and 24 in Appendix A to show land that may be affected by entertainment sound or high levels of entertainment activity.

- 5) This plan amends the *Green Square Town Centre Development Control Plan 2012* as follows:
- a) Include a new section '*Small scale and other cultural activities*' in section GSTC 12 'Other Development Types and Uses' to include the following text:

In accordance with clause 3.43(3) of the Environmental Planning and Assessment Act 1979 this Development Control Plan adopts the provisions of the Sydney Development Control Plan 2012 in sections 4.4.X Small scale and other cultural activities
 - b) Include a new provision on GSTC 6.10.8 'Acoustic and Visual Privacy' to include the following text:

In accordance with clause 3.43(3) of the Environmental Planning and Assessment Act 1979 this Development Control Plan adopts the provisions of the Sydney Development Control Plan 2012 in section 3.18 'Entertainment sound management' and Entertainment Sound Impact Assessment Schedule.
- 6) This plan amends the *Harold Park Development Control Plan 2011*, as follows:
- a) Include a new section '*Small scale and other cultural activities*' in Section 5 'Building Use, Form and Design' to include the following text:

In accordance with clause 3.43(3) of the Environmental Planning and Assessment Act 1979 this Development Control Plan adopts the provisions of the Sydney Development Control Plan 2012 in sections 4.4.X Small scale and other cultural activities
 - b) Include a new provision in section 5.9 'Acoustic Privacy' to include the following text

In accordance with clause 3.43(3) of the Environmental Planning and Assessment Act 1979 this Development Control Plan adopts the provisions of the Sydney Development Control Plan 2012 in section 3.18 'Entertainment sound management' and Entertainment Sound Impact Assessment Schedule.

Schedule 1: Amendment to Sydney Development Control Plan 2012 Small scale and other cultural activities

[1] Amendment to section 4.4 'Other development types and uses.'

4.4.X Small scale and other cultural activities

This section guides the provision of temporary small-scale and other cultural activities in the city, to provide social and economic benefits for residents, workers and visitors and meet the community's expectations for a vibrant, diverse and evolving cultural life.

These activities involve making or presenting creative content such as film, music, art, craft or performance. They may be irregular or one-off events held in adapted spaces on a small-scale or regular activities in permanent venues, theatres, galleries or entertainment spaces.

Advice on fire safety upgrades

The *National Construction Code* (NCC) and NSW land use planning definitions do not address the potential range and unique characteristics of creative uses. Despite their size and sometimes temporary nature, these uses can be classified as entertainment or Class 9b of the NCC, which is characterised by much larger uses with greater impacts. Imposing the requirements for a Class 9b space to small and often temporary creative spaces can result in onerous fire and safety provisions.

Council has prepared technical guidelines to outline alternative solutions for fire safety and building compliance standards for cultural activity taking place in existing building spaces less than 500 square metres. These include a checklist of specifications which address floor space, occupancy, travel distances between exits, exit capacities, stage size, sanitary provision and nature of stairways and ramps.

This checklist may assist operators in choosing the right types of buildings and ensure that minimal, if any works need to be done to make them suitable, while maintaining compliance with the fire safety and building requirements under the NCC and the *Environmental Planning and Assessment Act 1979*. Certifiers will be responsible for deciding whether a proposal complies with the National Construction Code.

In determining a development application for small scale cultural activities Council will take into account any measures implemented in accordance with the *Technical Guidelines for Small Scale Cultural Activities in Spaces Less than 500 Square Metres* when considering clauses 93 and 94 of the *Environmental Planning and Assessment Regulation 2000*.

Note

Notwithstanding the above, these guidelines do not override the Council's statutory obligations to ensure fire protection and structural capacity in proposals for changes of use or alterations of buildings under clauses 93 and 94 of the Environmental Planning and Assessment Regulations 2000. The Technical Guidelines will be considered in the assessment of applications, however there may be situations where they will not be applicable due to unacceptable levels of fire risk.

Definitions

Small scale cultural activities include:

- (a) live entertainment, (being an event at which one or more persons are engaged to play or perform live or pre-recorded music, or a performance at which at least some of the performers are present in person), including the presentation or rehearsal of music, film, theatre, spoken word, comedy or dance, or
- (b) the production or an event in association with an exhibition of art, craft, design, media, image or immersive technology, or
- (c) teaching or discussion related to (a) or (b).

Amplified sound means sound which is generated, provided or aided through the use of any electrically powered device. This includes but is not limited to the following: use of a public address system, bullhorn/megaphone, loudspeaker or any speaker or subwoofer, power amplifier, stereo system. It includes both background music and foreground music.

Background music means pre-recorded music played through no more than two electrically amplified speakers, which is intended as an accompaniment rather than the main focus of an audience/event. Background music is played at a soft, low volume/low amplification level which does not require persons to elevate their voices to hold conversations. It is not audible within any separate premises and does not create nuisance.

Foreground music or sound means any music or sound, amplified or not, which is directly played as a primary source of entertainment, or focus of entertainment to people who are attending an activity.

Objectives

- (a) To provide guidance for the provision of small scale cultural and performance activities in existing and new buildings where amenity impacts are managed according to scale and risk.
- (b) Manage impacts of small scale cultural and performance activities on the amenity of the surrounding area.

Provisions

Guidance for low impact small scale cultural activities

The following guidance is provided to assist operators in understanding the suitability of building spaces for small-scale cultural and performance events. Criteria is included to demonstrate the thresholds of activity which the Council considers to result in minimal impacts.

If an operator can demonstrate in a development application that the following criteria are satisfied, the Council's assessment may focus on the site specific impacts of the proposal on neighbourhood amenity, such as sound generation.

- (1) Development applications for small scale cultural activities which meet the following criteria will be considered to be low impact. The activity:

- (a) Accommodates less than 120 patrons
- (b) Occurs in a building with an operative development consent or other legal entitlement to operate as a retail, office, industrial premises or community facility
- (c) Occurs in a building with a current annual fire safety statement which enables occupation of the building for its current approved use
- (d) Complies with the alternative technical solutions to the *National Construction Code*.
- (e) Occurs no more than 52 days a year, no more than 8 days a month, or 4 consecutive days a month
- (f) Is no longer than 4 hours in duration, excluding set up and pack down
- (g) Finishes no later than 10pm if in a B2 Local Centre or B4 Mixed Use zone
- (h) Finishes no later than midnight if in a B3 Commercial Core, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 General Industrial zone
- (i) Does not include amplified music, but may include background music and the use of a microphone for the duration of the event
- (j) Includes the supply of alcohol subject to a liquor license or caterers authorisation
- (k) Provides adequate access to sanitary facilities. Where access is provided off site, this does not impact the amenity of separate noise sensitive locations
- (l) Is subject to a Plan of Management which manages potential impacts on adjoining and surrounding land uses in accordance with the section XX below.

Guidance for other cultural activities

The following guidance is provided for other cultural activities which do not meet the low impact criteria in XX above.

Development applications for these cultural activities will be assessed taking into account a number of issues, which may include but are not limited to the:

- (a) location and context of the premises where the cultural activity will be held, including the provision of facilities for the event and proximity to residential and other sensitive land uses
- (b) specific nature of the cultural event, its patronage, programming and entertainment, liquor licensing and duration
- (c) likely impact on the amenity of surrounding sensitive land uses and the ability

to manage these impacts. This may include, but not be limited to, the impact of amplified sound and sound from set up and pack down of the event

- (d) likely impacts arising from the opening and closing time of the event and patron arrival and dispersal on local amenity, local businesses, night time vibrancy and safety
- (e) measures to be used for ensuring adequate safety, security, waste management and crime prevention both on the site of the premises and in the public domain immediately adjacent to, and generally surrounding, the premises
- (f) accessibility and frequency of public transport during the operation of the event to ensure the efficient and safe movement of people and minimise impacts on local amenity
- (g) submission of a Plan of Management that includes measures for the good management of the event, particularly in relation to managing potential impacts on adjoining and surrounding land uses and premises, as well as the public domain.

Plans of Management for cultural activities

Plans of Management are to include information about the operational and contextual aspects of a premises which hosts a cultural activity and the actions that will be taken to ensure that premises will be responsibly managed, for example, crowd control procedures, noise minimisation and waste management.

This will ensure that operators have considered and addressed any potential impacts that may arise from their event. It is the responsibility of the operator to facilitate a well-managed premises and display sensitivity about the impact of the premises on the liveability of neighbourhoods.

- (1) Where the Council is of the opinion that proposals for cultural activities have the potential to impact adversely on amenity and neighbourhood safety, applicants may be required to prepare and submit with their application a Plan of Management to ensure that it operates with minimal impact on adjoining owners and occupiers. A Plan of Management should be accompanied by a signed declaration from the operator that they have read and understood the Plan of Management.

The Plan of Management should include details of:

- (a) the name and contact details of the operator
- (b) the times and days during which events are to occur
- (c) an emergency contact and address details for medical service, hospital, and police, in addition to emergency call triple zero "000"
- (d) the music, visual, performance, creative and cultural events that may be staged at the premises

- (e) the primary use of the premises as well as any secondary/ancillary uses. This shall include a floor and/or site plan that indicates the use of all areas within the building or site
- (f) the capacity of the space to host the small scale cultural activities including the location and dimensions the space, any stage and audience (standing or seating area) and equipment to present the cultural activity
- (g) the proposed operating hours for each day of the week for the small scale cultural activities at the premises
- (h) the maximum capacity of the premises and the maximum number of patrons that will be standing and/or sitting at the event any one time. The maximum capacity of specific areas of the premises should be updated to reflect fire safety requirement upon the issue of a construction certificate and the final Plan of Management submitted to the Council prior to the issue of an occupation certificate
- (i) the proximity of external doors, windows and other openings to residential and other sensitive land uses shown on a floor plan. The plan should also indicate the proposed layout of all areas of the premises and the location of waste storage areas, air conditioning, exhaust fan systems and security alarms
- (j) the staffing arrangements with the assigned duties of personnel for the event, including the number of staff to employed per patrons, security and the location or 24 hour contact details of any on-site manager, off-site manager or who has overall responsibility for the operation, administration, cleanliness, maintenance and fire safety of the premises
- (k) adequate provision for sanitary facilities at the small-scale or other cultural event
- (l) any liquor licenses to be utilised at the premises
- (m) any food service delivered through a catering authorisation, or an approved development consent for the preparation and service of food and drink on the premises
- (n) compliance for any food and/or drink service with the requirements of the Food Act 2003 and Food Standards Code
- (o) a policy that describes the measures to minimise harm associated with alcohol consumption to ensure the responsible service of alcohol (if it is served)
- (p) all likely sound and vibration sources associated with the operation of the premises. This may include such sources as:
 - live performance and amplified sound; including the location of speakers and PA system and the wattage of amplification and any noise limiting devices to be installed
 - background music
 - external areas such as courtyards, rooftops, balconies etc;
 - patrons leaving and entering the premises;

- waste disposal, sorting and collection of bottles
 - ancillary equipment supporting the event e.g. generators, refrigerated shipping containers, air compressors or lighting stacks
- (q) all sound and vibration management and attenuation measures related to the use and operation of the premises
- (r) signage that is to be erected providing advice to patrons to maintain quiet and order when leaving and entering the premises
- (s) signage detailing the nearest transport options for patrons leaving the event
- (t) measures that will be taken to ensure that any queuing is controlled in a manner that will not adversely impact the amenity of the neighbourhood and that the footpath will not be unreasonably impeded
- (u) a waste management plan that outlines the procedures for minimising and managing waste that is generated by the premises. This should address such matters as disposal of bottles, how and when waste will be removed, details of waste management facilities, waste collection and storage areas
- (v) procedures for notifying neighbours about the nights when the event(s) will be held, including signage and/or letterbox drops advising of:
- the event name, including a description of the nature of the event, commencement, duration, and
 - completion date the name and telephone number for contacting the person responsible for the event at all hours during which the premises is operating.
- (w) all actions that will be taken to respond to complaints made about the operation of the premises
- (x) procedures for addressing complaints and a complaints register for identifying issues that have caused disturbance to the neighbourhood.

Schedule 2 Amendment to Sydney Development Control Plan 2012 Entertainment sound management

[1] Amendment to Section 3 'General Provisions.' New section 3.18 Entertainment sound management.

Successful global cities possess a strong cultural life and economy. As Australia's global city, Sydney is home to a diverse range of uses including commercial, retail, housing, cultural, creative entertainment, and community uses.

The provisions in this Section apply to:

- all new development that includes an entertainment sound-generating activity
- alterations and additions to an existing development with entertainment sound-generating activity that is likely to increase the impact of entertainment sound to surrounding development; and
- all new sensitive development on land that may be affected by entertainment sound.

Applicants for alterations and additions to an existing sensitive development on land that may be affected by entertainment sound may also choose to apply the provisions for new sensitive development in this Section (refer to Section 3.18.2(6)).

These provisions must be read in conjunction with other relevant acoustic management requirements, standards, guidelines and policies relating to other types of sound and vibration, including mechanical, traffic and construction noise.

These provisions must also be read in conjunction with any applicable heritage considerations under Section 3.9 of this DCP, Schedule X.X (Entertainment Sound Impact Assessment Schedule).

Objectives

- (a) Preserve and support the vibrant character of areas with strong traditions of entertainment, live music and performance; and
- (b) Protect the community from potential adverse impacts of unacceptable levels of entertainment sound.

Definitions

Acceptable Sound Level refers to the relevant noise criteria, either primary or secondary depending on whether there is a common wall between an entertainment sound-generating activity and the affected sensitive development.

Broadband weighting relates to the weighting applied to instrument-measured sound levels to account for the way in which the ear responds to different frequencies of sound. In this context, the frequency weighting is specified as a suffix to decibels:

- **A-weighting/s** (represented as dB(A)) are measurement readings adjusted to mid-range frequencies so that low and very high frequencies, of which the ears are less sensitive to, are given less weight than on the standard decibel scale.
- **C-weighting/s** (represented as dB(C)) are measurement readings adjusted to suit low and high frequency sound levels (e.g. bass sound). For example, the C-weighting filters the sound the microphone picks up in the sound level

meter, used more in development with entertainment sound-generating activity.

Decibels (dB) is a measurement of sound intensity over the standard threshold of hearing.

Entertainment sound-generating activity means performance or activity including live entertainment, musical, film, rehearsal or performance, theatrical, comedy or dance performance that uses live or recorded music provided for the entertainment of patrons in the following premises:

- an entertainment facility,
- a pub or registered club,
- a restaurant or café, or
- a small bar.

Note: Entertainment sound-generating activity does not include small-scale cultural uses as defined in Schedule 2 (Exempt development) of Sydney LEP 2012.

Entertainment Sound Impact Assessment Schedule refers to *Schedule X.X of Sydney DCP 2012*.

Existing entertainment sound-generating activity means entertainment sound-generating activity defined in this Section that:

- was approved or commenced prior to lodgement of the proposed sensitive development, or
- was approved or commenced before the commencement of this Plan.

Existing sensitive development means sensitive development defined in this clause that:

- was approved or erected prior to commencement of the relevant new entertainment sound-generating activity, or
- was approved or erected before the commencement of this Plan.

Habitable room means a room that is intended for occupation and normal domestic activities, including:

- Includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room, home theatre and sunroom
- Excludes any other space not specified above of a specialised nature not occupied frequently or for extended periods including a bathroom/water closet, balconies, laundry, pantry, walk-in wardrobe, corridor, lobby, and clothes-drying area.

High activity area is comprised of land that is likely to be affected by entertainment sound given strong traditions of night-time activity, entertainment, live music and/or performance and ground-level activation. These areas include areas within Late Night Management areas and those within the vicinity of existing premises with an entertainment sound-generating activity, as mapped in the Entertainment Sound Management Map.

L_{[A or C]eq,15 min} means the A or C weighted equivalent continuous sound levels with a 15-minute measurement period. In this context, L_{eq} is the descriptor used to represent or measure all noise levels, which vary over the relevant period of

measurement (15 minutes) into a single average exposure level. It is as defined in the relevant Australian Standard.

Low activity area is an area that predominantly has low levels of exposure to entertainment sound or with low activation at the ground level. In the city context, these areas typically include areas that are mostly residential in character, outside of Late Night Management areas or in the vicinity of an existing entertainment sound-generating activity. These areas refer to land not identified in the Entertainment Sound Management Map.

Low frequency noise refers to bass sound commonly coming from amplified music and bass, fans, boilers and pumps, electrical substations and aircrafts. In the context of this section, low frequency noise is scientifically indicated as a frequency range 20 to 250 Hz – Hertz being the unit of measure representing ‘cycles per second’.

Noise includes sound and vibration.

Primary design criteria refers to the acceptable sound levels that must be achieved by development where these provisions apply:

- **Primary design criteria for development with entertainment sound-generating activity** (e.g. venues) are defined as external limits, measured as ‘free field’ at the worst affected location on or within the site boundary. Upper level receiver locations are to be assessed at any accessible location or at 1 m from the building façade with a 2.5 dB correction. Further guidance on assessment locations is provided in the *Entertainment Sound Impact Assessment Schedule*.
- **Primary design criteria for development on land that may be affected by entertainment sound** is the acceptable internal entertainment sound level that must be achieved within relevant areas of a development on land that may be affected by entertainment sound, taking into account the operation of any existing entertainment sound-generating activity in the vicinity.

Rating Background Noise Level (RBL) represents the background noise level to be used for assessment purposes. It is as described by the NSW EPA *Noise Policy for Industry* and may be described as a broadband noise level with accompanying frequency data in 1/1 of 1/3 octaves.

Secondary design criteria refers to the sound levels that must be achieved by development with an entertainment sound-generating activity with an adjoining receiver that may be affected by sound transfer via the common partition. This is an internal criteria applied to the internal transmission path, assessed with windows/doors closed. When background noise levels are to be measured, ventilation is to be set on the lowest setting that meets ventilation requirements.

Sensitive development means development on land that may be affected by entertainment sound, including:

- Residential accommodation (excluding hostels);
- Tourist and Visitor accommodation (including hostels);
- Educational facilities;
- Places of public worship; and
- Health services facility.

Time Period refers to the following periods of a calendar day:

Calendar Day	Day	Evening	Night (to following day)
Monday	7 am – 6 pm <i>Duration: 11 hours</i>	6 pm – 10 pm <i>Duration: 4 hours</i>	10 pm – 7 am <i>Duration: 9 hours</i>
Tuesday	7 am – 6 pm <i>Duration: 11 hours</i>	6 pm – 10 pm <i>Duration: 4 hours</i>	10 pm – 7 am <i>Duration: 9 hours</i>
Wednesday	7 am – 6 pm <i>Duration: 11 hours</i>	6 pm – 10 pm <i>Duration: 4 hours</i>	10 pm – 7 am <i>Duration: 9 hours</i>
Thursday	7 am – 6 pm <i>Duration: 11 hours</i>	6 pm – 10 pm <i>Duration: 4 hours</i>	10 pm – 7 am <i>Duration: 9 hours</i>
Friday	7 am – 6 pm <i>Duration: 11 hours</i>	6 pm – 11 pm <i>Duration: 5 hours</i>	11 pm – 7am <i>Duration: 8 hours</i>
Saturday	7 am – 6 pm <i>Duration: 11 hours</i>	6 pm – 12 am <i>Duration: 6 hours</i>	12 am to 8 am <i>Duration: 8 hours</i>
Sunday	8 am – 6 pm <i>Duration: 10 hours</i>	6 pm – 10 pm <i>Duration: 4 hours</i>	10 pm – 7 am <i>Duration: 9 hours</i>

Provisions

3.18.1 Acoustic amenity requirements for development with an entertainment sound-generating activity

- (1) A Noise Impact Assessment prepared by suitably qualified acoustic consultant is required when submitting a development application for new development that includes or increases the potential impact of an entertainment sound-generating activity. Noise Impact Assessments must be in accordance with the City's *Entertainment Sound Impact Assessment Schedule*.
- (2) An Entertainment Sound Management Plan may be required for new development that includes or increases the potential impact of an entertainment sound-generating activity. The Entertainment Sound Management Plan should detail all sound management measures to ensure that the development can achieve acceptable sound levels and minimise impacts on the existing sound environment and any affected existing sensitive development. Entertainment Sound Management Plans must be in accordance with the City's *Entertainment Sound Impact Assessment Schedule*.

Note: Noise attenuation measures must have regard to any applicable heritage considerations under Section 3.9 of this DCP.

- (3) The $L_{Aeq(15min)}$ for all development with an entertainment sound-generating activity that does not share an adjoining boundary with an existing sensitive development must, at the minimum, meet the sound levels specified in **Table 3.X**.

Existing development affected (receiver)	Time Period	Primary Design criteria for development with an entertainment sound-generating activity		
		Broadband	Assessment location ³	Low frequency criteria
Residential accommodation (excluding hostels)	Day / Evening	The lesser of: <ul style="list-style-type: none"> • RBL + 5 dB(A), or • 55 dBA in high activity areas/ 50 dBA in low activity areas¹ 	<ul style="list-style-type: none"> • At the property boundary of closest existing receiver 	Maximum of: <ul style="list-style-type: none"> • RBL + 5 dB (31.5 Hz – 250 Hz 1/1 octave bands), or • Reference curve in the Entertainment Sound Impact Assessment Schedule
	Night	The lesser of: <ul style="list-style-type: none"> • RBL + 0 dB(A), or • 45 dB(A) in high activity areas/ 40 dB(A) in low activity areas¹ 	<ul style="list-style-type: none"> • At the property boundary of closest existing receiver 	Maximum of: <ul style="list-style-type: none"> • RBL + 0 dB (31.5 Hz – 250 Hz 1/1 octave bands) , or • Reference curve in the Entertainment Sound Impact Assessment Schedule
Tourist and visitor accommodation (including hostels)	Day / Evening	<ul style="list-style-type: none"> • 60 dB(A) in high activity areas/ 55 dB(A) in low activity areas¹ 	<ul style="list-style-type: none"> • At the property boundary of closest existing receiver 	Maximum of: <ul style="list-style-type: none"> • dBC < Broadband limit + 10 dB, or • Reference curve in the Entertainment Sound Impact Assessment Schedule
	Night	<ul style="list-style-type: none"> • 50 dB(A) in high activity areas/ 45 dB(A) in low activity areas¹ 	<ul style="list-style-type: none"> • At the property boundary of closest existing receiver 	Maximum of: <ul style="list-style-type: none"> • dBC < Broadband limit + 10 dB, or • Reference curve in the Entertainment Sound Impact Assessment Schedule

Existing development affected (receiver)	Time Period	Primary Design criteria for development with an entertainment sound-generating activity		
		Broadband	Assessment location ³	Low frequency criteria
Educational facilities including early childhood and child care facilities (CCF)	When in use ²	<ul style="list-style-type: none"> Indoor learning areas: refer to Secondary criteria. 45 dB(A) Outdoor learning areas¹ 50 dBA Outdoor play areas¹ 	<ul style="list-style-type: none"> Indoor: refer secondary criteria, Outdoor: At the most affected part of the area 	Maximum of: <ul style="list-style-type: none"> dBC < Broadband limit + 10 dB, or Reference curve in the Entertainment Sound Impact Assessment Schedule
Place of Public Worship	When in use ²	<ul style="list-style-type: none"> 55 dBA in high activity areas/ 50 dBA in low activity areas¹ 	<ul style="list-style-type: none"> 1 metre from the most affected façade 	Maximum of: <ul style="list-style-type: none"> dBC < Broadband limit + 10 dB, or Reference curve in the Entertainment Sound Impact Assessment Schedule
Health Services Facility	Day / Evening	55 dBA	<ul style="list-style-type: none"> 1 metre from the most affected façade 	<ul style="list-style-type: none"> 65 dB(C), or not exceed the reference curve in the Entertainment Sound Impact Assessment Schedule
	Night (wards only)	45 dBA	<ul style="list-style-type: none"> 1 metre from the most affected façade 	<ul style="list-style-type: none"> Not exceed the reference curve in the Entertainment Sound Impact Assessment Schedule

Table 3.X: Criteria for entertainment sound-generating activity

¹Criteria for high activity areas as shown in the Entertainment Sound Management Map, apply to street facing façade in an active frontage area as per Part 3.2.3 of this DCP.

²'When in use' refers to operating hours as per the affected existing development's consent at the time the new development application is lodged.

³Further guidance on measurements at assessment locations specified are provided in the Entertainment Sound Impact Assessment Schedule.

- (5) The $L_{eq(15min)}$ for all development with an entertainment sound-generating activity that share an adjoining boundary or an internal to internal transmission path (e.g. shared wall) with an existing sensitive development must, at the minimum, meet the sound levels specified in **Table 3.X**.

Existing development affected (receiver)	Time Period	Secondary Design criteria for development with an entertainment sound-generating activity (assessed inside the affected receiver ¹)	
		Broadband	Low frequency criteria
Residential accommodation and tourist and visitor accommodation	Day / Evening	RBL + 0 dBA	Maximum of: <ul style="list-style-type: none"> • RBL + 0 dB (31.5 Hz – 250 Hz 1/1 octave bands), or • Reference curve in the Entertainment Sound Impact Assessment Schedule
	Night	RBL – 5 dBA	Maximum of: <ul style="list-style-type: none"> • RBL – 5 dB (31.5 Hz – 250 Hz 1/1 octave bands), or • Reference curve in the Entertainment Sound Impact Assessment Schedule
Educational facilities including early childhood and child care facilities	When in use	30 dBA	<ul style="list-style-type: none"> • 40 dBC, or not exceed the reference curve in the Entertainment Sound Impact Assessment Schedule
Place of Public Worship	When in use ⁵	35 dBA	<ul style="list-style-type: none"> • 45 dBC, or not exceed the reference curve in the Entertainment Sound Impact Assessment Schedule
Health Services Facility	Day / Evening	35 BA	<ul style="list-style-type: none"> • 45 dBC, or not exceed the reference curve in the Entertainment Sound Impact Assessment Schedule
	Night (wards only)	30 BA	<ul style="list-style-type: none"> • 40 dBC, or not exceed the reference curve in the Entertainment Sound Impact Assessment Schedule

Table 3.X: Criteria for entertainment sound-generating activity with an adjoining receiver development

¹If access to existing affected development cannot be obtained, measurements at assessment locations must be undertaken in accordance with the methodology provided in the Entertainment Sound Impact Assessment Schedule.

3.18.2 Acoustic amenity requirements for development on land that may be affected by entertainment sound

- (1) A Noise Impact Assessment prepared by a suitably qualified acoustic consultant may be required when submitting a development application for new development on land that may be affected by entertainment sound. Noise Impact Assessments must be in accordance with the City's *Entertainment Sound Impact Assessment Schedule*.

Note: Land that may be affected by entertainment sound is shown in Entertainment Sound Management Map.

- (2) Where necessary, new development on land that may be affected by entertainment sound is to include noise attenuation measures to achieve acceptable sound levels, taking into account the operation of existing, planned or approved development with an entertainment sound-generating activity. This involves incorporating measures that reduce the entry of noise from external sources into dwellings.
- (3) Where possible, noise attenuation may be at its source. Where this option is adopted, the applicant will need to demonstrate that the measures to be undertaken:
 - (a) have the consent of relevant parties associated with that noise source; and
 - (b) last for the life of the development proposal.
- (4) The $L_{eq(15min)}$ for new development must, at a minimum, achieve the levels specified in **Table 3.X**:

Development type/use	Time Period	Primary design criteria for sensitive development or development on land that may be affected by entertainment sound - $dBL_{eq(15min)}$ (measured internally)	
		Broadband	Low frequency criteria
Residential accommodation (excluding hostels)	All periods (habitable rooms excluding bedrooms)	35 dBA	45 dBC, or not exceed the reference curve specified in the Entertainment Sound Impact Assessment Schedule
	Day / Evening (bedrooms)	35 dBA	45 dBC, or not exceed the reference curve specified in the Entertainment Sound Impact Assessment Schedule
	Night (bedrooms)	30 dBA	40 dBC, or not exceed the reference curve specified in the Entertainment Sound Impact Assessment Schedule
Tourist and visitor accommodation (including hostels)	Day / Evening	40 dBA	50 dBC, or not exceed the reference curve specified in the Entertainment Sound Impact Assessment Schedule
	Night	35 dBA	45 dBC, or not exceed the reference curve specified in the Entertainment Sound Impact Assessment Schedule

Development type/use	Time Period	Primary design criteria for sensitive development or development on land that may be affected by entertainment sound - dBL _{eq(15min)} (measured internally)	
		Broadband	Low frequency criteria
Educational facilities including early childhood and child care facilities	When in use	35 dBA	45 dBC, or not exceed the reference curve specified the Entertainment Sound Impact Assessment Schedule
Place of Public Worship	When in use	35 dBA	45 dBC, or not exceed the reference curve specified in the Entertainment Sound Impact Assessment Schedule
Health Services Facility	Day / Evening	35 dBA	45 dBC, or not exceed the reference curve specified in the Entertainment Sound Impact Assessment Schedule
	Night (wards only)	30 dBA	40 dBC, or not exceed the reference curve specified in the Entertainment Sound Impact Assessment Schedule

Table 3.X: Criteria for development on land that may be affected by entertainment sound

- (6) Applicants for alterations and additions to an existing sensitive development on land that may be affected by entertainment sound may choose to include noise attenuation measures to achieve acceptable sound levels as indicated in **Table 3.X**. Where noise attenuation measures are provided, applicant should take into account the sound implications and operation of any existing or approved entertainment sound-generating activity within its vicinity and any relevant heritage considerations under Section 3.9 of this DCP.

Note: Where noise attenuation measures are not provided, the City will consider that the applicant acknowledges:

- (a) *that the maximum allowable sound generated by any planned or existing entertainment sound-generating activity at the time of the application are acceptable, and*
- (b) *acceptable sound levels within all habitable areas of the existing sensitive development, including alterations and additions can be achieved given any existing, approved or planned or entertainment sound-generating activity within its vicinity.*

[2] Amendment to sections 4.2.3.11(1) and 4.2.3.11(2) 'Acoustic privacy'

Add notes shown in italics below:

- (1) A Noise Impact Assessment prepared by a suitably qualified acoustic consultant may be required when submitting a development application for

commercial and retail uses which may affect the acoustic privacy of the adjacent residential use.

Note: Refer to Part X.X. of this DCP for provisions relating to new and alterations and additions to development with an entertainment sound-generating activity and sensitive development on land that may be affected by entertainment sound.

- (2) Where necessary, a residential development is to include acoustic measures to reduce the impact of noise from existing or planned external sources (for example busy roads, adjoining industries, live music venues and public parks and plazas in which people may congregate or host live music or events).

Note: Refer to Part X.X. of this DCP for provisions relating to development on land that may be affected by entertainment sound.

[3] Amendment to Schedules

Insert the following at the end of the Schedules in Sydney DCP 2012.

Schedule X.X: Entertainment Sound Impact Assessment Schedule

1. The purpose of the Schedule

The purpose of the Entertainment Sound Impact Assessment Schedule (Schedule), which forms part of Sydney Development Control Plan 2012 is to provide:

- guidance on allocation of entertainment sound management responsibility
- technical methodology and guidance for assessing entertainment sound levels and meeting acceptable sound levels set in the DCP controls
- outlines the matters to be addressed in Plans of Management for development with or affected by an entertainment sound generating activity

2. Relationship to other noise management controls, policies, standards and requirements

This Schedule relates to development to which **Section 3.18** of the Sydney DCP 2012 applies. For development that generates or is affected by noise from other external sources, including patron, traffic and mechanical noise, refer to all relevant provisions under Sections 3 and 4 of the Sydney DCP 2012.

This Schedule must be read in conjunction with other relevant noise management policies, standards and requirements, including but are not limited to:

- *State Environmental Planning Policy No. 65 – Design Quality of Apartment Development and Apartment Design Guide*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *NSW Environment Protection Authority Noise Policy for Industry 2017*
- *NSW Department of Planning Development near Rail Corridors and Busy Roads Interim Guideline 2008*
- *World Health Organisation Guidelines for Community Noise*

3. Technical guidance on design criteria

3.1 New and modifications to development with an entertainment sound generating activity

3.1.1 Requirement for evaluation

All applications for new development with an entertainment sound-generating activity and development that is likely to increase the impact of an existing entertainment sound-generating activity must include an Entertainment Sound Impact Assessment and meet the sound levels specified in Section 3.18.1(4) of the DCP. The Entertainment Sound Impact Assessment must be in accordance with Section 7.2 of this Schedule.

It is highly recommended that a pre-lodgement meeting is scheduled to determine the level of assessment required as part of the application depending on the site's context.

Applications for new or alterations and additions to development that generates noise from activities or uses other than entertainment sound-generating activity (e.g. restaurants and cafes with no entertainment provided but generates patron noise, development that generates poker machine noise, etc.), must be in accordance with all relevant provisions under Sections 3 and 4 of the Sydney DCP 2012.

The key steps involved in preparing an Entertainment Sound Impact Assessment and Management Plan are:

1. Identify any **entertainment sound-generating activity** within the proposed development
2. Identify existing sensitive developments that may be affected by the **entertainment sound-generating activity**
3. Determine an appropriate assessment location for each **sensitive development**
4. Establish **acceptable sound levels** at each **sensitive development**
5. Prepare documentation in accordance with the City's reporting requirements and procedures

3.1.2 Appropriate assessment locations

Following the identification of sensitive receivers to be assessed, the most appropriate assessment location shall be determined. The assessment location is dependent on:

- the type of sensitive receiver;
- whether the development shares a common wall or building floor or ceiling separation with the sensitive receiver.

Multiple assessment locations and criteria may apply depending on the existing sensitive receivers identified. **Table X** below outlines the appropriate assessment locations for different scenarios.

Type of receiver	Adjoins the venue via a common partition ¹	Building floor	Assessment location
Residential	Not adjoining – primary criteria apply	Ground	External - Most affected location on or within site boundary ²
		Upper	External - 1m from most affected façade ³
	Adjoins – secondary criteria apply	Any	Internal – Centre of most affected room

Type of receiver	Adjoins the venue via a common partition ¹	Building floor	Assessment location
Non-residential	Not adjoining – primary criteria apply	Any	External – 1 m from most affected facade ³
	Adjoins – secondary criteria apply	Any	Internal - Centre of most affected room

Table X: Assessment location summary

Notes:

All measurements to be conducted at a height of 1.2 - 1.5 m off the floor.

1. Partition may include wall, floor or ceiling partition, i.e. venue may be horizontally adjacent to, directly above or below a receiver.
2. Measurements to be conducted at a 'free field' location, i.e. no closer than 3 metres from a reflective surface or measurements may be conducted at 1m from the reflective surface and corrected with a -2.5 dB correction.
3. Measurements to be conducted at 1m from the façade and to be adjusted by -2.5 dB to correct for surface reflections.

Where external assessment locations are specified, the noise level is to be assessed at the reasonably most-affected point on or within the property boundary. This requirement should not be read to infer that the noise level **only** applies at the 'reasonably worst-affected location'.

3.1.3 Alternative assessment methods

Primary design criteria

Where access to the most affected location on or within the site boundary, or at 1 metre from the most affected facade cannot be obtained, a representative measurement location may be used to determine noise levels.

A well-established theoretical and/or empirical relationship between the representative location and the assessment location in terms of noise exposure would be required to be demonstrated. This relationship should consider such factors as distance correction, shielding, reflections and source directionality.

Secondary design criteria

In the case that access to existing affected development cannot be obtained, determination of the of the noise level at the assessment location using measurement results within the venue, and calculation of the noise level at the assessment location in the adjacent receiver room may be permissible.

A well-established theoretical and/or empirical relationship between the representative location and the assessment location in terms of noise exposure would be required to be demonstrated. This relationship should consider such factors as the transmission loss of the common partition, flanking paths and reverberant noise build up within the room as applicable.

An application should show that reasonable endeavours have been made to gain access to the affected development before assessing at an alternative location.

3.1.4 Proxy assessment locations for compliance

To expedite compliance measurements, it may be appropriate to assess on-going compliance at a proxy assessment location. Similarly, to the methods outlined above, alternative assessment methods may be used to establish an on-going 'proxy' assessment location for sensitive developments.

For this approach to be acceptable there needs to be well-established theoretical and/or empirical relationships between the 'proxy' location and the assessment location in terms of noise exposure. Measurement and/or noise modelling may be utilised to establish this relationship.

3.1.5 Establishing design criteria

Following the establishment of appropriate assessment locations for each **sensitive development**, establishment of **acceptable sound levels** is required.

Acceptable sound levels may be primary or secondary, dependent on whether the **sensitive development** adjoins the venue via a common partition, see Table X. Both primary and secondary design criteria are made up of two components: broadband criteria and low-frequency criteria. Compliance with both components is required.

3.1.5.1 Rating Background Levels

In some cases, design criteria are based on Rating Background Levels (RBLs). RBLs are to be established in accordance with the methodology laid out in the *Noise Policy for Industry Fact Sheet B: Measurement procedures for determining background noise*.

When RBLs are to be measured internally, ventilation is to be set on the lowest setting that meets ventilation requirements and all external windows and doors shall be closed.

3.1.5.2 High and low activity areas

In some cases, broadband criteria are established based on whether the **sensitive development** is in a **high activity area** or a **low activity area**. The activity area for a **sensitive development** is defined in the Entertainment Sound Management Map, which shows high activity areas across the Local Government Area, and low activity areas as all other areas not identified.

3.1.5.3 Low-frequency criteria

In some cases, low-frequency criteria are based on the 'low-frequency reference curve' below.

Frequency ¹	20	25	31.5	40	50	63	80	100	125	160	200	250
dB(Z)	61	64	56	49	40	36	33	29	26	23	21	19

Table X: Low frequency reference curve

¹Note: 1/3 octave band centre frequency

3.1.5.4 Appropriate periods of the day

Acceptable sound levels vary across the periods of the day to reflect the community's sensitivity to noise. Entertainment sound levels must comply with the **acceptable sound level** for the period of the day the **entertainment sound generating activity** occurs.

3.2 New sensitive development on land that may be affected by entertainment sound

3.2.1 Requirement for evaluation

All applications for new sensitive development on land mapped in the DCP as land that may be affected by entertainment sound must include an Entertainment Sound Impact Assessment and meet the sound levels specified in Section 3.18.2(5) of the DCP.

It is highly recommended that a pre-lodgement meeting is scheduled to determine the level of assessment required as part of the application depending on the site's context.

For all applications relating to sensitive uses on land not identified in Figure XX of the DCP that are affected by other noise sources, refer to all other relevant provisions under Sections 3 and 4 of the Sydney DCP 2012.

The key steps involved in preparing an Entertainment Sound Impact Assessment and Management Plan for sensitive uses are:

1. Identify whether proposed sensitive development is on land that may be affected by entertainment sound identified in Figure XX of the DCP
2. Identify any existing or approved entertainment sound-generating activity in the vicinity of the subject site
3. Conduct consultation with the existing entertainment sound-generating activity
4. Determine entertainment sound levels affecting the sensitive development based on development consent of any existing or approved entertainment sound-generating activity
5. Establish acceptable sound levels at the sensitive development
6. Prepare documentation in accordance with the City's reporting requirements and procedures

3.2.2 Consultation with existing development with entertainment sound-generating activity ('venues')

Consultation with venue operators or managers is recommended to understand the nature of entertainment sound activities carried out at the venue. Consultation with the venue can both inform the level of noise control required to achieve **acceptable sound levels** within the **new sensitive development**, as well encourage communication between parties which may prevent future issues from occurring or escalating.

Initiating a conversation with local venues is recommended to obtain such useful information as:

- Types of entertainment sound generating activities which take place at the venue;
- Nature of sound generated by the activities;
- Frequency of the activities;
- Time and duration of the activities;
- Location of the activities

3.2.3 Determining entertainment sound levels

Quantification of entertainment sound levels which will be impacting the new **sensitive development** is required. As no development would yet exist, entertainment sound levels at the most affected façade of the proposed development should be determined. Where possible, this should take into account the relevant existing venue's maximum permissible sound emission based on its development consent.

Consideration should be given to the loudest types of **entertainment sound generating activity** hosted at the venue when determining sound levels at the **sensitive development**.

3.2.3.1 Measurement procedure

The most effective method for determining the entertainment sound contribution is measuring levels both during and outside of an entertainment sound generating activity. Subtracting the ambient noise level when no activity is taking place from the level during an activity will result in the entertainment sound level, provided both measurements are conducted at similar times of the day when extraneous ambient noise sources are consistent.

The following procedure should be followed when undertaking measurements of entertainment sound generating activities:

- Consideration should be given to the particular **entertainment sound generating activity** to ensure it represents the loudest typical entertainment sound level from the venue, e.g. levels during an acoustic performance may not be representative of the loudest sound levels generated by the venue if it also hosts rock concerts or dance events.

- While the **entertainment sound generating activity** is occurring, determine the time when the greatest impact is likely to occur and take measurements at this time. (Note: this is likely to be the beginning or the end of a live performance)
- Field-calibrate the noise monitoring equipment.
- Measure the entertainment sound level continuously for 15-minutes, in minimum 1/3 octave bands from 31.5 Hz to 8 kHz centre frequencies. All distinct extraneous noises shall be excluded. (Because of the short period over which the entertainment sound is being measured, distinct extraneous noises, including noise from transportation, birds and insects, should be excluded from the measurements.) If extraneous noise is present, post-process data, pause the meter when this noise occurs or choose another measuring time or location.
- Check the field calibration at the end of the monitoring period in accordance with AS IEC 61672.1 and AS2659. Re-monitoring may be required if there is a calibration drift greater than that allowed by the standards.
- If two or more valid entertainment sound levels are recorded at the one location, adopt the highest level as the entertainment sound level.
- Where vibration has the potential to generate structure-borne noise transfer, this must also be addressed in the assessment.

3.2.3.2 Measurement locations

In quantifying the entertainment sound levels from a venue at a new sensitive development, the following options may be employed.

Direct measurement at a receiver location

Entertainment sound levels at the sensitive development may be determined through operator-attended direct measurement of noise at the appropriate assessment location during a typical **entertainment sound generating activity**, using a sound level meter.

Where the compliance location is dominated by entertainment sound, this can be an effective and simple exercise. However, some locations are not controlled by a single noise source, and techniques, including professional judgement, are often needed to determine the entertainment sound level.

Description of the measurement location must include justification of its appropriateness for the assessment.

Direct measurement at alternative or intermediate location/s

Where direct measurement of entertainment sound at the assessment location is not practical because of poor signal-to-noise ratios (that is, extraneous noise is louder than the noise under investigation), measurements near the **entertainment sound generating activity** or at intermediate locations between the venue and the receiver location, where signal-to-noise ratios are higher, may be a viable option.

For this approach to be effective there needs to be well-established theoretical and/or empirical relationships between the intermediate

location and the receiver location in terms of noise exposure. Noise modelling may be one option to establish this relationship.

The techniques under the above section 'Direct measurement at a receiver location' would also be relevant in terms of quantifying the level of noise from the source at the intermediate location(s). Where this technique is relied upon, it is the responsibility of the proponent to demonstrate a robust acoustic relationship between the compliance location and the intermediate location.

3.2.4 Determining acceptable sound level

Acceptable sound levels for new sensitive developments are made up of two components; broadband criteria and low-frequency criteria. Compliance with both components is required.

In some cases, low-frequency criteria are based on the 'low-frequency reference curve' as shown section 3.1.5.3 of this Schedule.

3.3 Alterations and additions to development on land that may be affected by entertainment sound

Applicants for alterations and additions to existing sensitive development on land that may be affected by entertainment sound has the option to include noise attenuation measures to achieve acceptable sound levels as per Section 3.18 of the DCP. Measures can either be for the new component of the sensitive use or the entirety of the sensitive development.

If proponents choose to do so, key steps involved in preparing an Entertainment Sound Impact Assessment and Management Plan for alterations and additions to sensitive uses affected by entertainment sound are the same as those indicated in Section 8.2 of this Schedule.

Where noise attenuation measures are not provided, the City will consider:

- (c) that the maximum allowable sound generated by any planned or existing entertainment sound-generating activity at the time of the application are acceptable, and
- (d) acceptable sound levels within all habitable areas of the existing sensitive development, including alterations and additions can be achieved given any existing, approved or planned or entertainment sound-generating activity within its vicinity.

Appendix A: Sydney Development Control Plan 2012 Entertainment Sound Management Map

Attachment C

**Draft Technical Guidelines
Small Scale Cultural Activities in Spaces
Less Than 500 square metres**

Draft Technical Guidelines

Small scale cultural activities occurring in spaces less than 500 square metres

City of Sydney
Town Hall House
456 Kent Street
Sydney NSW 2000

May 2020





Contents

Purpose2

Application of the guidance2

Checklist4

Purpose

This guidance contains advice for cultural producers about the type of buildings or spaces that may be used and adapted for small scale cultural activities. The *Sydney Development Control Plan 2012* (the DCP) defines small scale cultural activities as:

- a) live entertainment, (being an event at which one or more persons are engaged to play or perform live or pre-recorded music, or a performance at which at least some of the performers are present in person), including the presentation or rehearsal of music, film, theatre, spoken word, comedy or dance, or
- b) the production or an event in association with an exhibition of art, craft, design, media, image or immersive technology, or
- c) teaching or discussion related to (a) or (b).

Council may consider these guidelines when determining whether an application for small scale cultural activities in spaces less than 500sqm needs building or fire safety upgrades.

This guidance is a matter for consideration in the discharge of Council's responsibilities under clauses 93 and 94 of the Environmental Planning and Assessment Regulation 2000. Clause 93 requires Council to take into consideration whether the fire protection and structural capacity of an existing building will be appropriate where a new use is proposed with no buildings works. Clause 94 requires the Council in determining a development application to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *National Construction Code* (the NCC).

Applications for cultural activities proposed in existing Class 5, 6 or 8 buildings may trigger fire and building compliance requirements that are more comparable to class 9b assembly buildings. This can result in building upgrades that may not be necessary because the cultural activity is proposed in a building which already has an adequate degree of construction to mitigate fire, safety and amenity issues.

This guidance includes a checklist of requirements, which provide an alternative performance solution to the standard requirements in the NCC. It provides advice for cultural producers about how they can reduce the costs of adapting buildings while maintaining compliance with fire safety and building compliance requirements under the NCC and the *Environmental and Planning and Assessment Act 1979*.

Application of the guidance

The checklist may assist operators in choosing the right types of buildings and ensure that minimal, if any works are required to make them suitable for the proposed activity. This checklist may be applied to small scale cultural activities which require development consent because they are:

- 1. not considered to be ancillary or related to the primary use of a premises and
- 2. do not satisfy the criteria for exempt development in Schedule 2 of the *Sydney Local Environmental Plan 2012* and are otherwise not a form of complying development

This checklist does not apply to cultural spaces located in basements which exceed 200m². Applicants seeking to use basements more than 200m² in size should refer directly to the provisions of the *National Construction Code*.

The following steps summarise how this guidance may be applied when a development application is proposed for a cultural activity.

Step 1 – DA Assessment

- A development application (DA) is submitted to the City which proposes fire safety and building compliance in accordance with the specifications in the checklist
- City officers assess the DA proposal to ensure that the proposals are in accordance with the checklist, and address any other matters required under the National Construction Code (NCC).

Step 2 – Development Consent granted

- If/when a DA for a cultural activity is approved, a condition may be applied to the development consent which requires that the activity comply with the checklist. Alternatively a standard condition may be applied requiring compliance with the NCC and any associated alternative solutions.

Step 3 – Certification

- The checklist may be applied when the applicant applies for their construction certificate (if there are works) or an occupation certificate. A Council or private certifier will be responsible for deciding whether a proposal complies with the NCC and whether to apply this advice.
- Depending on the condition imposed on the development consent, the certifier can choose to:
 - (1) apply the Council adopted guidelines for spaces less than 500sqm, particularly if the condition on consent requires them to, or
 - (2) apply a deemed to satisfy solution to the applicable construction or occupation certificate, or
 - (3) apply for a performance solution from a suitably qualified person.
- The certifier applies the checklist in the technical guideline and if all relevant matters are addressed, the Certifier may issue the construction or occupation certificate without an upgrade required under class 9b of the NCC.

There may be situations where the checklist may not be appropriate due to unacceptable levels of fire risk. The checklist provides guidance only and will not override the Council's or Certifier's statutory obligations to ensure fire protection and structural capacity in relation to the individual circumstances of each application. These circumstances will be identified to the applicant during the assessment of a DA.

The checklist is not the only mechanism that is available to the applicant. As an alternative to the checklist, the applicant may choose to:

- Apply a Deemed to Satisfy solution to the applicable construction / occupation certificate; or
- Apply for a performance solution from a suitable qualified person.

Checklist

The advice in this checklist has been adapted from a 'Creative Spaces Fire Safety Strategy' prepared by Arup in January 2020. This strategy proposes a series of fire safety measures that shall be implemented when adapting a building for a cultural activity, in order to achieve a level of safety that is comparable to the class 5, 6 or 8 uses of the base buildings.

To be with consistent with the Fire Safety Strategy for Cultural Spaces, the proposed space must meet all of the following requirements in the checklist below.

Requirement Number	Requirement	✓ Supporting Information
Venue geometry		
1	Cultural space shall be located on Basement Level 1, Ground Level or Level 1. <ul style="list-style-type: none">- If located on basement level, the cultural space shall be less than 200m².- If located on Ground Level or Level 1, the cultural space shall be less than 500m².	<i>This information will be verified by a survey of the premises submitted with the development application.</i>
2	A void or open stair within the venue connects Basement Level 1 to Ground Level or Ground Level to Level 1 only.	<i>This information can be requested from the building manager; this information will be listed on the building's architectural drawings.</i>
3	Travel distances to an exit are limited to: <ul style="list-style-type: none">- 30m single direction at Ground Floor;- 20m single direction at Basement Level 1;- 20m single direction at Level 1;- 40m overall travel at Basement Level 1, Ground Floor or Level 1.	<i>This information can be requested from the building manager; this information will be listed on the building's architectural drawings.</i>
Fire Safety Systems		
4	The venue shall have either (or both) of the following systems installed and operational: <ul style="list-style-type: none">- Detection and alarm system to AS1668.1- Sprinkler system to AS2118.1	<i>This information can be requested from the building manager; this information will be listed on the building's Fire Safety Schedule.</i>
5	The venue shall have extinguishers provided and positioned in accordance with AS2441-2001.	<i>This information can be requested from the building manager; this information will</i>

Requirement Number	Requirement	✓ Supporting Information																		
		<p>be listed on the building's Fire Safety Schedule.</p> <p>Alternatively, this is simple to install for the change in use.</p>																		
Event use																				
6	Any proposed stage (floor and raised) shall be <50m ² in floor area																			
7	There will be no sleeping use within the cultural space compartment.																			
8	<p>Occupant numbers permitted within the space are limited based on the available exit capacity as follows:</p> <table> <tr> <th>Maximum number of occupants</th><th>Minimum aggregate exit width (door openings are permitted to be 250mm less)</th><th>Notes</th></tr> <tr> <td>Up to 50</td><td>1m</td><td>1 exit permitted</td></tr> <tr> <td>51 - 100</td><td>1m</td><td>Minimum 2 exits</td></tr> <tr> <td>101 - 150</td><td>1.5m</td><td>Minimum 2 exits</td></tr> <tr> <td>151 – 200</td><td>2m</td><td>Minimum 2 exits</td></tr> <tr> <td>201 - 250</td><td>2.5m</td><td>Minimum 2 exits</td></tr> </table>	Maximum number of occupants	Minimum aggregate exit width (door openings are permitted to be 250mm less)	Notes	Up to 50	1m	1 exit permitted	51 - 100	1m	Minimum 2 exits	101 - 150	1.5m	Minimum 2 exits	151 – 200	2m	Minimum 2 exits	201 - 250	2.5m	Minimum 2 exits	<p>The available exit width information can be requested from the building manager; this information will be listed on the building's architectural drawings. Alternatively, the exit width can be measured on site.</p> <p>As an example, if a theatre production was intended for a cultural space and 175 occupants are proposed, the chosen venue would require 2 exits, each a minimum of 1m wide.</p>
Maximum number of occupants	Minimum aggregate exit width (door openings are permitted to be 250mm less)	Notes																		
Up to 50	1m	1 exit permitted																		
51 - 100	1m	Minimum 2 exits																		
101 - 150	1.5m	Minimum 2 exits																		
151 – 200	2m	Minimum 2 exits																		
201 - 250	2.5m	Minimum 2 exits																		
Non-addressable fire hazards																				
9	The space shall not be defined as an entertainment venue (cinema, theatre, concert hall, or an indoor sports stadium) or used as a discotheque or nightclub.	<p>This information can be requested from the building manager; if the building manager is unaware, a Certifier will be able to provide this information.</p> <p>This information can be checked under the NCC (https://ncc.abcb.gov.au/) or checked with Council before</p>																		

Requirement Number	Requirement	✓	Supporting Information
			<i>submitting for a DA or checked with a Certifier.</i>
10	Pyrotechnics or naked flames will not be used.		
11	Detectors and alarms will not be isolated.		

Sanitary facility provision

- 12 (1) For the purpose of this checklist, 'sanitary facilities' mean a room with toilet(s) and a sink. Sanitary facilities are to be made available to patrons for the duration of the cultural activity. This may include the use of:
- (a) sanitary facilities usually only allocated for staff use, or
 - (b) any sanitary facilities that are accessed on a shared basis by patrons/staff within or associated with a building in close proximity,
- The venue operator must provide information and signage at the venue identifying the location of the sanitary facilities.
- (2) If sanitary facility provision described in (1) cannot be achieved, the venue operator must obtain agreement for shared access to sanitary facilities located in a neighbouring food and drink premises for the duration of the cultural activity. The shared facilities must be located within a reasonable walking distance of the venue. Agreement for shared access must be included and verified in a Plan of Management. The venue operator must provide information and signage at the venue identifying the location of the sanitary facilities.
- (3) If both (1) and (2) cannot be achieved then the level of sanitary provision will be determined by applying Tables 5.3.1 '*Provision of Sanitary Facilities*' and 5.3.2 '*Adjusting the number of required number of sanitary facilities for events*' of the Australian Building Codes Board Temporary Structures guidance.

Requirement Number	Requirement	✓	Supporting Information
--------------------	-------------	---	------------------------

Access provisions

- | | | | |
|----|--|--|--|
| 13 | Equitable access to the cultural space must be demonstrated in a Plan of Management. The Plan of Management must identify facilities and areas that are inaccessible and propose solutions which provide access without imposing special terms or conditions. For example, the Plan of Management may require a temporary ramp to provide an accessible entrance. Or if fully accessible sanitary facilities cannot be provided in the venue, the Plan of Management must identify the location of the nearest facilities within an accessible and reasonable distance of the venue which patrons can use for the duration of the cultural activity. | | |
|----|--|--|--|

It is the user's responsibility to implement the following fire safety requirements:

1. A Fire Warden shall be assigned for the event who shall be present at all times. Training shall be provided to the fire warden in accordance with AS3745-2010. In addition to the requirements of the AS3745-2010 training, the fire warden shall undertake the following actions:
 - a. Monitor and enforce the required material lining and ignition source provisions;
 - b. Check all escape routes and exits are kept clear and are immediately and easily available at all times;
 - c. Visually detect signs of fire and smoke;
 - d. Manually activate (where possible) the fire alarm in a fire event;
 - e. Verbally initiate an early evacuation in a fire event;
 - f. Provide clear direction to occupants for the need to evacuate immediately;
 - g. Assist occupants to the nearest exit;
 - h. Provide first-attack fire-fighting measures if necessary.
 - i. The fire load shall be strictly controlled within the space, to ensure that there is no accumulation of rubbish or large storage of combustible material.
2. Occupants within the cultural space shall be awake at all times; no sleeping occupancy shall be permitted at any time.
3. Exits and escape routes shall be maintained as follows:
 - a. All exit doors are to remain unlocked at all times that the venue is in use.
 - b. Egress paths are to remain clear and maintained free from obstructions

- c. The exit capacity, number of exits and the maximum occupant numbers permitted shall be managed, monitored and enforced in accordance with the following table:

Maximum number of occupants	Minimum aggregate exit width (door openings are permitted to be 250mm less)	Notes
Up to 50	1m	1 exit permitted
51 - 100	1m	Minimum 2 exits
101 - 150	1.5m	Minimum 2 exits
151 – 200	2m	Minimum 2 exits
201 - 250	2.5m	Minimum 2 exits

4. Remove combustible material as follows:

- a. No accumulation of rubbish or large storage of combustible material is permitted within the space when occupied.
 - b. Combustible temporary linings shall be removed or covered with non-combustible linings. Any polystyrene panels and foams shall be removed.
 - c. Unless they are non-combustible, new linings, curtains, drapes, textile hanging, decorative textile fabrics, scenery or props shall not be positioned above or adjacent to escape routes or exits.
 - d. Any combustible items such as general display storage, materials and decorations shall not be positioned adjacent to escape routes and exits.
 - e. Any temporary items or equipment which pose a risk of ignition (e.g. lighting, electrical goods, fans) shall be inspected by the fire warden to check for signs of damage and overloading of electrical sockets. Any equipment generating heat shall be positioned away from combustible materials/linings.
5. If using a roller shutter or tilt up door as an exit, the following fire safety requirements (in addition to those listed above) shall be implemented:
- a. The exit shall be held in the open position at all times when a 'cultural space' event is happening. The mechanism for maintaining the door open shall be secure, tamper proof and continue to remain open on power failure (if electrically operated);
 - b. NCC compliant exit signage above the roller shutter or tilt-up door shall be provided.

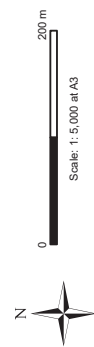
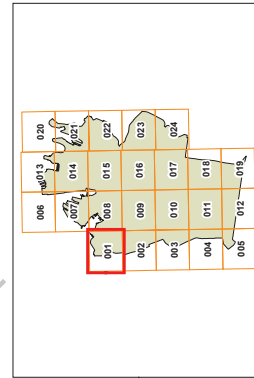
Attachment D

**Appendix A for Public Exhibition
Open and Creative City Planning Reforms**

**Entertainment sound management
map
Sheet 001**

- Legend**
- Late night management areas
 - Existing live music and performance venues
 - Land that may be affected by entertainment sound or high activity area
 - Land excluded from this DCP





Pre-Exhibition

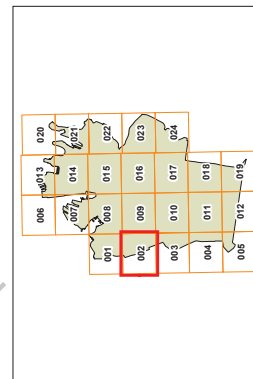


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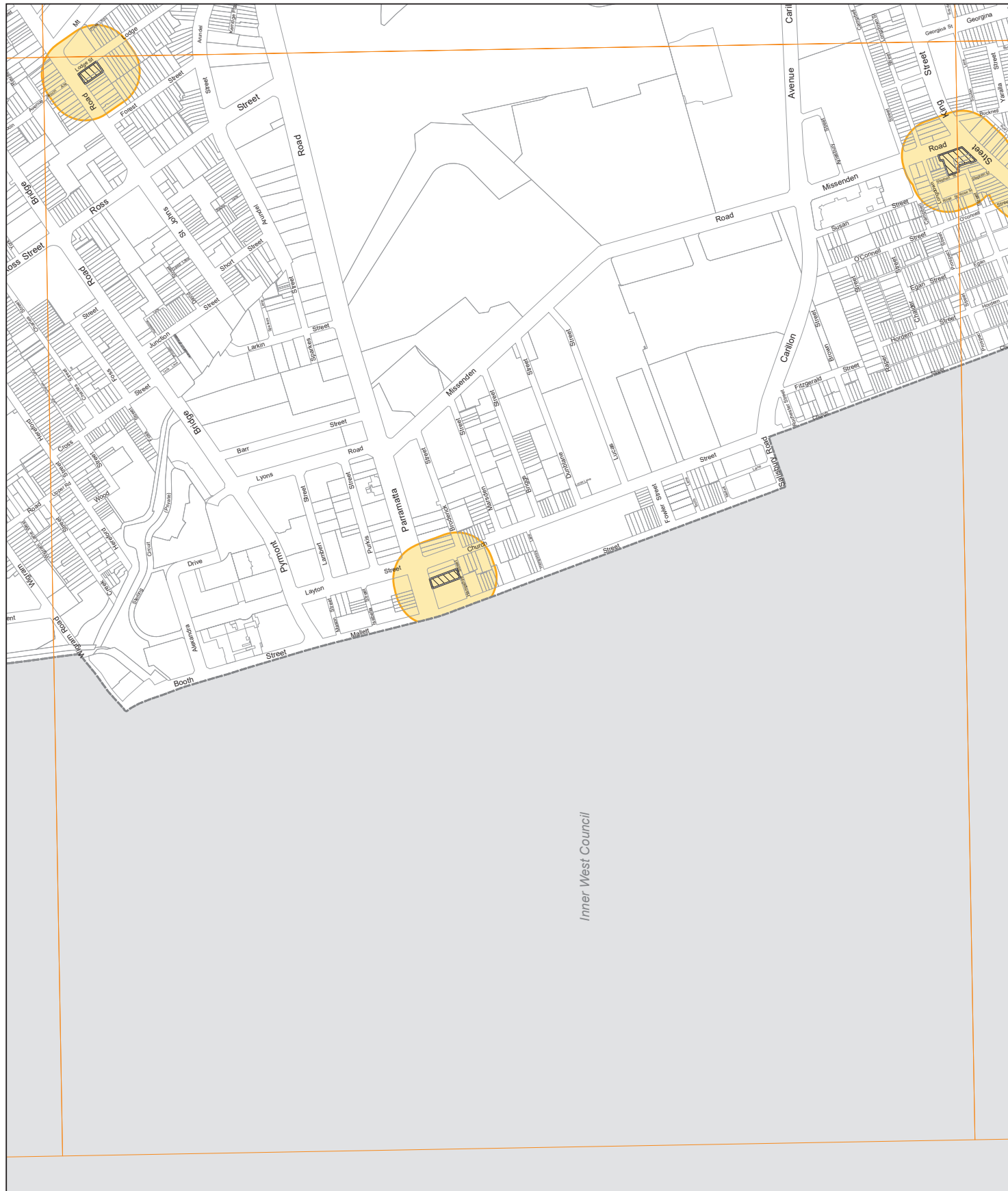


Entertainment sound management
map
Sheet 002

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 -  Land that may be affected by entertainment sound or high activity area
 -  Land excluded from this DCP



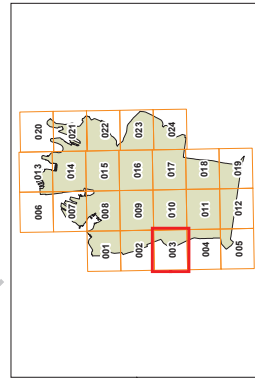
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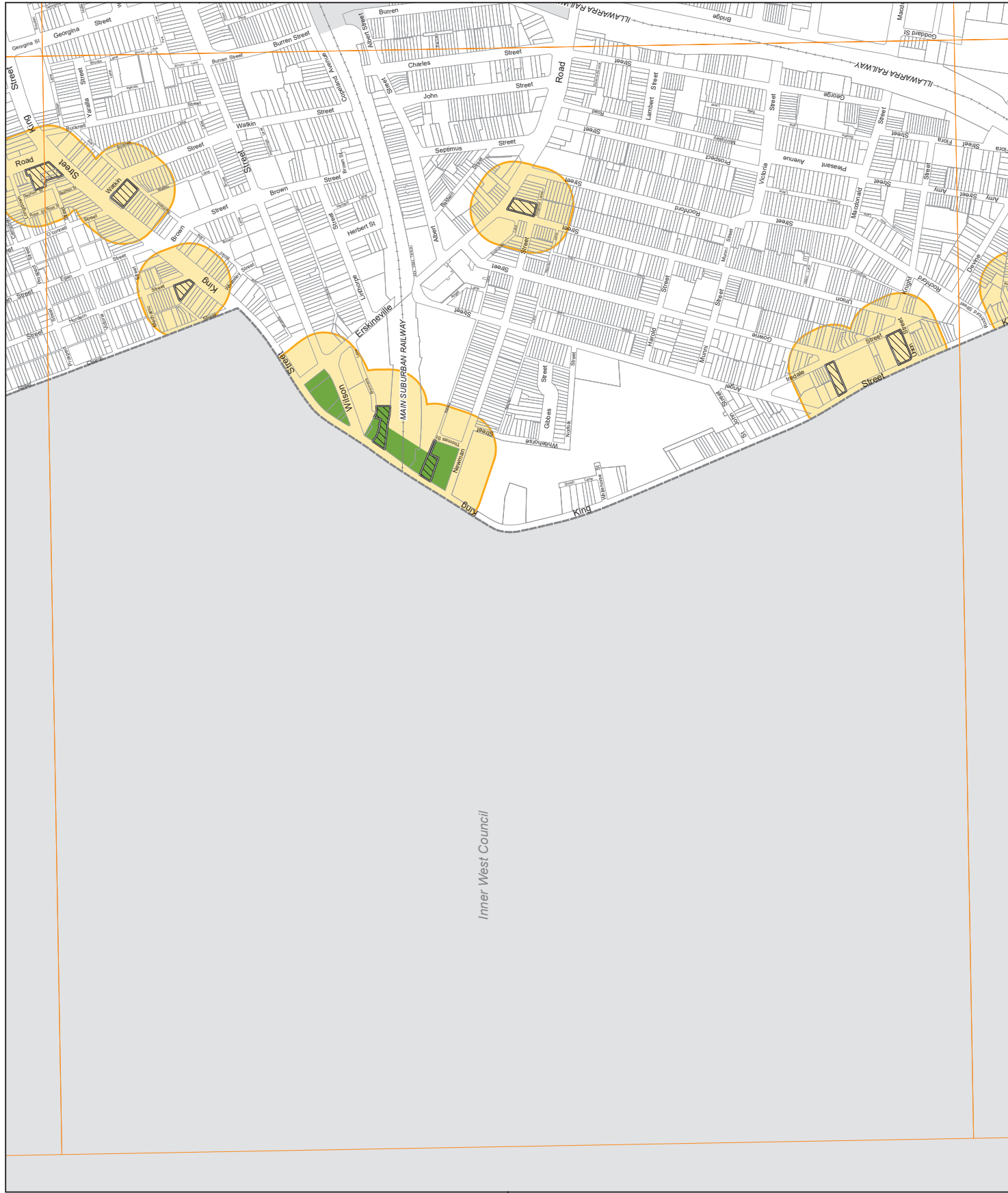
Legend

- Late night management areas
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- Land excluded from this DCP

Pre-Exhibition



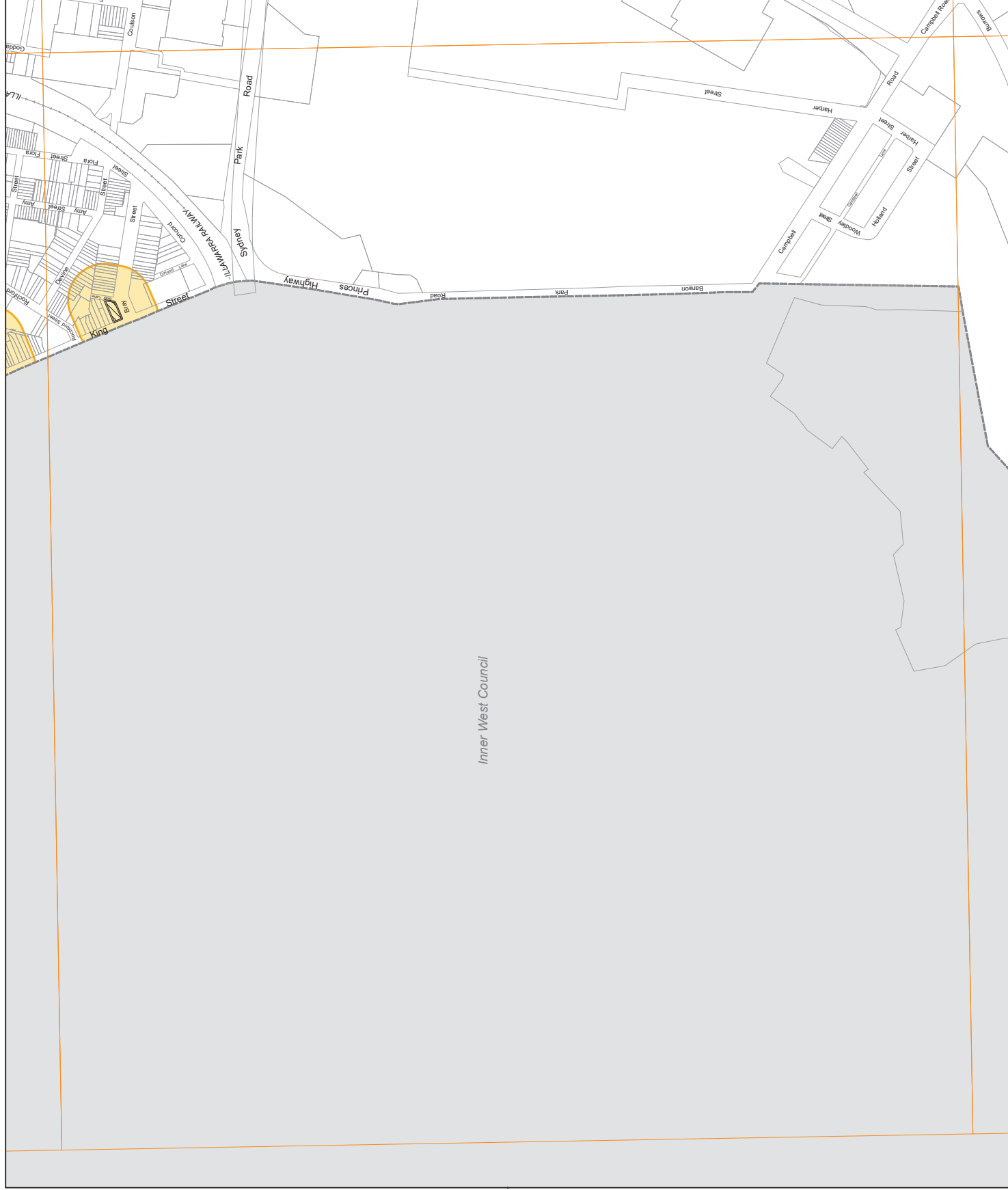
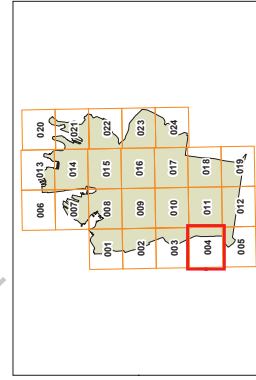
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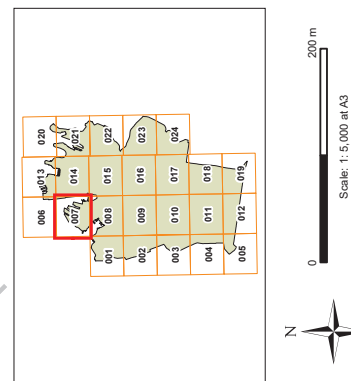
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Pre-Exhibition

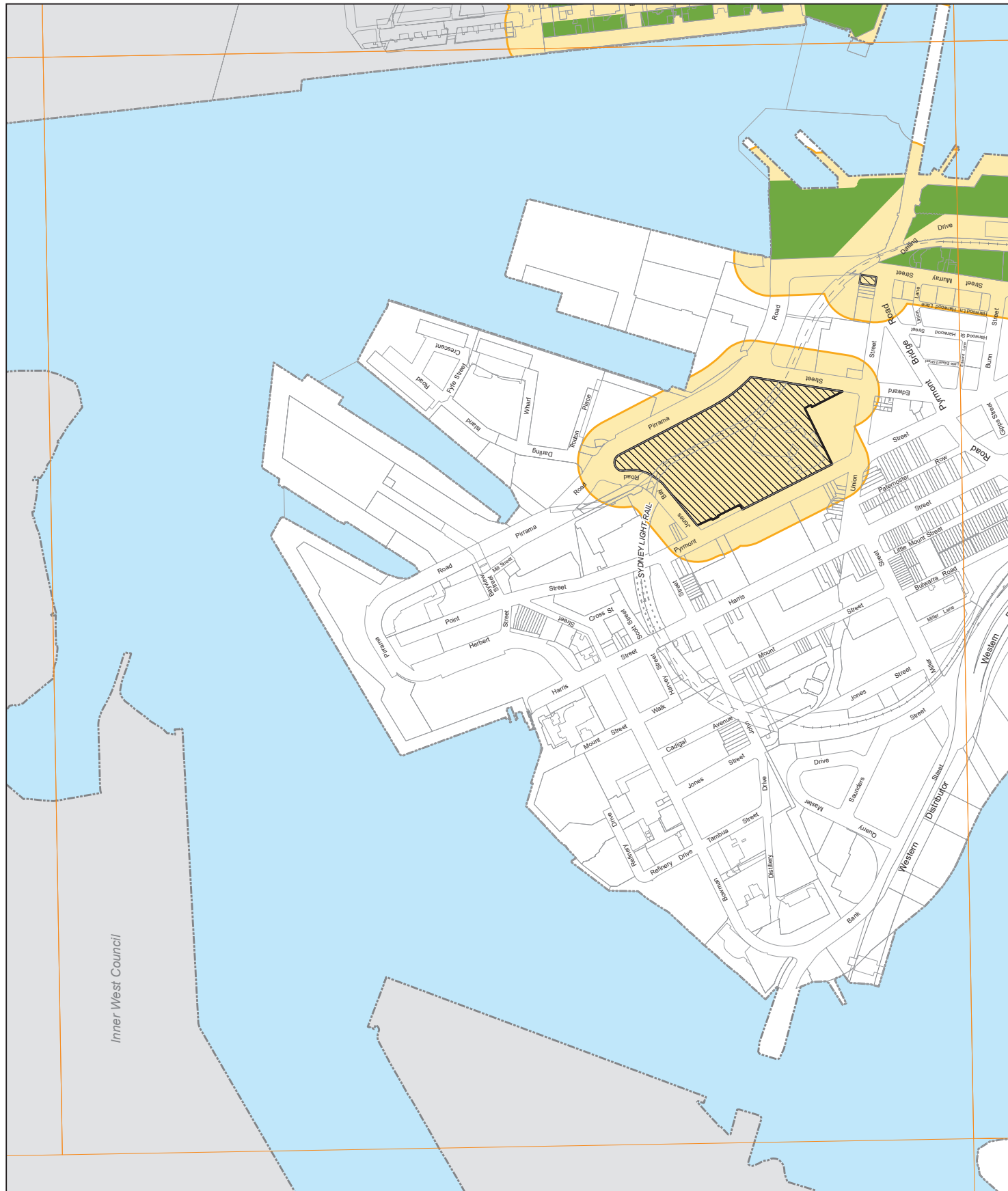


Entertainment sound management
map
Sheet 007

- Legend**
- Late night management areas
 - Existing live music and performance venues
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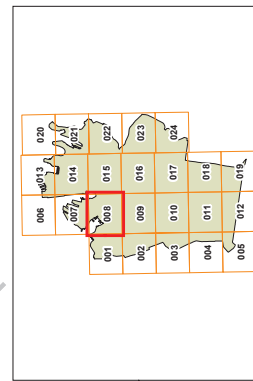
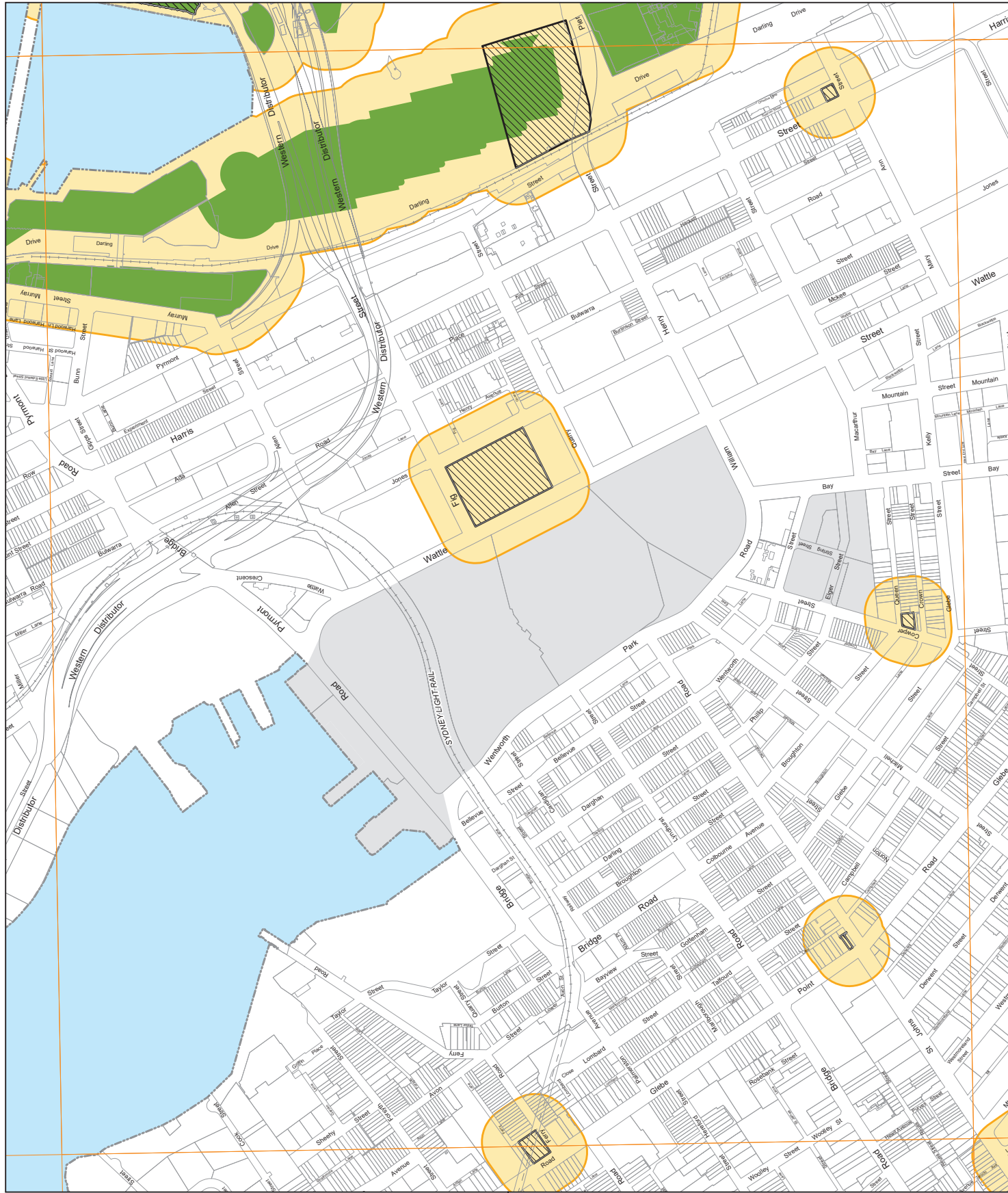


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Entertainment sound management
map
Sheet 008

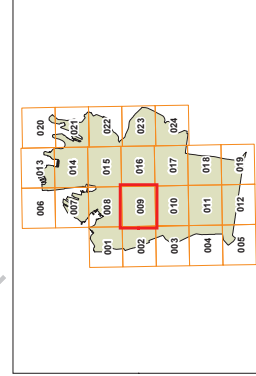
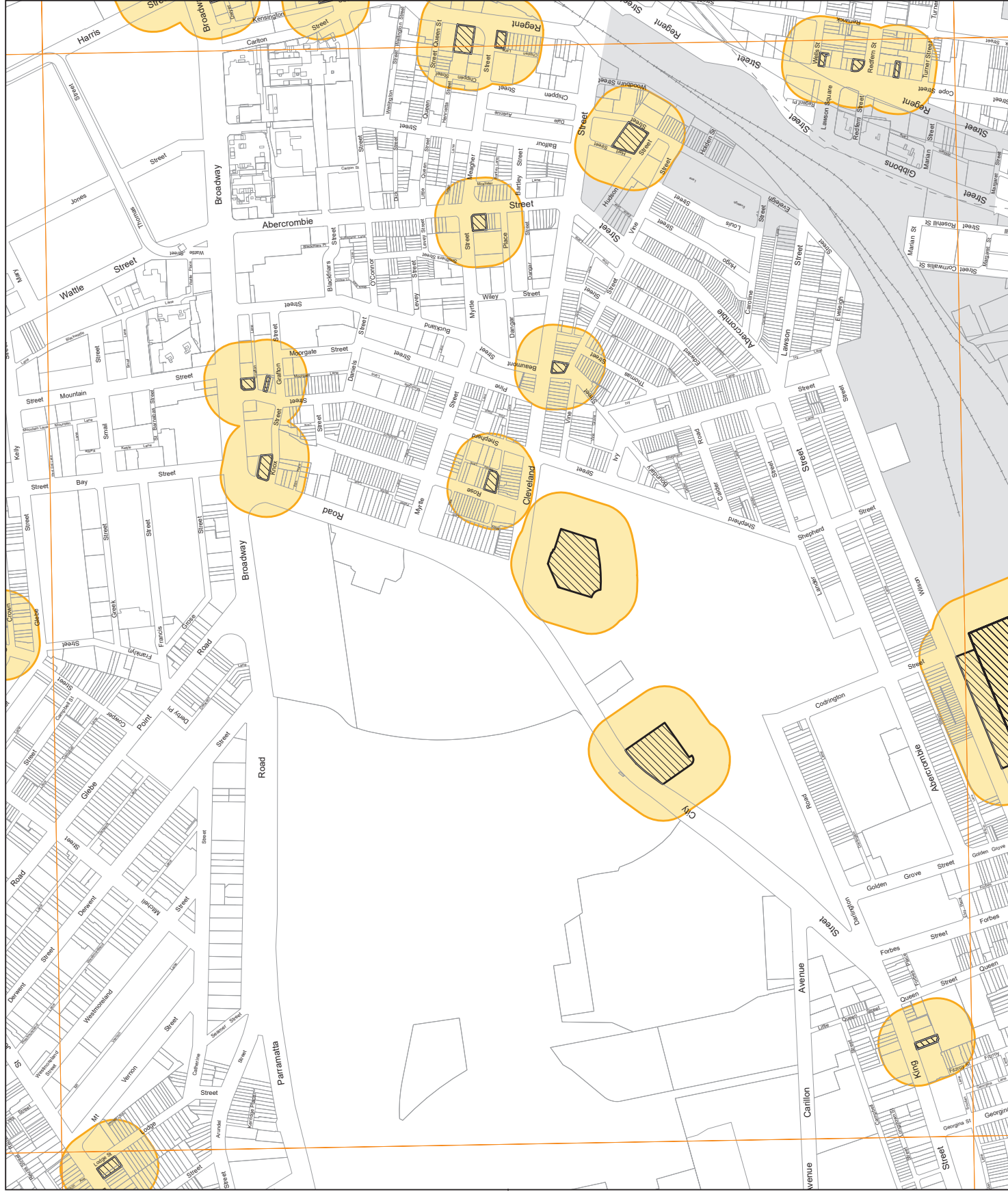
- Legend**
- Late night management areas
 - Existing live music and performance venues
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Entertainment sound management
map
Sheet 009

- Legend**
- Late night management areas
 - Existing live music and performance venues
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 - Land excluded from this DCP



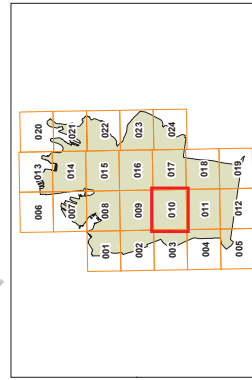
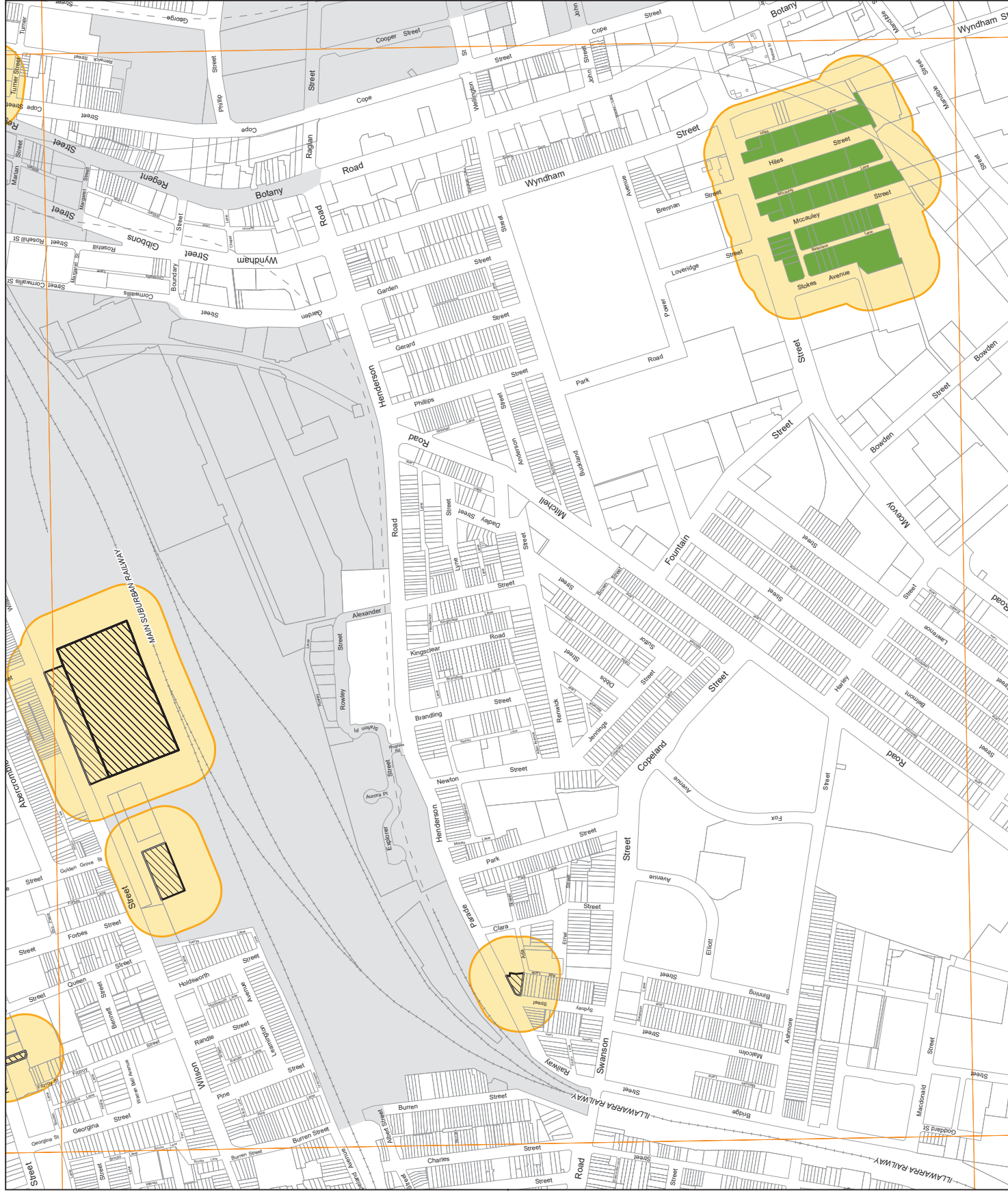
Sydney Development Control Plan 2012



Entertainment sound management map Sheet 010

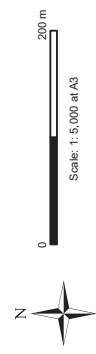
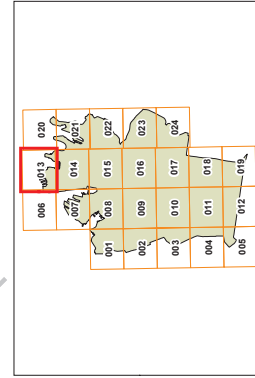
Legend

- Late night management areas
- Existing live music and performance venues
- Land that may be affected by entertainment sound or high activity area
- Land excluded from this DCP



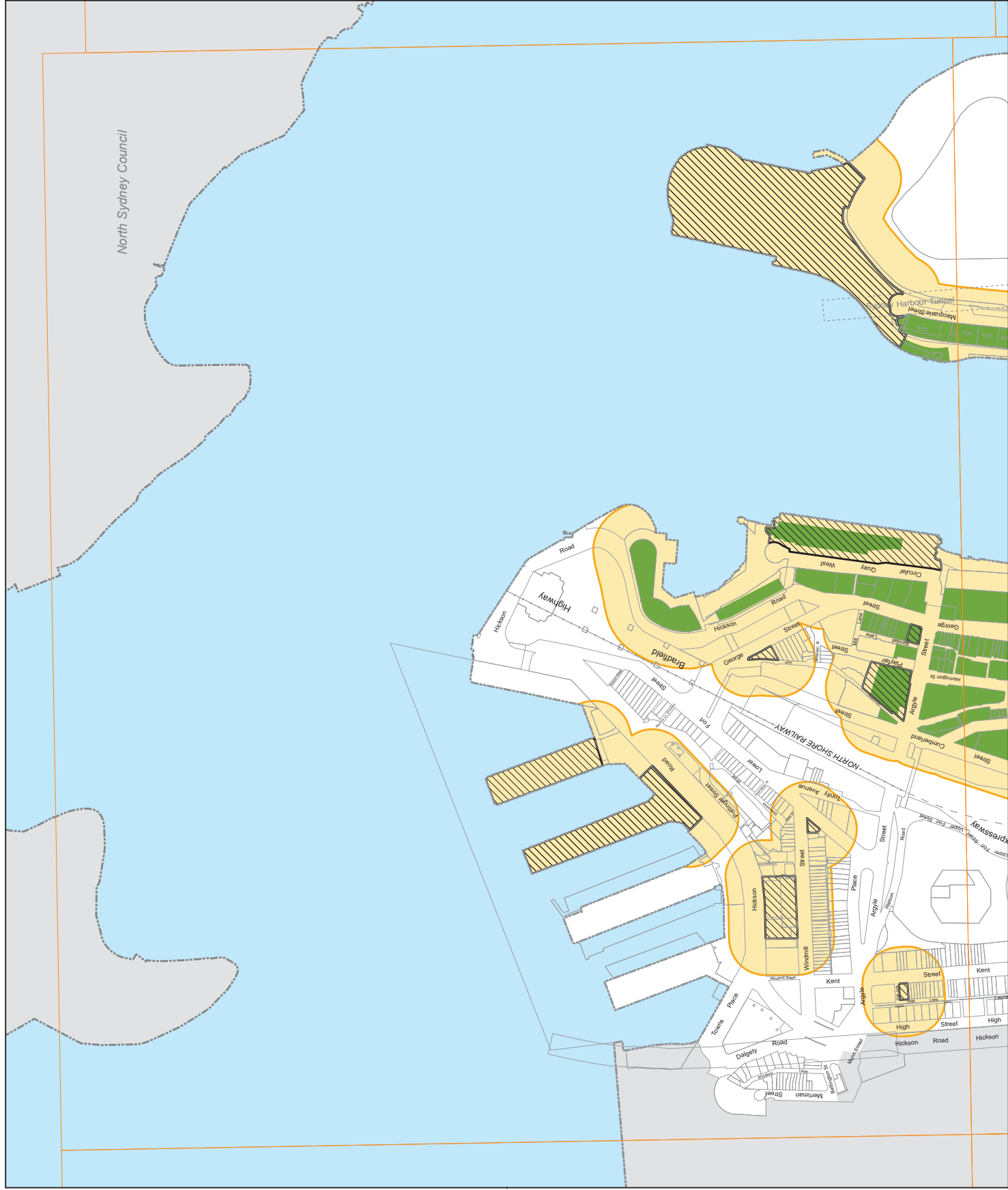
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- Legend**
- Late night management areas
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 - Land excluded from this DCP







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Publication Date: June 06
Drawing: GDA
Project: 013-013
Printed Date: March 09, 2020
File: 013-013-013.dwg



Legend

-  Late night management areas
-  Existing live music and performance venues
-  Land that may be affected by entertainment sound or high activity area
-  Land excluded from this DCP



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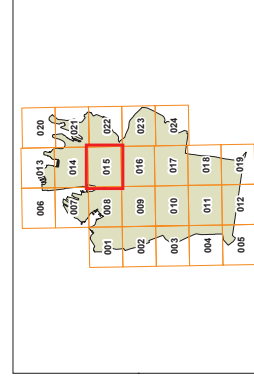
Sydney Development Control Plan 2012



Entertainment sound management map Sheet 015

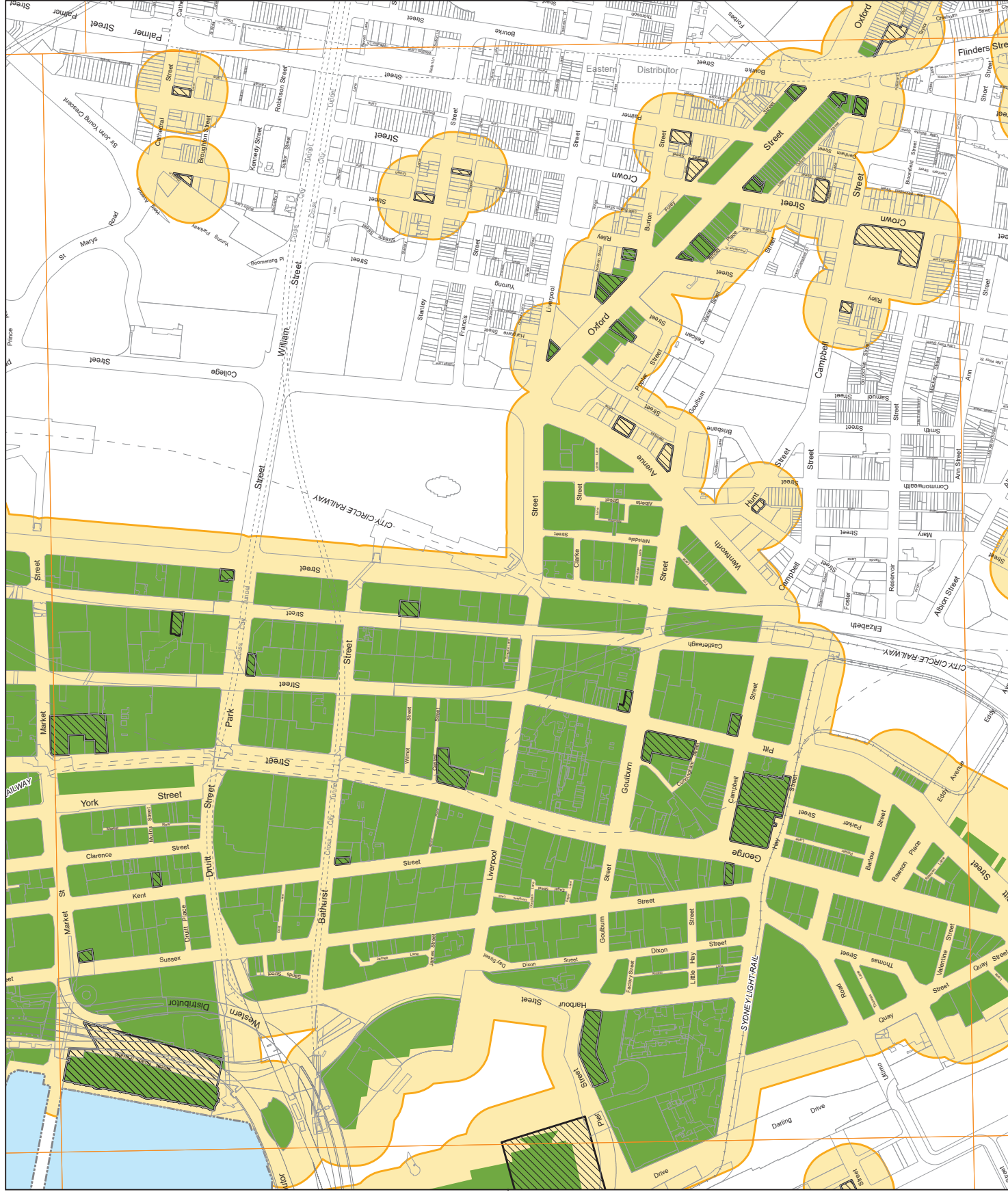
Legend

- Late night management areas
- Existing live music and performance venues
- Land that may be affected by entertainment sound or high activity area
- Land excluded from this DCP
- Land excluded from this DCP



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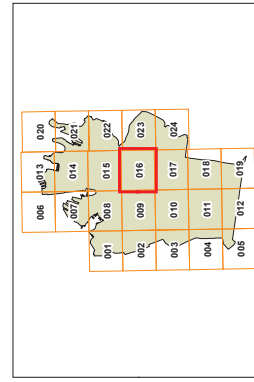
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Drawn: GUMA
Checked: GUMA
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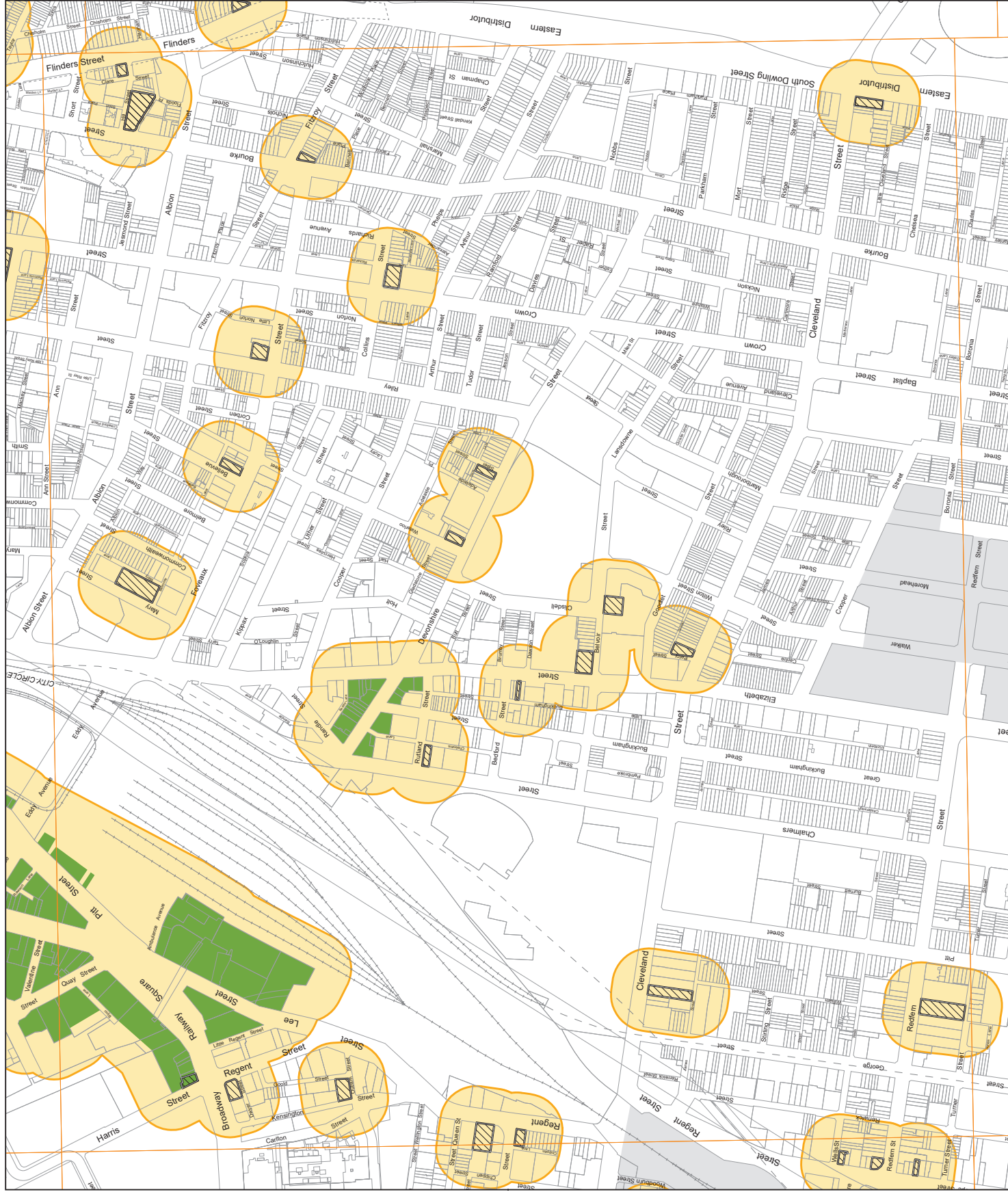
Entertainment sound management
map
Sheet 016

Legend

- Late night management areas
- Existing live music and performance venues
- Land that may be affected by entertainment sound or high activity area
- Land excluded from this DCP



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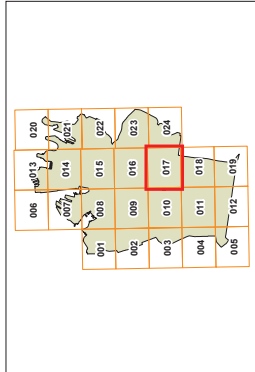


Sydney Development Control Plan 2012

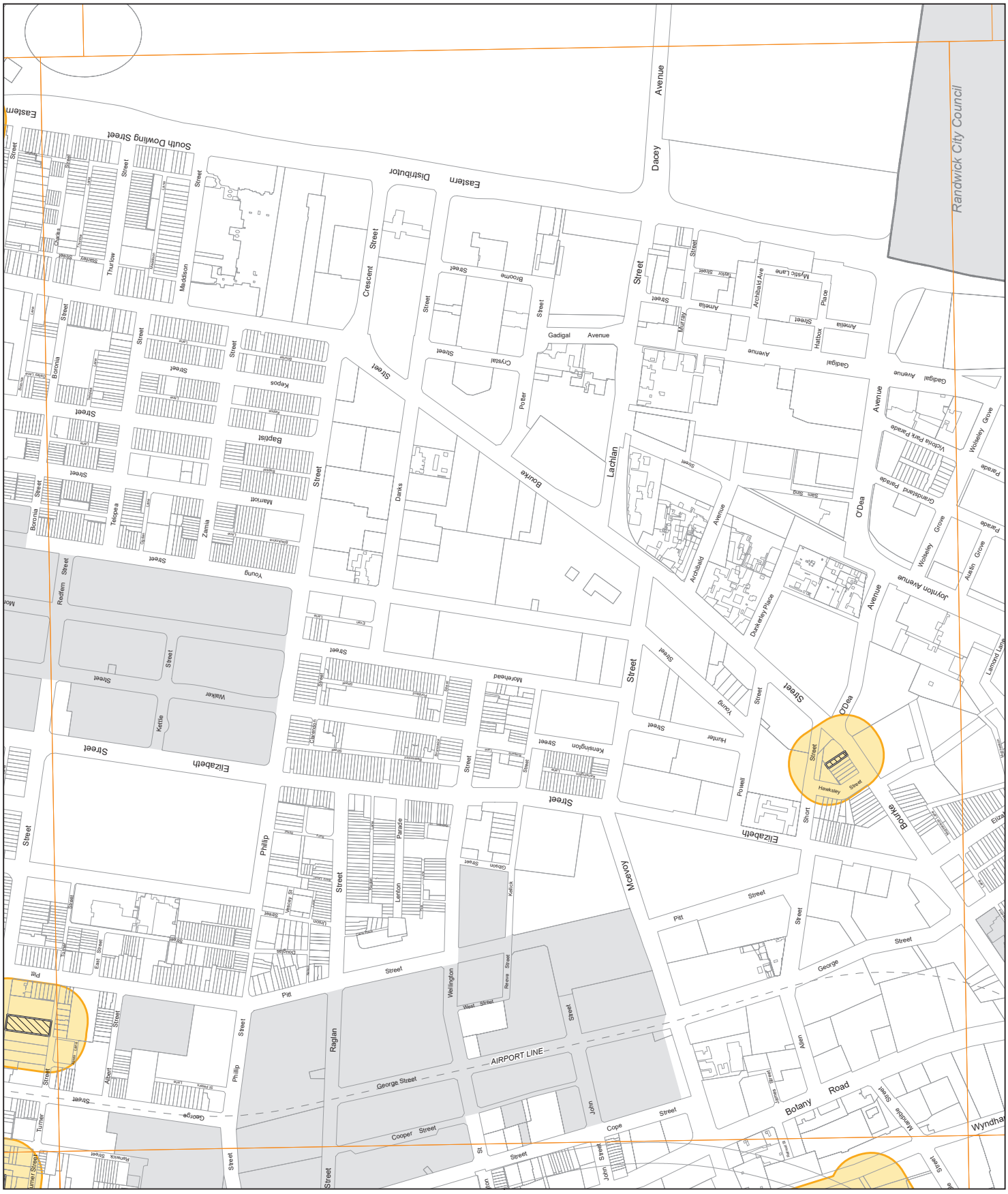


Entertainment sound management map Sheet 017

- Legend**
- Late night management areas
 - Existing live music and performance venues
 - Land that may be affected by entertainment sound or high activity area
 - Land excluded from this DCP







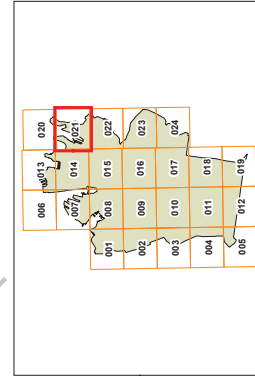
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Randwick City Council

Entertainment sound management
map
Sheet 021

- Legend**
-  Late night management areas
 -  Existing live music and performance venues
 -  Land that may be affected by entertainment sound or high activity area
 -  Land excluded from this DCP

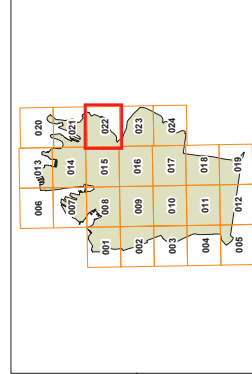


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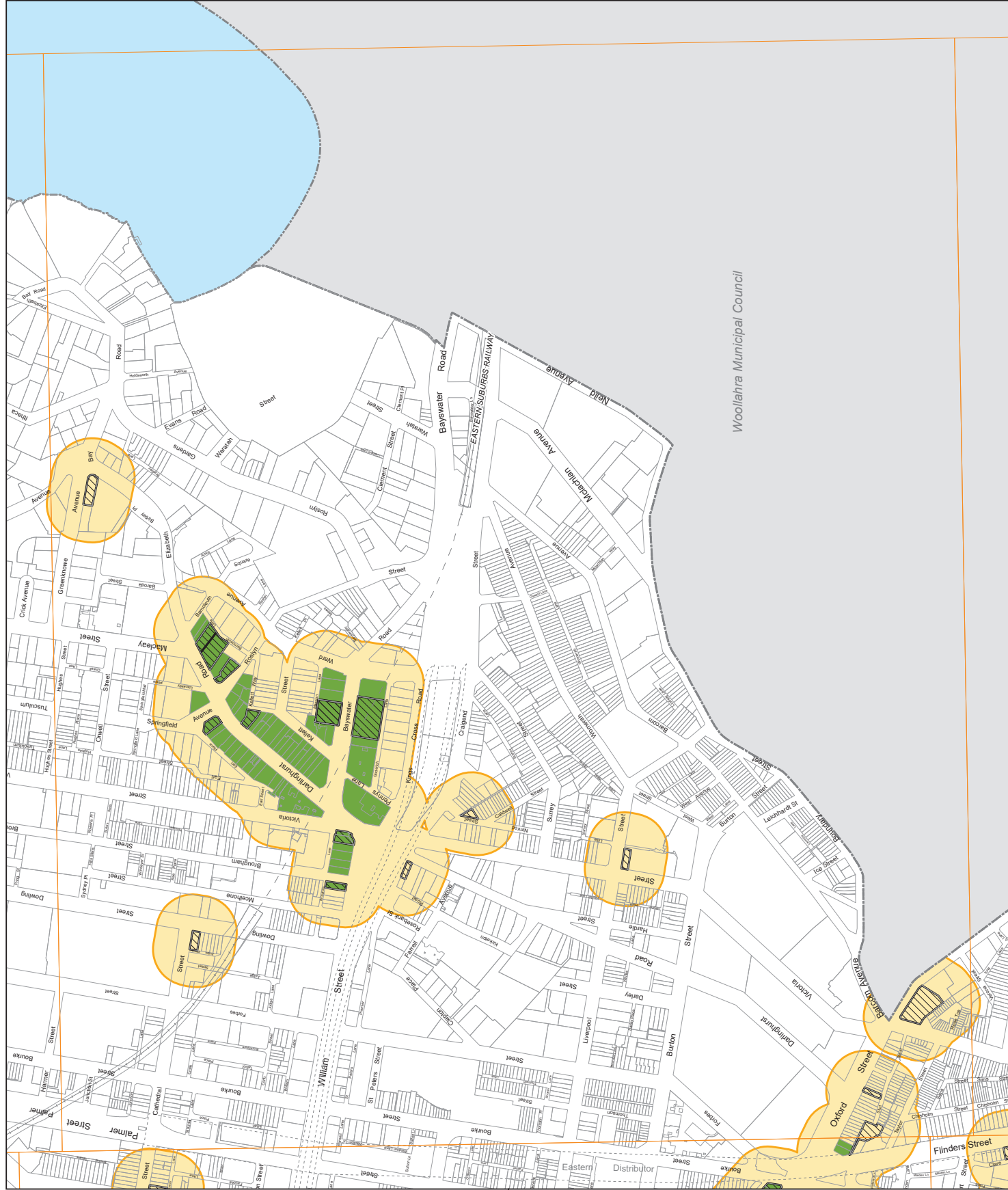


Entertainment sound management
map
Sheet 022

- Legend**
- Late night management areas
 - Existing live music and performance venues
 - Land that may be affected by entertainment sound or high activity area
 - Land excluded from this DCP

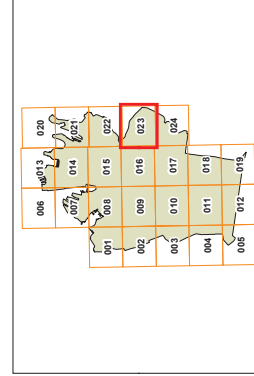


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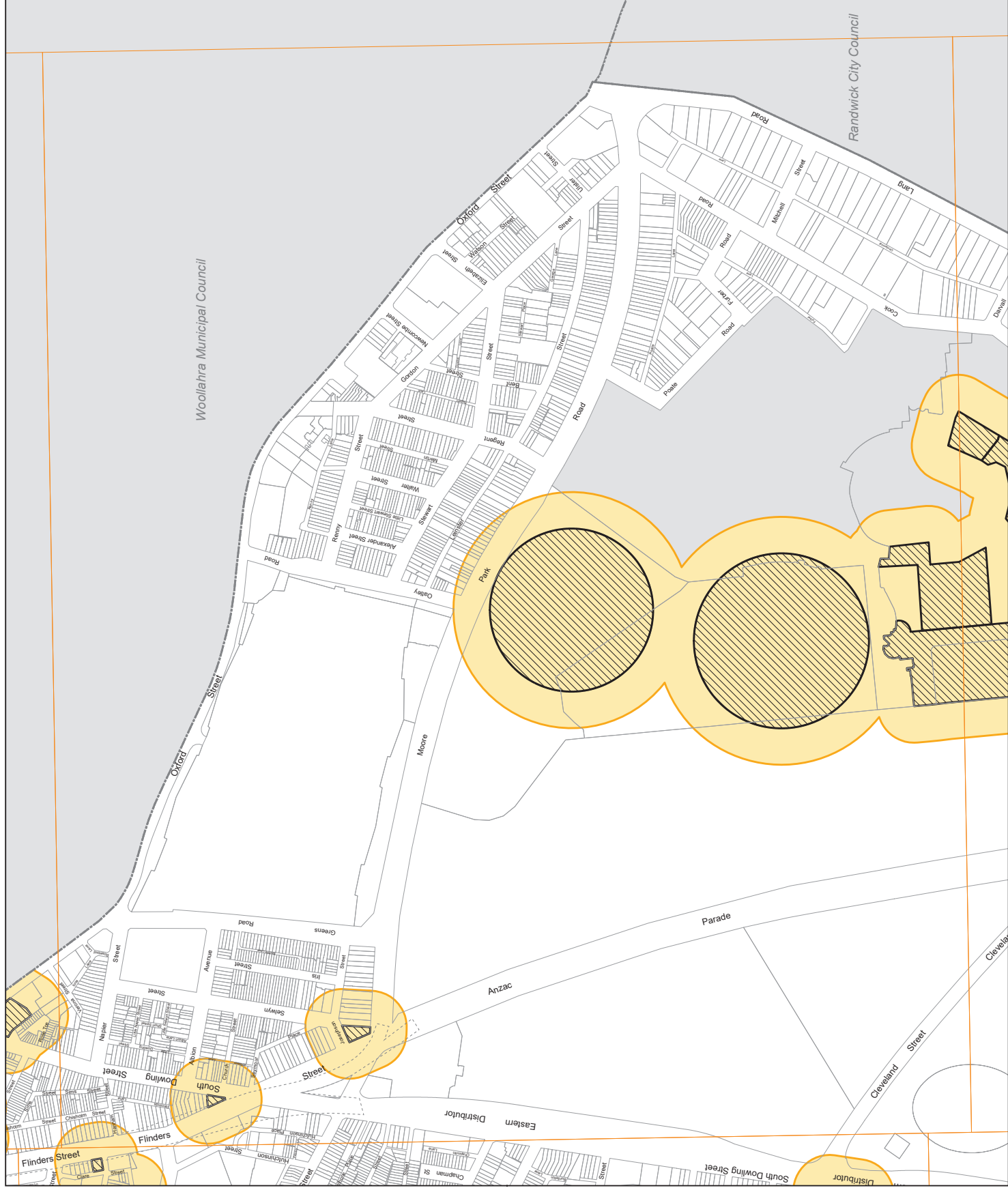


Woollahra Municipal Council

- Legend**
- Late night management areas
 - Existing live music and performance venues
 - Land that may be affected by entertainment sound or high activity area
 - Land excluded from this DCP

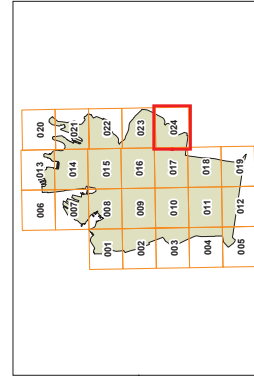


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Entertainment sound management
map
Sheet 024

- Legend**
- Late night management areas
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