

A man with a full, light brown beard and closed eyes. His beard is filled with a variety of flowers, including large red dahlias, smaller pink and red roses, and green foliage. He is looking directly at the camera with a serene expression.

SYDNEY
FRINGE
FESTIVAL

1-30
SEPTEMBER
2015

2015
**SYDNEY
FRINGE
FESTIVAL**

**FINDINGS OF THE POP-UP
THEATRE PILOT PROJECT**

2015 SYDNEY FRINGE FESTIVAL

CONTENTS

Introduction	4
Background	5
Space, Form & Function	6
Scope	7
 A Need To Redefine The Traditional Performance Space	20
Site Details	21
The Cost of Compliance	28
 Case Studies	35
469 King Street Newtown – Glitterbox Hair Salon	35
123a King Street Newtown	38
Assemblage Space, Chippendale	39
 Recommendations	42
 Attachment A: Sydney Fringe Festival Investigation to Encourage Arts and Cultural Facilities	

SYDNEY FRINGE FESTIVAL:

FINDINGS OF THE POP-UP THEATRE PILOT PROJECT*

This report summarises the need for, and potential approaches to facilitate, creative spaces for theatre and performance in Sydney and NSW. It draws from the experience of the Sydney Fringe pilot Pop-Up Theatres project, run with the support of the City of Sydney.

The aim of this project was to activate up to five empty shop-front, retail or alternative spaces to create temporary theatres during the festival period from the 1st till the 30th of September 2015. The intended outcome was the creation of a model from which to base an ongoing temporary theatre license for the City, to open up empty, unused space to the performing arts sector.

During the pilot the Sydney Fringe Festival worked closely with City of Sydney, the City of Marrickville and two Independent consultants to identify sites, work through applications and activate spaces. Of the five sites outlined as case studies during

this project, it was only possible to open one, as a retail space without performance, due to the difficulties in activating the spaces brought about by unclear regulatory frameworks.

This report outlines the Sydney Fringe Festival's findings, considering the costs and experiences of stakeholders including performers, independent theatre companies, existing businesses and property owners. The attached appendix, 'Sydney Fringe Festival Investigation to Encourage Arts and Cultural Facilities', outlines the findings of two independent consultants, who reviewed five prospective sites for temporary use with reference to building and planning requirements. This report provides an analysis of the impact and risk profiles of such uses, and makes recommendations on alternative approaches.

**This report is an outcome for the City of Sydney's grant funding for the Sydney Fringe Festival Pop-Up Theatre Pilot Project. It is not an official position of the City of Sydney and is not endorsed by the City of Sydney Council.*

BACKGROUND

The Sydney Fringe Festival is now the largest Independent arts festival in NSW, presenting over 350 productions by independent artists each year. Over 90% of the artists that participate in the Sydney Fringe Festival are locally based. The Fringe offers a snapshot of the work being created by those artists year round. As a result of the density of the program, the festival also amplifies the issues facing those artists on a day-to-day basis.

Each year the Sydney Fringe faces a challenge to house its artists in appropriate small to medium sized performance spaces. Over the past three years the festival has seen a steady decline in the amount of appropriate, affordable and available space. This is highlighted by the increased activity during the Fringe but is by no means limited to the festival period. It is an ongoing issue facing the creative sector year round, and is currently the most urgent issue that needs addressing. Demand for performance and rehearsal space now far outweighs the supply of suitable space.

Rising costs of real estate, and limited existing theatre and performance space has made it increasingly common for creative entrepreneurs to seek out otherwise vacant buildings or establish partnerships with existing businesses. Through these pathways, creative spaces can be established quickly and on an 'as needs' basis.

Fundamental to Sydney's creative landscape is the need to provide affordable spaces for new, emerging and experimental activity. This type of activity acts as the 'R&D' for Sydney's cultural life. However, like most innovative activity, it does not produce high profit margins.

The development of a sustainable enterprise is particularly susceptible to regulatory barriers. Issues in identifying suitable planning or building requirements, which may be easily dealt with by larger businesses, can present insurmountable barriers to smaller creative spaces.

In many instances, managers of small and medium creative spaces, generally under 500m², have found focusing primarily on arts and cultural activity has drawn them into regulatory categories designed for much larger theatre and performance space. Whilst relatively defined regulatory pathways exist for small bars and retail spaces, regulation does not appear to scale effectively between small and large creative spaces.

Currently, creative spaces are often subject to definition within the planning system as 'Entertainment Venues' and, within the building system, as 'Assembly Buildings'. These categories have been designed for nightclubs, major halls and public buildings such as airports and schools. Whilst they can be adapted to apply to smaller creative spaces, this can only be done at a cost well beyond the limited resources of smaller creative enterprises, and with time-frames which make short term and temporary projects untenable.

This report is designed to outline the current operating environment for creative spaces, the needs of the performing arts sector in particular, and the impact regulation has on sustainability. Read in conjunction with the attached reports by Michael Wynn-Jones and Design Collaborative, it offers potential alternative approaches to enhance Sydney's creative life.

SPACE, FORM AND FUNCTION

Increasingly artists are presenting work that is breaking with tradition, is multi-genre, and pushing the boundaries of form and function. These contemporary works require a very different venue from the traditional theatres of old.

When weighing up the average inner city retail property to lease short term, with the producer retaining all box office earnings, a pop-up retail conversion becomes an economically viable option to hiring a traditional theatre space. Rental rates are generally cheaper than accessing one of the limited hireable spaces, time spans are more flexible, and the producer has greater control over ticketing, staffing and other conditions. This increased control over ticket pricing and expenses makes it possible to make a profit, rather than the investing most earnings back into hiring the venue.

If artists were able to legally and affordably use available, empty spaces the current venue crisis would literally cease to exist.

“Content is becoming more diverse and we are seeing a breakdown of genre as artists become more inventive with form. In many ways, unusual and pop up spaces create opportunities for artists to experiment, diversify content and develop their craft.

Dino Dimitriadis
Artist Liaison
Sydney Fringe Festival

SCOPE

For the purpose of this report, the Sydney Fringe has limited its scope to theatre venues and activating space for the purpose of work that involves theatrical performance of some kind. However, this issue is relevant to all creative sectors and performance styles, as well as many other small creative businesses operating in existing buildings. Theatre and performance is a particularly good case study for two reasons.

Firstly, live performance triggers particularly complex regulatory requirements, frequently requiring existing buildings to change both their planning and building approvals.

Secondly, it is suggested that the difficulty of setting up spaces for performance has led to a situation in which the current supply does not match the demand but has, instead, been falsely shaped by regulatory, rather than economic, conditions.

At the time of this report there are currently nine independent theatres operating in a full-time capacity in the inner city that are available for hire:

- Tamarama Rock Surfers
- Old 505 Theatre
- The Old Fitz
- 107 Projects
- Griffin Independent
- King St Theatre
- PACT
- The Reginald Theatre
- Hayes Theatre

Of these nine available spaces all have some type of curatorial condition attached to them. This ranges from a preference for new work to full submission processes. Such a process tends to favour more established theatrical organisations with an existing audience.

New and experimental performances require non-curated space. There is currently not an established affordable space that artists can hire, no strings attached, to present their work in, build new audiences and trial new work on a regular basis in Sydney.

CURRENT LANDSCAPE OF INDEPENDENT THEATRES IN SYDNEY

TAMARAMA ROCK SURFERS

- LOCATION ▶ Bondi
- CAPACITY ▶ 225
- COST ▶ \$2200 per week or \$1100 per day outside hire box office split on case-by-case basis for co-produced work
- CONDITIONS ▶ Curated seasons via a submission process
- SUBSIDISED ▶ Yes government funding

THE OLD FITZ

- LOCATION ▶ Woolloomooloo
- CAPACITY ▶ 54
- COST ▶ \$1500 or 35% of box office whichever is higher
- CONDITIONS ▶ Curated seasons via a submission process
- SUBSIDISED ▶ Yes from hotel upstairs

THE OLD 505 THEATRE

- LOCATION ▶ Surry Hills
- CAPACITY ▶ 30
- COST ▶ \$880 per week minimum box office guarantee or 25% of gross whichever is higher + staff costs
- CONDITIONS ▶ Curated seasons via a submission process
- SUBSIDISED ▶ No

107 PROJECTS

- LOCATION ▶ Redfern
 - CAPACITY ▶ 60 seated
 - COST ▶ \$990 per week
 - CONDITIONS ▶ Open access with conditions attached must be new work
 - SUBSIDISED ▶ Yes accommodation grant
-

GRIFFIN INDEPENDENT

- LOCATION ▶ Kings Cross
- CAPACITY ▶ 105
- COST ▶ \$5000 for 3 ½ weeks or 30% of box office whichever is greater
- CONDITIONS ▶ Limited curated seasons via a submission process
- SUBSIDISED ▶ Yes government funding

PACT CENTRE FOR EMERGING ARTISTS

- LOCATION ▶ Erskineville
- CAPACITY ▶ 100
- COST ▶ \$2700 per week
- CONDITIONS ▶ Straight hire with curatorial conditions
- SUBSIDISED ▶ Yes accommodation grant and government funding

KING STREET THEATRE

- LOCATION ▶ Newtown
- CAPACITY ▶ 100
- COST ▶ \$880 per performance straight hire or profit share for co-produced work
- CONDITIONS ▶ Straight hire with curatorial conditions or co-produced
- SUBSIDISED ▶ No

THE HAYES THEATRE

- LOCATION ▶ Darlinghurst
- CAPACITY ▶ 150
- COST ▶ \$2200 per week or 30% of net box office whichever is greater
- CONDITIONS ▶ Self produced curated seasons with limited spaces also available for hire
- SUBSIDISED ▶ Yes accommodation grant and government funding
-

THE REGINALD THEATRE

- LOCATION ▶ Chippendale
 - CAPACITY ▶ 150
 - COST ▶ \$5900 + GST per week
 - CONDITIONS ▶ Curated seasons via a submission process with limited spaces also available for straight hire
 - SUBSIDISED ▶ No
-

The above spaces combined offer approximately 70- 80 production slots per year. However this is well below the amount of sessions needed by local artists.

If artists are fortunate enough to be able to gain one of the available seasons, they will then pay a venue hire ranging from a minimum of \$880 to a maximum of \$6000 per week.



We spent 2 years applying for every theatre in Sydney, but were unsuccessful in securing a space in an established theatre. It seemed that there was no alternative. If you cannot convince a theatre board that your show is the perfect fit for one of their 6-9 available slots in their season, amongst the other 80+ applicants, then the only thing to do is find a space and put it on yourself.

Samantha Ward
Sydney Fringe 2015
Pop-Up Artist



We have now been operating legally for six years as Venue 505 on Cleveland Street in Surry Hills, we constantly struggle with programming what fits our artistic vision for the company and what brings in the most amount of income.

As a completely commercial artist run space with no subsidy or funding it only takes a couple of bad months in a row to set you back or even cause doors to be closed, the sector is quite frankly that volatile.

Cameron Undy
Founding Director Venue 505

“ Each year we receive many more submissions for our annual program than we can accommodate.

On average we program only 50% of the submissions that we receive, while some of these are rejected due to artistic vision, there are approximately 25% that we would love to program but just can't fit in to the calendar.

Gareth Boylan

Associate Artistic Director
Old 505 Theatre Surry Hills

“ The Sydney Fringe Festival is currently at capacity with the amount of productions we can physically include in our program each year due to the lack of suitable venues. In 2015 we had to literally build five temporary theatres to house 26 productions that would not have been able to be part of the festival otherwise. In addition to this the Fringe facilitated another 9 productions that presented in site specific spaces.

Dino Dimitriadis

Artist Liaison
Sydney Fringe Festival

Each year the Sydney Fringe Festival runs a detailed series of producer workshops to equip emerging and early career artists with producing skills. In the budgeting and finance workshop the Fringe recommends that artists budget their production on a capacity of 30% attendance to ensure that they do not financially overextend themselves, and to place them in the best possible situation to break even at the end of their season. An estimated 30% audience capacity is now the realistic expectation among the emerging performance sector. It is important to note that, in 2005, budgets were set on an estimated 60% capacity. This decline, we believe, can be partly attributed to the lack of smaller spaces producing a subsequent lack in audience development.

The two example budgets on the following page are from 2015 productions (outside of the Sydney Fringe Festival) by two established Sydney based, Independent companies. Both companies had higher than usual capacities and both productions received critical acclaim. These two examples were chosen as they outline the production costs of two productions that sit at two different ends of the independent theatre spectrum. SEEING UNSEEN was a bare-bones unfunded production in the artist run space Old 505 Theatre, where proceeds are retained by the company for future productions. DAPTO CHASER was produced using a more traditional model in one of the coveted spots at Griffin Independent and paid artists Equity rates for rehearsals.

SEEING UNSEEN – BUDGET ACTUAL OLD 505 THEATRE

INCOME

BOX OFFICE

NO: PERFORMANCES ▶ 15
VENUE CAPACITY ▶ 30
ACTUAL ATTENDANCE ▶ 60%

TOTAL BOX OFFICE INCOME ▶ \$5 297

OTHER INCOME

VENUE FOR DEVELOPMENT ▶ \$4 800
(VALUE IN KIND)
CROWDSOURCING ▶ -
FUNDING ▶ -
GRANTS ▶ -
PHILANTHROPY ▶ -
MARKETING SUPPORT ▶ \$860
POSTCARDS (VALUE IN
KIND) ▶ -
OTHER ▶ \$10 957

TOTAL BOX OFFICE INCOME ▶

EXPENDITURE

PRODUCTION COSTS

DEVELOPMENT/REHEARSAL ▶ \$4 800
SPACE (VALUE IN KIND
PROVIDED BY VENUE)
VENUE HIRE ▶ \$2 400
(PERFORMANCE)
SET ▶ -
PROPS ▶ \$350
COSTUME ▶ \$90
LIGHTING ▶ -
SOUND ▶ -
AUDIO VISUAL ▶ -
TRANSPORT ▶ -
RUNNING COSTS ▶ -
BUMPIN/OUTCREW ▶ -
PRODUCTION SUBTOTAL ▶ \$7 640

MARKETING

OPENING INVITES	▶ -
OPENING NIGHT CATERING	▶ \$150
PROMOTIONAL PHOTOGRAPHY	▶ -
ARCHIVAL PHOTOGRAPHY	▶ -
ARCHIVAL VIDEO	▶ -
GRAPHIC DESIGN	▶ \$400
ADVERTISING : STREET PRESS	▶ \$150
ADVERTISING : RADIO	▶ -
POSTCARDS (VALUE IN KIND BY VENUE)	▶ \$860
PROGRAMS: DESIGN & PRINT	▶ -
LIGHT BOX POSTER	▶ -
DISTRIBUTION	▶ -
PUBLICITY	▶ -
MARKETING SUBTOTAL	▶ \$1 560

ADMINISTRATION

GROUP PERSONAL INJURY INSURANCE	▶ -
PUBLIC LIABILITY INSURANCE	▶ \$550
ADMIN COSTS: PHONE, POSTAGE, ETC	▶ -
APRA LICENSE	▶ -
ADMINISTRATION SUBTOTAL	▶ \$550

SALARIES & FEES

CREATIVES & CREW	▶ -
PERFORMERS	▶ -
OTHER	▶ -
SALARIES & FEES SUBTOTAL	▶ -

CONTINGENCY

TICKETING & CREDIT CARD CHARGES	▶ \$114.26
ADDITIONAL BOX OFFICE SHARE TO OLD 505 (IF 25% IS GREATER THAN MINIMUM GUARANTEE)	▶ -

TOTAL EXPENDITURE ▶ \$9 864.26

RESULT ▶ \$1092.74

DAPTO CHASER – BUDGET ACTUAL GRIFFIN INDEPENDENT

INCOME

BOX OFFICE

NO:PERFORMANCES ▶ 22
VENUE CAPACITY ▶ 105
ACTUAL ATTENDANCE ▶ 81%

TOTAL BOX OFFICE INCOME ▶ \$51 228

OTHER INCOME

CROWDSOURCING ▶ \$8 315.82
CORPORATE SPONSORSHIP \$1 360
GRANTS ▶ -
PROGRAM SALES: ▶ \$537
GOLD COIN DONATION
OTHER ▶ -
TOTAL INCOME ▶ 61 440.82

EXPENDITURE

PRODUCTION COSTS

REHEARSAL SPACE ▶ \$620
SET, PROPS & WARDROBE ▶ \$2 499.21
LIGHTING ▶ \$104.49
SOUND ▶ -
AUDIO VISUAL ▶ -
TRANSPORT ▶ \$100
RUNNING COSTS ▶ \$521.02
BUMPIN/OUTCREW ▶ -

PRODUCTION SUBTOTAL ▶ \$3 844.72

MARKETING

OPENING INVITES	▶ -
OPENING NIGHT CATERING	▶ -
PROMOTIONAL PHOTOGRAPHY	▶ \$400
ARCHIVAL PHOTOGRAPHY	▶ \$500
ARCHIVAL VIDEO	▶ -
GRAPHIC DESIGN	▶ -
ADVERTISING : STREET PRESS	▶ -
ADVERTISING: DIGITAL	▶ \$200
ADVERTISING : RADIO	▶ -
POSTCARDS	▶ -
PROGRAMS: DESIGN & PRINT	▶ \$400
LIGHT BOX POSTER	▶ -
DISTRIBUTION	▶ -
ADDITIONAL PUBLICITY	▶ \$300
MARKETING SUBTOTAL	▶ \$1 800

ADMINISTRATION

GROUP PERSONAL INJURY INSURANCE	▶ -
PUBLIC LIABILITY INSURANCE	▶ \$550
ADMIN COSTS: PHONE, POSTAGE, ETC	▶ -
APRA LICENSE	▶ \$55
DIRECTOR'S ACCOMMODATION	▶ \$2 500
WRITER'S ROYALTY	▶ \$4 369
ADMINISTRATION SUBTOTAL	▶ \$7 474

SALARIES & FEES

CREATIVES & CREW	▶ \$14 000
PERFORMERS	▶ \$12 000
OTHER	▶ -
SALARIES & FEES SUBTOTAL	▶ \$26 000

CONTINGENCY \$309

TICKETING CHARGES	▶ \$3 740
CREDIT CARD CHARGES	▶ \$349.46
BOX OFFICE SHARE TO GRIFFIN	▶ \$14 245.66

TOTAL EXPENDITURE ▶ \$57 762.84

RESULT ▶ \$3 677.98

TO SUMMARISE

Even with successful seasons, established companies struggle to accommodate the expense of most venue hires in Sydney. If either of these companies had only gained a 30% capacity (as is the industry standard budgeted figure) both would have made significant losses.

These two actuals clearly show that regardless of where a company sits within the Independent sector in Sydney the cost of production and the bottom line (even with a high attendance) affords limited room for further costs, such as the consultancy, upgrade and associated fees attached to building and planning approvals. Whilst compliance remains important, it is vital to sector sustainability that it is an easily identifiable and scaled to the size and relative impact of the space.

“ Over the past two years I've witnessed a significant increase in the number of artists and companies interested in pop-up and bare bones performance. Artists are excited by opportunities that exist in unique spaces and the dialogue between content and space. Many artists are keen to embrace simple staging infrastructure and are finding inventive ways to create unique environments in new spaces. This has a direct effect on the audience's experience of the work. Performances in unusual and pop-up spaces see high audience attendance.

Dino Dimitriadis
Artist Liaison Sydney Fringe

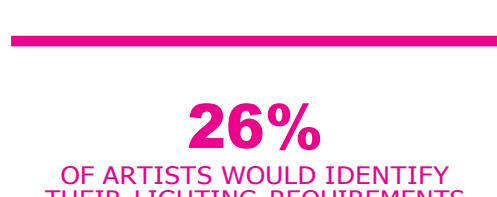
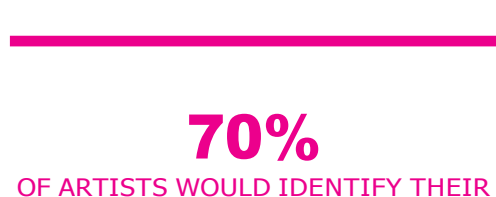
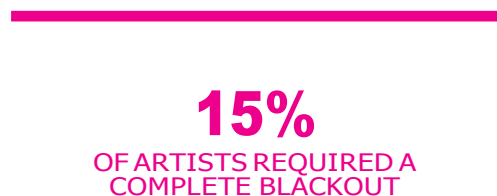
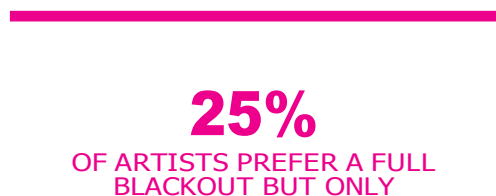
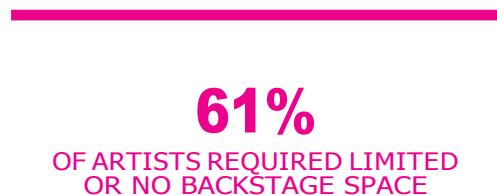
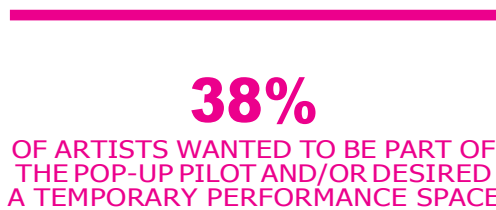
“ The space is cool too. In a warehouse the small audience surrounds all four sides of the square stage looking in on other members of the audience. Granted this might prove too big a distraction for some, but I delighted in seeing other people's reactions to the play in real time without turning my head.

Audience Member
Pop-Up Fringe 2015

A NEED TO REDEFINE THE TRADITIONAL PERFORMANCE SPACE

Traditional theatre spaces are, as demonstrated above, expensive to operate in the current landscape of Sydney. They are also limiting in their form and function. Many artists are now seeking more exploratory spaces that break down the barriers between performance and audiences, that are non-traditional in appearance, are flexible in layout, that cater to site-specific works and that aesthetically contribute to the production. This often makes using existing, empty shop-fronts, or partnering with existing businesses, a preferable option.

Notably, Fringe attracts a number of applications for productions which do not require traditional theatre infrastructure. Of the 300 producers that registered for the Sydney Fringe Festival in 2015:



66%

OF ARTISTS WOULD IDENTIFY THEIR
SOUND REQUIREMENTS AS SIMPLE

29%

OF ARTISTS WOULD IDENTIFY
THEIR SOUND REQUIREMENTS
AS INTERMEDIATE

5%

OF ARTISTS WOULD IDENTIFY THEIR
SOUND REQUIREMENTS AS COMPLEX

81%

OF ARTISTS HAVE NO LARGE SET
PIECES OR SCENERY

These figures demonstrate a move
towards productions that are more
flexible in form, require much less
infrastructure, and sit outside the
older performance styles associated
with the more traditional theatres.

Of the 300 producers that registered with the Sydney Fringe Festival in 2015:

64%

PREFER BETWEEN
2-4 PERFORMANCES

20%

PREFER BETWEEN
5-7 PERFORMANCES

7%

PREFER BETWEEN
8-10 PERFORMANCES

6%

WANTED A
SINGLE EVENT

4%

WANTED MORE THAN
11 PERFORMANCES

There is a great need for flexible temporary space, particularly from companies wanting to present limited seasons or one off events as a method of trialling and developing new work. This need could easily be catered for in creative spaces that could accommodate events and productions in their premises outside of their usual trading hours.

Additionally, there are many culturally specific businesses such as artist studios, design studios, photography studios, artisan retail, galleries or rehearsal spaces which need to supplement their income streams to remain viable and to ensure economic sustainability for the future.



The need to be able to present events in our communal spaces is growing daily. Not only from outside hirers but from our resident creatives who often need space to present projects to their networks, to increase audiences and customers, or to pitch to clients. Collaborations between creatives is one of the benefits of working in a communal space. However the current regulations make it impossible for us to present events that contain some element of performance in our spaces. We would love to be able to hire out our facilities to artists as affordable performance space for one off or limited run events but simply cannot do so.

Sam Ali
Founder of The Commune

For any creative business to remain viable, they need diverse business models and the ability to partner with other artists, creatives and collectives. To achieve this, they need to be able to present projects that may sit outside of the current approved use attached to their space.

The easiest and most common way for a creative business, such as a retail gallery or studio, to inject much needed income into their model, is to host events. Performance is a natural ancillary activity for many existing businesses, allowing them to attract new audiences, connect with larger festivals, and encourage visitation to specific village centres and high streets. These offer a fast and simple way to increase their income while offering local artists and collectives alternative affordable performance spaces.

A comparison of the use of existing small shop fronts, both vacant and currently tenanted for retail or office purposes, suggests the economic appeal of such spaces compared to their more formal counterparts:

COMPARISON 1 59A ERSKINEVILLE RD

- 133m²
- Potential capacity 60 seats
- \$1500 per week rental
- \$500 temporary lease fee

\$3500
TOTAL COST FOR 2 WEEKS

\$4.86
COST PER SEAT TO PRODUCER
CALCULATED ON 6 SESSIONS PER
WEEK FOR A 2 WEEK SEASON

COMPARATIVE EXISTING THEATRE THE OLD FITZ

- LOCATION ▶ Woolloomooloo
- CAPACITY ▶ 60
- COST ▶ \$1500 or 35% of box office whichever is higher
- CONDITIONS ▶ Curated seasons via a submission process

\$3000 minimum
TOTAL COST FOR 2 WEEKS

\$4.16
COST PER SEAT TO PRODUCER
CALCULATED ON 6 SESSIONS PER
WEEK FOR A 2 WEEK SEASON

When budgeting a production producers will divide the rental amount by the amount of available seats to work out the percentage of ticket income that is required to cover the cost of rental.

This effectively means that for every ticket sold the producer will have to allocate \$4.86 to the venue for hire fees. With average ticket prices in independent theatre in Sydney sitting at \$25 per ticket this example has venue hire taking up just over 19% of the gross ticket price if producers reached a 100% capacity across their season. As most producers budget on 30% capacity we see that the above venue hire would need to take 57% of the gross box office income. Leaving 43% to cover all other costs

COMPARISON 2 123a King Street Newtown

- 40m²
- Potential capacity 30 seats
- \$1000 per week rental
- \$500 temporary lease fee

\$2500

TOTAL COST FOR 2 WEEKS

\$6.94

COST PER SEAT TO PRODUCER
CALCULATED ON 6 SESSIONS PER
WEEK FOR A 2 WEEK SEASON

COMPARATIVE EXISTING THEATRE THE OLD 505 THEATRE

LOCATION ▶ Surry Hills

CAPACITY ▶ 30

COST ▶ \$880 per week minimum
box office guarantee or
25% of gross whichever is
higher + \$420 staff costs

CONDITIONS ▶ Curated seasons via a
submission process

\$2600

TOTAL COST FOR 2 WEEKS

\$6.37

COST PER SEAT TO PRODUCER
CALCULATED ON 6 SESSIONS PER
WEEK FOR A 2 WEEK SEASON

These two examples clearly outline the comparability of leasing empty retail space to hiring a theatre when considering the base line cost of rent only.

Opening up unused and empty spaces makes absolute economic sense. Not only is the cost comparative for artists but it would open up a new market for land owners, reinvigorate struggling high streets and create much needed venue stock without major investment in infrastructure, while encouraging diversity in night-time economies.

The growing creative industries now bolster and support a number of sectors. Recent national research conducted by the University of Tasmania and released by the Live Music Office shows the live music sector contributed \$15.7 billion of value to the Australian community in 2014, providing vital commercial, individual and civic benefits.



Our research shows that for every dollar spent on live music, three dollars of benefit is returned to the wider community. This is a significant, and unrecognised, contribution that includes the dollars that flow to the national economy as well as the ways experiencing live music enriches people's lives.

Dr. Dave Carter
Lecturer in Music Technology
at University of Tasmania

While no official comparative research has been conducted for other performing arts sectors, we can anecdotally conclude that there would be a positive contribution made by small-medium sized theatrical performance spaces if they were able to legally and sustainably exist, with a flow-on effect to the local community and economy.

THE COST OF COMPLIANCE

The basis of current regulation for performance was formed on the assumption of traditional theatre spaces with heavy curtaining, fixed raked seating and thrust stages. These traditional spaces present a very different set of requirements and risk factors when compared with the bare-bone alternative spaces outlined in this report. Applying regulation drafted for the traditional theatre spaces to these newer, smaller spaces is a complex process, requiring the development of alternative solutions and highly nuanced interpretation and adaption of existing building and planning categories.

There are virtually no small-scale buildings under 500m² with existing consents as 'Class 9b' assembly buildings in Sydney. Pop-Up and alternative theatres interstate and overseas traditionally rely on temporary use of retail and other locations, for which there is no clear regulatory pathway in NSW. For an artist in NSW to use an empty retail space at present, a Change of Use is usually needed to alter consents from a Class 6 or 'Retail' use to a Class 9b 'Assembly Building' permitted to host performance.

The estimate minimum average cost of applying for building approvals is outlined below. Note this does not include the additional costs of building upgrades, and assumes the building does not require consultants to construct alternative solutions for the provision of fire egress, disability access or the like. These costs do not relate to actual approval, but merely suggest the minimum cost to simply identify how the site might be lawfully used, and apply for building consent

CURRENT COSTS ASSOCIATED WITH CHANGING USE TO INCLUDE PERFORMANCE

- BCA Consultancy Fee \$220
- Inspection fee for Council Acting as PCA \$312.1 Mandatory Inspection\$ 312.1
- Issue of CC or CDC \$572
- Registration Fee \$36
- Estimate for other BCA and AS expert consultants \$312
- Planning notification \$535
- Other professional advice and consultancy \$220
- **MINIMUM TOTAL OF LODGING FOR BUILDING APPROVAL PER SITE: \$2519.20**

If we look at the two example budgets from earlier and incorporate the cost of activating a site and the attached compliance costs two things are evident:

1. The cost to companies to activate a space in a bare bones manner excluding compliance costs is actually quite comparable. However the inclusion of the costs associated with compliance have a negative impact on the budget.
2. To activate and operate a space with economic sustainability companies need to have the freedom to operate beyond the standard 52 days currently allowed with a temporary use, to have the ability to break even and earn back their investment

It is important to note that no building works or upgrades have been accounted for in these pop-up budgets, only the cost of applications and inspections.

SEEING UNSEEN POP-UP BUDGET

INCOME

BOX OFFICE

NO:PERFORMANCES	➤ 15
VENUE CAPACITY	➤ 30
ACTUAL ATTENDANCE	➤ 60%

TOTAL BOX OFFICE INCOME ➤ \$5 297

OTHER INCOME

VENUE FOR DEVELOPMENT (VALUE IN KIND)	➤ \$4 800
CROWDSOURCING	➤ -
FUNDING	➤ -
GRANTS	➤ -
PHILANTHROPY	➤ -
MARKETING SUPPORT	➤ \$860
POSTCARDS (VALUE IN KIND)	➤ -
OTHER	

TOTAL BOX OFFICE INCOME ➤ \$10 957

EXPENDITURE

PRODUCTION COSTS

DEVELOPMENT/REHEARSAL SPACE (VALUE IN KIND PROVIDED BY VENUE)	➤ \$4 800
VENUE HIRE (TEMPORARY LEASE)	➤ \$3 000
TEMPORARY LEASE FEE	➤ \$500
SET	➤ -
PROPS	➤ \$350
COSTUME	➤ \$90
LIGHTING	➤ -
SOUND	➤ -
AUDIO VISUAL	➤ -
TRANSPORT	➤ -
RUNNING COSTS	➤ -
BUMPIN/OUTCREW	➤ -

PRODUCTION SUBTOTAL ➤ \$8 740

COMPLIANCE COSTS

BCA CONSULTING FEE	➤ \$220
INSPECTION FEE FOR COUNCIL ACTING AS PCA	➤ \$312.10
MANDATORY INSPECTION	➤ \$312.10
ISSUE OF CC OF CDC	➤ \$572
REGISTRATION FEE	➤ \$36
ESTIMATES FOR OTHER BCA & EXPERT CONSULTANTS	➤ \$312
PLANNING NOTIFICATION	➤ \$535
OTHER PROFESSIONAL ADVICE & CONSULTANCY	➤ \$220
COMPLIANCE SUBTOTAL	➤ \$2 519.20

MARKETING

OPENING INVITES	▶ -
OPENING NIGHT CATERING	▶ \$150
PROMOTIONAL PHOTOGRAPHY	▶ -
ARCHIVAL PHOTOGRAPHY	▶ -
ARCHIVAL VIDEO	▶ -
GRAPHIC DESIGN	▶ \$400
ADVERTISING : STREET PRESS	▶ \$150
ADVERTISING : RADIO	▶ -
POSTCARDS (VALUE IN KIND BY VENUE)	▶ \$860
PROGRAMS: DESIGN & PRINT	▶ -
LIGHT BOX POSTER	▶ -
DISTRIBUTION	▶ -
PUBLICITY	▶ -
MARKETING SUBTOTAL	▶ \$1 560

ADMINISTRATION

GROUP PERSONAL INJURY INSURANCE	▶ -
PUBLIC LIABILITY INSURANCE	▶ \$550
ADMIN COSTS: PHONE, POSTAGE, ETC	▶ -
APRA LICENSE	▶ -
ADMINISTRATION SUBTOTAL	▶ \$550

SALARIES & FEES

CREATIVES & CREW	▶ -
PERFORMERS	▶ -
OTHER	▶ -
SALARIES & FEES SUBTOTAL	▶ -

CONTINGENCY

TICKETING & CREDIT CARD CHARGES	▶ \$114.26
ADDITIONAL BOX OFFICE SHARE TO OLD 505 (IF 25% IS GREATER THAN MINIMUM GUARANTEE)	▶ -
TOTAL EXPENDITURE	▶ \$13 483.46
RESULT	▶ -\$2526.46

DAPTO CHASER POP-UP BUDGET

INCOME

BOX OFFICE

NO:PERFORMANCES	➤ 22
VENUE CAPACITY	➤ 105
ACTUAL ATTENDANCE	➤ 81%

TOTAL BOX OFFICE INCOME ➤ \$51 228

OTHER INCOME

CROWDSOURCING	➤ \$8 315.82
CORPORATE SPONSORSHIP	\$1 360
GRANTS	➤ -
PROGRAM SALES:	➤ \$537
GOLD COIN DONATION	
OTHER	➤ -
TOTAL INCOME	➤ \$61 440.82

EXPENDITURE

PRODUCTION COSTS

REHEARSAL SPACE	➤ \$620
VENUE HIRE (LEASE)	➤ \$4 800
TEMPORARY LEASE FEE	➤ \$500
SET, PROPS & WARDROBE	➤ \$2 499.21
LIGHTING INFRASTRUCTURE	➤ \$2 500
FOR POP-UP	
SOUND INFRASTRUCTURE	➤ \$2 000
FOR POP-UP	
OTHER INFRASTRUCTURE	➤ \$4 000
FOR POP-UP (RIG, SCAFFOLDING, ETC)	
SEATING BANKS FOR	➤ \$2 000
AUDIENCES	
AUDIO VISUAL	➤ -
TRANSPORT	➤ \$100
RUNNING COSTS	➤ -
BUMP IN/OUT CREW	➤ -
PRODUCTION SUBTOTAL	➤ \$19 540.23

COMPLIANCE COSTS

BCA CONSULTING FEE	➤ \$220
INSPECTION FEE FOR	➤ \$312.10
COUNCIL ACTING AS PCA	
MANDATORY INSPECTION	➤ \$312.10
ISSUE OF CC OF CDC	➤ \$572
REGISTRATION FEE	➤ \$36
ESTIMATES FOR OTHER BCA	➤ \$312
& EXPERT CONSULTANTS	
PLANNING NOTIFICATION	➤ \$535
OTHER PROFESSIONAL	➤ \$220
ADVICE & CONSULTANCY	
COMPLIANCE SUBTOTAL	➤ \$2 519.20

MARKETING

OPENING INVITES	▶ -
OPENING NIGHT CATERING	▶ \$200
PROMOTIONAL PHOTOGRAPHY	▶ \$400
ARCHIVAL PHOTOGRAPHY	▶ \$500
ARCHIVAL VIDEO	▶ -
GRAPHIC DESIGN	▶ \$400
ADVERTISING : STREET PRESS	▶ \$200
ADVERTISING: DIGITAL	▶ \$200
ADVERTISING : RADIO	▶ -
POSTCARDS	▶ \$250
PROGRAMS: DESIGN & PRINT	▶ \$400
LIGHT BOX POSTER	▶ -
DISTRIBUTION	▶ -
ADDITIONAL PUBLICITY	▶ \$2 000
MARKETING SUBTOTAL	▶ \$5 150

ADMINISTRATION

GROUP PERSONAL INJURY INSURANCE	▶ -
PUBLIC LIABILITY INSURANCE	▶ \$550
ADMIN COSTS: PHONE, POSTAGE, ETC	▶ -
APRA LICENSE	▶ \$55
DIRECTOR'S ACCOMMODATION	▶ \$2 500
WRITER'S ROYALTY	▶ \$4 369
ADMINISTRATION SUBTOTAL	▶ \$7 474

SALARIES & FEES

CREATIVES & CREW	▶ \$14 000
PERFORMERS	▶ \$12 000
OTHER	▶ -
SALARIES & FEES SUBTOTAL	▶ \$26 000

CONTINGENCY \$309

TICKETING CHARGES	▶ \$3 740
CREDIT CARD CHARGES	▶ \$349.46

TOTAL EXPENDITURE ▶ \$65 081.89

RESULT ▶ -\$3 641.07

When adding on the compliance costs to the SEEING UNSEEN production the company will make a \$2526.46 loss compared to the small profit they made during their season. Without the compliance costs however the costings are quite similar when activating their own space or hiring a theatre, if the production were able to run for an additional week they would have been able to turn a profit if the cost of compliance were not as high.

The production of DAPTO CHASER made a profit of \$3677.98 in its original season but spent \$14,245.66 on venue hire. When activating a temporary space the production was able to invest in \$11,000 worth of equipment however it still made a loss of -\$3641.07. Most of this loss is a result of the additional costs associated with inspections and applications to activate the space excluding any upgrades or works. Again, if this production were able to activate their temporary space for additional weeks beyond the 52 days, they would be able to generate a healthy profit.

IN CONCLUSION

The above requirements are largely based on a perceived risk associated with 'performance'. This perceived risk is in many ways tied to the archaic idea of the traditional theatre structure and the works presented in them. Most contemporary works are now vastly different in form and function and as a result no longer have the same risks attached to them.

While the risk profile of a short-term performance space may be the same or similar to a permanent retail space or a space's current use, compliance requirements often demand things like fireproofing, the installation of additional toilets and the provision of access requirements, such as lifts and ramps. These requirements make the cost of activating what was an affordable space unattainable. It is also the fear of these major works, their associated expense and compliance ramifications that endangers tenants relationships with landlords or cause landlords to not give consent for a change of use.

CASE STUDIES

CASE STUDY ONE:

469 KING STREET NEWTOWN – GLITTERBOX HAIR SALON

As part of our Pop-Up Pilot during the 2015 Sydney Fringe Festival, one particular case emerged that clearly outlines the difficulties posed by the current regulatory system.

Local artists Rue De La Rocket received funding from a local council to develop a new project that would present a site specific work. This involved developing a performance set in a hairdressing salon as part of the Sydney Fringe Festival. The work was to be performed inside an actual, operating hairdressing salon. The performance met a key goal of Fringe's temporary use project in uniting small local business and local artists and performers.

This particular production intended to use the salon in exactly the same nature as its permitted use, with the notable addition of selling tickets and declaring itself a performance. The production required no changes to the internal infrastructure, no additional technical requirements such as lighting or sound were needed. Audience numbers were to remain the same number as would usually be serviced in the salon at any one time during ordinary trade (in this instance between 10 and 12 patrons).

The artist quickly found a local business to partner with. A strong advocate and supporter for the arts, the salon saw the benefit of supporting local artists, was keen to see her business vibrant outside normal trading hours, and was excited by the additional activity and promotion that would come with the project to generate new business for her salon, and create a unique offering for her current clients.

This should in theory have been a simple project to produce. It involved a supportive tenant, project funding from local government, a supportive platform as part of the Sydney Fringe, and no production design or technical equipment needed. Unfortunately, due to the current regulations in place the artist would need to submit a Change of Use as the sale of tickets inhibited the performance from being seen as ancillary to the existing consents as a hairdresser.

The artist was completely unaware that they would be noncompliant if they presented their project inside the hairdresser:



We were unaware that the planning department of Marrickville Council required us to submit a DA for our performance. We were informed of the DA requirements by Sydney Fringe Organisers and worked with them to try and complete the required documentation through their pop-up pilot program, including a site inspection. The documentation required the signature of the Landlord of the building. This was difficult as the Landlord was overseas and we were unable to contact him for many weeks. When he did return we were advised that it was probably too late for the DA to be processed in the time remaining even with his signature.

The requirement of obtaining the landlords signature placed stress on the business owner, she felt unsure that the landlord would share her enthusiasm in supporting the arts and thus approve of the project taking place in the building. Without a DA finalised and the performance drawing closer we were unable to proceed with the show. The uncertainty of receiving the correct permissions effected things like, advertising the venue on our marketing collateral and obtaining insurance.

Rue de La Rocket

This building is on the ground floor. Has two exits one directly on to King Street and one via rear lane entry, had sufficient toilet facilities for the anticipated audience numbers and a vacant tenancy upstairs. Patrons who were to attend the event would be taking part in a similar action as they would have had they been attending the salon on any other day, and performers would have been carrying out actions similar to those by usual employees in the business. The only difference being that a ticket price would be charged upon entry as opposed to a fee being charged after a service, and the activity identified as 'performance' not retail.

It would appear reasonable that no alteration in risk levels is posed by patrons sitting in a working salon waiting for their appointment as compared to patrons sitting in a salon watching a performance set in a salon. The Change of Use was thus triggered due to the different categorisations of performance and retail activity, as distinct from the relative risk in using the building.

If existing retail space was opened up to the performance sector, the city and its high streets could be peppered with 30-60 seat performance spaces, that operated up to 10pm, encouraging a varied nightlife, re-invigorating struggling high streets and diversifying night-time economies, whilst simultaneously filling a gap in the local venue ecosystem. In this way, the performance sector and local businesses could be supported without the need for major investment in infrastructure or increased resources and subsidy.

CASE STUDIES

CASE STUDY TWO:

123A KING STREET NEWTOWN

The one property that the Sydney Fringe was able to activate to completion was 123a King Street Newtown. This was, however, limited in its ability to function as a performance space. Rather the Fringe used it as a retail space housing a pop-up box office, pop-up retail, and as a home for crafternoons, artisan workshops and talks.

Two key factors blocked the way for the fringe to house performance in this activated space.

1. The time-frame required to assess a building, identify suitable building upgrades and negotiate both planning and building approvals meant that there was no guarantee that the Fringe could get the required approvals before the festival. There are two reasons for this. Firstly, the nature of temporary space requires friendly and co-operative landlords and real estate agencies. The lead-time from identifying a suitable temporary tenancy and taking out a temporary lease is rarely longer than 4-6 weeks. The reason being that landlords are hesitant to sign a temporary lease in the hope of finding a full time tenant, as such they will not commit to a temporary lease with a great deal of lead time in between signing a lease and activating the space.
2. The time-frame required by the authorities to gain the appropriate approvals is more often than not longer than the lead-time given by landlords and agents. This meant the Fringe was unable to assuredly program artists in the space until approvals were granted which was too late to meet marketing deadlines and artists were not willing to commit without the security of knowing their event could legally take place
2. The landlord, although supportive of the Fringe and project, was hesitant to have a Change of Use officially submitted. This space had held the same DA and use for over 40 years. The reluctance on behalf of the landlord of having authorities assessing the premises meant that they would not sign a development application form, even if there had been enough lead-time. This we found to be the single most common hurdle across the pilot project. Landlords are fearful of the costs associated with compliance to host performance.

CASE STUDIES

CASE STUDY THREE:

ASSEMBLAGE SPACE, CHIPPENDALE

As part of this Pilot Project, Fringe artists wanted to present a production in a photographic studio occupying a former warehouse under an older DA with allowance for 'artist studios'. She had the permission and support of the current tenant/business owner who had informed her that they would be open to having their space used regularly by artists. The production was capping the capacity at 20 patrons (no more than would ever be at the studio ordinarily at any one time), was not changing any internal fixtures or infrastructure, and using existing lights and sound equipment. It was a site specific work set in a warehouse so the studio suited the aesthetics of the work and the space itself would become the set. The tenant was happy to accommodate the production as it would bring new people into the studio and provide the business with additional income.

The site was a tri-level warehouse with multiple tenancies, and, after investigating the possible issues, the pilot team decided that to pursue the premises could jeopardise the current tenant's relationship with their landlord as the existing consents pre-dated the current building and planning system and it was unclear whether or not the building could be used for performance, whether approval would need to be sought, or what upgrades might be required.

As the photographic studio was not able to be included in the Pilot Project, the Pilot team decided to use the former Assemblage Space, originally located close to the proposed photographic studio, as a case study for this example of mixed use creative space. This site has since been demolished and thus provided a purely theoretical example.



When finding the best venue for our Sydney Fringe show, I knew that the studio space would work perfectly and offer Sydney audiences a unique theatrical experience. We are living in the world of the Small Bar, the Food Truck and the Pop-up Shop. People want different. And as a young artist in Sydney wanting to put on a political Australian play, I wanted to make theatre accessible and appealing to not only regular theatre goers, but to those who don't even know how to 'Theatre'. This space would allow us to create a theatre on a low budget, but with high impact. And we'd tried all the conventional, legal avenues already.

When finding out that we couldn't legally use the space and potentially not be able to do the show at all we were devastated and spent weeks trying to find alternatives. We came across many other spaces that could be great performance venues, but they were also all 'illegal'. Sydney is full of available spaces, if only they could be used! We lost so much time trying to find alternate venues that we had cast members having to step aside from the project.

Samantha Ward
Sydney Fringe 2015
Pop-Up Artist

Assemblage began in 2010 for the purpose of bringing together young creative professionals in a diverse range of disciplines to create a trans-disciplinary space to encourage no standard outcome and to experiment with art forms. It was set up under a business structure of a sole trader before becoming an unincorporated association in 2014. Its former manager, Damien Butler, had provided a summary of the site structure and activities as part of earlier studies undertaken by the City of Sydney. A summary of the site's potential use for performance is contained within the additional assessments by Michael Wynn-Jones and Design Collaborative.

COMMON ISSUE

One common issue that the Sydney Fringe Festival faced in the attempt to activate sites was the issue of communication and response with the building owners. The current system requires the Fringe to submit a Change of Use to present performance in the sites. This requires owner consent which proved very difficult to obtain on all our sites for a number of reasons.

1. 50% of the building owners that the Fringe dealt with were not directly contactable as they were overseas or not available via means of digital communication. This made gaining landlords signatures on forms very difficult and often impossible due to the time restraints of the application process and the fast turn around needed to meet deadlines for the festival.

2. All building owners that the Fringe had communication with were hesitant to have any type of council inspections on their properties. There is an underlying mistrust of officials and a fear amongst building owners that any inspections will "red flag" the properties and result in other subsequent and unrelated inspections.
3. There is a strong belief and resulting fear that any compliance works that may need to be carried out as a result of the inspections, will incur a substantial cost.

As a result of the above, building owners were reluctant to sign a consent form for temporary use. On two occasions real estate agents refused to even take the permissions to the landlords stating that they knew what the reaction would be and that there was little point even pursuing it. The issues surrounding communication with, and approvals by building owners very seriously halts the process of activating temporary space. This is most detrimental when trying to present work in an open and operating business (see example #1, 469 King Street), as it puts the relationship between tenant and landlord at great risk, and tenants often feel fearful that they may jeopardise their lease should the landlord not be as supportive of the project as they are.

RECOMMENDATIONS

The current landscape of regulatory red-tape makes it virtually impossible to establish new small-medium sized performance focused spaces in an economically sustainable manner. As long as any cultural activity that includes performance is perceived as high risk and regulated as such, there is very little opportunity for temporary or permanent performance spaces with cultural activity as their main core of business to thrive and survive in Sydney.

The cultural and economic benefit of pop-up and temporary activity is now well documented. Temporary and affordable performance spaces could easily, and safely be housed in empty retail and alternative spaces.

Based on the experience of this project, the types of performance now presented by the majority of contemporary artists do not pose the same risks associated with the larger theatre models as they are less reliant on large halls with tiered seating, operating in near or total darkness. The risk profile of using an existing, ground floor shop front with a capacity of under 100 people is markedly different, and difficult to reconcile with existing regulation.

The attached reports by James Lidis and Michael Wynn- Jones outline recommendations concerning planning and BCA compliance. The recommendations below are directly derived from the Sydney Fringe Festivals experience during the Pop-Up Theatre Pilot and from extensive surveying of Fringe artists and sector feedback. All recommendations have been devised to service the growing need within the Independent sector for affordable, alternative spaces, with the goal of ensuring that any additional space opened up by any resulting changes will be economically sustainable and commercially viable while building a culturally diverse and vibrant sector.

- The creation of a clear and expanded regulatory pathway for 'Temporary Use'. The definition attached to what is 'temporary' needs to be flexible enough to accommodate the needs of the sector and the varying needs of companies and projects. This would extend beyond the current 52 days outlined within the Sydney Local Environmental Plan to allow companies to break even on their investment in activated spaces.

- That regulation around performance be defined on the basis of a clearer assessment of the risk of small to medium creative spaces and contemporary practice, as distinct from the adaptation of standards designed for traditional, large theatres with tiered seating.
- That regulatory conditions accommodate multi-purpose business models to ensure financially diverse and sustainable cultural businesses.
- That the current costs associated with applications and compliance for a Change of Use be re-assessed to provide affordable pathways for small scale and low risk creative activities, so as to encourage the activation of empty space and the long term economic sustainability of the cultural sector.
- That the application process for temporary use be streamlined to enable projects with shorter lead times the ability to submit and gain approval in time to meet project deadlines

Appendix A:

SYDNEY FRINGE FESTIVAL INVESTIGATION TO ENCOURAGE ARTS AND CULTURAL FACILITIES

A NEW APPROACH FOR ASSESSING PERFORMANCE SPACES

PREPARED FOR:

THE SYDNEY FRINGE FESTIVAL
THE CITY OF SYDNEY COUNCIL

BY:

DESIGN COLLABORATIVE PTY LIMITED

MICHAEL WYNN-JONES & ASSOCIATES PTY LIMITED

19 OCTOBER 2015

Ref: 150644.2R

CONTENTS

<u>1.0</u>	<u>EXECUTIVE SUMMARY</u>	3
<u>2.0</u>	<u>INTRODUCTION</u>	4
2.1	<u>BACKGROUND</u>	4
<u>3.0</u>	<u>INVESTIGATION AIMS AND OBJECTIVES</u>	6
3.1	<u>REDUCE BARRIERS IN TOWN PLANNING AND BUILDING SYSTEMS</u>	6
3.2	<u>SOCIAL AND ECONOMIC BENEFITS</u>	6
<u>4.0</u>	<u>CASE STUDIES</u>	8
4.1	<u>123A KING STREET, NEWTOWN</u>	8
4.2	<u>469 KING STREET, NEWTOWN</u>	8
4.3	<u>59A ERSKINEVILLE ROAD, ERSKINEVILLE</u>	9
4.4	<u>75 MARY STREET, ST PETERS</u>	9
4.5	<u>42-44 KENSINGTON STREET, CHIPPENDALE</u>	10
<u>5.0</u>	<u>NSW TOWN PLANNING LEGISLATION FOR ENTERTAINMENT</u>	12
5.1	<u>ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979</u>	12
5.2	<u>ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION, 2000</u>	13
<u>6.0</u>	<u>BUILDING RELATED MATTERS AND SOLUTIONS</u>	19
6.1	<u>PERFORMANCE SPACES THE SUBJECT OF THIS PAPER</u>	19
6.2	<u>BUILDING RELATED ISSUES</u>	22
6.3	<u>FIRE AND LIFE SAFETY</u>	22
6.4	<u>ACCESS FOR PEOPLE WITH A DISABILITY</u>	23
6.5	<u>SUMMARY OF KEY BUILDING ATTRIBUTES</u>	23
<u>7.0</u>	<u>PROCEDURES FOR DEVELOPMENT CONSENT & OPTIONS FOR CHANGES</u>	25
7.1	<u>DEVELOPMENT CONSENT PROCEDURES AND LAND USE DEFINITIONS</u>	25
7.2	<u>EXISTING LAND USE DEFINITIONS</u>	26
<u>8.0</u>	<u>PLANNING SOLUTIONS</u>	27
8.1	<u>A NEW DEFINITION</u>	27
8.2	<u>ADDITIONAL PERMITTED USES / CONTROLS RELATING TO PERMISSIBLE USES</u>	28
8.3	<u>CLAUSE 5.4 – CONTROLS FOR MISCELLANEOUS PERMISSIBLE USES (STD. INSTRUMENT)</u>	28
8.4	<u>CLAUSE 2.5 – ADDITIONAL PERMITTED USES FOR PARTICULAR LAND (STD. INSTRUMENT)</u>	29
8.5	<u>ALTERNATIVE TO DEVELOPMENT CONSENT – COMPLYING DEVELOPMENT</u>	30
8.6	<u>TEMPORARY USES</u>	32
8.7	<u>ANCILLARY DEVELOPMENT</u>	33
<u>9.0</u>	<u>REVIEW OF CASE STUDIES AND CONCLUSIONS</u>	34
9.2	<u>BCA REVIEW OF CASE STUDIES</u>	34
9.3	<u>TOWN PLANNING REVIEW OF CASE STUDIES</u>	34

ATTACHMENTS

ANNEXURE 1	CULTURAL SUB-COMMITTEE MEETING 11 MAY 2015; ITEM 3: GRANT – SYDNEY FRINGE FESTIVAL POP-UP THEATRES PILOT PROJECT
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Executive Summary

1.1.1 This Paper responds to a brief seeking comment on how the town planning and building approval process for **performance spaces** could be made more efficient and user friendly so as to allow certain low impact arts and cultural activities in existing buildings with consents for retail and commercial use.

1.1.2 This Paper contains recommendations for changes that, if made, will provide additional controls to protect occupants and the community, ensure consistent decision making within consent authorities, and allow these existing spaces to be used as performance spaces whilst overcoming the cost of fire and life safety upgrading that would otherwise apply.

The Paper advances options from a town planning perspective that seek to make it more efficient to obtain development consent for the use of an existing retail or commercial space to provide low-risk forms of entertainment and performance. That is proposed to be done by incorporating a new definition within the standard instrument of ***low-risk arts and cultural facility*** and through complying development provisions that could be incorporated into the Standard Instrument.

The health, safety and amenity requirements that currently apply to entertainment venues (i.e. Class 9b assembly buildings) are not appropriate for the performance spaces the subject of this Paper. The requirements associated with the Class 9b category were developed based on an assumption of large numbers of people, in an unfamiliar space, with fixed seating, aisles and cross overs, that there is a dedicated stage and backstage, that people will need to travel long distances to two or more exits with high loads of flammable material that could impede egress.

It is our opinion that the existing fire and life safety requirements in the existing retail and commercial (Class 5/6) spaces will be adequate, subject to meeting the following minimum requirements:

Located on the ground floor thereby allowing quick egress;

Floor area will be less than 300 m² and the population generally limited to 100 persons;

The fire resistance, fire load, requirements for exit signs, emergency lighting, hose reels and fire hydrants are consistent with those for the existing Class 5/6 spaces.

This report was commissioned by the Sydney Fringe Festival with support from the City of Sydney. It is not an official position of the City of Sydney and is not endorsed by the City of Sydney Council.

Introduction

Background

This Paper responds to a brief issued by the Sydney Fringe Festival and the City of Sydney seeking comment on how the town planning and building approval process for **performance spaces** could be made more efficient and user friendly, with particular regard to be had to temporary approvals, as used by the City of Edinburgh to support the Edinburgh Fringe Festival.

The problem, as seen by the Sydney Fringe Festival is stated as follows:

For a vibrant cultural sector we need a wide variety of cultural facilities, we need small intimate theatres, we need spaces where emerging artists can affordably hire and explore ideas, we need space for curated presentations and places companies and artists can run themselves and call home. In the current Sydney landscape this is simply impossible to achieve in any affordable way for the large majority of artists.

We need to think outside the box, we need to encourage artists and companies to redefine the traditional performance space and use available, affordable spaces. This doesn't just make cultural sense, it makes economic sense.

If empty retail space was opened up to the performance sector it would encourage a varied nightlife, reinvigorate our struggling high streets and add to night time economies, all the while filling a gaping hole in our local venue ecosystem, without major investment in infrastructure.

We welcome the opportunity to get our hands dirty and work alongside the City to explore alternative processes for the temporary use of space within the City, to allow the performing arts sector the same benefits that the retail sectors currently have within the pop-up revolution.

The recommendations in this Paper are based on a review of five (5) case studies of sites that had been considered by the Sydney Fringe Festival as possible performance spaces, but for which consent could not be readily obtained in time for the event.

Building Code of Australia (BCA) advice in this Paper is provided by Michael Wynn-Jones and Associates in the form of an analysis and recommendations with respect to the health, safety and amenity of existing retail or commercial spaces up to 300 m², proposed to be used as performance spaces. Addressing these building regulation matters is important as the current BCA requirements for theatres and public halls are restrictive, and not considered relevant of the performance spaces the subject of this Paper. That review is provided in Section 0 of this Paper.

Town Planning advice in this Paper is provided by Design Collaborative and reviews the approvals required under the *Environmental Planning and Assessment Act 1979 (Planning Act)* for performance spaces, the statutory considerations and, the barriers to obtaining timely determinations. It also includes recommendations as to how that process can be simplified. That review is provided in Sections 6 and 7 of this Paper.

This Paper relies and builds upon the recommendations of a previously prepared Paper “*Low Risk Arts and Cultural Venues – A NSW Case Study for National Application*” prepared by Design Collaborative on behalf of the National Live Music Taskforce which reviews procedures for the provision of ancillary and standalone entertainment and makes recommendations for changes to the planning system to encourage the provision of entertainment.

This Paper concludes with recommendations for change, that if made, will provide additional controls to protect occupants and the community, ensure consistent decision making within consent authorities, and help lower barriers to the provision of low impact arts and cultural activities in performance spaces.

Investigation aims and objectives

Reduce Barriers in Town Planning and Building Systems

The following analysis of barriers to providing performances, entertainment or other similar arts and cultural activities is derived from issues identified in the Sydney Fringe Festival Pop-Up Theatres Pilot Project Report, considered at Sydney City Council's Cultural Sub-Committee Meeting on 11 May 2015.

There is no clearly defined pathway, framework or process in either the Planning or Building Systems that is provided for the benefit of applicants to understand how the making of an application should unfold and the timeframe for approval;

There are no detailed assessment criteria or risk management criteria for applicants when preparing an application which makes it impossible to cost a project or estimate timeframes for construction. There is no such criteria for Council staff which leads to inconsistencies between approaches depending on the experience of the Council Officer;

The lack of clear criteria for Council Officers and applicants requires the use of external consultants who are required to educate the applicant and Council staff as to appropriate criteria and how they should be applied. It is expensive to hire consultants and doubly so if they need to take the time to explore alternative solutions for new or innovative projects;

The above results in lengthy, costly and confusing regulatory process that acts as a deterrent to cultural initiatives; and

Entertainment premises are generally required to be built to Class 9b of the National Construction Code. Upgrading of premises to comply with deemed-to-satisfy provisions for Class 9b is prohibitively expensive for most applicants. Similarly, hiring expert consultants to establish alternative solutions is expensive, time consuming and requires an additional layer of analysis and review

Social and Economic Benefits

The aim of the Sydney Fringe Festival is to make available presently underutilised commercial spaces, particularly retail spaces on high streets, for use as performance spaces for arts and cultural purposes.

The quote in the introduction from the Sydney Fringe Festival touches upon the social and economic benefits of providing improved pathways and lower barriers to providing performance and entertainment spaces.

It is widely recognised that there is significant pressure on retail high streets, initially from the popularity of standalone shopping centres, and more recently, from internet sales. Many brick and mortar stores are failing in the competition against online retail, resulting in an increasing number of empty shops on retail high streets and the length of time that these spaces stay empty.

The downturn in demand for retail goods needs to be replaced. It is clear that simply providing a greater variety of retail goods will not replace demand. To some extent, the reduction in demand for goods has been replaced by demand for services, and in particular, food and drink premises, which has seen recent strong year on year growth. However, food and drink premises cannot fill the gap entirely, which is evidenced in the continued availability of empty retail spaces and the high turnover of new restaurant operators.

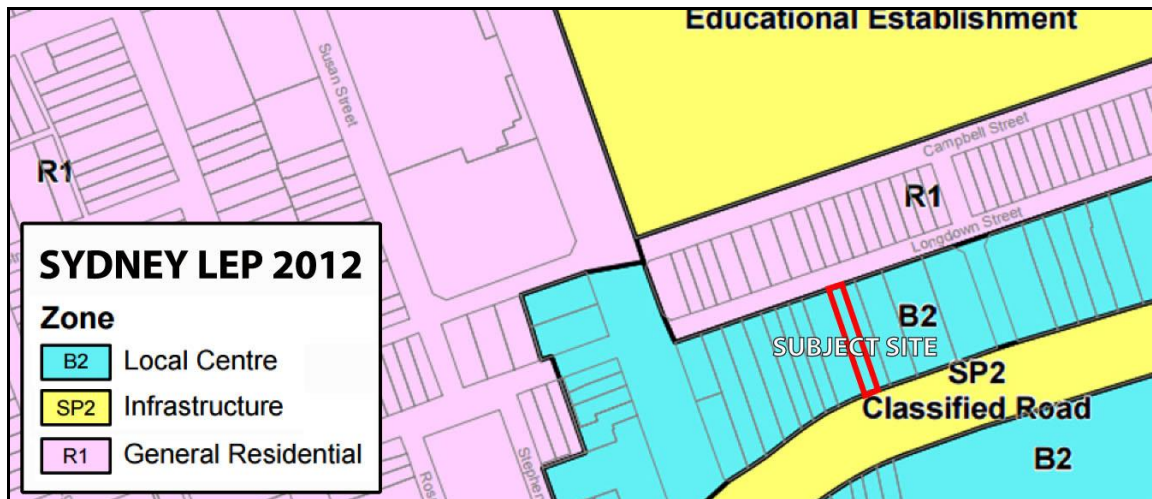
A new approach is needed to draw patronage back to physical high streets and away from the internet and away from standalone shopping centres. That can only be done by providing a service which is physical, tangible or interactive because such a service cannot readily be provided by the internet.

Research from the National Live Music Office found that every \$1 dollar that is spent on live music, generates \$3 of benefit to the community. If this investment could be made privately throughout the year, it would drive interest and provide purpose for patrons to attend existing high streets. These patrons would then be likely to purchase goods and services that are available, thereby driving increased economic growth and employment opportunities – as is demonstrated during the Sydney Fringe Festival.

These economic benefits provide a solid basis to pursue the aims and objectives of this Paper to reduce barriers to providing performance spaces on retail high streets.

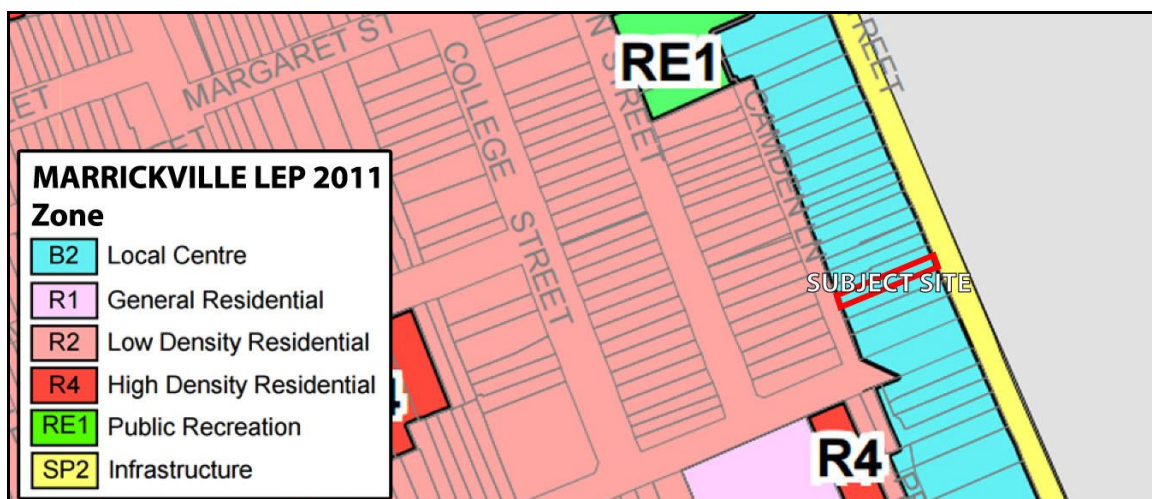
Case Studies

123A King Street, Newtown



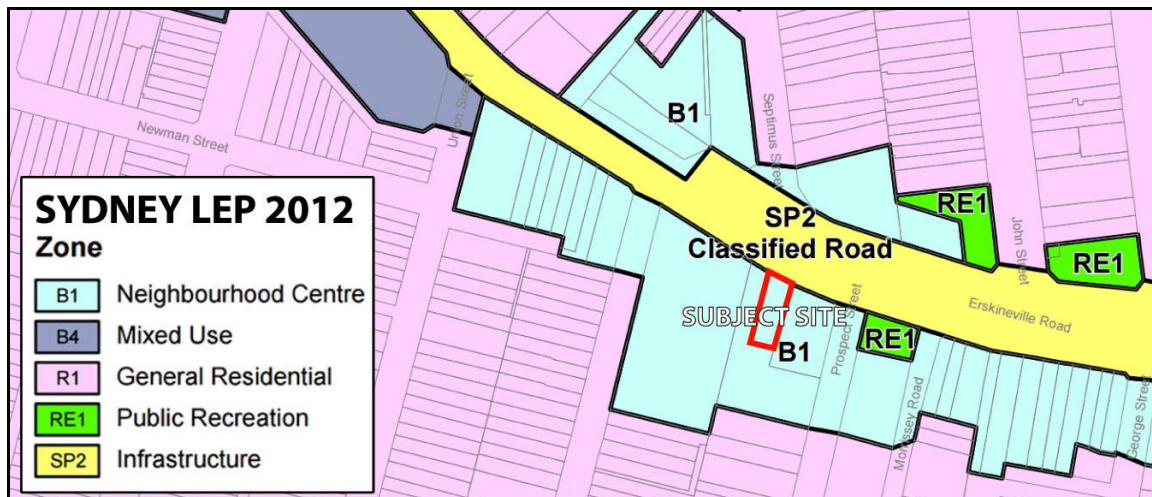
Community facilities, entertainment facilities and innominate uses are permissible within the B2 Local Centre Zone for 123A King Street.

469 King Street, Newtown



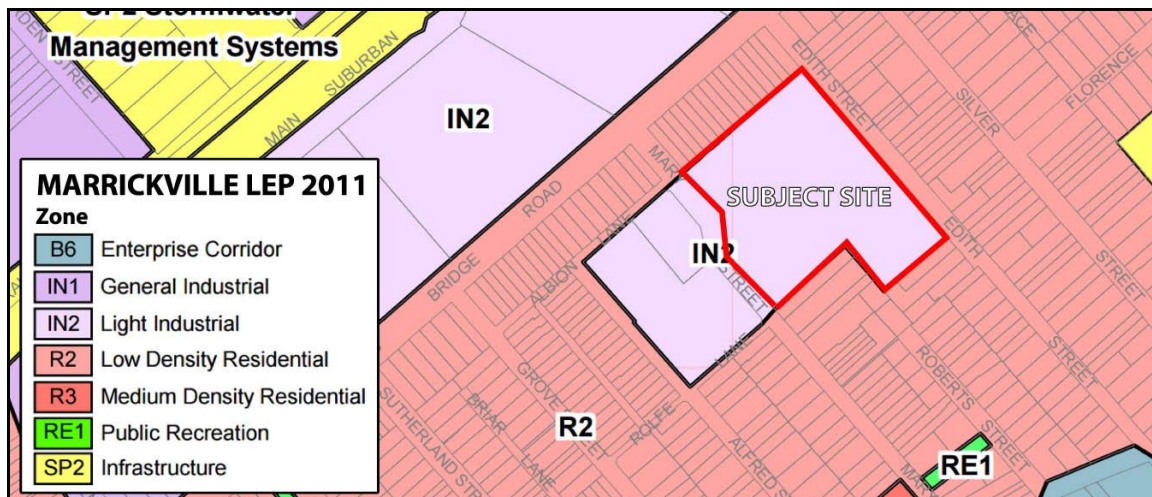
Community facilities, entertainment facilities and innominate uses are permissible within the B2 Local Centre Zone for 469 King Street.

59A Erskineville Road, Erskineville



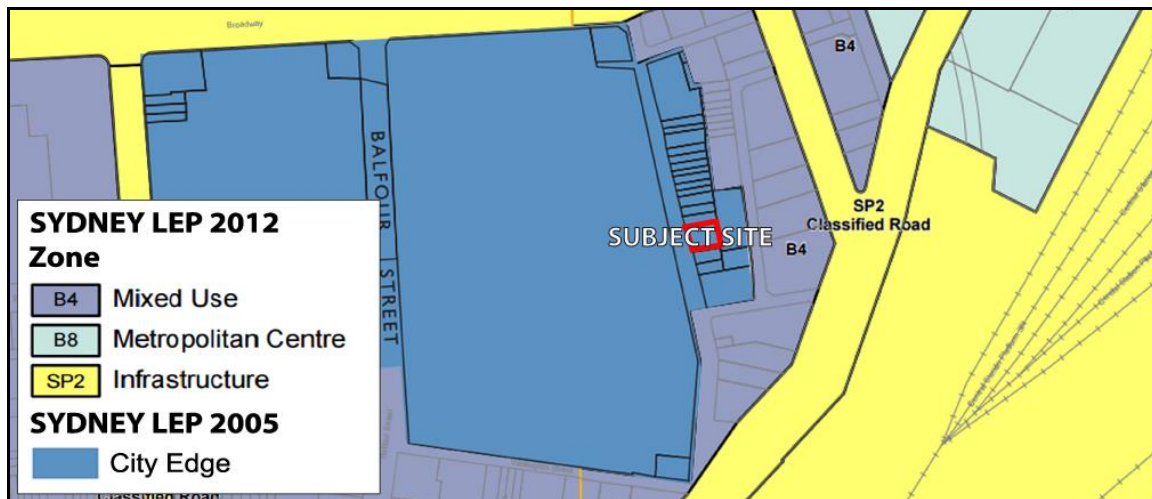
Community facilities and innominate uses are permissible but entertainment facilities are prohibited within the B1 Neighbourhood Centre Zone for 59A Erskineville Road.

75 Mary Street, St Peters



Community facilities, entertainment facilities and innominate uses are permissible within the IN2 Light Industrial Zone for 75 Mary Street.

42-44 Kensington Street, Chippendale



42-44 Kensington Street, Chippendale is zoned 'City Edge', under Sydney Local Environmental Plan 2005. All development except for brothels is permissible with consent in the City Edge Zone.

Under the Sydney LEP 2005 the use could be defined as one of the following definitions.

Community facility means a building or place that provides for the physical, social, cultural, religious, educational or intellectual development or welfare of the community, but does not include business floor space not directly related to its community function.

Commercial premises in Central Sydney means a building or place used as an office or for other business or commercial purposes, such as a bank, building society branch, customer-orientated financial services shop, cinema, club and public car parking area or station.

Refreshment rooms means premises in which meals or light refreshments are served to the public for profit or reward, whether or not they are also used for live entertainment or dancing.

Tourist-related uses means a building or place used for commercial, cultural, entertainment or educational purposes which primarily meet the needs of tourists.

Which of the above definitions is appropriate depends on a few fine distinctions, for example, if

it is operated primarily as a community organisation to provide a benefit to the community then **community facility** is inappropriate. If it is operated for profit then **commercial premises** might be more appropriate, unless it sells food and refreshments and then, **refreshment room** would be more appropriate, unless it sells food and refreshment to tourists, and then, **tourist-related use** would be most appropriate.

The definitions available under the Sydney LEP 2005 in this instance are poorly constructed. The appropriate land use definition can be finely dissected between four (4) alternatives, but from a land use and operational perspective, the distinction is essentially pointless.

NSW Town Planning Legislation for Entertainment

Environmental Planning and Assessment Act, 1979

In NSW, the *Planning Act* prohibits development being carried out without consent. Development, relevantly, is defined to include the use of land and so includes the provision of entertainment or performances.

There are three kinds of development consent available:

Exempt development – development of minimal environmental impact specified within an Environmental Planning Instrument as not requiring development consent;

Complying development – development that is permissible by addressing predetermined development standards specified within an Environmental Planning Instrument; and

Development consent – requires a development application and is assessed against all relevant criteria for potential adverse impact on the natural, built and human environment. Development consent may be refused should it be considered approval would result in unreasonable adverse impacts.

There is presently no environmental planning instrument that permits entertainment to be undertaken as either exempt or complying development.

Section 79C ‘*Evaluation*’ of the Planning Act provides the relevant considerations for the assessment of a development application; viz:

(1) *Matters for consideration—general*

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) *the provisions of:*

(i) *any environmental planning instrument, and*

- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) *any development control plan, and*
- (iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),*

that apply to the land to which the development application relates,

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

Section 80A 'Imposition of Conditions' of the Planning Act permits conditions of consent to be imposed for any matter related to s. 79C(1) and specifically to impose reviewable conditions of consent for extended hours of operation or the number of persons permitted in an entertainment venue, function centre, pub, registered club or restaurant. These provisions allow for development consents to be partially "recalled" and reassessed periodically.

Environmental Planning and Assessment Regulation, 2000

Section 79C(1)(a)(iv) of the Planning Act requires consideration of certain provisions of the *Environmental Planning and Assessment Regulation, 2000 (the Planning Regulation)* in the

assessment of development applications. Those relevant to the assessment of entertainment are detailed below. These provisions provide the statutory link between the planning system and the building system.

Clause 93 ‘*Fire safety and other considerations*’ of the Planning Regulation requires the following considerations for applications that seek a change of building use and no building work:

- (1) *This clause applies to a development application for a change of building use for an existing building where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building.*
- (2) *In determining the development application, the consent authority is to take into consideration whether the **fire protection and structural capacity** of the building will be appropriate to the building’s proposed use.*
- (3) *Consent to the change of building use sought by a development application to which this clause applies must not be granted unless the consent authority is satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building’s proposed use.*

Fire protection and structural capacity of a building is defined in the Planning Regulation to mean:

the structural strength and load-bearing capacity of the building, and

the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and

the measures to restrict the spread of fire from the building to other buildings nearby.

Clause 93 of the *Planning Regulation* is relevant to the case studies assessed in this Paper, as the intention is to use existing retail or commercial spaces that require no or very little physical work. Clause 93 requires development consent for the “change of use” from Class 6 ¹ retail

¹ Pursuant to the BCA “Class 6” is a shop or other building for the sale of goods by retail or the supply of services direct to the public, including:

- (a) an eating room, cafe, restaurant, milk or soft-drink bar; or
- (b) a dining room, bar, shop or kiosk part of a hotel or motel; or
- (c) a hairdresser’s or barber’s shop, public laundry, or undertaker’s establishment; or
- (d) market or sale room, showroom, or service station.

or Class 5² commercial space to Class 9b assembly³ space. This is required even where no building work is proposed.

Clause 94 '*Consent authority may require buildings to be upgraded*' of the Planning Regulation provides the following considerations when building work (as defined in the Planning Act) is proposed:

- (1) *This clause applies to a development application for development involving the rebuilding, alteration, enlargement or extension of an existing building where:*
 - (a) *the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls, or*
 - (b) *the measures contained in the building are inadequate:*
 - (i) *to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or*
 - (ii) *to restrict the spread of fire from the building to other buildings nearby.*
- (2) *In determining a development application to which this clause applies, a consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia.*

² Pursuant to the BCA "Class 5" is an office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9

³ Pursuant to the BCA "Assembly building" in NSW means a building where people may assemble for—

- (a) civic, theatrical, social, political or religious purposes including a library, theatre, public hall or place of worship; or
- (b) educational purposes in a school, early childhood centre, preschool, or the like; or
- (c) entertainment, recreational or sporting purposes including—
 - (i) a cinema; or
 - (ii) a sports stadium, sporting or other club; or
- (d) transit purposes including a bus station, railway station, airport or ferry terminal.

Insert definition for auditorium as follows:

Pursuant to the BCA "Auditorium" means a part of an entertainment venue used or intended to be used for the purposes of accommodating an audience to an entertainment.

Clause 94 of the *Planning Regulation* is less relevant to the performance spaces the subject of this Paper, as the intention is to utilise spaces that do not require building work. Clause 94 of the *Planning Regulation* will likely be addressed in future papers.

Clause 98C 'Conditions relating to entertainment venues' of the Planning Regulation imposes certain conditions on entertainment venues (through Schedule 3A), as follows.

Schedule 3A Entertainment venues

(Clause 98C)

1 Nitrate film

An entertainment venue must not screen a nitrate film.

2 Stage management

During a stage performance, there must be at least one suitably trained person in attendance in the stage area at all times for the purpose of operating, whenever necessary, any proscenium safety curtain, drencher system and smoke exhaust system.

3 Proscenium safety curtains

If a proscenium safety curtain is installed at an entertainment venue:

- (a) there must be no obstruction to the opening or closing of the safety curtain, and*
- (b) the safety curtain must be operable at all times.*

4 Projection suites

- (2) When a film is being screened at an entertainment venue, at least one person trained in the operation of the projectors being used and in the use of the fire fighting equipment provided in the room where the projectors are installed (the **projection room**) must be in attendance at the entertainment venue.*

- (3) *If the projection room is not fitted with automatic fire suppression equipment and a smoke detection system, in accordance with the Building Code of Australia, the person required by subclause (2) to be in attendance must be in the projection suite in which the projection room is located during the screening of a film.*
- (4) *No member of the public is to be present in the projection suite during the screening of a film.*

11 Emergency evacuation plans

- (1) *An emergency evacuation plan must be prepared, maintained and implemented for any building (other than a temporary structure) used as an entertainment venue.*
- (2) *An **emergency evacuation plan** is a plan that specifies the following:*
 - (a) *the location of all exits, and fire protection and safety equipment, for any part of the building used as an entertainment venue,*
 - (b) *the number of any fire safety officers that are to be present during performances,*
 - (c) *how the audience are to be evacuated from the building in the event of a fire or other emergency.*
- (3) *Any fire safety officers appointed to be present during performances must have appropriate training in evacuating persons from the building in the event of a fire or other emergency.*

Clause 98D 'Conditions relating to maximum capacity signage' of the Planning Regulation requires signage related to the maximum capacity of certain premises to be erected at its entrance; viz:

- (1) *For the purposes of section 80A (11) of the Act, the requirement set out in subclause (2) is prescribed as a condition of development consent (including an existing development consent) for the following uses of a building, if the development consent for the use contains a condition specifying the maximum number of persons permitted in the building:*
 - (a) *entertainment venue,*

(b) *function centre,*

(c) *pub,*

(d) *registered club,*

(e) *restaurant.*

(2) *From 26 January 2010, a sign must be displayed in a prominent position in the building stating the maximum number of persons, as specified in the development consent, that are permitted in the building.*

(3) *Words and expressions used in this clause have the same meanings as they have in the standard instrument set out in the Standard Instrument (Local Environmental Plans) Order 2006.*

Clause 187 'Modification and Supplementation of Building Code of Australia Standards' of the Planning Regulation permits variation to BCA compliance requirements in the construction of new work; viz:

(2) *The applicant in relation to development to which this clause applies may lodge with the consent authority or certifying authority an objection:*

(b) *that compliance with any specified provision of the Building Code of Australia (as applied by or under clause 98 or 136A) is unreasonable or unnecessary in the particular circumstances of the case.*

The recommendations in this Paper with respect to the health safety and amenity requirements for the performance spaces are consistent with the intent of Clause 187 of the Planning Regulation. The recommendations are based on determining that the health, safety and amenity requirements for the performance use are not dissimilar to those for the existing retail and/or commercial use.

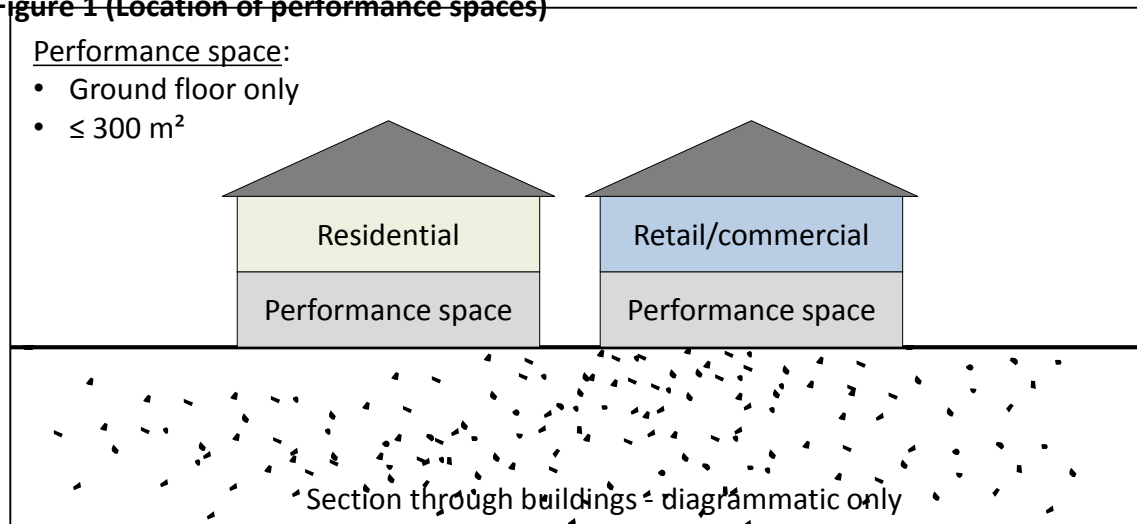
Schedule 1 of the Planning Regulation outlines documentation that is required to be submitted with a development application. Relevantly, subsection (1)(o) requires a statement of the maximum number of persons proposed to occupy the relevant part of the building for entertainment venues, function centres, pubs, registered clubs or restaurants.

Building Related Matters and Solutions

Performance spaces the subject of this Paper

The performance spaces the subject of this Paper will be located at ground level and are limited to 300 m² as shown in Figure 1 of this Paper.

Figure 1 (Location of performance spaces)



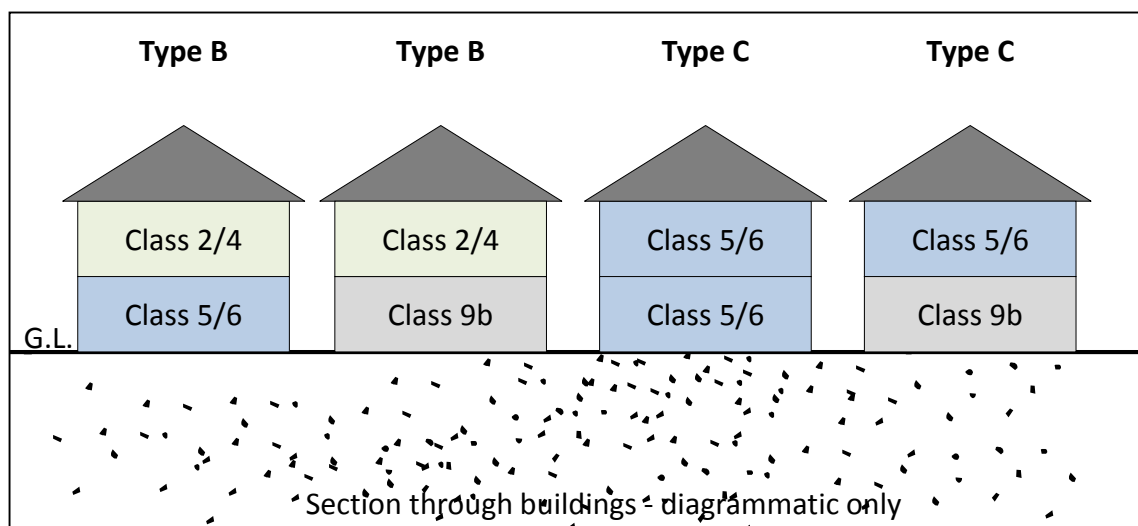
The existing spaces that will 'accommodate' the performance spaces the subject of this Paper are likely to be retail or commercial spaces.

The required fire resistance of a building is determined based on that building's use, 'rise in storeys' and floor area/volume. All buildings the subject of this Paper must be constructed in at least Type C construction (the least fire resisting), some would need to be of Type B construction (intermediate), and all buildings having a rise in storeys greater than four (4) must be constructed in the most fire resisting Type of construction, being Type A construction.

The existing spaces the subject of this Paper are one or two storey buildings of Type B or Type C construction, with either retail and commercial on both storeys, or residential on the top storey and retail or commercial on the ground floor storey.

The proposal to provide performance spaces on the ground floor would not change the Type of fire resisting construction required (which is determined in accordance with Table C1.1 of the BCA) even where the performance spaces were considered Class 9b. This is shown in Figure 2 of this Paper.

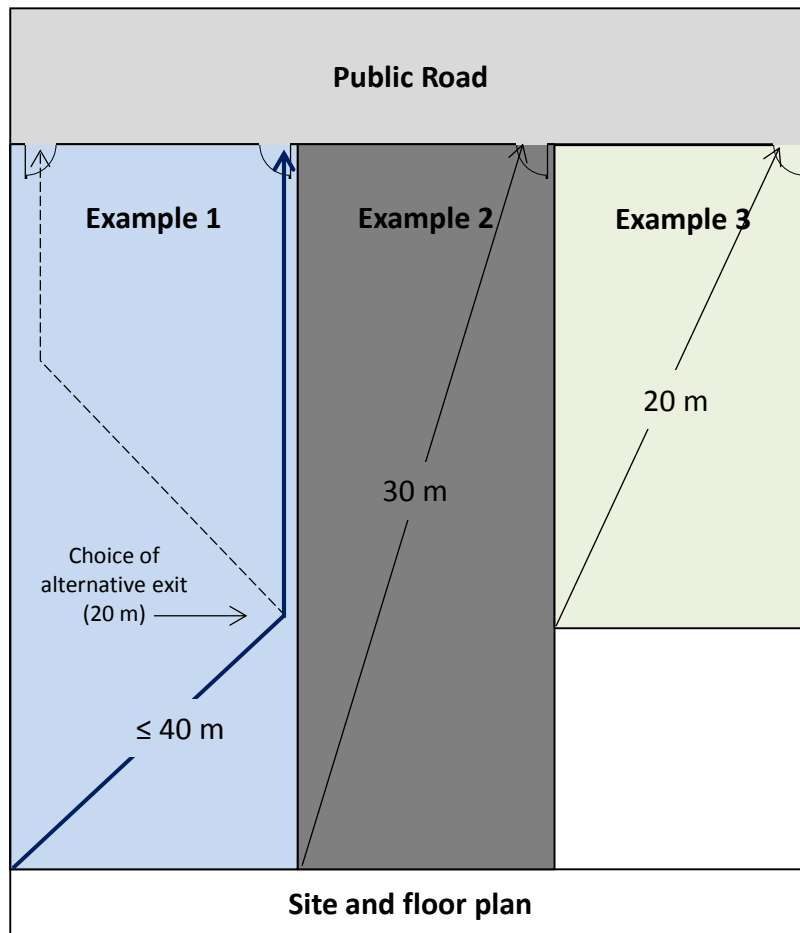
Figure 2 (Fire resisting construction)



The total population in the performance spaces the subject of this Paper will be limited to between 100 and 120 persons, notwithstanding that 300 people could technically be accommodated where the population determined using the rates set out in in D1.13 of the BCA of one person per square metre of floor area.

Egress from the performance spaces the subject of this Paper will comply with the requirements in D1.4 of the BCA for a retail or commercial space, as shown in Figure 3 of this Paper.

Figure 3 (Egress from performance spaces)



The door hardware provided to the egress doors serving the performance spaces the subject of this Paper is consistent with the existing hardware to the exit/s serving the existing Class 5/6 spaces, and Class 9b spaces accommodating not more than 100 persons. Where up to 120 persons is proposed the 'exit doors' must be left unlocked when the space is occupied and panic bars are not fitted.

The exit signs, emergency lighting, hose reels and fire hydrants serving the performance spaces the subject of this Paper are consistent with the requirements for the existing Class 5/6

spaces.

There is no requirement to provide a sound system and intercom system for emergency purposes in the performance spaces the subject of this Paper as the floor area is small and the buildings are low rise.

Building Related Issues

Generally speaking, very few of the existing Class 5/6 land uses are built to comply with the higher standards of a Class 9b space. It is expensive to build or retrofit to this standard. It is so expensive in fact, that pubs and restaurants have been specifically exempted from these requirements whether or not they provide entertainment. Clearly, for small intimate performance spaces with low numbers of patrons, there is no reason why such high building standards should continue to be required, and it is our opinion that to do so essentially prohibits existing Class 5/6 spaces being used as performance spaces even though the health, safety and amenity issues are adequately addressed without the need to comply with the more onerous 'Class 9b requirements'.

Fire and Life Safety

The fire and life safety BCA issues for general Class 9b Assembly Buildings and the more onerous requirements for Class 9b Entertainment Venues are based on an assumption that there are large numbers of people in an unfamiliar space with fixed seating, aisles and cross overs, that there is a dedicated stage and backstage, that people will need to travel long distances to two or more exits, and a high fire load that could impede egress.

It is our opinion that the fire and life safety requirements for Class 9b spaces are not relevant to the smaller performance spaces the subject of this Paper, and that the existing fire and life safety requirements of compliant Class 5/6 spaces will be adequate.

The main BCA requirements for Class 5/6 spaces the subject of this Paper are based on low rise buildings (one or two storeys) of Type B or Type C fire resisting construction, with a floor area (300 m²) much less than is allowed (2 000 m² and greater), and where travel to an exit is less than 30 m where there is only one exit, and no more than 40 m where two exits are required and provided.

The fire resistance of the case study buildings is such that openings in the external walls are generally protected (to prevent fire spread between buildings), and walls built up to the boundary are fire resisting common or party walls.

The fire services provided in these existing Class 5/6 spaces usually comprises exit signs, emergency lighting and a smoke detection and alarm system even though some of these services are not required given the small floor area of the spaces.

Access for people with a disability

Access for people with a disability is not usually provided to the existing Class 5/6 spaces given their age and small floor area, and in many cases it would be difficult to provide complying access as the shop fronts open directly onto a footpath and the thresholds and floor levels are much high than the footpath.

Pursuant to the Federal Premises Standards appropriate access for persons with a disability would need to be provided to these existing Class 5/6 spaces where a building application seeking 'building approval' (a complying development or construction certificate in NSW) for the construction of a "new part"⁴ is lodged on or after 1 May 2011.

Exempt development in NSW includes building work of such a minor nature that building approval is not required. An example of minor building work considered exempt development is contained in Part 2 (**Exempt Development Codes**) of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (**Codes SEPP**).

Access for people with a disability would not need to be provided to the performance spaces the subject of this Paper where:

No building work was proposed (this is the current proposal); or

Building work considered Exempt Development was required by the Council as a condition of determining any application (for example minor work required pursuant to clause 93 of the Planning Regulation); or

Building work not considered Exempt Development is proposed and the application is lodged by a lessee⁵.

Summary of key building attributes

The following summary of the key attributes of the performance spaces the subject of this Paper is provided to highlight that the existing fire and life safety requirements in the existing Class 5/6 spaces will be adequate, subject of course to these existing spaces generally complying with the main BCA requirements for Class 5/6 spaces:

⁴ A "new part" is an extension to the building or a modified part of the building where an application for approval is submitted on or after a certain date

⁵ Section 4.3 of the Federal Premises Standards in effect says that the responsible people referred to (in the Standards) do not have to ensure the affected part complies where the lessee submits an application for approval for the building work

Located on the ground floor thereby allowing quick egress

Floor area will be limited to 300 m²

Population will generally be limited to 100, which is less than the possible population in the existing Class 5/6 spaces ⁶

Required fire resistance level is equal to or less than for the existing Class 5/6 spaces ⁷

Fire load is no greater than in the existing Class 5/6 spaces ⁸

Risk of being involved in a fire is no greater in the existing Class 5/6 spaces ⁹

Exit system (in terms of travel to an exit) is consistent with the system serving the existing Class 5/6 spaces ¹⁰ (as shown in Figure 3 of this report)

The door hardware provided to exits and doors in a path of travel to an exit is consistent with that serving the existing Class 5/6 spaces, and Class 9b spaces accommodating not more than 100 persons. Where the population exceeds 100 persons but not more than 120 persons a requirement will be imposed to the effect that exit doors must be left unlocked when the space is occupied, except where the doors can be opened without a key by a single hand pushing action or downward action on a single device which is located between 900 mm and 1.2 m from the floor. ¹¹

The requirements for exit signs, emergency lighting, hose reels and fire hydrant are

-
- ⁶ Whilst the floor area of a space is used to determine the exit width and facilities required the population in a Class 5/6 space is not regulated by the BCA. Neither the BCA nor the NSW legislation regulates situations where the actual population exceeds the exit width provided. The recommendations in this Paper address this issue for the performance spaces by limiting the population to 100 even though more than 300 persons could be accommodated based on a floor area/person rate of 1 m²/person (D1.13 of the BCA)
- ⁷ The existing Type of Fire resisting construction required for the Class 5 and 6 spaces is consistent with the Type of Fire resisting construction that would be required for the Class 9b space – see discussion commencing in 0 on page 6 of this Paper
- ⁸ The fire load (being combustible materials) in a typical Class 6 space is potentially higher than the fire load in the performance spaces the subject of this Paper
- ⁹ The ignition source in a performance space the subject of this Paper are no greater than those in the existing Class 5/6 space, as no naked flame, fireworks or other pyrotechnics are proposed
- ¹⁰ The travel distance allowed to a single exit in a Class 5 or 6 building (D1.4 of the BCA) is either 20 m or 30 m. Where the distance exceeds 30 m a second exit would be required for a Class 5 or 6 building, and for the performance space
- ¹¹ The intent of the requirement (in D2.21 of the BCA) to provide panic bars to exit doors and doors in a path of travel to an exit serving a Class 9b assembly is associated with large populations. This requirement does not apply in retail or commercial spaces with large populations, or in Class 9b spaces used for religious purposes.

In any event D2.21 of the BCA requires that 'panic bars' only where the space accommodates more than 100 persons.

consistent with those for the existing Class 5/6 spaces ¹²

There is no requirement or proposal to provide a sound system and intercom system for emergency purposes in the performance space ¹³.

Procedures for Development Consent & Options for Changes

Development Consent Procedures and Land Use Definitions

Under the Planning Act, each local Council prepares its own 'Environmental Planning Instrument' (*EPI*) to guide development in accordance with the broad objectives of the Planning Act and any State or Regional Strategic Planning documents. An EPI is required to be considered under s. 79C of the Planning Act and has the force of law.

EPIs contain land use zones (among other controls that are not relevant here) under which certain land uses are listed as being **permissible** or as being **prohibited**. These documents also contain definitions for various land uses.

The first step in seeking consent is to ascertain whether the available definitions include the land use that is sought. There are two (2) possible definitions that could apply to the activities undertaken by the Sydney Fringe Festival; viz:

entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.

community facility means a building or place:

(a) owned or controlled by a public authority or non-profit community organisation, and

(b) used for the physical, social, cultural or intellectual development or welfare of the community,

but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

¹² As a general principle Part E4 of the BCA does not require that exit signs or emergency lighting is required to a space $\leq 300 \text{ m}^2$. The intent of these requirements is used for the purposes of this Paper even though it is likely that exit signs or emergency lighting is provided to most of the existing Class 5/6 spaces.

¹³ E4.9 only requires such a system where the space is a theatre, public hall, or the like, having a floor area more than $1\,000 \text{ m}^2$ or a rise in storeys of more than 2. This is not proposed

From the above two choices, community facility is the preferred definition because it specifically applies to a building “*controlled by a non-profit community organisation*” and the buildings are intended to be used for the “*cultural development or welfare of the community*”. The Sydney Fringe Festival is a non-profit community organisation and that seeks to encourage development of the independent arts sector.

Whilst entertainment facility could just as equally apply, for example as a “theatre” or “music hall”, if a more specific definition is available it must be preferred.

Existing Land Use Definitions

The issue that arises from the above is for those premises that are not run under the umbrella of the Sydney Fringe Festival, and are unlikely to be “*controlled by a public authority or non-profit community organisation*” and so would not have the community facility definition available to them. The only alternative definition is entertainment facility. This is problematic.

The definition for entertainment facility is very broad. It includes theatres, cinemas, concert halls, music halls and dance halls. It is clear that the land use of entertainment facility has been designed to capture large assembly buildings. It also captures “nightclubs” and this is another reason why it is problematic. Without the relevant experience or advice, an applicant would have significant difficulty articulating why their premises will not be a “nightclub” (or similar, intensive style of operation) in a concrete way, which would satisfy other stakeholders such as Council, the Police and neighbours.

Being unable to articulate the characteristics of the proposed operation and use of a performance space, or not being aware of what is necessary, leads to a situation where the health, safety and amenity requirements for an **entertainment facility** under the standard instrument are consistent with those for an **entertainment venue** under the Planning Regulation (as referred to in **Error! Reference source not found.** of this Paper).

The health, safety and amenity requirements for general assembly buildings, entertainment facilities and entertainment venues are not appropriate for the performance spaces the subject of this Paper, as the requirements were developed to cater for large floor area venues with large populations, a dedicated stage and fixed seating.

Planning Solutions

A New Definition

Given the issues as outlined above, a new definition is required that gives surety to stakeholders as to the intended use of performance spaces, and differentiates between these small spaces (with small populations) and the larger more traditional assembly spaces.

A proposed solution to address the planning issues is the creation of a definition of **low-risk arts and cultural facilities**, meaning a basement, ground or first floor of a building or part of such a building which provides entertainment in the form of live performance, or, stationary art such as images, sculpture or cinema whether or not the premises provides food and drink, but does not include:

any premises where the density of patrons is greater than one person per square metre of publicly accessible floor space; or

any premises with a capacity greater than 120 patrons.

The proposed definition emphasises that the land use must:

Be for arts or cultural purposes, and therefore not a nightclub or the like;

Not be intensively used, with a capacity of one person per square metre which is no different to a restaurant or retail space, and therefore not a nightclub or the like, and also poses a lower fire risk than buildings that are more densely populated; and

Be relatively small with a capacity number that is consistent with what the City of Sydney (generally) deems to be a “low-risk premises”, and therefore not a nightclub or the like, and also poses a lower fire risk than larger buildings, for example, that are generally triggered when buildings exceed 500sqm of floor space.

In addition, there is no inference as to the level of building standard required which should provide flexibility to certifying authorities to consider any class of building for the proposed use. Built into the definition are restrictions that reduce risk to the surrounding area, provide surety to stakeholders and lower fire risk. The fact that the land use is also restricted to the basement, ground or first floor also reduces fire risk.

The reason why the proposed definition is so tightly restricted is because from a planning perspective, there is nothing preventing a person from applying for an **entertainment facility** that would be subject to the same restrictions and achieving the same end. The strictness resolves the issue of applicants having to articulate these restrictions themselves and to force planners and certifiers to consider the land use as low risk.

Additional Permitted Uses / Controls Relating to Permissible Uses

It is recognised that the above proposed definition, within it, incorporating self-imposed restrictions has not previously been contemplated for the Standard Instrument. There is no land use definition that carried with it restrictions as to how the land use shall operate. Therefore, other stakeholders, such as the Department of Planning, may not be inclined to accept such a change in approach to the Standard Instrument. Two alternatives are therefore proposed.

Clause 5.4 – Controls for Miscellaneous Permissible Uses (Std. Instrument)

Clause 5.4 'Controls Relating to Miscellaneous Permissible Uses' of the Standard Instrument, permits the attaching of restrictive criteria to any land use. In this respect, **Arts and Cultural Facility** may be an acceptable definition to include in a Standard Instrument, but the restrictions may not.

The definition inserted into the Standard Instrument could be included in Land Use Zones where it would ordinarily be inappropriate to permit entertainment facilities, such as residential zones, or less intensive mixed use zones. The restrictions on the use throughout the relevant local government area could be incorporated into Clause 5.4.

The definition would then need to be as follows: **low-risk arts and cultural facility**, means a building or part of a building which provides entertainment in the form of live performance, or, stationary art such as images, sculpture or cinema whether or not the premises provides food and drink.

The restriction under Clause 5.4 would be as follows.

Arts and Cultural Facility

If development for the purposes of arts and cultural facility is permitted under this Plan, the use may only be approved at the basement, ground and/or first floor of a building and must not:

- i) Have a patron density greater than one patron per square metre of publicly available floor space; or

- ii) A capacity greater than 120 patrons.

Clause 2.5 – Additional Permitted Uses for Particular Land (Std. Instrument)

Clause 2.5 ‘Additional Permitted Uses for Particular Land’ is generally used to permit specific land uses in certain lots which would ordinarily be prohibited due to land zoning.

These provisions can however be utilised in the same manner as Clause 5.4 to only make those land uses permissible under certain circumstances. Entertainment facilities or arts and cultural facilities could therefore be made permissible throughout the local government area contrary to zoning provisions and subject to restrictions as follows.

- (1) *Development on particular land that is described or referred to in Schedule 1 may be carried out:*

- (a) *with development consent, or*

- (b) *if the Schedule so provides—without development consent,*

- in accordance with the conditions (if any) specified in that Schedule in relation to that development.*

- (2) *This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.*

Schedule 1

Use of Land as Entertainment Facility

This clause applies to all land to which this Plan applies.

Development for the purpose of an Entertainment Facility may be carried out with development consent in any zone as an **Arts and Cultural Facility** if it used for the social, cultural or intellectual development or welfare of the community and:

- i. Is located in the basement, ground or first floor of a building; and
- ii. Has a maximum patron capacity not exceeding 120 patrons; and
- iii. Has a patron density equal to or lesser than one (1) person per square metre of publicly accessible floor area.

Alternative to Development Consent – Complying Development

Complying Development Provisions can be incorporated into either Clause 3.3 of the Standard Instrument or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

For development which may otherwise require development consent and is considered to be of low to moderate risk, Complying Development criteria can be created to permit that use. The development standards created would need to ensure that the risk associated with the provision of entertainment is mitigated.

This would assist in encouraging the provision of entertainment by lowering the bar in obtaining development consent and provide a pathway to moderate levels of entertainment by clearly outlining building requirements.

(2) Development specified in Part 1 of Schedule 3 that is carried out in compliance with:

(a) the development standards specified in relation to that development, and

(b) the requirements of this Part,

is complying development.

(3) To be complying development, the development must:

(a) be permissible, with development consent, in the zone in which it is carried out, and

(b) meet the relevant deemed-to-satisfy provisions of the Building Code of Australia, and

(c) have an approval, if required by the Local Government Act 1993, from the Council for an on-site effluent disposal system if the development is undertaken on unsewered land.

(4) A complying development certificate for development specified in Part 1 of Schedule 3 is subject to the conditions (if any) set out or referred to in Part 2 of that Schedule.

Compliance with the BCA as referred to in clause 3(b) above in Section 6.0 of this Paper.

The land use that would be permitted under Part 1 of Schedule 3 of a Standard Instrument would best be described simply as “art, performance or entertainment”. Relevant considerations or prohibitions that could be incorporated into the Part 2 of Schedule 3 could be as follows:

The provision of art, performance or entertainment may be provided in premises which have development consent for another purpose, subject to adherence to the following requirements or stricter requirements if they apply elsewhere:

All conditions of development consent continue to apply and the provision of art, performance or entertainment must comply with all requirements of the development consent.

Operating hours are 10am and 10pm any day of the week or lesser if trading hours are imposed under any development consent condition.

Noise produced must comply with the *Protection of the Environment Operations Act, 1997* for “offensive noise”, unless stricter requirements apply separately.

Large percussion instruments such as drums, gongs and cymbals must not be utilised.

Naked flame or other Pyrotechnics must not be used

A 5 kg Fire Extinguisher suitable for a Type A and E fire must be located within 20 m of electrical fire risks such as in-house amplification equipment, electronic equipment or the like and must be certified annually

A copy of the annual fire safety certificate must be kept on premises

The maximum capacity of the premises must be displayed at the main entrance to the premises

The maximum population must not exceed 100 persons where each exit door is not less than 750 mm wide measured clear of all obstructions and the aggregate exit width is 750 mm, or 120 persons where the aggregate exit width is 1.5 m (where two exit doors are provided) or 1 m (where one exit door is provided)

The doors serving as exits must be left unlocked when the space is occupied, except where the doors can be opened without a key by a single hand pushing action or downward action on a single device which is located between 900 mm and 1.2 m from the floor

Toilet facilities in accordance with Table F2.3 of the BCA must be provided where food and drink is provided

Exits and any fixed tables, chairs or furniture must be positioned so that the maximum travel Distance to an exit from the worst point of the ground floor to an exit does not exceed 30 m (where only one exit is provided), or 40 m (where two exits not less than 6 m apart are provided and a choice of travel in different directions is available after travelling 20 m from that worst point).

It is considered that the considerations and prohibitions above adequately restrict the use of the building and the provision of art, performance or entertainment to what would be considered low to moderate risk operations. Consequently, the considerations appropriately protect the surrounding area from adverse impact and the users of the building with respect to fire and life safety.

We note further that under the Codes SEPP, cl. 1.17A 'Requirements for Complying Development for All Environmental Planning Instrument's, sub-clause (d) prohibits the carrying out of any complying development on so much of any land that is subject to an interim or heritage order under the Heritage Act, 1977 or heritage item under an Environmental Planning Instrument.

Clause 1.18 'General Requirements for Complying Development for this Policy' prohibits complying development for draft heritage items under an Environmental Planning Instrument.

With respect to State Heritage Items under the Heritage Act, 1977, an exemption is available. However, no such exemption is available for local heritage items and the above prohibition applies even in the case where there is no work proposed.

It is considered that the Codes SEPP should be amended to permit complying development to be approved for all heritage items where no work is proposed, such as in the case of a change of use, or to provide art, performance or entertainment as proposed above.

Furthermore, exemptions should be available, such as those under cl. 5.10(3) of the Standard Instrument for minor works to heritage items with the approval of the local consent authority, for work permitted under the Codes SEPP to be carried out on heritage items.

Temporary Uses

The issue of temporary uses may be relevant from a town planning perspective, but from a building perspective it is not relevant. The use of a building is required to comply with the relevant building safety standards no matter if it is to be used for one (1) hour, one (1) day or permanently.

From a town planning perspective, temporary uses can lower the bar for assessment purposes with respect to potential adverse impacts. For example, an application may give rise to concerns to impacts associated with parking demand or acoustic impact, which in the scope of a land use that may only seek approval for two (2) weeks might be considered acceptable without the need to rely on Traffic and Parking or Acoustic Reports due to the temporary nature of the use.

For example, imagine an empty retail shopfront that adjoins a residential dwelling. The retail

shop is sought to be used as part of the Sydney Fringe Festival for a theatre production containing some amplified music and stringed instruments, no later than 10pm for a period of two (2) weeks.

If the above application were sought on a permanent basis it may be reasonable to request an acoustic report to confirm that use is capable of complying with the relevant acoustic criteria and to ensure that appropriate procedures are in place for compliance.

Where that use is only proposed on a temporary basis and, as above, is low-risk and ceases at a reasonable hour, it may be considered unreasonable to require an Acoustic Report that would cost \$4,000-\$5,000 where the extent of impact, if it were to occur, would be for a short period of two (2) weeks.

Ancillary Development

The provision of entertainment may be provided in any existing retail or business premises, so long as the entertainment is “ancillary” to the primary purpose of the land use and could not be considered an independent use of the land.

It is recommended that Guidelines are prepared specifically to encourage the provision of entertainment as ancillary development for a variety of businesses.

Common examples are small bands in the corner of pubs or restaurants, but there is no reason why entertainment of a similar kind of other performances could not be used to draw patrons to a business in support of a primary purpose such as retail or other business land use.

Review of Case Studies and Conclusions

Each of the above case study sites were reviewed to consider the relevant town planning considerations with respect to permissibility, together with the health, safety and amenity requirements that would be considered, given the performance spaces are technically Class 9b spaces.

BCA Review of Case Studies

Each of the case studies sites, except 75 Mary Street, St Peters, are consistent with the performance spaces described in Section 6.0 of this Paper, as:

The space is located on the ground floor thereby allowing quick egress;

The floor area is less than 300 m²;

The population can be limited to 100 persons;

The existing fire resistance level is equivalent to a Class 9b space;

The fire load is no greater than that associated with the Class 5/6 spaces;

The risk of a fire starting is no greater than the risk in the Class 5/6 spaces;

The travel distance to an exit/s is consistent with Class 5/6 spaces;

The door hardware to exits is consistent with the Class 5/6 spaces, and Class 9b spaces accommodating not more than 100 persons;

The fire services appear consistent with the Class 5/6 spaces; and

No sound system and intercom system for emergency purposes is required.

Town Planning Review of Case Studies

Community facilities and entertainment facilities are permissible for all of the case study sites, other than 59A Erskineville Road.

It is anticipated that due to the restricted nature and lower potential intensity of the use, low risk arts and cultural facilities could be made permissible in a wider array of land use zones. For example, entertainment facilities are prohibited within the B1 Neighbourhood Zone for 59A Erskineville Road, where other land uses that may provide entertainment such as pubs and restaurants are permissible.

Innominate land uses are permissible for all of the case study sites. An innominate land use is not specifically prohibited, and so is permissible with consent.

That bodes well for using innominate terms, such as the ***low-risk arts and cultural facility*** definition proposed. However, it is entirely inappropriate to do so when there is an appropriate land use definition available. The question therefore is whether a more appropriate definition could fit between ***community facility*** and ***entertainment facility***.

It is considered highly likely that either community facility or entertainment facility would be considered a sufficiently reasonable and appropriate definition to use, and would therefore be preferred over the innominate definition of low risk arts and cultural facilities, particularly, where entertainment facilities are prohibited.

For that reason, it is necessary to introduce a new definition to overcome the problem of seeking to utilise the innominate definition of low-risk arts and cultural facility.

Use of the proposed land use definition ***low risk arts and cultural facility***, whether it is added to the list of permissible uses under the Land Use Table or made permissible via some other mechanism such as Clause 2.5 'Additional Permitted Uses for Particular Land', Clause 3.3 'Complying Development' or Clause 5.4 'Controls Relating to Miscellaneous Permissible Uses', would make that land use permissible with development consent. In this respect, it is only partly less complicated than using the definition of entertainment facility.

The use of a new definition to narrow the ambit of development consent sought to provide entertainment is intended to narrow the potential for adverse impact and reduce building related costs. By narrowing the considerations, the aim is to reduce adverse impact, stakeholder concern and eliminate the use of higher than necessary fire safety provisions.

The short comings of the use of this new definition are similar to that of entertainment facility, in that there is the possibility for the perception of, or actual, adverse impact if the Application is not properly framed. For example, there is no restriction on the type of entertainment that is provided or the hours of operation. Applicants need to be cognisant of such potential issues, but of course, the same could be said for the land use of entertainment facility.

In order to raise awareness of these relevant matters, and so as to provide an alternative path of approval, a complying development process is also proposed.

The most important aspect of the complying development process is that it requires the premises to have an existing commercial development consent and stipulates maximum operating hours, capacity and style of entertainment if they are not controlled by an existing development consent.

Copies of the development consents that apply to the case study sites in order to comment on their effect have not been sought.

Notwithstanding, the assumption is that the previously approved land use will have restrictions appropriate for the surrounding area. If it is the case that trading hours and patron capacity were proposed for business reasons and are not appropriate for a low the risk arts and cultural facility, then the consent merely needs to be modified to extend the trading hours or increase the patron capacity.

That significantly narrows the considerations necessary for the consent authority, as opposed to seeking consent for an entirely new land use, which should increase the speed in which a determination can be made and at the same time minimise costs.