

## Relevant Information for Council

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**FILE:** X009155 **DATE:** 26 June 2020

**TO:** Lord Mayor and Councillors

**FROM:** Graham Jahn AM, Director City Planning, Development and Transport

**SUBJECT:** Information Relevant To Item 9.3 – Public Exhibition - Planning Proposal - Open and Creative Planning Reforms

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### Alternative Recommendation

- (A) Council approve the Planning Proposal - Open and Creative Planning Reforms, shown at Attachment A to the subject **Information Relevant To Item 9.3 Memorandum** ~~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;
- (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; and

- (G) ***Council note a comprehensive review is being undertaken by staff separate to the subject report, of the land use zoning and permitted uses required to support the desired future uses of other town halls and Council-owned facilities.***

## **Background**

This memo provides additional information to Council following the meeting of the Transport, Heritage and Planning Committee on 22 June 2020.

The Transport, Heritage and Planning Committee requested further information on:

- an amendment to extend the exempt provision for later opening shops to include the B4 Mixed Use zone, and
- the zoning and additional permitted uses for Council's town halls and community facilities.

## **Later opening shops extended to the B1 Neighbourhood Centre and B4 Mixed Use Zones**

The planning proposal removes the requirement for development consent for shops and businesses, wishing to extend their standard business hours until 10pm, excluding licensed and food and drink premises.

The proposals considered by the Transport, Heritage and Planning Committee and the CSPC limited this opportunity to shops and businesses in areas zoned B2 Local Centre, B3 Commercial Centre and B8 Metropolitan Centre as shown at Figure 1 below.

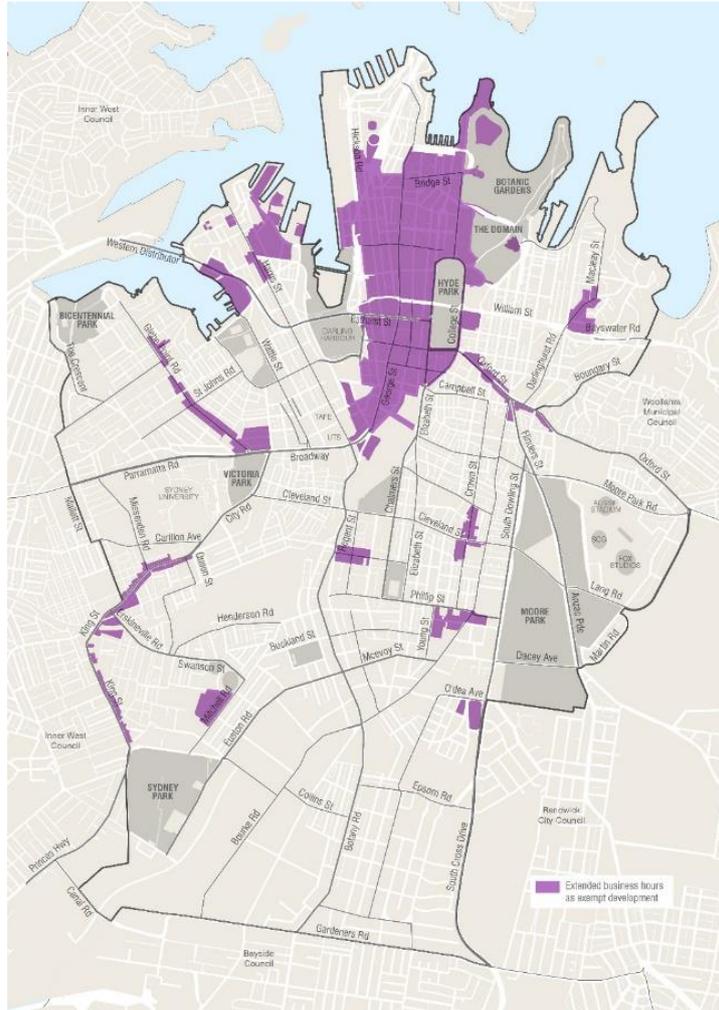


Figure 1: Areas where shops and businesses could open until 10pm without an additional approval including the B2, B3 and B8 zones

Councillors have requested that the exempt provision include streets, such as Parramatta Road, William Street and Botany Road located in the B4 Mixed Use zone. The B4 zone is included to capture these streets and other surrounding areas with retail and business premises. It includes parts of Surry Hills, Ultimo, Darlinghurst, Pyrmont, Chippendale, Rosebery, Camperdown, Beaconsfield, Paddington, Redfern and Zetland. With the expansion of the exempt provision to B4 zones it is also recommended that the B1 Neighbourhood Centre zone is included. The Neighbourhood Centre zone includes shops and businesses in Erskineville, Camperdown, Forest Lodge, Darlington, Ultimo, East Sydney and Rosebery.

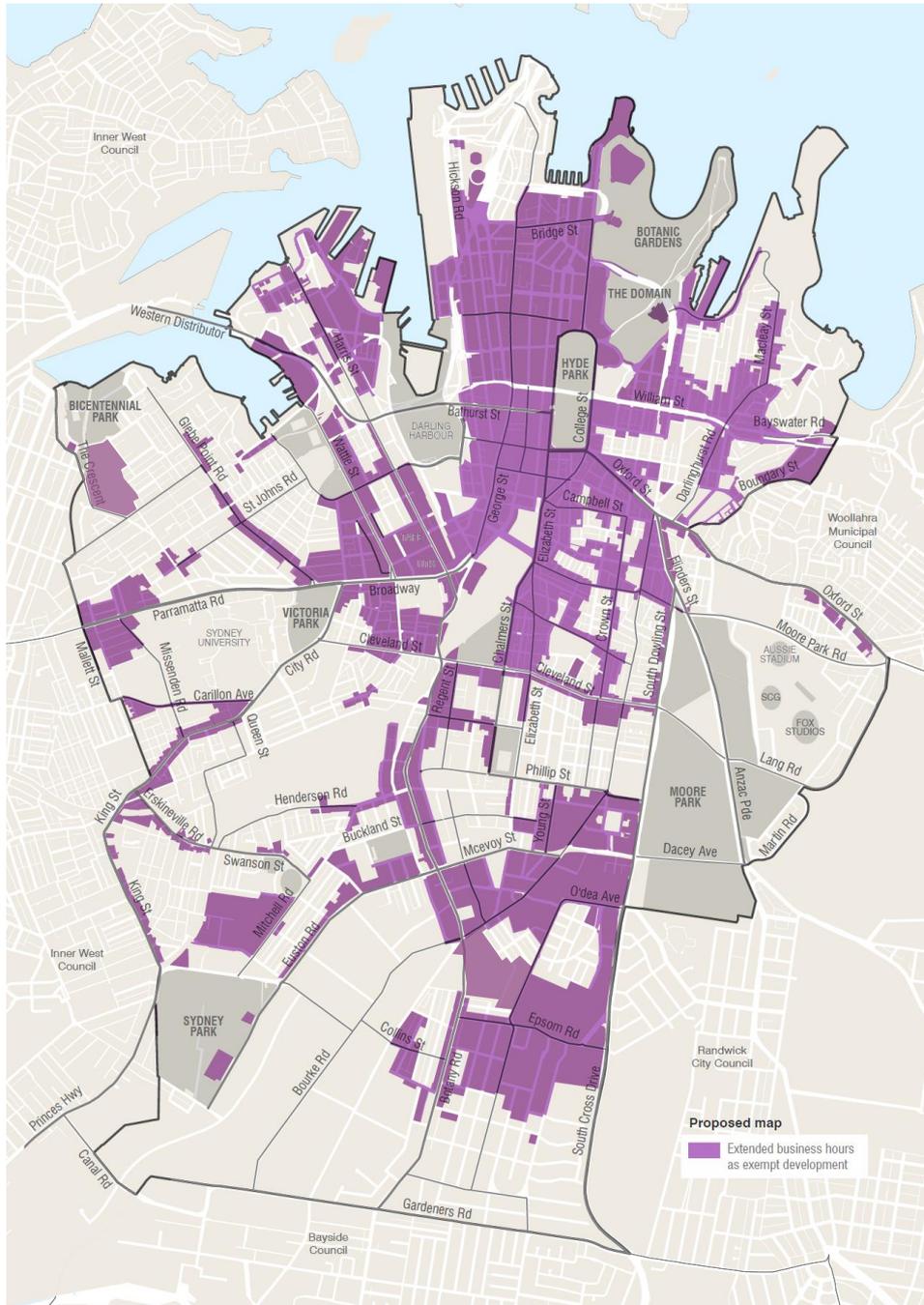


Figure 2: Areas where shops and businesses could open until 10pm without an additional approval including the B1, B2, B3, B4 and B8 zones

The inclusion of late opening shops and businesses in the B1 Neighbourhood Centre and B4 Mixed Use zones as exempt development is supported, because:

- It will achieve the objectives of the zones to provide a range of retail and business uses that serve the needs of people who live or work in the surrounding neighbourhood and a mixture of compatible land uses in accessible locations to encourage walking and support the viability of centres.

- It will complement and support the late night DCP controls. Many of the shops and businesses located in the zones are already included in DCP late night trading areas where unlicensed shops and businesses may apply for later trading after 10pm and the principle of late night retail activity has been established.
- The principle and impacts of standard business hours for shop or businesses in the zones have been assessed in individual development approvals. The impacts of the extension of these hours until 10pm will only be minor. This is because eligible premises will not be licensed or food and drink premises or involve outdoor trading and as a result, will not create unacceptable sound impacts or anti-social behaviour.
- It will increase the opportunity for more shops and businesses to open later, which contributes to the liveability, vibrancy and safety of an area and increases services for local communities. This may encourage more people to shop locally at their convenience after work and support the viability of businesses in the recovery from the Covid-19 pandemic.

The planning proposal has been amended to reflect the addition of the B1 Neighbourhood Centre and B4 Mixed Use zone and is included at Attachment A. Amendments are shown in bold italic underlined and strike-through text.

### **Extending entertainment uses to other City facilities**

The planning proposal makes entertainment facilities, such as theatre, cinema, music and dance, an additional permitted use for Erskineville Town Hall. Entertainment facilities are currently prohibited in the B1 Neighbourhood Centre zone, where the Erskineville Town Hall is located.

Other facilities such as the Paddington Town Hall, Glebe Town Hall, Redfern Town Hall, Alexandria Town Hall and Surry Hills Community Centre are zoned SP2 Infrastructure. Uses in the SP2 Infrastructure zone are limited to those for the purpose shown on the land zoning map, including any development that is ordinarily incidental or ancillary to development for that purpose.

With the exception of Surry Hills Community Centre, these properties are labelled 'Community' uses, however each are different in terms of their function and the types of activities currently occurring within them. Some activities may occur under existing use rights.

The additional permitted use for Erskineville Town Hall is proposed because this site does not have SP2 zoning. It is considered to be the most efficient way of allowing performance uses to occur and support cultural activity.

The ability of other town halls and Council-owned community centres to host entertainment uses is currently under separate review. The City's community centres are located in a range of zones including B4 Mixed use, RE1 Public Recreation, SP2 Infrastructure or R1 Residential. The review involves a comprehensive and detailed analysis to establish the land use zoning and permitted uses required to support the desired future uses of each of these venues within their different contexts.

The outcomes of this work will be integrated into the update of the LEP later this year.

Prepared by: Julie Prentice, Specialist Planner

## Attachments

**Attachment A.** Amended Planning Proposal Sydney Local Environmental Plan 2012:  
Open and Creative Planning Reforms

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Approved



**GRAHAM JAHN AM**

Director City Planning, Heritage and  
Transport

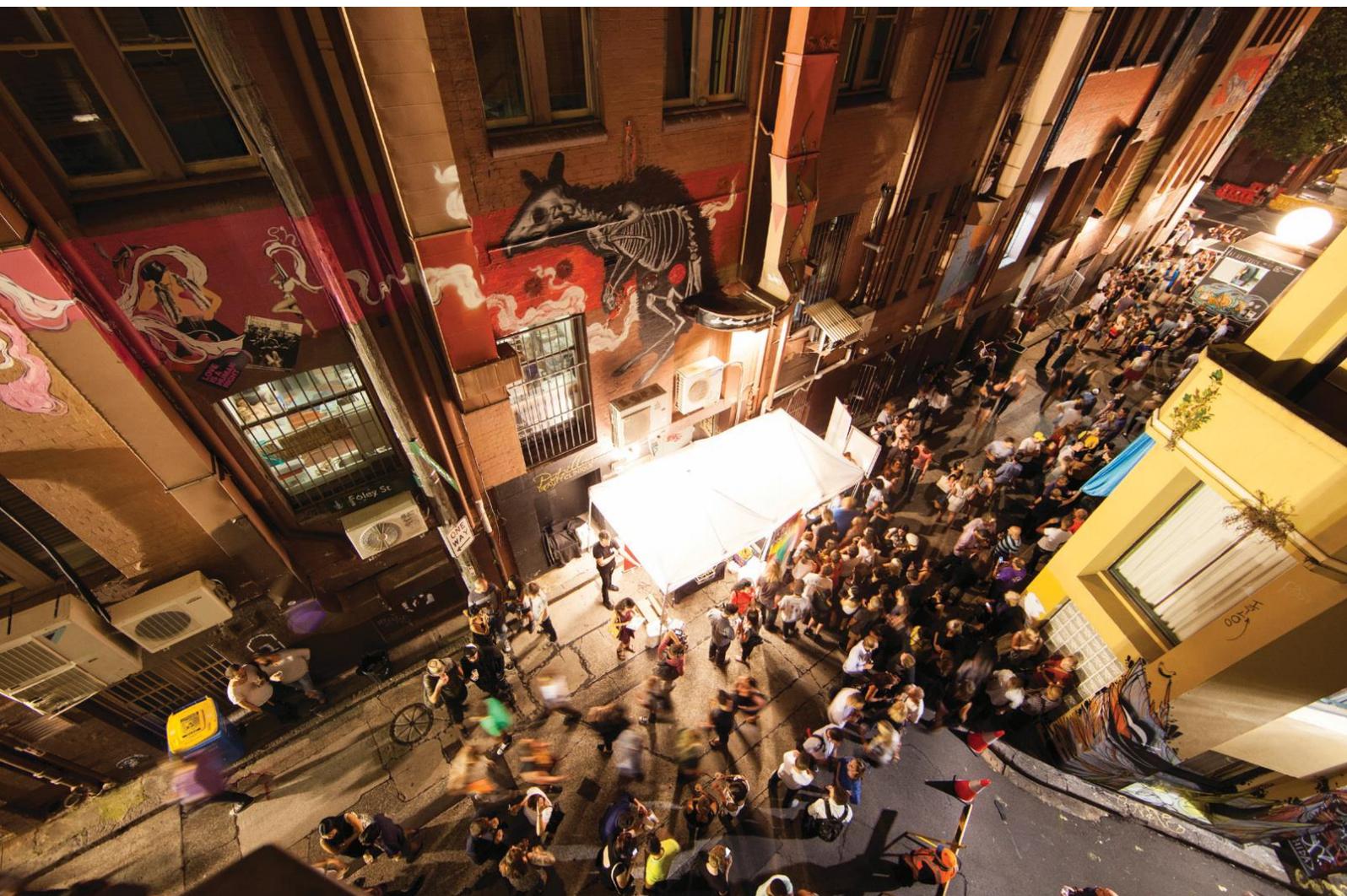
# Attachment A

**Amended 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

June 2020



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# 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:

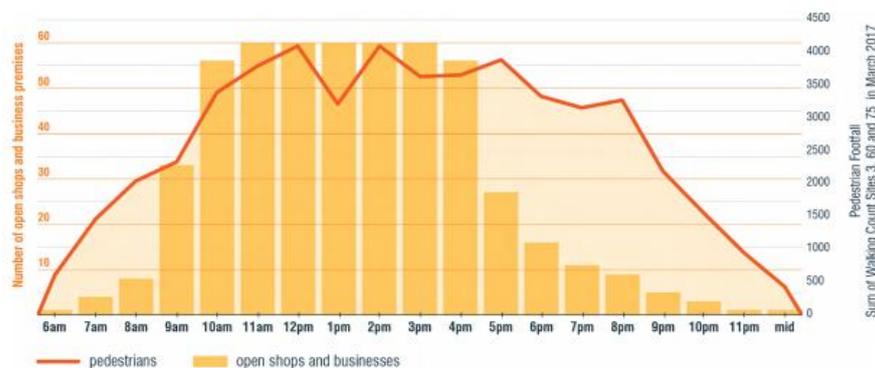
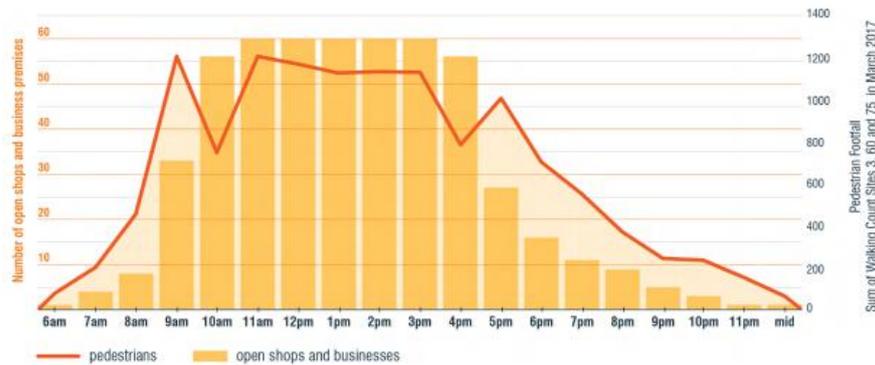
- make it easier for shops and business to trade in central Sydney and local centres from 7am to 10pm, seven days a week
- make it easier for small scale cultural activities to take place in existing office, industrial, retail and community facility buildings
- make it easier for creative and maker tenants 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 **in business zones** 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 **business zones 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).

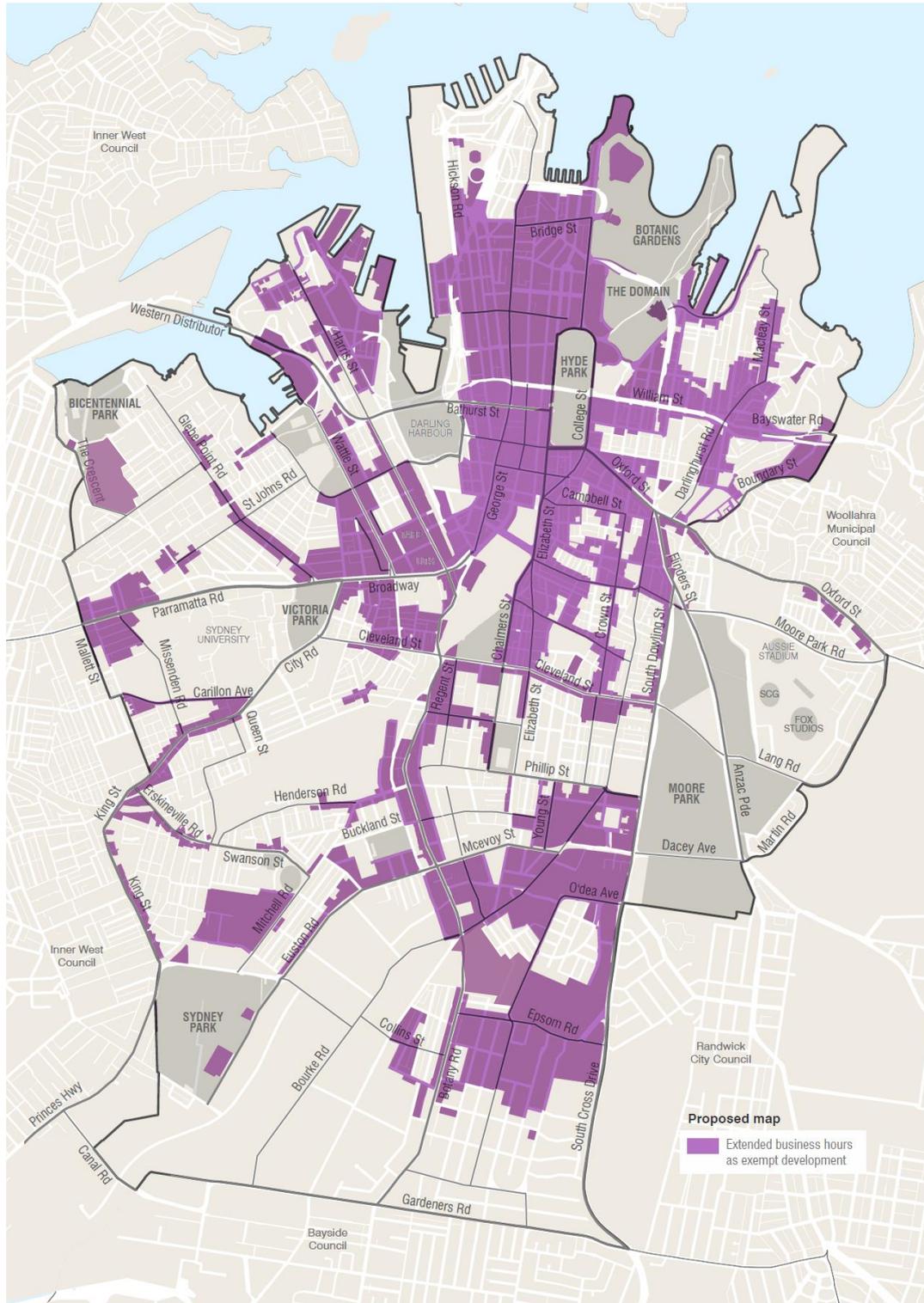
The planning proposal does not seek to amend any other environmental planning instruments. As noted in Part 1 it will be supported by associated amendments to the Sydney Development Control Plan 2012 and other relevant DCPs which are addressed in a separate document and are not part of this planning 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 **B1 Neighbourhood Centre**, B2 Local Centre, B3 Commercial Centre, **B4 Mixed Use Zone** 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 ***B1 Neighbourhood Centre***, B2 Local Centre, B3 Commercial Centre, ***B4 Mixed Use*** 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
  - ***Sydney LEP (Harold Park) 2011***

#### 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

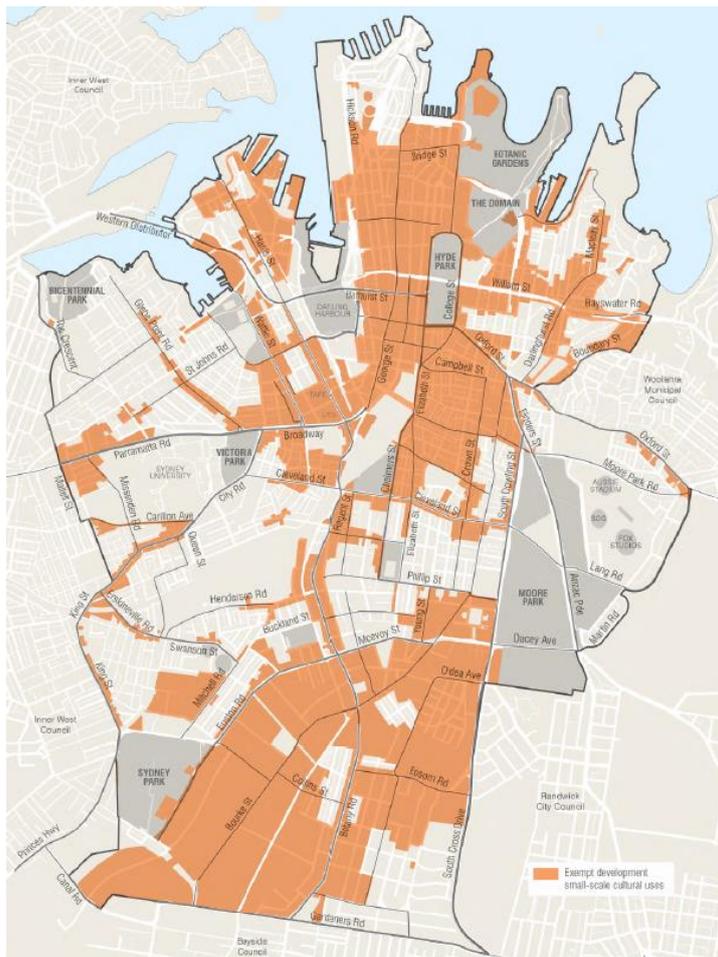
- the production, or an event in association with an exhibition of art, craft, design, media, image or immersive technology, or
- teaching or discussion related to (a) or (b).

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.

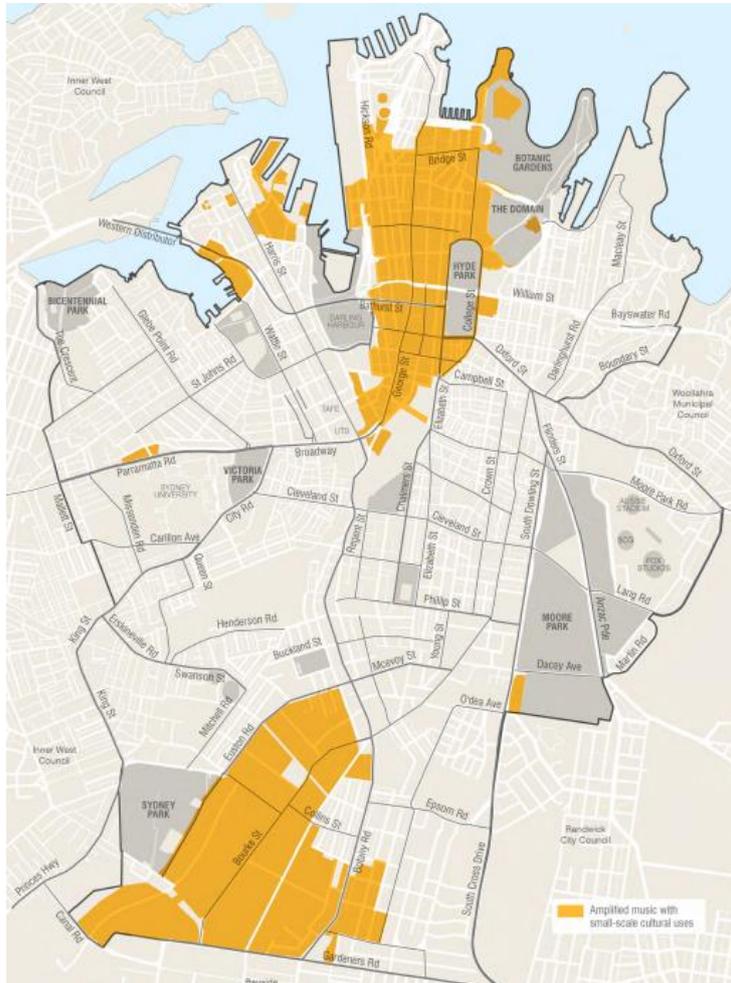
The provision will require that signage be displayed in a visible place within the premises five to seven days before and during the event describing the activity and including contact details for the person operating the event.

### 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 **B1 Neighbourhood Centre**, B2 Local Centre, B3 Commercial Centre, **B4 Mixed Use** 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. **Allowing shops to open until 10pm in the B1, B2, B3, B4 and B8 zones is consistent with the objectives of these zones to provide a mixture of compatible land uses in accessible locations to encourage walking and increases the availability of services for communities.**

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, **B4** 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, **B4** 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**

<b>SS2030 Strategic Direction</b>	<b>Consistency</b>
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**

<b>LSPS Local Priority</b>	<b>Consistency</b>
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.

### 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.

<b>State Environmental Planning Policy (SEPP)</b>	<b>Comment</b>
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.
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
<b>Regional Environmental Plan (REP)</b>	<b>Comment</b>
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**

<b>No.</b>	<b>Title</b>	<b>Comment</b>
<b>1. Employment and Resources</b>		
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
<b>2. Environment and Heritage</b>		
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
<b>3. Housing Infrastructure and Urban Development</b>		
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.
<b>4. Hazard and Risk</b>		
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.
<b>5. Regional Planning</b>		
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.
<b>6. Local Plan Making</b>		
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.
<b>7. Metropolitan Planning</b>		
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 ***mixed use and*** 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~~ **22 June 2020** on the Open and Creative City Planning Reforms, and the Resolution of Council, will be inserted once determined by Council.