

Liquor & Gaming NSW

# Review of the Small Bars Legislation

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City of Sydney Council Submission



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## 1. Executive Summary

The night-time economy is an integral part of Sydney's commercial, cultural and social fabric. The City of Sydney (the City) commends the Liquor & Gaming NSW for providing the opportunity for stakeholders to participate in this review.

Since at least 2007, including with the Late Night Trading Premises Development Control Plan, the City has advocated for and facilitated the establishment of small bar style venues with capacities up to a maximum of 120 patrons. In 2011, the City started a program to support business diversification of the night-time economy through the establishment of small bars with development consent for venues with capacity of up to 120 patrons.

In 2013, the City adopted the OPEN Sydney Strategy which aims to make Sydney at night better connected, more diverse, more inviting and safe, and more responsive to change. A vibrant and sustainable night-time economy is essential for Sydney to remain competitive and maintain its global status. The diversification of the night time economy is one of five objectives contained in the strategy and continues to be a key focus of the City.

There are approximately 128 small bar style venues (120 capacity) in the City of Sydney's local government areas. Advocacy to the NSW Government resulted in the creation of a separate small bar licence category under the (NSW) Liquor Act 2007 (the "Act"), which came into effect on 1 July 2013. However, this licence is for venues with a maximum capacity of 60 patrons (rather than 120).

The City supports the retention of a specific class of licence for small bars and recommends, in this submission, adjustments to ensure it effectively meets the needs of the industry, the expectations of the public and the objectives of the Act. At present, the capacity limit of 60 persons for a small bar licence is too restrictive, leading some small bars to apply for an on-premises (restaurant) licence even though their intended business model more closely resembles a 'small bar'. In addition, for those venues which do have a small bar licence, it means the venues are usually unable to sustain live music and performance programming on a significant scale.

The development of a safe and sustainable night-time economy can only be realised through implementation of a range of robust measures that operate together to encourage diversity and good management. The City supports the objectives of the Small Bars legislation and the retention of this policy, however, as outlined in the submission, refinements to the legislation will ensure that outcomes meeting these objectives are optimised.

### Summary of recommendations

#### Small bar licence features and requirements

##### a. 60 patron limit for small bars

**Recommendation 1:** Change the liquor licence definition of the Small Bar licence category to increase the capacity limit from 60 to 120 patrons.

##### b. Authorised trading hours for small bars

**Recommendation 2:** Remove the restriction on trading hours for small bars in liquor freeze areas to allow standard trading hours to 2am, instead of 12 midnight.

### c. Availability of extended trading hours for small bars from 10am until 5am

**Recommendation 3:** The availability of extended trading hours for Small Bars should be maintained, with each venue's suitability for extended hours of operation assessed on application.

### d. Exemption for small bars from the community impact statement (CIS)

**Recommendation 4:** Continue the exemption for small bars from preparing a community impact statement.

**Recommendation 5:** Consider improved synchronising between the development and liquor licence assessment process, for example by allowing applicants to prepare a single Plan of Management to encompass the development consent and liquor licence aspects.

## Factors affecting the uptake of small bar licences

### a. Awareness of the small bar licence and its conditions

**Recommendation 6:** Consider providing further information on the types of business activities that a Small Bar licence holder may engage in, such as the provision of food and live music and performance, to increase awareness and potential uptake.

**Recommendation 7:** Reduce or remove the trading hours loading fee in the Periodic Licence Fee Scheme for small bar style venues up to 120 patron capacity.

## The nature of any positive and negative impacts of the small bar legislation

### a. Impacts on the risk of alcohol-related violence and anti-social behaviour

**Recommendation 8:** Consider research into licenced premises size and type to assess the impact on alcohol-related violence and anti-social behaviour.

### b. Impacts on the prevalence of venue morphing

**Recommendation 9:** Change the liquor licence definition of the Small Bar licence category to increase the capacity limit from 60 to 120 patrons to contribute to a reduction in venue morphing.

## 2. Background

On 27 June 2016, Liquor & Gaming NSW announced a review of the small bars legislation under Clause 40 of Schedule 1 of the *Liquor Act 2007*. The Act requires a review of the small bars legislation to be undertaken after 1 January 2016 and a report tabled in Parliament before 1 January 2017.

The overarching objective of the review is to assess whether the policy objectives of the amendments made to the *Liquor Act 2007* and the regulations by the Liquor Amendment (Small Bars) Act 2013, remain valid and whether the terms of the amendments remain appropriate for securing those objectives.

The objectives of the small bars legislation are to:

1. provide clarity about what a small bar constitutes and thereby help to prevent ‘venue morphing’;
2. prompt investment in a different business model for licensed venues in NSW, encouraging more diversity in how liquor is sold and supplied and how licensed venues are operated;
3. provide incentives for operators to establish smaller, lower risk venues across NSW; and
4. help reduce the alcohol-related violence and anti-social behaviour that can be associated with larger licensed venues.

The City’s submission contains comments and recommendations about the review, and commends Liquor & Gaming NSW for providing the opportunity for stakeholders to participate.

## 3. Policy context

The City’s local government area (the LGA) is 26.7 square kilometres with an estimated residential population of 205,339<sup>1</sup> and some of the greatest residential densities in Australia. Each day, there are an estimated 1.2 million people in our local area, including residents, workers, students and visitors<sup>2</sup>.

The night-time economy is an integral part of Sydney’s commercial, cultural and social fabric. Late-night trading premises are an important part of Sydney’s social and street life, and play an important role in the city’s economic growth. People who live or work in the city, as well as tourists, are attracted to these places as a result of their diversity and vitality. Late-night trading premises provide employment and jobs with flexible hours.

The City’s local area contains one of the greatest densities of late-trading licensed premises in Australia. As at March 2016<sup>3</sup>, it contains:

- 2,162 licensed premises;
- 228 can trade 24 hours;
- 638 have extended trading hours authorisations; and
- 521 trade after midnight.

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<sup>1</sup> Estimated Resident Population (ERP) at 30 June 2015 (ABS Cat no. 3218.0 Regional Population Growth Australia, 2014-15)

<sup>2</sup> City of Sydney estimates published in the City of Sydney Council Fit For Future Submission (p.14)

<sup>3</sup> Liquor & Gaming NSW

As Australia's global city, it is estimated that the economic output from the City of Sydney is just over \$110 billion. This represents around a third of the economic output of metropolitan Sydney, more than 20 per cent of NSW's output and more than 7 per cent of the national economic output<sup>4</sup>. The night-time economy makes a significant contribution to our economy; in 2014 it was estimated at \$19.025 billion, employing 31,871 people<sup>5</sup>.

The City recognises the important role that licensed premises play, with well-managed, safe licensed premises an integral part of any global city. There must be an appropriate balance between public safety, residential amenity and economic growth.

### a. Planning controls for small bars

In December 2007, the City of Sydney's Late Night Trading Premises Development Control Plan 2007 was adopted by Council. This plan was incorporated into the current Sydney Development Control Plan 2012 (the "development control plan") upon its adoption. The development control plan was developed to help manage the potential impacts from late-night trading premises and also encourage diversity and vibrancy in the City's late night economy. There was no comprehensive planning approach to managing late night trading impacts prior to 2007.

The planning controls achieve these aims by setting flexible limits on late night trading hours, identifying areas in the City where late trading is appropriate and encouraging well managed premises by allowing extended trading following successful trial periods. The controls have assisted in the diversification of late trading, managed conflicts between incompatible uses and provided certainty to proponents and the community about appropriate trading hours and locations for late night trading premises.

The development control plan encourages vibrancy and diversity in the City's late night economy through a risk based approach that facilitates smaller, lower impact premises such as small bars. Low impact premises have less restrictive operating hours and management requirements than higher impact premises.

Small bar style premises will generally fall into the category of low impact premises, known as "Category B" premises, under the development control plan. Low impact "Category B" premises are defined under section 3.15 of development control plan and include:

- a hotel within the meaning of the Liquor Act 2007 that has a capacity of 120 patrons or less and is designated as a general bar licence;
- premises that have a capacity of 120 patrons or less where the primary purpose is the sale or supply of liquor for consumption on the premises;
- an on-premises licence within the meaning of the Liquor Act 2007;
- any premises where the owner or occupier sells or supplies liquor for consumption on the premises that is not a Category A Premises.

In comparison, High impact "Category A" premises include licensed premises such as pubs, nightclubs, and registered clubs and other premises that provide for the consumption of alcohol that have more than 120 patrons.

Generally low impact "Category B" premises such as small bars will be permitted longer trading hours than "Category A" premises at the initial development application stage. Category B premises will generally need fewer trial periods to achieve the maximum

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<sup>4</sup> City of Sydney estimates published in the City of Sydney Council Fit For Future Submission

<sup>5</sup> TBR (2015) Australian Night Time Economy

'extended' trading hours. Further information can be found in Section 3.15 of the development control plan (attached).

## **b. Open Sydney**

In 2011, the City began work on the OPEN Sydney Strategy, a vision for Sydney at night. The strategy was developed following wide consultation with the public on what they wanted for their city after dark. The strategy is grounded in a substantial body of research into Sydney's night-time economy, including international research into best practice management.

Endorsed in 2013, the strategy forms the basis for how the City makes decisions about Sydney at night between now and 2030. The strategy includes actions for making Sydney's night-time economy better connected, more diverse, more inviting and safe, and more responsive to change.

The City's Cultural Strategy and Live Music and Performance Action Plan support the delivery of OPEN Sydney's objectives for greater diversification of the night-time economy. They guide the development and growth of these key sectors to increase the diversity and amount of night-time entertainment options in Sydney.

The Live Music and Performance Action Plan, which was developed in partnership with representatives of the live music and performance industry and academics, focused on the regulation of live music. The Action Plan commits the City to regulatory reform, advocacy, research and strategic projects across four areas: development controls and noise, Building Code of Australia, liquor licensing and audience and sector development.

Having more options at night creates a safer and more balanced night-time economy in the city and village centres, which attracts a wider range of people into these precincts for different activities.

## **c. Liquor licensing**

In late 2012, the NSW Government introduced a range of measures to tackle alcohol and drug-related crime and anti-social behaviour in Kings Cross. The Liquor Amendment (Kings Cross Plan of Management) Act 2012 supported the measures announced as part of that package. This whole-of-government approach covered liquor licensing, compliance, transport, policing and public spaces.

To encourage investment in smaller, lower risk licensed premises, the amendments introduced an exemption from the liquor licence freeze in the Kings Cross and Oxford Street Darlinghurst precincts for smaller venues with a maximum limit of 60 patrons. Such venues were considered to add to the diversity of entertainment venues on offer, and can be associated with a reduced risk of alcohol-related violence compared with larger licensed venues.

The Government indicated at the time that this exemption for small venues was a precursor to a new category of small bar licence. Until then, small bars had been required to operate under a general bar hotel licence, which could also be utilised for a nightclub or other type of licensed venue that has a focus on alcohol sales and consumption.

In February 2013, the NSW Government introduced amendments to the Liquor Act 2007 to create a new category of liquor licence for small bars. The legislation commenced on 1 July 2013.



## a. 60 patron limit for small bars

In 2011 the City started a program to support business diversification of the night-time economy through the establishment of small bars. This was supported by the 2007 and 2012 development control plans, which classifies premises with capacity of up to 120 patrons, where the primary purpose is the sale of alcohol for consumption on premises, as a Category B low impact venue.

There are approximately 128 small bar style venues (120 patron capacity) in the City of Sydney. Advocacy to the NSW Government resulted in the creation of a separate small bar licence category under the (NSW) Liquor Act 2007, which came into effect on 1 July 2013. However, this licence is for venues with a maximum capacity of 60 patrons (rather than 120).

At present there are three ways in which small bar style venues can obtain a liquor licence under the (NSW) Liquor Act 2007:

- Hotel (General Bar) licence;
- On-premises (restaurant) licence (with primary service authorisation); and
- Small Bar licence (maximum patron capacity of 60 patrons).

For the period from July 2013 to May 2016 the City identified 128 licensed premises that could be characterised as small bar style premises. These premises hold the following liquor licenses:

- 21% (27 venues) operate under a Small Bar liquor licence;
- 35% (45 venues) operate under a Hotel (General Bar) licence; and
- 43% (56 venues) operate under an On-premises licence with Primary Service Authorisation.

After 10pm, City compliance staff observe that businesses with approval as a restaurant with an On-premises licence and Primary Service Authorisation tend to primarily operate as drinking venues later at night.

Anecdotal feedback from small bar style premises operators (capacities of 30 to 120) in June 2016 indicated that the majority considered themselves to be a small bar, regardless of their licence type. They considered a small bar to be a small sized venue, with an 'independent feel'. Operators talked of having a real passion for their venue and had worked to create a bar that they enjoyed themselves; a venue with a real point of difference.

The City supports a specific class of licence for small bars, however, recommends adjustments to ensure it effectively meets the needs of the industry, the expectations of the public and the objectives of the Act. At present, the capacity limit of 60 persons for a small bar licence is too restrictive, and may result in small bars applying for an on-premises (restaurant) licence even though their intended business model more closely resembles a 'bar'. If the patron capacity under the small bar liquor licence was increased to 120 and small bars were only permitted through the small bar licence, it would make the character of the premise clear to local residents from the outset of the application being made.

Small Bars in Western Australia and South Australia are licensed for a maximum capacity of 120 patrons. Consultation with the Western Australian Department of Culture and Arts and the music industry association, and South Australia's Music Development Office suggests that small bars are providing positive outcomes for the live music and performance industry in their respective states. The current capping of allowable

capacity for the small bar licence at 60 limits the impact this licence type can have in achieving the objective referred to in s 3(1)(c) of the Act (support for live music and performance). Venues of such low capacity are usually unable to sustain live music and performance programming on a significant scale. Analysis carried out in 2016 by the City of APRA live music licence data for venues in the City of Sydney was compared against liquor licence types to see what type of liquor licence live music venues operated under. There were no venues operating with both an APRA live music licence and a NSW Government Small Bar liquor licence. The overwhelming majority of venues with a live music licence operate with either a hotel licence or an on-premises licence. The expansion of the small bar licence to include venues of capacities up to 120 would increase the impact this licence category can have in achieving the stated goal of the liquor act in supporting live music and performance, as well as align with similar categories in other states.

**Recommendation 1:** Change the liquor licence definition of the Small Bar licence category to increase the capacity limit from 60 to 120 patrons.

#### **b. Authorised trading hours for small bars**

The authorised Small Bar liquor licence standard trading hours from midday to 2am is considered appropriate. However, the current CBD Entertainment Precinct liquor freeze restricts small bars in the city from operating beyond 12 midnight, unless further approval is sought. This restriction is inconsistent with the objective of the Act which seeks to prompt investment in a different business model and provide an incentive to operators who may wish to establish smaller, lower risk venues. This restriction creates a disincentive to business diversification and growth in these smaller, lower risk type of licenced premises in the city.

Anecdotal feedback from twenty small bar operators (capacities of 30 to 120) in June 2016 indicated that the majority of venues closed between 10pm and midnight. Feedback received from the Small Bar Association and other operators indicates the desire for flexibility in trading hours to ensure that they can manage their operating hours in a way that is responsive to opportunities and market changes.

**Recommendation 2:** Remove the restriction on trading hours for small bars in liquor freeze areas to allow standard trading hours to 2am, instead of 12 midnight.

#### **c. Availability of extended trading hours for small bars from 10am until 5am**

International and Australian evidence suggests a clear link between later closing times and levels of alcohol related violence.<sup>6</sup> Trading hours for licensed premises are determined via the respective licensing legislation and planning consents. Many cities globally do not have 24 hour licensing. Those cities with earlier closing times for licensed venues tend to have lower levels of alcohol-related crime. However, many factors influence crime levels.

Increasing trading hours into the early morning leads to increased alcohol use and related harms. Adding or subtracting just one or two hours of trading after midnight can make a substantial difference to violence rates.<sup>7</sup>

Notwithstanding, we believe that it is important that Sydney, as a global city, maintains a diverse late-night economy. From 2009 there was a clear downward trend in assault

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<sup>6</sup> Preventative Health Taskforce (2009)

<sup>7</sup> Chikritzhs and Stockwell (2002); Hadfield (2011); Kypri et al., (2011); Stockwell (2011).

for both the Kings Cross and CBD precincts. This trend accelerated following the introduction of the January 2014 liquor law reforms.<sup>8</sup> The City believes a more refined approach to trading hours would achieve better outcomes to maintain a diverse night-time economy while achieving safety outcomes and reducing alcohol-related violence.

In the City, allowable trading hours for business is established by geographic areas as outlined within the development control plan. The provisions now contained in section 3.15 of the development control plan were originally developed in 2007 to assist in the management of the impacts of late-night trading premises and to protect the amenity of existing residential properties. They have been consistently and effectively implemented by the City since that time.

The development control plan outlines the following areas:

- Six (6) Late Night Management Areas (LNMA) allowing 24 hour trading, subject to consent;
- Three (3) City Living Areas allowing trading to 5am, subject to consent; and
- Fourteen (14) Local Centre Trading Areas allowing trading to 12 midnight, subject to consent.

The development control plan also establishes definitions for ‘Category A - High Impact Premises’ and ‘Category B - Low Impact Premises’. These provide greater certainty to the community and proponents of late-night trading premises in respect to appropriate operating hours and locations. The provisions do not set out to curb or increase potential trading hours in a blanket fashion throughout the city, but allow opportunities for late-night trading hours in appropriate locations with appropriate management actions.

The development control plan is the City’s guide to assessing development applications and is instrumental in determining appropriate trading hours according to land use zoning and evidence-based risk mitigation measures. The availability of extended trading hours for Small Bars from 10am to 5am is aligned with the development control plan, with each venue assessed on application

**Recommendation 3:** The availability of extended trading hours for Small Bars should be maintained, with each venue’s suitability for extended hours of operation assessed on application.

#### **d. Exemption for small bars from the community impact statement (CIS)**

The exemption of small bars from submitting a community impact statement with a small bar liquor licence application in circumstances where development consent is required is considered appropriate by the City. The provision requiring the applicant to notify the local police and Secretary of the Department of Justice within two days of the development application is also considered appropriate.

Liquor licenses control only the manner in which alcohol is sold or supplied at a venue. A development consent restricts the manner in which a premises is used and operated, including the hours of trade. The development consent process requires assessment of community impact and involves community consultation. Current provisions within the Act acknowledge this by eliminating the need for a Community Impact Assessment to be undertaken prior to lodging the licence application; conditional upon prior development consent being obtained from council.

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<sup>8</sup> Menendez, P (2015)

As a liquor licence (of any type), is not issued without evidence of appropriate development consent for a premise, it could be argued that the community impact of the proposed licensed venue has already been assessed as part of the development assessment process. There are opportunities for streamlining development and liquor licence application assessments whereby they are assessed concurrently to avoid duplication, red-tape and unnecessary cost and delay in establishing a business.

The requirement for two Plans of Management to be prepared, one for the development application and the other for the liquor licence application is also a duplication. In many instances the same document is submitted for both applications and assessed separately by the Council and Liquor & Gaming NSW.

**Recommendation 4:** Continue the exemption for small bars from preparing a community impact statement.

**Recommendation 5:** Consider improved synchronisation between the development and liquor licence assessment process, for example by allowing the applicants to prepare a single Plan of Management to encompass the development consent and liquor licence aspects.

## 4. Factors affecting the uptake of small bar licences

### a. Awareness of the small bar licence and its conditions

City staff perceive there is reasonable awareness of the Small Bar liquor licence and its specific purpose. However, it is possible that there is a misconception that a Small Bar liquor licence issued under the Act requires an identical development consent to operate as a “small bar”. This perception may lead operators to believe that if they proceed with this approach they have reduced flexibility in their business model, restricting them to operate as a small bar only. In combination with issues of patron capacity, this could be limiting the uptake of the Small Bar licence in preference for the On-premises licence with Primary Service Authorisation.

**Recommendation 6:** Consider providing further information on the types of business activities that a Small Bar licence holder may engage in, such as the provision of food and live music and performance, to increase awareness and potential uptake.

### b. Nature of small bar licence conditions

The nature of the small bar licence conditions require review to ensure that they are securing the policy objectives of the small bars legislation. This review should include consideration of the areas for reform outlined within this submission.

Anecdotal feedback from small bar operators (capacities of 30 to 120) in June 2016 indicated a number of factors affecting uptake of the small bar licence. Many small bars hold either an On-premises (restaurant) or Hotel (General Bar) Licence, specifically seeking out these licence types for the following reasons:

- Business flexibility e.g. operating as a café or other business during the day and a small bar at night (as small bar licences preclude minors from entering the venue).
- Capacity of the venue greater than small bar licence maximum of 60 allowable patrons.

### c. Costs and time associated with regulatory processes and compliance

Anecdotal feedback from small bar operators (capacities of 30 to 120) in June 2016 indicated delays were experienced in establishing their business due to a lack of co-ordination between Council, Liquor & Gaming NSW and landlords which resulted in additional costs prior to receiving any income.

This situation can apply to all liquor licence applications, and as outlined at 3.d in this submission, it demonstrates the need to align the licensing and development application processes to reduce duplication, costs, and time for all involved stakeholders.

The requirements for approval from the City for all licenced premises up to 120 patron capacity is similar, regardless of the type of liquor licence (i.e. Small Bar licence, Hotel (General Bar) licence, or On-premises (with Primary Service Authorisation) licence. Similarly, compliance and regulatory requirements are similar for all three types of premises.

The City, in its submission to the NSW Liquor Law Review (April 2016), noted its support for the continuation of the periodic liquor licence fee scheme as a mechanism to encourage good management and smaller lower impact venues. The City also recommended that consideration should be given to reviewing the trading hours loading to provide incentives for greater diversification and operation of these lower impact premises. This may include exemptions or reduced trading hours loading fees for small bars and venues that regularly program live music and performance or other positive social outcomes, subject to good management.

**Recommendation 7:** Reduce or remove the trading hours loading fee in the Periodic Licence Fee Scheme for small bar style venues up to 120 capacity.

## 5. The nature of any positive and negative impacts of the small bar legislation

### a. Impacts on the risk of alcohol-related violence and anti-social behaviour

A study of Sydney's small bar style venues (120 patron capacity) was undertaken in October 2013 by Woolcott Research (attached). It found that small bars were viewed positively by customers, operators, and regulatory staff from the NSW Police, Liquor & Gaming NSW and the City of Sydney. They were considered a relaxed alternative to other licensed venues, and were overwhelmingly felt to have brought diversity to the city.

Larger pubs and bars were the most common alternative to small bar style venues, but visitors preferred the smaller venues because of the friendly, intimate atmosphere and quality of service, food and drinks.

They were considered low risk in terms of safety issues by operators, regulatory staff and customers. The majority of customers (79 per cent) said they felt safer in the local area because of the presence of small bars. Operators and regulators cited the small, intimate nature of the bars, as well as more mature patrons for their low risk of anti-social behaviour and violent incidents.

Anecdotal feedback from similar operators in June 2016, reinforces 2013 findings, that the presence of small bars was considered to make an area feel safer and more welcoming. In the absence of evidence to the contrary, there is a perception that

alcohol-related violence and anti-social behaviour is less likely to occur in or be associated with small bars. There is a need for specific research in this area to better inform decision-making and policy development.

**Recommendation 8:** Consider research into licenced premises size and type to assess the impact on alcohol-related violence and anti-social behaviour.

#### **b. Impacts on the prevalence of venue morphing**

City staff have observed an increasing focus on food and meal service at Small Bar and Hotel (General Bar) licensed venues. No small bars have been observed to be morphing into night clubs.

As noted in point 4a, 43% of venues operating in the city that are considered to be more closely aligned with a small bar than a restaurant, are operating as restaurants with an On-premises licence with Primary Service Authorisation. These businesses are observed by City compliance staff to primarily operate as drinking venues after 10pm.

It appears there is a direct relationship between the type of licence obtained and the prevalence of venue morphing. Anecdotally, it is considered that small bar style premises with patron capacities above 60 will often obtain the incorrect licence (On-premises with Primary Service Authorisation) due to the capacity limitations associated with the Small Bar licence. The increase in the Small Bar licence patron capacity to 120 would likely contribute to a reduction in venue morphing.

**Recommendation 9:** Change the liquor licence definition of the Small Bar licence category to increase the capacity limit from 60 to 120 patrons to contribute to a reduction in venue morphing.

#### **c. Positive and negative community impacts**

Sydney's small bars have been recognised globally, most recently with *The Baxter Inn* recognised as the sixth best bar globally in 2015. In a recent visit and tour of Sydney laneways and small bars by Australian capital city late night economy specialists, the professionalism of staff, the unique character of venues and the broader patron demographic were acknowledged.

## **6. Attachments**

Sydney Development Control Plan 2012 (Section 3.15)

Small Bars Media (2012-2016)