

Item 3.

Post Exhibition – Planning Proposal – Open and Creative Planning Reforms – Sydney Local Environmental Plan Amendment and Draft Sydney Development Control Plan

File No: X009155

Summary

A strong cultural life and night time economy strengthens Sydney's global competitiveness as a productive, liveable and inviting city. It provides a wide range of social, cultural, leisure and entertainment opportunities throughout the day, evening and night to match the city's growing and changing population. This diversity creates a more connected community, an inclusive and vibrant nightlife, improves safety and reduces crime.

The Open and Creative planning reforms have been informed by research and consultation since 2015. This included extensive consultation on a discussion paper in 2017 with strong support through deliberative community workshops and over 1,300 submissions. The reforms reflect the City's long-term commitment to the night time and cultural sectors and assist in addressing the significant challenges that creative and cultural businesses face from Covid-19. They aim to reactivate the night time economy and remove regulatory burden from shops and businesses wanting to trade later, provide alternative venues for small scale cultural activities, and allow a greater range of creative uses in local centres and in Erskineville Town Hall.

The proposal was granted Gateway determination on 17 September 2020. The planning proposal and draft Development Control Plan and other supporting documents were then publicly exhibited from 19 October to 18 November 2020.

In response, 190 submissions from residents, individuals, resident associations, government agencies, music and performance venue operators, business owners, business associations and developers were received. Of these, 128 were in support, 36 in objection, 26 were neutral and 13 related to the City's proposed fair management of entertainment sound proposal. In order to enable the most efficient possible progression of the other aspects of the proposed reform, the fair management of entertainment sound proposal does not form part of this report. This is because the detailed and technical nature of the submissions and the implications of new NSW Government legislation for entertainment precincts requires further analysis and engagement. It is anticipated that entertainment sound provisions will be reported to Council later in the year.

A summary of and responses to matters raised in submissions (excluding entertainment sound) is provided at Attachment F.

There was strong support for the proposal overall, in particular:

- Support for controls that will facilitate increased vibrancy and a 24-hour economy, post-Covid;
- Opportunities for more small scale cultural activities to diversify the night time economy and provide alternative venue space;

- Reducing red tape and costs for business and creative sector;
- Less regulatory burden to encourage later trading shops; and
- More diversity on high streets, including much needed maker space for creative industries and performance and rehearsal space in Erskineville Town Hall.

There were also concerns and objections in relation to:

- The potential cumulative impact of later opening shops and small-scale cultural activities;
- Potential impacts on amenity from performance and patron entry/egress noise, smoking and waste;
- Compliance, enforcement and lack of oversight by the council; and
- The absence of a DA assessment for small scale cultural activities and shops trading until 10pm.

There were also concerns raised in regard to recent changes implemented through the NSW Government's Liquor Amendment (Night-time Economy) Act 2020 (the Night-time Economy Act) from December 2020 and the potential for further amenity impacts. The Night-time Economy Act and how it interacts with the City's Open and Creative planning reforms is addressed as part of this report. This new legislation is seen as complementary to the City's work.

The planning proposal has been amended to require operators to notify council of their intention to host a small scale cultural activity via an online form, to allow council to monitor frequency and impacts of the exempt provision. It is proposed to undertake a review of the take-up of the small scale cultural activity exempt provisions two years after they are published. This change has been made in response to submissions and a condition of the Gateway determination. Other changes to minimise impacts on residents include not permitting pack down of small scale cultural activities after 10pm and ensuring that waste collection from these events only takes place between 7am and 7pm daily.

Overall, the Open and Creative planning reforms are considered to permit business activities in a way that will have minimal impact on our residential communities. The expected impacts are in line with those experienced in any major city with a healthy night time economy. The reforms do not permit any additional activities past 10pm, they support business in a time where business requires additional support and they promote Sydney as a productive, liveable and inviting city.

This report recommends Council and the Central Sydney Planning Committee approve the amended planning proposal at Attachment A and request that the Department of Planning, Industry and Environment make it as a local environmental plan. It also recommends approval of the draft DCP and Technical Guidelines at attachments B and C, noting that the consideration of the entertainment sound controls is deferred to enable proper consideration of technical submissions will be reported to Council at a later time.

The local environmental plan will come into effect when it is published on the NSW Legislation website. The development control plan will come into effect at the same time.

Recommendation

It is resolved that:

- (A) Council note matters raised in response to the public exhibition of the Planning Proposal: Open and Creative Planning Reforms and draft Sydney Development Control Plan 2012: Open and Creative Planning Reforms, as detailed in this report and as shown in Attachment F to the subject report;
- (B) Council approve the amended Planning Proposal: Open and Creative Planning Reforms, as shown at Attachment A to the subject report, and request that the Department of Planning Industry and Environment make it as a local environmental plan under S3.36 of the Environmental Planning and Assessment Act 1979;
- (C) Council approve the draft Sydney Development Control Plan 2012: Open and Creative Planning Reforms, as shown at Attachment B to the subject report, noting that it will come into effect on the date of publication of the subject local environmental plan, in accordance with Clause 21 of the Environmental Planning and Assessment Regulation 2000;
- (D) Council note that the entertainment sound management from Schedule 2 of the draft Sydney Development Control Plan 2012: Open and Creative Planning Reforms as approved for exhibition on 25 June 2020 are deferred from the proposed amendment to enable further consideration of submissions and will be reported to Council at a later date;
- (E) 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; and
- (F) authority be delegated to the Chief Executive Officer to make any minor amendments to the Planning Proposal: Open and Creative Planning Reforms and draft Sydney Development Control Plan 2012: Open and Creative Planning Reforms to correct any minor errors or omissions prior to finalisation.

Attachments

- Attachment A.** Amended Planning Proposal Sydney Local Environmental Plan 2012: Open and Creative Planning Reforms
- Attachment B.** Draft Sydney Development Control Plan: Open and Creative Planning Reforms (amended to exclude the Entertainment Sound Management provisions)
- Attachment C.** Draft Technical Guidelines - Small Scale Cultural Activities in Spaces less than 500 square metres
- Attachment D.** Resolution of Council and Central Sydney Planning Committee
- Attachment E.** Gateway Determination
- Attachment F.** Summary of and Responses to Matters raised in Submissions

Background

1. 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.
2. 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.
3. 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. The proposals received strong support 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 informed the further development of the proposals into changes to the City's planning controls.
4. At the meetings on 25 and 29 June 2020, Council and CSPC approved the submission of a request for Gateway Determination to publicly exhibit the Open and Creative planning reforms. The reforms propose changes to the Sydney LEP and DCP and new technical guidance to encourage later opening shops, more small scale cultural uses and the fair management of entertainment. They also encourage more creative work spaces on village high streets and make permissible entertainment uses in the Erskineville Town Hall. The proposed changes will complement the City's amended late night trading controls approved by Council in 2019.
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 will help to re-activate the night time economy, which has been greatly impacted, with businesses forced to close and others struggling to survive.
6. A Gateway determination was issued by the Department of Planning, Industry and Environment on 17 September 2020. The planning proposal and draft Development Control Plan and other supporting documents were then publicly exhibited from 19 October to 18 November 2020. In response, 190 submissions were received. Of these, 128 were in support, 36 objected, 26 were neutral.
7. Of these 190 submissions, 13 related specifically to the City's proposed fair management of entertainment sound proposal. Because of the technical nature of the entertainment sound submissions and the submissions provided there is a need for further analysis and engagement. In order to enable this analysis and engagement to occur without causing any further delay to the other parts of the proposal the fair management of entertainment sound provisions in the DCP are deferred from consideration at this time. It is anticipated that they will be reported later in the year.

8. This report details the outcomes of public exhibition and the changes made to the planning proposal in response to submissions. No changes are made to the draft DCP (other than the deferral of the entertainment sound management provisions for further consideration) and Technical Guidelines as exhibited.

The Open and Creative planning reforms

9. The Open and Creative planning reforms progressed as part of this report propose to allow shops to open later without the need for an additional development consent, encourage more small scale cultural uses to occur in existing buildings without consent, allow a greater range of creative uses in local centres and entertainment uses in Erskineville Town Hall.
10. The proposed changes to the Sydney LEP 2012 are outlined in Attachment A and include:
 - (a) Two new exempt development provisions, one for later opening shops and the other for small scale cultural activities;
 - (b) Making 'light industry' a use permitted with consent to allow creative and maker spaces to operate in B2 Local Centre zones; and
 - (c) Additional permitted uses for Erskineville Town Hall.
11. The proposed amendments to the Sydney DCP 2012 are outlined in Attachment B and include a new section for cultural activities, including objectives and guidance on low impact activities, other cultural activities, fire safety and plan of management considerations.
12. 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.
13. The proposed changes:
 - (a) Allow shops and local businesses in B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Centre, B4 Mixed Use or B8 Metropolitan Centre zones to extend their opening hours without a further development consent (exempt) from 7am to 10pm, seven days per week, subject to meeting certain criteria. The criteria require that eligible businesses are not food and drink premises, not licensed and do not contravene conditions of consent relating to noise, car parking, loading or waste management;
 - (b) Allow minimal impact small scale cultural uses without development consent (exempt) to take place in existing office, business, retail and community facility buildings located 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 zones subject to meeting certain criteria. The criteria address capacity, location in building, fire safety, frequency, duration, sanitary facilities, waste management, entry/egress, licensing, amplified sound, building works, existing consent conditions (for car parking, vehicular movement, traffic, loading or waste management), notification and signage;

- (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) Allow creative and maker tenants and owners to operate in B2 zoned local centres; and
- (e) Extend the current community and cultural uses available for Erskineville Town Hall to include entertainment uses such as theatre, cinema, music and dance.

Outcomes of public exhibition and public authority consultation

14. The planning proposal, draft DCP and supporting guidance were placed on public exhibition from 19 October to 18 November 2020.
15. The exhibition was advertised in the Sydney Morning Herald and 121,714 notification letters were sent to owners and occupiers. Notification of the public exhibition was advertised on the Sydney Your Say website with copies of the planning proposal, draft DCP Amendment and supporting documents made available.
16. Emails were sent to 751 stakeholders including local community groups, resident groups, government agencies, councils, bars, performance venues, education facilities, creative organisations, festival organisers and business associations. Eight public agencies were also consulted as required by the Gateway determination, including the NSW Environmental Protection Authority, Create NSW, NSW Liquor and Gaming, NSW Police, NSW Health Alcohol and other Drug Prevention and Harm Minimisation and the NSW Night Time Economy Taskforce.
17. In response, 190 submissions from residents, individuals, resident associations, government agencies, music and performance venue operators, business owners, business associations and developers were received. Of these, 128 were in support, 36 in objection and 26 were neutral. As noted above, 13 submissions related to the City's proposed fair management of entertainment sound proposal which, due to the technical nature and detailed consideration required, will be reported to Council in the future.
18. A summary of and responses to matters raised in submissions (excluding entertainment sound) is provided at Attachment F. The predominant issues arising from submissions are addressed below.

Strong support for Sydney's night time economy, post-Covid

19. Most submitters strongly support the night time economy and measures to encourage shops to open later and more cultural activities. They say that the proposals provide the potential opportunity to reinvent Sydney post-Covid, revitalise its nightlife and increase the standing of Sydney as an international city.

20. The impact of the pandemic on the city's nightlife, and cultural and creative sector is a significant concern, with many submissions noting the limited activity, trading hours and early closures of venues and restaurants. One submitter stated:

As a resident in Glebe, I fully support any reforms that make it easier for business, retail, arts and culture and night life industries to thrive in Sydney. Especially in these difficult pandemic times. Online trading is hurting traditional retail and allowing shops to open later allows them to catch the after work foot traffic market.

21. The need for more diversity in the night time economy is a key concern as described by another submitter:

As a performer and resident of Oxford Street I would love to see creative energy return to our neighbourhood. Get our pubs, clubs, galleries, theatres and creative spaces open and working at times which make their existence viable. I didn't move to Oxford Street to live in a quiet community. Noise, laughter, music, colour, art, food, artistic and individual freedoms are what make Sydney great.

22. Submitters support more night time activity in Green Square, Rosebery and Waterloo, where there is a growing large residential population seeking more cultural and entertainment options close to where they live.

Response:

23. The significant concern about Sydney's night time economy and support for the proposed changes to improve Sydney's night time economy in the recovery from the pandemic is noted. The City is committed to improving the city at night to ensure night-time experiences are balanced with daytime activities and are safe and inclusive of the broader population. OPEN Sydney aims to double the city's night-time turnover to \$30 billion and increase night-time employment by 25 per cent to 100,000 jobs by 2030. These proposed planning controls changes are one of a range of measures the City undertakes to support the night time economy.
24. The reforms for later opening shops and small-scale cultural activities aim to activate and provide a more diverse nightlife in Green Square and Waterloo where over 70,000 people will live by 2030. The proposals complement the City's late night trading DCP controls published in June 2019, which support a late night cultural and arts precinct in North Alexandria and other late night trading areas in Green Square town centre and Danks Street.

Strong support for helping businesses and the creative sector

25. Most submitters support reducing red tape for later opening shops and small scale cultural uses. They see this as helping the creative sector to find accommodation, reuse space and create opportunities for artists to be able to use existing spaces and non formal venues for performances.
26. The NSW Small Business Commissioner supports the proposals, and the growth of creative performing arts businesses using alternative spaces in areas where space is scarce. The Commissioner supports the potential for businesses to activate and diversify their activities through the use of underused or vacant spaces.

Response:

27. The support for reducing regulatory processes and the significant impacts of the pandemic on cultural and creative businesses is noted. The Australian Bureau of Statistics Business Indicators report in February 2021 shows that 70% of arts and recreation businesses are reporting 'COVID-19 restrictions' as a factor significantly impacting businesses, as are 80% of accommodation and food services, the highest of any industry group.

Concerns about the absence of DA assessment and impact on amenity

28. Some Chippendale residents are concerned about the proposals for later opening shops and small scale cultural activities which will be exempt from requiring development consent. They believe that proposals to allow these activities without development consent is inconsistent with the City's previous position regarding late-night trading. The City previously indicated that any changes to operating hours or uses would require development consent and that late-night trading would be limited to main streets such as Abercrombie Street, Regent Street, and Broadway.

Response:

29. The Open and Creative planning reforms were referenced in the report to Committee on Late night Trading DCP in May 2019 and have been developed to complement and support late night trading in the city.
30. The Open and Creative proposals allow later opening shops and small scale cultural uses exempt from development consent to occur before 10pm. Submitters refer to consultation that the City undertook with Chippendale residents in respect of the Late Night Trading DCP in 2019, which limited activities occurring after 10pm to Abercrombie Street, Regent Street and Broadway.
31. All proposals for late night trading, including shops, pubs, bars and clubs that operate after 10pm are subject to a DA. The later opening shops and small scale cultural activities which are exempt from development consent occur before 10pm. Those cultural activities or shops that trade after 10pm will be subject to a DA and will be notified so that the community has the opportunity to comment.

Concerns that small scale cultural activities may not have enough oversight

32. Submitters are concerned about the lack of oversight by Council of the small scale cultural activities which are exempt from development consent. They consider that there should be more avenues to manage non-compliance and potential impacts on amenity, other than having to lodge a complaint to City Rangers or Police.

Response:

33. The exempt provision requires operators to display signage and information about the event before and during the event so neighbours can contact the operator if there are issues. If activities do not comply with any of the proposed exempt criteria they are in breach of the exempt provision and risk being asked to cease by City compliance staff.
34. A post-exhibition change to the LEP exempt provision will include additional criteria. It will require that operators wishing to host an event or activity exempt from development consent, notify the City of the intention to hold an event, via an online web form five days prior to the commencement of the event.

35. The notification will require the same details as required for signage notification of the event. This includes the event name, a description of the nature of the event, commencement, duration, and completion date and the name and telephone number for contacting the person responsible for the event at all hours during which the premises is operating. This information will be made available to the City compliance team and will also be used by the City to monitor the take-up of the provision and track any impacts on local amenity. This information will be used to inform a review of the provisions two years after their commencement to confirm whether they are achieving their goals and whether any amendments are required.

Concerns that small scale cultural activities may impact on amenity

36. Submitters are concerned that the reforms may result in an increase in late-night venues which encourage drinking and antisocial behaviour which will impact neighbourhoods and exacerbate existing issues associated with pubs and bars. They are concerned about construction activities, gambling, waste, intoxicated people and noise impacts from local bars on families with young children and residents who want a quiet night. Smoking from patrons outside events on the public domain and waste and litter issues is also a concern for residents.
37. Some submitters are concerned that noise from up to 70 people leaving a building at 10pm will continue until 11pm as people will hold conversations after an event in the street with set up and pack down. They request that set up and pack down be included in the event duration time.
38. Other issues include cumulative impacts of several events and the need to restrict events with amplified sound to 10pm on any night and to 6pm on Sundays. A one-year trial of the proposals was suggested.

Response:

39. The small scale cultural activity proposals have been developed and subject to community consultation since 2017 and will involve changes to the Sydney LEP.
40. A post-exhibition change to the exempt provision is proposed to require online notification of exempt small scale cultural activities, which will give council the ability to monitor where, when and how often it is being taken up. The City will also review the take up and impacts associated with the exempt provision two years after its publication. This will enable the City to identify whether it is achieving its intended outcomes and also identify any amendments which may be required to better achieve those outcomes or resolve any impacts.
41. These activities will not exacerbate impacts associated with existing pubs and bars, which already trade later than 10pm and have capacities greater than 70 patrons. Small scale cultural activities do not include outdoor trading/performance or allow amplified music in residential business zones. If noise or amplified sound from a small scale cultural event continues after 10pm it is in breach of the exempt provision and risk being asked to cease by City compliance staff.
42. While the exempt criteria have been set to minimise impacts on neighbours, the 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.

43. The exempt provision does not apply to activities which require building works (with the exception of minor approved exempt works), so no noise from construction activities will occur. Other larger cultural activities will be subject to DAs and conditions of consent will minimise impact on neighbours and the public domain.
44. The 4 hour duration of events which can occur between 7am-10pm, should not be reduced to include set up and pack down. This is the minimum time that has been confirmed as viable by the City's Nightlife and Creative Sector Panel for small scale cultural activities which can include seminars, talks and exhibitions as well as performance. The small-scale nature of these cultural activities means that set up and pack down will be limited and not create significant impacts. Operators will be required to manage the impact of smoking and patron egress on local amenity and ensure the orderly entry and egress of patrons which does not affect the amenity of the neighbourhood. This includes queueing of patrons and ensuring that there is adequate public access to other pedestrians on footpaths. Any proposals later than 10pm will be assessed through a DA.
45. Notwithstanding these requirements, a post-exhibition change is proposed to address concerns of residents about the impacts of packing down an event on local amenity after 10pm. The proposed change will require that no pack down occur after 10pm, and instead be undertaken between 7am and 10pm the following day.
46. The exempt criteria requires that that small scale cultural activities not contravene any existing condition of the active development consent for the main use of the building. If there is no consent condition applying to the premises relating to waste management, then waste must be removed from the premises and not placed on the public way at any time. Glass is not to be emptied or transferred anywhere in a public place. To further minimise the impacts of pack down activities on residents, a post-exhibition change requires that waste collection must only occur between 7am to 7pm daily.
47. If small-scale cultural activities exempt from development consent occur in mixed-use zones, concurrently or on separate days until 10pm, they must meet all criteria so that any impacts will be minimal. Consistent trading hours through the week will provide flexibility for operators and encourage vibrancy and minimise cumulative impacts of activity in the weekend. If more activities with minimal impact are spread throughout the week, there may be less activities in a single location in the weekend. A restriction on Sunday night is not proposed because it will limit performance, such as small theatre runs which may take place on Sunday nights until 10pm with minimal impacts.

Concerns that small scale cultural activities may impact parking and public transport

48. Submitters are concerned that the proposals will increase traffic in busy streets or small laneways, where parking for local residents is not sufficient, such as Kings Cross, Pyrmont and Chippendale. They are concerned that public transport service is not adequate to service current late night trading areas and is not safe.

Response:

49. Small scale cultural activities under exempt development are limited to 10pm when public transport still operates at a high frequency. The exempt criteria for small scale cultural activities do not allow operators to contravene conditions of consent of the building which relate to traffic generation, vehicle movement, loading or parking. This is to minimise the impacts on residents and enable them access to their properties.

50. It is agreed that the night time economy should be supported by a range of public transport options. The reforms are applied to areas of the city that are well served by public transport such as bus, ferry and heavy rail transport. The Sydney Metro will introduce a new high frequency, 24 hour service in the City with stations at Pyrmont, Barangaroo, Martin Place, Pitt Street, Central and Waterloo. These stations will serve Pyrmont, Barangaroo, city centre, Surry Hills, Redfern, Chippendale and North Alexandria, increasing accessibility to these areas later at night. The City continues to engage with the relevant State Government agencies to increase the provision of services and infrastructure to match population growth.

Concerns about the impact of small scale cultural activities on specific areas

Pyrmont

51. Some submitters are concerned about the alignment of the proposals with the Pyrmont Peninsula Place Strategy, and the sub-precinct Master Plans, which may rezone land in Pyrmont.
52. Other issues include the impact of retail premises at the Star Casino and Doltone House holding exempt small scale cultural activities with indoor/outdoor amplified music on neighbouring properties, and the presence of existing residential in the B3 Commercial Core zone where amplified music is proposed to be permitted in Pyrmont.

Response:

53. The Pyrmont Peninsula Place Strategy is an NSW Department of Planning, Industry and Environment led project. The Department are in the process of preparing sub-precinct master plans for Pyrmont and Ultimo that may inform LEP amendments in the future. Any amendments will require public consultation and consideration of zoning and associated impacts, including how any rezoning aligns with the City's Open and Creative planning reforms.
54. It is not considered appropriate to pre-empt rezoning that may occur under the Department's project for Pyrmont and Ultimo. These issues will be addressed at that time, with the City always seeking to ensure the appropriate and reasonable protection of residential amenity.
55. The proposals do not apply to function centres such as Doltone House, which are not classified as commercial uses under the Standard Instrument LEP definitions. Existing conditions on function centre approvals will continue to apply. The reforms may apply to retail and commercial tenancies located in the Star Casino, which will be allowed amplified music until 10pm. The proposals do not permit outdoor performance or outdoor trading without development consent. Other cultural activities which do not meet exempt criteria will be subject to a DA.
56. Overall the Open and Creative planning reforms are considered to permit business activities in a way that will have minimal impact on our residential communities. The impacts expected are considered to be commensurate with those impacts experienced in any global city and they are consistent with the B3 Commercial Core which seeks to provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

Chippendale

57. Some Chippendale residents are concerned about the noise impacts of small scale cultural events on low rise residential properties, many of which are heritage properties with no acoustic protection. They believe that an event with a microphone, background music and two speakers on any floor with doors opening for entry/exit will have significant impacts. This will exacerbate noise issues with cultural activities at Kensington Street and in local streets where cultural events have recently been staged.
58. Other issues include the impacts on local amenity from exempt small scale cultural activities being permitted in Darlington, south of Cleveland Street and Rose and Shepherd Lane, where residential development may be impacted by commercial uses. Residents believe that only existing venues on City Road, including the Lansdowne Hotel should be allowed exempt small scale cultural activities.

Response:

59. The proposed exempt criteria relating to capacity, frequency and duration include thresholds to ensure impacts will be minimal. Noise impacts experienced in Chippendale from these exempt small scale events will be minimal, given that there will be no outdoor activity, the events will be until 10pm and no amplification is allowed. The character and built form of the conservation area is like that in other conservation areas in other mixed-use zones such as Surry Hills where the proposals apply.
60. An area of Darlington, south of Cleveland Street, is included in the area where exempt activities can occur because it is part of the mixed use zone. This area features creative spaces and shops, which could be activated for events through the day and evening until 10pm. It is also included in the City's existing DCP as a late night trading area.
61. Land in Rose Street and Shephard Street is zoned B4 mixed use, where a wide range of uses are permissible, including residential and commercial uses. If more commercial or retail uses locate in this mixed use area, temporary small scale activities may be able to occur until 10pm. Microphones are permitted until 10pm, however amplified music is not permitted anywhere in Chippendale.
62. Overall the Open and Creative planning reforms are considered to permit business activities in a way that will have minimal impact on our residential communities. The impacts expected are considered to be commensurate with those impacts experienced in any global city and they are consistent with the objectives of the B4 Mixed Use zone which seeks to provide a mixture of compatible land uses.

Strong support for later opening shops without consent and including restaurants

63. Submitters strongly support later opening shops to activate and provide vibrancy to areas of the city. They would like the exempt provision to be extended to restaurants and outdoor dining because they believe that food and drink is important to engage people in the night time economy.
64. The NSW Small Business Commissioner supports a diversity of retail options to integrate with the traditional night-time economy. The Commissioner supports extended trading hours for existing retailers as it will allow businesses to adapt and diversify, and to trial extended trading. The proposals will enable businesses take advantage of opportunities provided by events, festivals and seasons where increased foot traffic may occur, while ensuring staffing and other costs remain within their control.

Response:

65. The support for a more diversified night time economy and flexibility for business is noted. The proposals for later opening shops do not apply to food and drink premises because these can become licensed and generate different impacts that have the potential to impact on amenity and require assessment through a development application, with the potential to apply specific conditions to manage impacts. The impacts of outdoor dining or trading on residents may differ depending on individual site circumstances and should be assessed on a case by case basis through applications for development consent.

Concerns that later opening shops may impact on amenity

66. Submitters are concerned about the cumulative impact of longer trading hours of shops on local areas. They are concerned about the impact of patron entry and egress to shops on residents' right to peace and the enjoyment of their homes.

Response:

67. The provisions facilitate later opening shops until 10pm in areas with an established retail character, such as the city centre or village high streets. These streets are daily destinations for community, retail and commercial activity where later opening times after 6pm can be accommodated without creating significant impacts on neighbours. In these areas, the impacts of standard business hours for shop or businesses have been already assessed in individual development approvals.
68. Eligible shops will be unlicensed and include for example those selling clothing, books, stationery and homewares, or businesses such as drycleaners, banks and hairdressers, which do not create noise or encourage anti-social behaviour. As these are unlicensed and non-food and drink premises the cumulative impacts on local amenity from patron entry and egress will be minor.

Strong support for the diversity of high streets

69. Submitters support more diverse high streets and the provision of maker spaces in the B2 zone to provide much needed maker space for the creative industries that are struggling to secure appropriate and affordable accommodation.
70. The NSW Small Business Commissioner supports the proposals because it provides additional opportunities for creatives and makers to use premises closer to their potential customer base and other retailers. The Commissioner says that many small businesses categorised as 'light industrial' have shop fronts and include activities that do not impact negatively on local amenity.

Response:

71. The support for additional opportunities for creatives and makers and the minimal impact on amenity is noted.

Concerns that light industrial uses in local centres may impacts on amenity

72. Submitters note that the provision of more maker space in local centres will include 'light industrial uses'. It is suggested that there may be impacts on residences located in streets and lanes behind high street premises and raise the need to restrict machinery that generates significant noise.

Response:

73. The LEP classifies creative and maker spaces as light industrial uses. These uses are currently not permitted in B2 Local centre zones. Light industrial uses are currently permitted with consent in the B4 mixed use zones such as Pyrmont, Surry Hills and Chippendale.
74. Any industrial activity that interferes with the amenity of the neighbourhood cannot be permitted in the B2 Local centre zone. The definition of Light Industry in the LEP requires that the 'industrial activity that does not interfere with the amenity of the neighbourhood' due to a range of impacts including noise, vibration, smell, fumes, smoke, vapour, steam or dust. If a proposal is likely to interfere with the amenity of the neighbourhood then it does not meet the definition of light industry. It would then be classified as general or heavy and industry and not be permitted in the zone. The potential impact of proposed light industrial uses will be assessed on a case by case basis through applications for consent.

Strong support for a diverse night time economy and increased performance space

75. Submitters support increasing the use of the Erskineville Town Hall for cultural uses and live performance to provide a more diverse night time economy in Erskineville. It is suggested that Erskineville Town Hall could provide an affordable opportunity for emerging musicians to rehearse.
76. The NSW Small Business Commissioner supports the proposal because it will provide much needed performance and theatre space, particularly by performers or small businesses wishing to stage their own shows.

Response:

77. The support for diversity and increased theatre space is noted. As a result of the significant impact of Covid on the cultural sector and creative spaces, it is recognised that the use of publicly owned spaces for cultural and performance activities is more important than ever. If the proposals are approved via a development application, the Erskineville Town Hall will be available for hire by musicians and performers to rehearse.

Concerns that the extended use of Erskineville Town Hall will impact on amenity

78. Some submitters raise the need to ensure that the use of Erskineville Town Hall for performance does not result in noise impacts on residents living in nearby properties who are already impacted by nearby hotels. They raise the need for the City to undertake acoustic testing and install noise abatement measures.

Response:

79. If the proposed change is made to the LEP to permit entertainment facilities with consent, a development application on behalf of the City will be submitted for the extended use of the facility, which will include a Plan of Management to address operational issues. Any potential impacts, including noise, on neighbours will be assessed, and conditions to mitigate the impacts of noise imposed upon the development consent.

The fair management of entertainment sound

80. 13 submissions, including eight objections and five in support, were received in response to the proposed entertainment sound planning controls. Specific issues include the definition of entertainment sound, changes in internal and external noise criteria measurements and acoustic testing requirements. These issues require further technical analysis and engagement with submitters to ensure the provisions meet the intent to have a fair approach to entertainment sound that protects existing venues and provides appropriate amenity. As a result, and to enable the rest of the proposal to proceed as quickly as possible, these amendments have been deferred for consideration at this time. It is anticipated that a response to the submissions and the draft controls will be reported to Council later in the year.

Key Implications

Liquor Amendment (Night-time Economy) Act 2020

81. In December 2020, after the public exhibition of the Open and Creative planning reforms, the Liquor Amendment (*Night-time Economy*) Act 2020 received assent. This legislation implements two changes of particular relevance to the Open and Creative reforms.

Special entertainment precincts

82. From 30 April 2021 the Local Government Act 1993 is to be amended to allow councils to create special entertainment precincts in their LEPs. In these precincts the amendment allows amplified music to be regulated by planning controls and conditions, noise requirements to apply to certain types of development and venues to trade for an additional 30 minutes. Councils must have a plan for regulating noise in the precinct and must notify residents and people moving into the area about the precinct including through planning certificates. The Minister may prepare guidelines about establishing and operating precincts, which may potentially include noise requirements.
83. The special entertainment precinct amendment has merit as a potential avenue for progressing the City's fair management of entertainment sound proposal. The potential benefits include the ability to adopt a consistent approach to the management of entertainment sound across NSW. The City will consider this and the technical submissions received in relation to entertainment sound before reporting a preferred approach back to Council.

Exempt development for entertainment associated with existing premises

84. The NSW Exempt and Complying State Environmental Planning Policy (the SEPP) has been amended to allow low impact performance of music or arts in an existing building not in a residential zone as exempt development subject to criteria. The activity is limited by the hours on the relevant development consent and other conditions relating to number of persons allowed, noise, traffic and loading allowed for that building. As the provision does not allow a change of use, it only includes music or arts activities which are ancillary to the primary use of the building and can occur while this use is operating.
85. The new exempt development for low impact performance is different to the City's proposed small scale cultural activities exemption. The key similarities and differences are highlighted in the table below.

<p>NSW Exempt and Complying SEPP</p> <p>Low impact performance of music or arts without development consent where:</p>	<p>City's proposed local exempt provision</p> <p>Temporary live performance, production, exhibition, teaching and discussion of art, craft, design, media, image or immersive technology without development consent where:</p>
<ul style="list-style-type: none"> • Not in a residential zone • Is inside a building • Must be ancillary to the primary use • No contravention of existing conditions relating to hours, noise, number of people permitted, parking, vehicle movement, loading and waste management or landscaping • No offensive noise 	<ul style="list-style-type: none"> • Not in a residential zone • Is inside a building • Additional activities to a shop, office, warehouse or community building's primary use • Hours extended beyond those on development consent until 10pm • Subject to range of criteria including location, frequency, duration, capacity, amplified music and notification to manage amenity • No offensive noise

86. The SEPP provision only addresses ancillary activities, which must occur at the same time as the primary use of the building, within existing approved trading hours. The City's small scale cultural activity exempt provision allows a broader range of additional activities within extended trading hours until 10pm, supported by a range of criteria to manage potential impacts. Consultation with the Department of Planning, Industry and Environment has confirmed that City can proceed with the exhibited small scale cultural activity exempt provision and that it can be applied independently of the SEPP provision.

87. Some submissions raised concern over the cumulative impact on local amenity from the City's small scale cultural activity exempt provision and the Night-time Economy Act. In response to this and the Gateway Determination, the planning proposal has been amended to require operators to notify council of their intention to host a small scale cultural activity via an online form, to allow council to monitor frequency and impacts of the exempt provision. It is proposed to review the take-up of the small scale cultural activity exempt provisions two years after they are published.

Gateway

88. The Gateway determination included a condition which requires the updating of the planning proposal to consider the potential impacts on amenity and non-compliance with the proposals for late opening shops and small scale cultural activities.

89. A post-exhibition amendment proposes a mechanism to monitor the impacts of the small scale cultural activity to satisfy part of this Gateway condition. A mechanism to monitor the impact of unlicensed later opening shops until 10pm is not appropriate due to the limited impacts on amenity of these activities, which already have approved standard business hours and are located in areas with an established retail character.

Eastern District Plan

90. 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.
 - (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.

Strategic Alignment - Sustainable Sydney 2030

91. 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 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. These reforms directly respond to Operational Plan action 7.3.1 to develop planning and regulatory reforms to support the provision of cultural infrastructure and activities.

Local Strategic Planning Statement

92. 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.
 - (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.

Social / Cultural / Community

93. The planning proposal and draft DCP respond to issues raised by the community in early consultation about later opening shops and small scale cultural uses. The provisions aim to encourage more diverse social and cultural activities at night to match the needs of a growing and changing population.

Economic

94. 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.
95. The planning proposal and draft DCP will support businesses in these sectors facing significant challenges during and after the Covid-19 pandemic. 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.

Relevant Legislation

- 96. Environmental Planning and Assessment Act 1979.
- 97. Environmental Planning and Assessment Regulation 2000.
- 98. Liquor Amendment (Night-time Economy) Act 2020

Critical Dates / Time Frames

- 99. The Gateway Determination of 17 September 2020 requires that the amendment to Sydney LEP 2012 is completed within 12 months.
- 100. The Council has not been given delegation to make the local environmental plan because of the complexity and unique nature of the City's planning proposal.
- 101. If approved by Council, the planning proposal will be forwarded to the Department of Planning, Industry and Environment with a request to draft and publish the LEP.
- 102. The amendment to Sydney DCP 2012 will come into effect on the same day as the amendment to Sydney LEP 2012.
- 103. The deferred amendments to Sydney DCP 2012 relating to entertainment sound management will be reported to Council at a later date following consideration of detailed technical submissions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Julie Prentice, Specialist Planner