

**ITEM 5. PUBLIC EXHIBITION - DISCUSSION PAPER: AN OPEN AND CREATIVE CITY - PLANNING FOR CULTURE AND THE NIGHT TIME ECONOMY**

**FILE NO: X009155**

**SUMMARY**

Successful global 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 attractions and attract a diversity of ages, lifestyles, and cultures throughout the day, evening and night. Evidence shows that this diversity of options leads to a stronger, more connected and resilient community, creates a more inclusive nightlife, improves safety and reduces crime.

Through significant research and public engagement we developed a long term vision and strategies for the City's night time economy and cultural life. The *Open Sydney* strategy and action plan, the *Creative City* cultural policy and action plan and the *Live Music and Performance* action plan include, among other initiatives, actions to investigate improvements to our planning and regulatory frameworks to support the city's cultural life and the night time economy.

To progress these actions, the City is seeking community and industry input into proposals and options for the changes to the City's planning controls. We have prepared the discussion paper, *An Open and Creative City: planning for culture and the night time economy* at Attachment A. The discussion paper sets out proposals and options that aim to make it easier for shops and businesses to open later in the City's business precincts, support more small-scale cultural uses in existing under-used buildings and provide a clear and fair approach to managing noise from entertainment venues.

The discussion paper will also guide feedback from stakeholders. We have prepared an engagement program to canvas a broad range of views on the options we have put forward. The engagement program includes an open call for submissions to the discussion paper, publicising the discussion paper through social, online and print media, briefings and workshops for industry operators, and community focus groups.

This report recommends Council endorse the discussion paper.

Following public exhibition and consultation, the City will consider feedback and begin drafting new planning controls. We then report the draft planning controls to Council for further public exhibition, amend the draft controls based on any further feedback, and report them back to Council for adoption. The final step is to request the Greater Sydney Commission publish the changes to the controls, at which point they come into effect. We expect this process to take us at least to the end of 2018.

**RECOMMENDATION**

It is resolved that Council:

- (A) endorse the discussion paper *An Open and Creative City – planning for culture and the night time economy*, as shown at Attachment A to the subject report, for public exhibition; and
- (B) authority be delegated to the Chief Executive Officer to make amendments to the Discussion Paper in order to correct any minor errors prior to public exhibition.

**ATTACHMENTS**

**Attachment A:** *An Open and Creative City – planning for culture and the night time economy*

## BACKGROUND

1. Successful global cities provide a wide range of opportunities to create or experience cultural life, leisure and entertainment options. They strike a rich balance between private and public attractions and attract a diversity of people throughout the day, evening and night. Evidence shows that this diversity of options leads to a stronger, more connected and resilient community, creates a more inclusive night life, improves safety and reduces crime.
2. The City's night time economy represents the heart of Sydney's social, cultural and leisure opportunities, comprising food, drink, cultural and entertainment industries. It is estimated to produce \$3.64 billion in revenue per year, involving 4,608 businesses and employing 32,411 people. The creative sector is equally important, with the NSW Government's 2013 Creative Industries Economic Profile identifying NSW as home to 40 per cent of the nation's creative industries workforce, contributing \$1.4 billion to the State economy. A large proportion of this is concentrated in the City of Sydney local government area.
3. The City has undertaken significant research and consultation to establish our vision for a city with a strong cultural life, diverse and safe night time economy and thriving live music and performance industry. The outcomes of that research and consultation are included in the City's *OPEN Sydney* night time economy action plan, *Creative City* cultural policy and action plan and *Live Music and Performance* action plan. To achieve our vision the plans and policies set out a series of actions across planning and regulation, liquor licensing, advocacy, and sector development.
4. Since endorsement of *OPEN Sydney* by Council in February 2013, the City has commenced 70 per cent of the 248 actions, with 13 per cent complete. Notable actions include introduction of the Sydney Food Truck Program, support to small bars, upgrading of lighting, laneways and pavements, installation of CCTV cameras, establishment of the Safe Space Program and new late night taxi ranks, later opening of Tourist Kiosks and 24 hour cleansing and waste services on Friday and Saturday nights.
5. More than 60 percent of the 209 actions in *Creative City* are underway. Recent planning changes have made it easier for street artists to exhibit their work on buildings in the city. The Creative Spaces Program has provided access to affordable space for more than 1200 artists, cultural workers and creative entrepreneurs, activating the city and attracting economic activity. The City's guidelines for hoardings and scaffoldings now require creative graphics on hoardings, with a selection of works from 10 artists available for developers to use around their construction sites. A review of the City's Busking Policy will be presented to Council in early 2018.
6. The actions in the *Live Music and Performance Action Plan* are well underway, with more than half already completed. We have established a major new funding program for new and existing music and performance venues, distributed more than \$2.7 million in small grants and provided rehearsal spaces in City-owned community venues. Our research has examined the rates of alcohol consumption in live music venues and identified the economic importance of the live music industry, contributing more than \$350 million to the City's economy in 2016 alone. Through partnerships with key industry organisations and collaboration and advocacy with the NSW government we continue to promote growth of the live music industry.

7. We have prepared the *An Open and Creative City* discussion paper to guide community and industry input on the proposals and options. The discussion paper is at Attachment A and focuses on the actions of those plans and policies that ask us to investigate changes to the City's planning controls. The changes we are putting forward for discussion together address the following key areas:
  - (a) a diverse evening economy - making it easier for shops and businesses in Central Sydney and the village centres to trade later;
  - (b) more small-scale cultural uses - making it easier for small-scale cultural uses to take place in existing buildings; and
  - (c) entertainment noise - protecting live music and performance venues and maintaining residential amenity.
8. Our plans and policies identify that the City, government agencies, industry sectors and the community all have a role to play in building a strong and diverse night time economy. Further contributions will be needed from the industry, other government agencies and the community to make the most of the opportunities from the changes to planning controls proposed in the discussion paper.

#### **PUBLIC CONSULTATION**

9. The Discussion Paper follows on from feedback received through previous consultation on the *OPEN Sydney* strategy, the *Creative City* cultural policy and action plan, and the *Live Music and Performance* action plan. It takes feedback from those consultations and additional targeted consultations and research to develop options to improve planning and regulation of the cultural and night time economy. The discussion paper sets out a number of questions to help guide feedback, but broader comments outside of the proposals in the discussion paper are also encouraged.
10. If endorsed, the discussion paper will be placed on public exhibition for the month of November. We have developed an extensive consultation program to ensure we get a broad range of views to help us refine the options we have put forward. The discussion paper will be available on the City's Sydney Your Say webpage, and at the City's One Stop Shop and Neighbourhood Service Centres. Consultation approaches include:
  - (a) an open call for submissions, promoted through local media, flyers, targeted social media and through the City's business newsletters;
  - (b) invitations to stakeholder and industry groups to review the discussion paper and make submissions;
  - (c) a series of briefings for key industry stakeholders to explain the proposals;
  - (d) a survey, available on Sydney Your Say, for community members who may prefer to comment on a specific issue rather than make a full submission; and
  - (e) focus groups drawn from the City community to gain further feedback from our diverse community.

## **NEXT STEPS**

11. There are several steps required to make changes to the City's planning controls. Following public exhibition of the discussion paper, we consider all the feedback from stakeholders and incorporate it in draft planning controls to amend *Sydney Local Environmental Plan 2012* (the LEP) and *Sydney Development Control Plan 2012* (the DCP) and any additional guidance documents.
12. These draft controls will be reported to Council as a planning proposal to change the LEP, and a draft development control plan to amend the DCP. Council will be asked to endorse the planning proposal and draft development control plan for further consultation on the detail of the planning changes. The planning proposal will then be submitted to the Greater Sydney Commission, seeking a gateway determination to allow them to be placed on public exhibition.
13. Public exhibition of the planning proposal and draft development control plan will take place for a minimum of 28 days. After that period, City staff will make any changes needed to finalise the new planning controls after consideration of the feedback to public exhibition. The planning proposal and development control plan will be reported to Council for adoption and integration into the City's planning framework.
14. The final step is to request that the Greater Sydney Commission publish the changes to the LEP on the NSW Government legislation website. Once that step has been completed, the changes to the LEP and the DCP will come into force. We aim to complete the project by the end of 2018, depending on the time taken for the Greater Sydney Commission to exercise its functions.

## **DISCUSSION PAPER**

15. The discussion paper puts forward proposals and options to change planning controls to support the evening economy, cultural uses, and live music and performance. Further detail of the changes is discussed below.

### A diverse evening economy

16. The City's *OPEN Sydney* strategy identified that people want more shops and other businesses open later, to give greater options in the evening and help manage busy lifestyles. *OPEN Sydney* has a target of 40 per cent of all businesses open after 6pm to be shops. Further research has shown that there are significant numbers of potential customers on our high streets in the evenings, but that few businesses are open to serve these potential customers. Areas serviced by public transport, destination marketing, and that already have a busy character can easily accommodate later opening times without creating amenity impacts for neighbours.
17. The discussion paper puts forward new and longer standard opening hours of 7am to 10pm for some shops and some businesses as exempt development in certain parts of the City. Exempt development is of minor impact and does not need a development approval from the City as long as it meets certain criteria. The criteria we propose include limiting its application to shops and some business, with licensed premises and cafes and restaurants excluded. The areas where this will apply are those that have existing retail and businesses, to ensure consistency with the overall character of the neighbourhood.

18. Removing the requirement for a shop or business to get development approval to extend their opening hours will make it easier for operators to respond flexibly to changing retail opportunities, such as local festivals and longer summer evenings. Combined with other initiatives, such as destination marketing and our grants program, we can support and encourage later opening hours.

More small-scale cultural uses

19. Small-scale cultural uses involve making or presenting creative content, such as film, art or performance. They are often irregular, one-off or intermittent, can be ticketed, free or by donation, and generally take place in spaces that are not established theatres, galleries, or entertainment venues. Generally, they have fewer safety or amenity impacts than more permanent cultural events or venues.
20. *Creative City* identified that there are a number of underused retail, office and warehouse buildings in the City that could host cultural events within their current approvals, and that there are many operators keen to make use of these opportunities. Research has also identified that there is significant demand for spaces suitable for small-scale cultural events, but that there are barriers to using these spaces. Perceived barriers include complex and costly planning and regulatory approvals to host events in existing buildings.
21. *Creative City* commits us to investigating the use of exempt and complying development pathways for cultural uses to reduce the planning and regulatory barriers to hosting cultural events, particularly in underused buildings that already meet fire safety requirements.
22. Exempt development has minimal impacts as long as certain criteria are met, and does not need development approval from the City or a private certifier. We are proposing to introduce small-scale cultural uses that meet certain strict criteria as exempt development. These criteria include the number of patrons and staff, the frequency of the events, the location, timing and duration of events, and patron safety. Allowing small-scale cultural events as exempt development will remove one of the barriers that discourage cultural events in under-used buildings. Further contributions from landlords, industry operators and the community will be needed to make the most of the opportunity this presents.
23. Alcohol service has the potential to cause some additional impacts, and will only be allowed as exempt development when there is an existing license or a caterer using an off-premises authorisation. Amplified music can also cause impacts, and so will only be allowed as exempt development when the activities are taking place outside of residential areas.
24. For other cultural uses that have more significant impacts and need development consent, we propose new planning controls specific to cultural uses. These new controls will sit alongside guidance on suitable fire safety and building compliance standards for cultural uses. As part of these new controls, we will identify opportunities to reduce notification periods for development applications for cultural uses. The new controls and guidance will support existing and new permanent cultural spaces below 500 square metres.

25. Complying development is used for proposals which have some impacts, but where the proposal is tightly defined, and the impacts are predictable and can be managed through applying standard conditions. Complying development can be approved by a private certifier without the involvement of the City. Typically, this pathway is used for structures such as single dwellings, sheds, fences and the like where a development code can be applied to manage any impacts. Small-scale cultural uses are broad-ranging in scope and not easily defined, and so it is not always possible to predict what the impacts of the activity might be. This makes them unsuitable for a complying development pathway.

#### Entertainment Noise

26. The City's *Live Music and Performance* action plan identified planning and regulatory actions that the City could investigate to support live music venues, musicians and audiences. It committed the City to investigating the protection of areas with strong traditions of live music and performance, and identifying areas where urban and cultural amenity can be improved by live music and performance activity. It also asked the City to investigate planning changes to encourage growth in the industry and to clarify the City's approach to managing complaints about entertainment noise to give greater certainty to venue operators and to residents.
27. The action plan acknowledged that, while the live music industry is a significant part of the City's cultural and economic profile, noise from venues needs to be well-managed to prevent unreasonable impacts on nearby residents. Fair management of impacts can bring certainty to both venue operators and residents.
28. In developing the discussion paper, the City investigated live music precincts to protect areas with a tradition of live music, and to make it easier for new venues to establish there. Brisbane's Fortitude Valley is an example of an operating live music precinct, established to protect an existing cluster of entertainment venues as new residential development moved into the existing business and industrial precinct. It required new residential development to be constructed in a way that protects residents from the entertainment noise. In some circumstances, this can add to construction costs and may discourage some residential development from happening. Live music precincts work best in areas with a concentration of entertainment venues and little existing residential development. To function well, they should ideally be located in conjunction with good quality public transport.
29. While Sydney has a strong history of entertainment and live music venues, our research shows that these venues are generally dispersed rather than concentrated in precincts. The pattern of development of the City's neighbourhoods has seen venues locate in neighbourhoods and on village high streets, often near existing residential development. Many of these neighbourhoods have historically had a mix of business and residential use. Sometimes this residential development is older and has not been constructed to meet modern noise management practices. Parts of the City without significant residential development, such as industrial areas in Alexandria, do not have good access to public transport. Identifying precincts with a sufficient concentration of venues, without existing residential development, and good access to public transport is not practical in the dense, mixed use context of the City.

30. To protect operating entertainment venues, we are proposing an alternative approach known as the agent of change principle. It is recognised as a fair method for allocating responsibility for the management of noise impacts and is used in cities such as Melbourne and San Francisco. Under our current approach, venues are solely responsible for managing the impacts of their noise, which means that when a new residential development comes into an area, the venue may have to reduce its volume or sometimes stop operating. The agent of change principle aims to fairly allocate the responsibility for managing noise impacts to the new development – the ‘agent of change’.
31. In applying the agent of change principle through our planning controls, new residential development planned within a certain distance, such as 100 metres, of an existing entertainment venue would be required to design and construct to protect its residents from the noise that the venue makes. This will give venues certainty that, if they operate within their approved noise conditions, they can continue to operate if a new residential building moves in nearby.
32. Similarly, a new venue coming into an area would need to be designed, constructed and operated to protect existing residents from any noise it makes through its operations. This will give residents certainty that they can continue to enjoy the same level of neighbourhood amenity that existed before the new venue.
33. To support the agent of change approach, we are proposing new noise criteria in our planning controls. These new controls will fairly and clearly allocate the responsibility for managing noise impacts, based on the nature of new developments and the surrounding context. The new controls will determine a fixed ‘venue design criteria’ for new venues, based on the surrounding area, the proximity of residents and the design of the residential building. This venue design criteria will remain the same, independent of future changes to background noise and future development.
34. New residential dwellings will have a ‘residential design criteria’, to ensure that residents can enjoy an acceptable level of amenity in their homes. Through the development process, we can place conditions on a development consent to make sure new residential buildings are designed and constructed to meet the residential design criteria. This will balance residents’ amenity with the need for long-term certainty for venue operators.
35. We are proposing new publicly available guidelines to make our approach to managing offensive noise complaints more consistent. Offensive noise is governed by the *Protection of Environment Operations Act 1997*. 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.
36. In our new guidelines we will set out some objective considerations that City officers can apply when assessing complaints about offensive noise from venues. These will include not just the nature of the noise itself, but also the noise level the venue can make in its approvals, or the new design criteria if there is no noise level on its consent. These considerations will help guide the City officer’s assessment of whether it is offensive noise.



37. The NSW Police and the NSW Office of Liquor and Gaming also have the capacity to respond to complaints about offensive noise, and this can cause further confusion for venue operators and residents. The City will continue to work with these authorities on a common approach to managing offensive noise complaints.
38. The Entertainment Noise chapter of the discussion paper contains technical information on noise criteria to be applied through the new planning controls. These will be of particular interest to operators, acoustic engineers and others in understanding the technical implications of the proposed approach.

## **KEY IMPLICATIONS**

### **Strategic Alignment - Sustainable Sydney 2030 Vision**

39. *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 discussion paper is aligned with the following SS2030 strategic directions and objectives:
  - (a) Direction 1 - A Globally Competitive and Innovative City – the discussion paper puts forward options to support and diversify the range of activities in our city at night. A thriving and diverse night time economy is an important part of a successful global city.
  - (b) Direction 6 - Vibrant Local Communities and Economies – the discussion paper proposes changes to planning controls to encourage later opening businesses and more small-scale cultural uses in our neighbourhoods.
  - (c) Direction 7 - A Cultural and Creative City – the discussion paper responds to key aspects of our Creative City cultural policy and action plan.
  - (d) Direction 9 - Sustainable Development, Renewal and Design – the discussion paper presents options to review our planning controls to improve development outcomes through better design.

## **RELEVANT LEGISLATION**

40. Environmental Planning and Assessment Act 1979; Protection of the Environment Operations Act 1997; Liquor Act 2007.

### **GRAHAM JAHN, AM**

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