

## Item 4.

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

**File No: X009155**

#### **Summary**

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

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

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

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

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

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

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

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

The proposed changes are:

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

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

## Recommendation

It is resolved that:

- (A) the Central Sydney Planning Committee approve the Planning Proposal - Open and Creative Planning Reforms, shown at Attachment A to the subject report, for submission to the Department of Planning, Industry and Environment with a request for a Gateway Determination;
- (B) the Central Sydney Planning Committee approve the Planning Proposal - Open and Creative Planning Reforms for public exhibition in accordance with any conditions required in the Gateway Determination;
- (C) the Central Sydney Planning Committee note the recommendation to Council's Transport, Heritage and Planning Committee on 22 June 2020 that 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) the Central Sydney Planning Committee note the recommendation to Council's Transport, Heritage and Planning Committee on 22 June 2020 that 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) the Central Sydney Planning Committee note the recommendation to Council's Transport, Heritage and Planning Committee on 22 June 2020 that Council seek authority from the Department of Planning, Industry and Environment to exercise its delegation under section 3.36 of the Environmental Planning and Assessment Act 1979 to make the amending Local Environmental Plan; and
- (F) authority be delegated to the Chief Executive Officer to make minor changes, including any changes required by the Department of Planning, Industry and Environment as a condition of the Gateway Determination to the Planning Proposal: Open and Creative Planning Reforms, and minor changes to the Draft Sydney Development Control Plan: Open and Creative Planning Reforms and Draft Technical Guidelines Small Scale Cultural Activities in Spaces less than 500 square metres to prepare them for public exhibition.

**Attachments**

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

## Background

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

## Covid-19 response

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

## City Strategies

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

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

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

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

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

#### **Response to Discussion Paper**

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

**Other consultation**

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

**Key Implications**

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



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

### **More diverse evening economy**

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

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

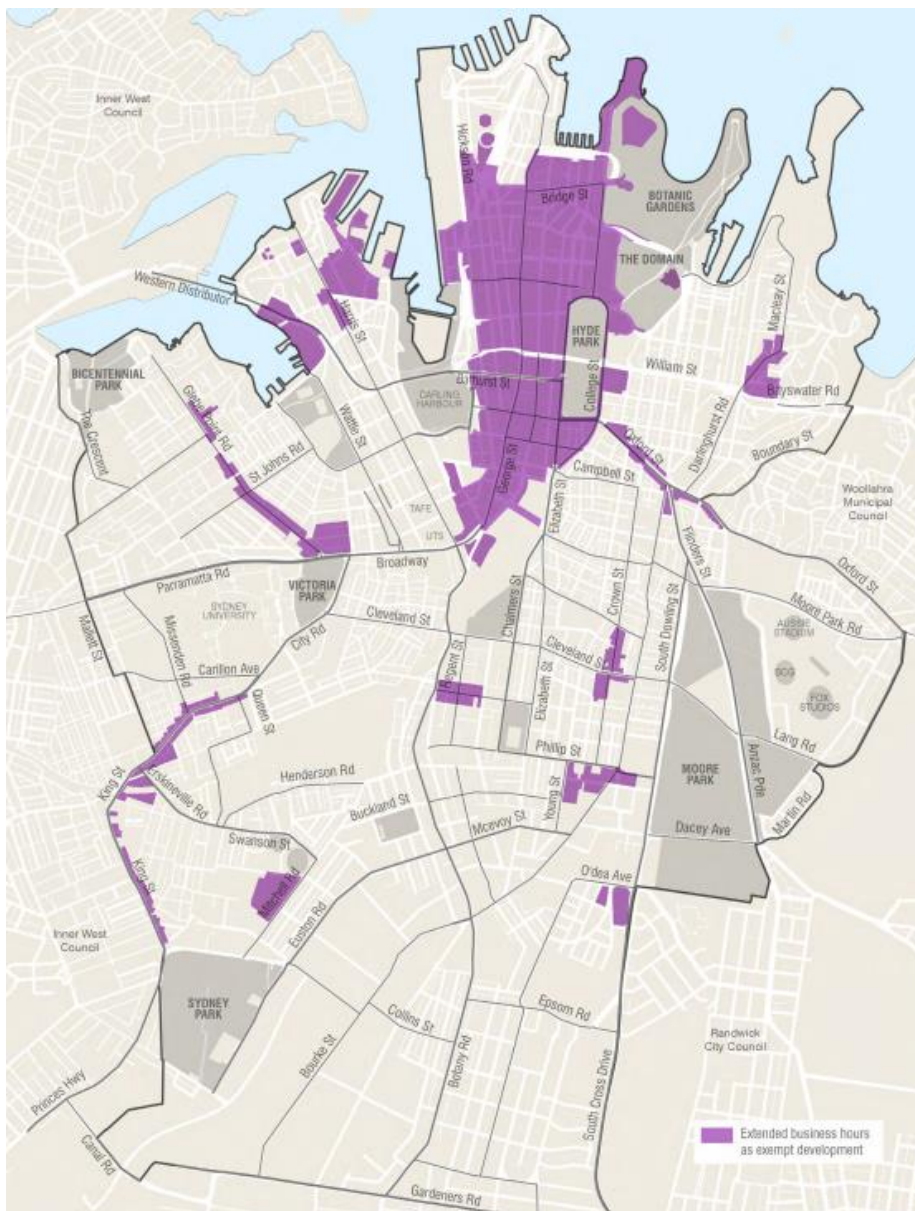


Figure 1 Areas where shops and businesses could open until 10pm without an additional approval

## Small scale cultural activities

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

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

#### *Activity*

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

#### *Application*

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

#### *Density*

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

*Frequency and duration*

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

*Fire safety*

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

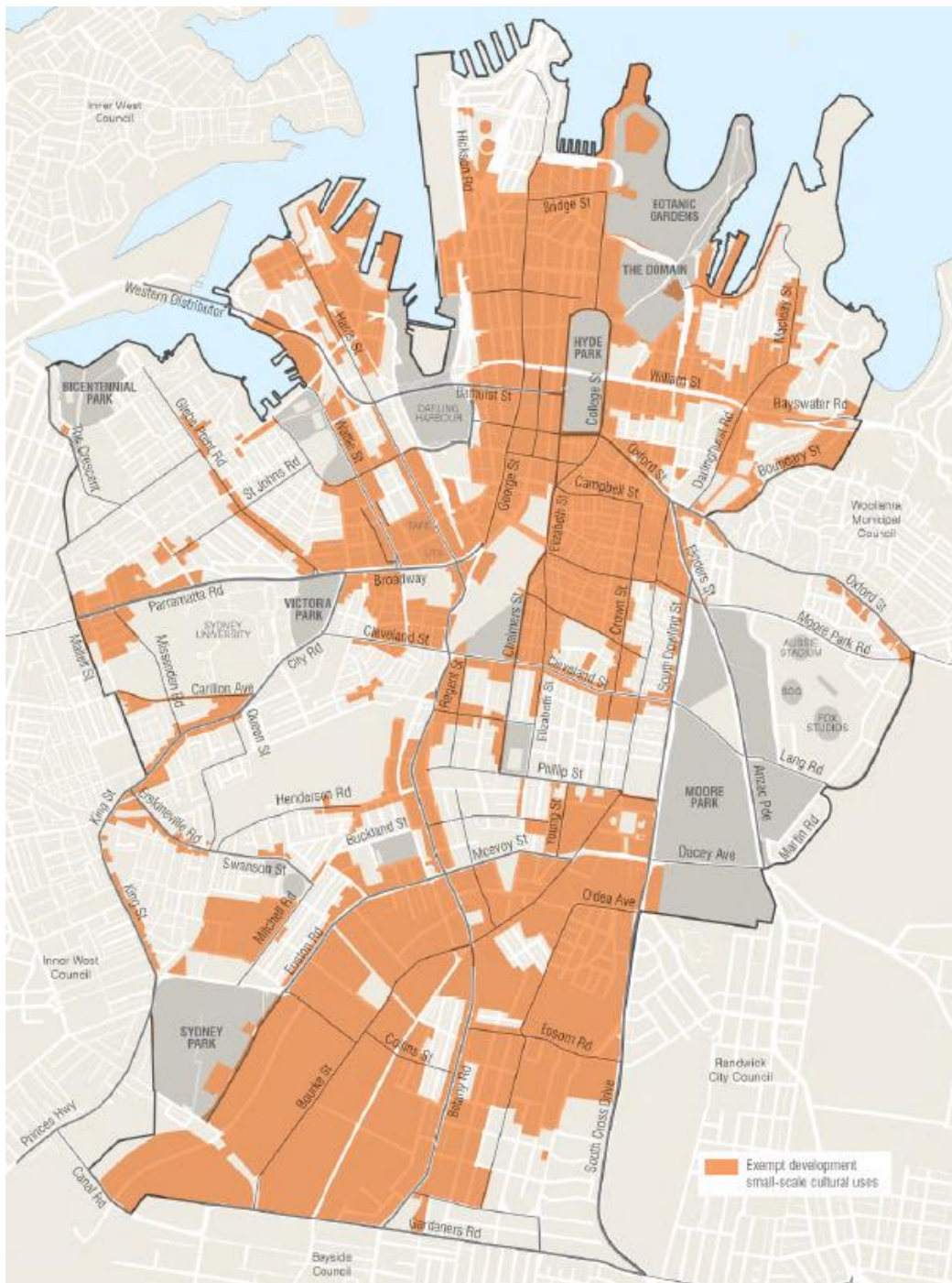


Figure 2 Areas where small-scale cultural activities could happen without approval

*Service of alcohol*

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

*Amplified music*

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

*Amenity*

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

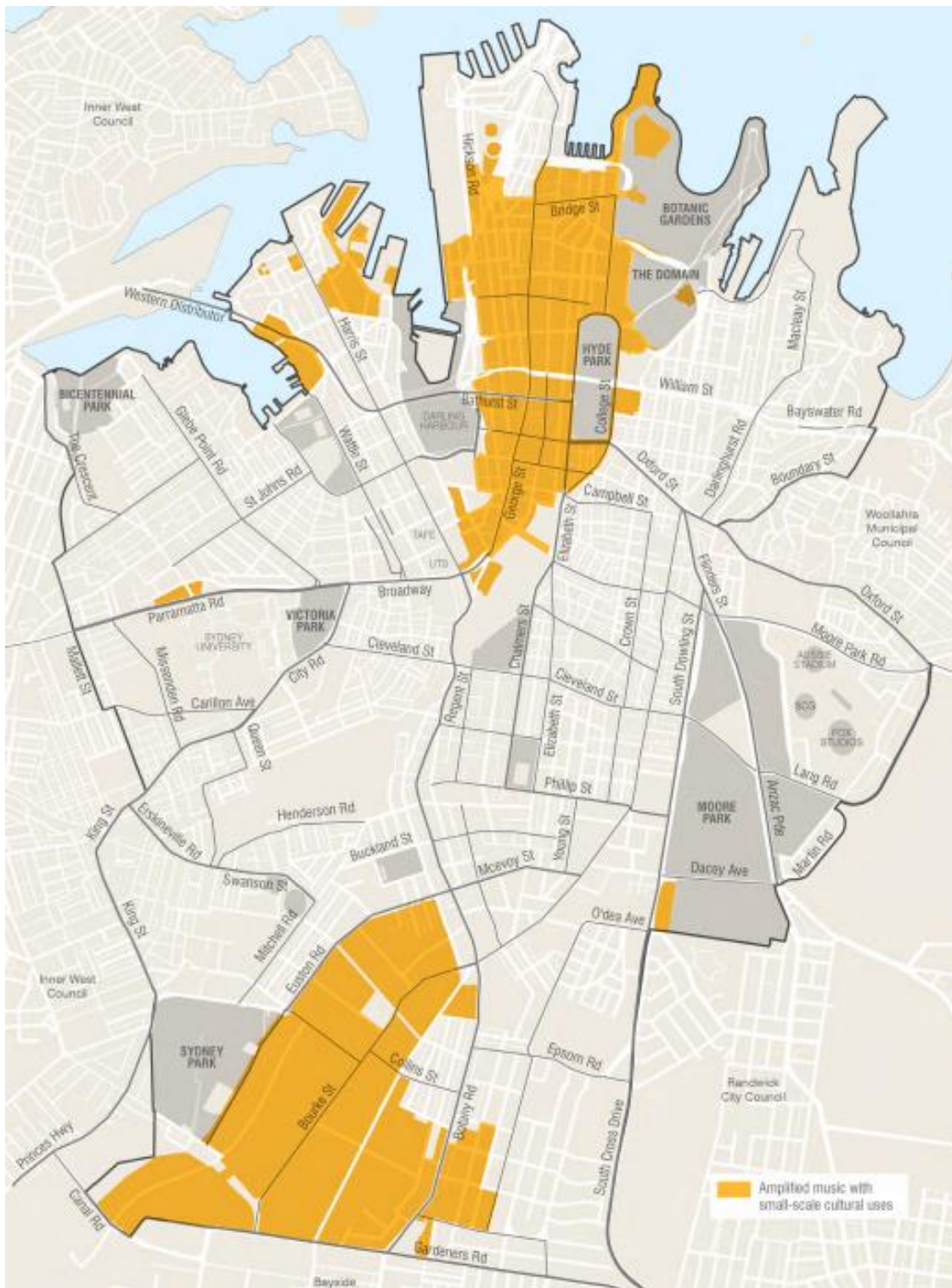


Figure 3 Areas where small scale cultural activities that do not need approval from Council can have amplified music



**Development Applications for small scale cultural activities**

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

**Guidance for other cultural activities**

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

*Guidance on Plans of Management*

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

*Technical guidance on fire safety upgrades*

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

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

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

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

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

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

### **Fair management of entertainment sound**

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

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

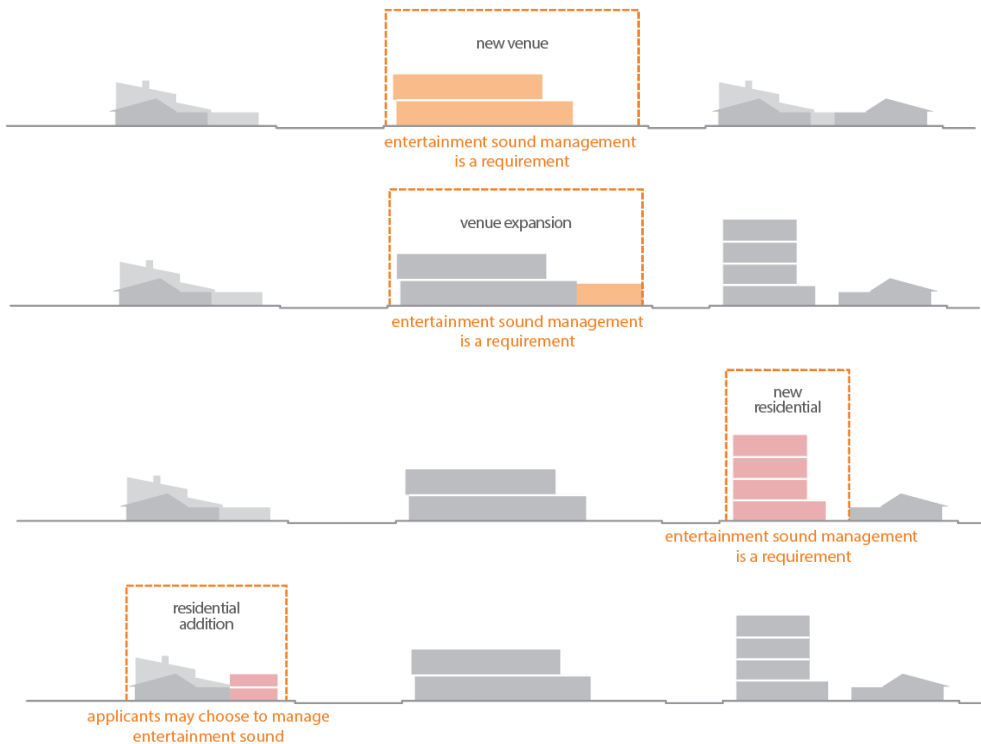


Figure 4 Allocation of entertainment sound management responsibility

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

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

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

#### *Proposed DCP Schedule*

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

#### *Managing offensive noise complaints*

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

#### **Creative work spaces**

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

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

### **Erskineville Town Hall**

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



## Strategic Alignment

### Eastern District Plan

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

### Sustainable Sydney 2030

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

### Local Strategic Planning Statement

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

### Social / Cultural / Community

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

### Economic

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

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

### **Relevant Legislation**

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

### **Critical Dates / Time Frames**

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

**Public Consultation**

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

**GRAHAM JAHN AM**

Director City Planning, Development and Transport

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