

An Open and Creative City:

planning for culture and the night time economy

Discussion Paper

October 2017





Cover Image: Foley Street 'We Are Here' launch party / Image: Jamie Williams
Above Image: Sydney Fringe Festival Hub, Alexandria / Image: Jamie Williams

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01

Lord Mayor's message



“A strong cultural life and night time economy are essential to a prosperous global city.”

The Creative City Cultural Policy and Action Plan, Live Music and Performance Action Plan and the OPEN Sydney Strategy and Action Plan were developed through extensive community consultation with residents, workers, business and the industry sectors, visitors and government. They help guide our work to build a diverse and strong night time economy that at its core, has a rich cultural and diverse offering.

As our city becomes more densely populated, we need to support and sustain our culture and nightlife. We need to **minimise red tape** for both existing and new night time businesses and cultural spaces. We need to **provide certainty and flexibility** for business as well as resident amenity and **not compromise on public safety**.

Our staff are hard at work researching and developing new planning and regulatory frameworks to deliver our action plans.

The Open and Creative City discussion paper includes three separate regulatory reform projects that will strengthen our cultural life and night time economy. They propose to enable businesses to trade later into the night, make it easier for artists to open creative spaces, and balance the impacts of live music and performance venues.

I invite you to read the discussion paper and provide us with feedback on the proposal to improve planning and regulation to ensure that the City's cultural life and night time economy provides something for everyone.

A handwritten signature in black ink that reads "Clover Moore". The signature is fluid and cursive, with a long horizontal line extending from the end.

Clover Moore
Lord Mayor

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Executive summary

Our vision

Our vision is for a city with a lively and diverse evening economy. This vision emerges from our research and consultation OPEN Sydney Strategy and Action Plan, Creative City Cultural Policy and Action Plan and Live Music and Performance Action Plan.

To achieve our vision the plans and policies set out a series of actions across planning and regulation, liquor licensing, advocacy and sector development.

This paper focuses specifically on a range of reforms to planning and regulation set out in those actions.

We are seeking your feedback as we continue to refine these reforms. We will use your feedback to help us write the changes to our planning controls.

Our proposals

We propose to take eight actions across the areas of a diverse evening economy, more small-scale cultural uses, and fair management of entertainment noise.

A diverse evening economy

Action 1

Allow shops and local businesses in areas with an established retail character to extend their opening hours without a new development consent from 7am to 10pm, seven days per week.

Action 2

Provide grants for businesses to program retail experiences in the evening.

Successful global cities possess a strong cultural life and economy. Evidence shows that this diversity of options leads to a stronger, more connected and resilient community, creates a more inclusive nightlife, improves safety and reduces crime.

More small-scale cultural uses

Action 3

Allow minimal impact small-scale cultural uses without development consent.

Action 4

Establish new planning controls specifically for cultural uses that may have some impacts and need development consent, to provide better planning guidance and greater certainty.

Action 5

Identify opportunities to reduce or remove notification periods for development applications for small-scale cultural uses.

Fair management of entertainment noise

Action 6

Fair management of noise impacts by applying the 'agent of change' principle.

Action 7

Planning controls for new venues and for new noise-sensitive development.

Action 8

New noise compliance guidelines to provide greater certainty and consistency.

How to give feedback

Visit www.sydneyyoursay.com.au/openandcreative



03

Introduction

We are looking for your feedback on the proposals to improve our approach planning and regulating of the City of Sydney's cultural life and night time economy.

Successful global cities possess a strong cultural life and economy. They provide a wide range of opportunities to create or experience the city's cultural life and its leisure and entertainment options. They strike a rich balance between private and public attractions and attract a diversity of ages, lifestyles and cultures throughout the day, evening and night. Evidence shows that this diversity of options leads to a stronger, more connected and resilient community, creates a more inclusive nightlife, improves safety and reduces crime ¹.

The City's night time economy represents the heart of Sydney's social, cultural and leisure opportunities, comprising food, drink, cultural and entertainment industries. It is estimated to produce \$3.64 billion in revenue per year, involving 4,608 businesses and employing 32,411 people ².

The creative sector is also vital to Sydney's future. The NSW Government's 2013 Creative Industries Economic Profile found New South Wales is home to 40 per cent of the nation's creative industries workforce, contributing \$1.4 billion to the state economy. A significant proportion of this is concentrated in the City of Sydney local government area.

Small art galleries, performance spaces and music venues, as well as co-working spaces, startups and social enterprises, are incubators for Sydney's creative life. They diversify the night time economy, attract tourists and provide places for people to produce and engage with local culture.

We have undertaken research and consultation to inform the OPEN Sydney Strategy and Action Plan, Creative City Cultural Policy and Action Plan and Live Music and Performance Action Plan. These plans set out a vision for a City with a strong cultural life, diverse and safe night-time economy and thriving live music and performance industry. To achieve these outcomes the plans and policies set out a series of actions across planning and regulation, liquor licensing, advocacy and sector development.

This paper focuses specifically on a range of reforms to planning and regulation set out in those actions.

We are proposing the following key changes:

- Making it easier for shops and businesses to trade in Central Sydney and the village centres from 7am to 10pm, 7 days a week
- Making it easier for small-scale cultural uses to take place in existing buildings
- Protecting live music and performance venues and encouraging fair management of noise.

Following this period of public consultation on the discussion paper, we will consider your feedback and begin drafting the new planning controls and guidance. These will need to be reported back to Council and placed on public exhibition again to make sure we've got them right. We will then ask Council to formally adopt the new planning controls, and ask the Greater Sydney Commission to put them into force. We aim to finish the project by the end of 2018.

¹ Hadfield P., 2011. *Night Time Economy Management: International Research and Practice, A Review for the City of Sydney*.

² The Australian Night Time Economy 2015: Prepared for the National Local Government Drug & Alcohol Committee May 2017



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A diverse evening economy

OPEN Sydney

OPEN Sydney is our strategy for Sydney at night. Research and public and industry consultation for this strategy showed that people want shops and other businesses to open later.

It showed there are limited options after 6pm apart from restaurants, bars, clubs and pubs. It found that only 14 per cent of people out in the city after 10pm were aged over 40 years³.

These findings helped develop OPEN Sydney to support an evening economy that attracts people of all ages and interests.

Our targets for 2030 are:

- 40 per cent of all businesses open after 6pm are retail businesses
- 40 per cent of people using the city at night are over 40.

To help meet these targets, we propose extending standard trading hours in specific locations, making it easier for retail and service businesses to trade in the evening.

We support businesses to program more evening activities and experiences with a grants and destination marketing.

We want to see a more diverse evening economy, with more non-alcohol-based activities opening later to attract families and older people.

Opportunities for retailers

In 2016 the City talked to businesses about later trading options and identified opportunities and challenges.

There are considerable opportunities for extended trading hours in areas serviced by good public transport, parking, destination marketing, events, night time signs and wayfinding.

For example, surveys show there are significant numbers of potential customers on the streets in Glebe and Newtown well into the evening. Shops and businesses in these areas have opportunities for increased trading hours on weekdays and weekends.

Glebe Point Road maintains high pedestrian numbers from 5pm to 11pm on weekdays and weekends though few retail and service businesses are open. King Street, Newtown also has a high level of pedestrians into the evening with few businesses staying open. There are more pedestrian on King Street between 7pm and 10pm than from 8am to 11am.

Retailers and businesses could take advantage of the high volumes of pedestrians in the evening by extending their trading hours.

Challenges for retailers

Challenges include uncertainty about the level of customer patronage, the impact of wages and overtime, diminishing public transport later in the evening and perceptions of safety after dark.

These uncertainties and costs can discourage businesses from trading later.

The proposed changes are designed to address some of these concerns by encouraging more overall evening trade, increasing the vibrancy of specific areas in the evenings and improving perceptions of safety.

³ Late Night Management Areas Research: Phase 4 Report September 2015. City of Sydney Council.



Figure 1

King Street, Newtown pedestrian counts and shop/business premises trading hours, Monday to Thursday in March 2017.

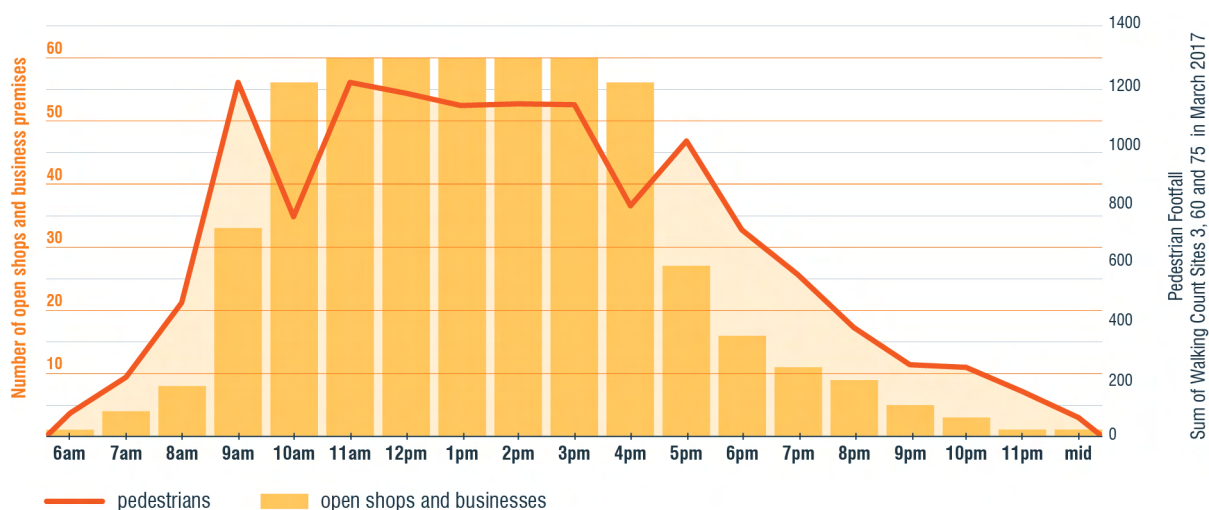
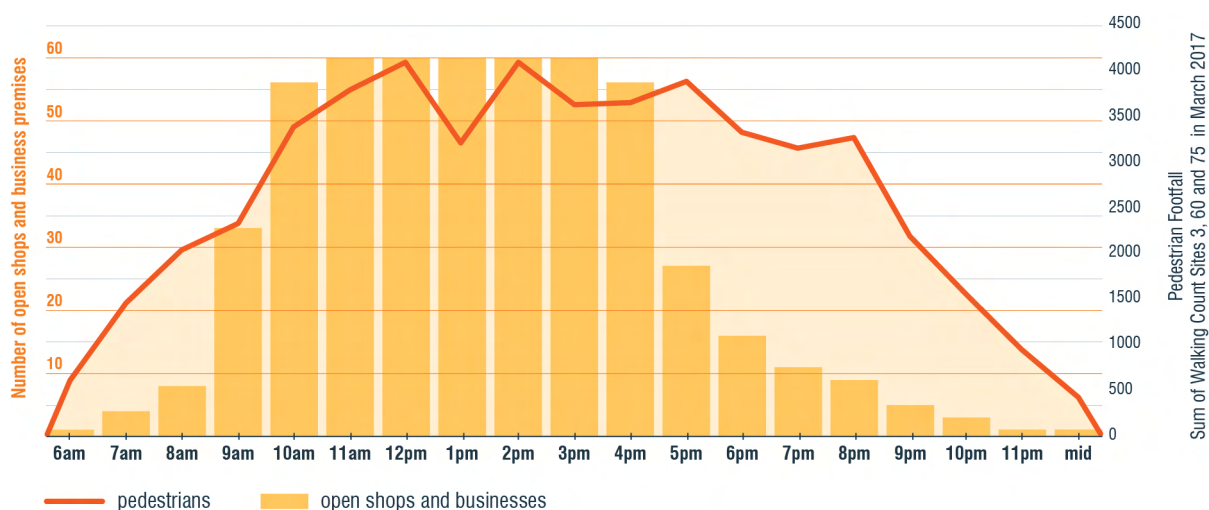


Figure 2

King Street, Newtown pedestrian counts and shop/business premises trading hours on Saturdays in March 2017.





Regulating opening hours

Operating hours for shops and businesses are regulated through conditions of development consent.

Retail and services businesses typically apply for 8am to 6pm opening hours, which can limit their flexibility for different occasions. If they want to extend their hours in the future, they need to apply for a new development consent.

Setting operating hours can help manage any impacts on the local area. However, most retailers and businesses do not have a negative impact on the local area. They do not create excessive noise or encourage anti-social behaviour or crime. Often, they contribute to the liveability, vibrancy and safety of the local area.

Established retail and service character

Some areas already have a wide range of retail, business and other services that service the local area and beyond.

These areas include:

- Newtown
- Glebe
- Pyrmont
- Darlinghurst
- Potts Point
- Surry Hills
- Waterloo
- the city centre

All these areas have higher impact uses, such as pubs, bars, cafes and restaurants. It is possible to have later opening hours with little impact on the local character or amenity in these areas. This increased variety in evening activity could enhance these areas.

These changes will increase street activity and the sense of safety by attracting a greater diversity of people out at night, give businesses the flexibility to choose operating hours such as opening and closing later, enable business owners to take advantage of events and festivals and provide more opportunities for people to shop and attend appointments after work.

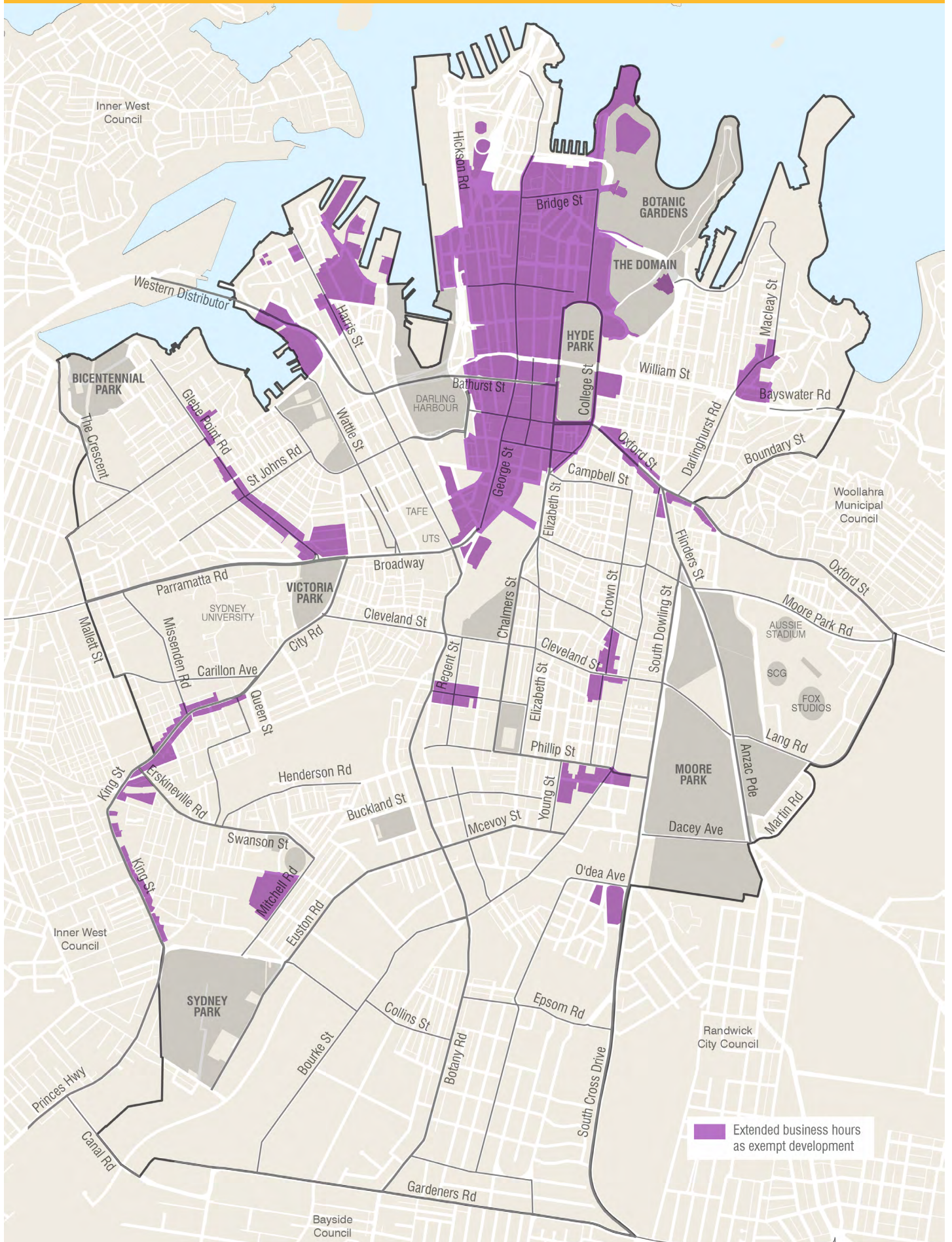


Figure 3 – Areas where shops could open till 10pm without additional approval from Council



Proposed changes

Action 1

Allow shops and local businesses in areas with an established retail character to extend their opening hours without a new development consent from 7am to 10pm, seven days per week

We would do this by making standard opening hours for shops and local businesses as exempt development. Exempt development has a minimal impact on surrounding neighbours and areas, and does not need development consent from the City if it meets certain criteria.

This would apply to shops such as grocery stores, clothing stores, bookshops, pharmacies and hardware stores, and businesses such as hairdressers, dry cleaners, travel agents and banks.

This change would apply to these land use zones in Sydney Local Environmental Plan:

- B2 Local Centre
- B3 Commercial Core
- B8 Metropolitan Centre.

These land use zones already provide a range of commercial, business and retail uses to service a wide catchment area. They also include cultural and civic land uses that fit with the character of the local area, as well as some residential dwellings.

These areas are shown on the adjacent map.

Action 2

Provide grants for businesses to program retail experiences in the evening

Together with destination marketing, this will draw customers to areas with later trading shops and businesses and support and encourage later opening hours.

Discussion

- Should all businesses be allowed to trade until 10pm without obtaining additional City approval?
- Is 10pm the right time for all areas, or should there be different times?
- Are there other areas we should consider for encouraging evening trading?
- Will these changes encourage local residents, workers and visitors to visit and shop in these areas in the evenings?
- Are there any other factors that may prevent businesses from opening later?



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More small-scale cultural uses

Creativity and culture are an important part of our city. They support community cohesion and underpin the arts and creative industries, providing social and economic benefits for the City's residents, workers and visitors.

Creative City Cultural Policy and Action Plan

In addition to the City's regulatory responsibility to protect health, safety and amenity, the City also aims to fulfil the community's expectation for emerging cultural trends to bring new energy and experiences to the city's cultural life.

Creative City is our strategy to increase cultural activity in the city and includes our Live Music and Performance Action Plan. It defines culture and cultural life as 'the production, distribution and participation in creativity by the City's community of residents, workers and visitors, and the reflection and expression of its customs, traditions, heritage and social character'.

Creative City was developed following extensive feedback from the community, and calls on the City to investigate improvements to planning and regulatory process that would encourage greater cultural activity.

Small businesses would like to include cultural activities, such as exhibitions, gallery openings, performances and community events, but are concerned they don't have the right planning approvals, and are unsure how to obtain them. Additionally, there many retail, office and warehouse buildings that are underused and could provide an opportunity to host small-scale cultural uses.

The City has received consistent feedback that complex and costly planning and building approvals discourage cultural activities, particularly in existing buildings. We want to make it easier for small-scale cultural uses to get the right regulatory and planning approvals.

Opportunities

The City has regulatory responsibilities under many state, federal and local laws and regulations covering building construction, public health, fire safety, noise emissions, land use planning and residential amenity. The City has a role not only in ensuring it meets its legislative obligations to protect health, safety and amenity, but in meeting community expectations for emerging cultural trends to bring new energy and experiences to the city.

Opportunities for small-scale event

Piccolo tales

Kings Cross institution the Piccolo cafe wanted to put on theatre performances for a small audience of about 10-15 people. There was no set or stage, and just the normal cafe background music. The play was performed once a day for four days.

Because our current planning controls don't recognise small-scale cultural uses, the owner wasn't clear what type of approvals he would need.

Our proposals clear up the confusion by confirming that this type of activity would be exempt development and not require approval.

Small-scale cultural uses

Small-scale cultural activities involve making or presenting creative content, such as film, art or performance, as well as talks or community events. They can be free, entry-by-donation or ticketed. They are often irregular or one-off events, which if held on a small-scale may not be suitable in one of the city's permanent theatres, galleries or entertainment spaces. Most small-scale cultural uses happen in older retail, office or industrial buildings, and involve no major works. They don't necessarily have the same safety or neighbourhood amenity risks as permanent licenced venues, major theatres or public halls.

Cultural activities can prove difficult to categorise within our existing building and planning classifications. This means that cultural activity may be included in the broader classification of entertainment use, and so may be subject to building code requirements designed for much larger venues. For example an artist studio wishing to host public lectures may need fire safety upgrades designed for a major function centre.

The City's planning controls and national building regulations provide enough flexibility for small and large scale cultural uses in many areas throughout the City.

However, there is little guidance specific to cultural uses about what should be done to get an approval. Approvals often require advice from experts in building compliance, planning and environmental health to manage issues like fire safety and residential amenity. This advice can be costly and time-consuming for a sector which provides significant benefits to the City but doesn't have a lot of financial capacity.

We can address some regulatory barriers for three types of small-scale cultural activities:

- Existing businesses hosting temporary cultural activity, such as small retail tenancies seeking to host an art exhibition or ticketed events and performances.
- Creative entrepreneurs wishing to utilise existing buildings for short periods of time. For example, a theatre group wishing to perform in a vacant shop, or a social enterprise wishing to use a warehouse for a community event.
- New cultural and community spaces, such as an artist studio or social enterprise, seeking approval for an ongoing activity in an existing retail, office or warehouse building.

Action 3

Allow minimal impact small-scale cultural uses without development consent

Exempt development has a minimal impact on surrounding neighbours and areas, and does not need development consent from the City if it meets certain criteria.

Temporary small scale cultural events, such as a shop hosting an art exhibition, temporary theatre or a public talk, could be carried out as exempt development without an approval.

People regularly produce art, rehearse or gather to discuss books, art or movies and generally do not need approvals. However, whether or not approval is required isn't always clear if it's a public event, ticketed or carried out more regularly. By classifying some of these events as exempt development we can provide greater certainty as to when an approval is needed.

To ensure minimal impacts the person undertaking the use will have to make a self-assessment against a set of criteria. If they cannot meet the criteria then a development application and assessment will be needed.

The key criteria we propose are for events to:

- occur only in a building with current development consent for a shop, office, industrial building or warehouse and an annual fire safety statement for that use
- accommodate a maximum of 1 person per square metre including patrons, staff and performers
- have a limit of no more than 50 people
- occur up to 26 days a year and on no more than 8 days a month and two days in a row
- last for a maximum of four hours on any day (not including event set up and pack down)
- finish no later than 9pm Sunday to Thursday and 10pm Friday and Saturdays
- not be in a residential area
- when alcohol is served, it must either be:
 - consistent with an existing licence, or
 - served by a caterer using an off-premises authorisation
- have amplified music only in Central Sydney and zones that don't allow residential uses
- not use pyrotechnics, theatrical smoke or other dangerous materials or implements
- maintain existing conditions of development consent relating to parking, waste and the like.



107 Projects, Redfern / Image: courtesy of 107 Projects – Matthew Venables

Defining the activity

To provide certainty the criteria needs to describe the activity that can be carried out without an approval.

We will describe the activity as:

“uses that are an independent and additional use of an approved office, retail and warehouse premise for:

- live entertainment, including musical, theatrical, comedy or dance performance
- display or production of an artwork, craft, design, media or image
- rehearsal, teaching or discussion of art, craft, design, literature or performance”

This would apply to buildings that are vacant or unused, but that still have development consent to operate as office, retail or warehouse.

Existing approvals

So that the operation of the main use of the building is not affected and the cultural use does not involve any adverse impacts on neighbours, small-scale cultural uses should comply with existing conditions of the main use of the building relating to car parking, vehicular movement, traffic generation, loading, waste management and landscaping.

Exclusion from residential areas

Small-scale cultural uses would not be allowed in residential locations (zones R1 and R2). Commercial, retail and business are currently prohibited in these zones because of the potential for increased amenity impacts. This means that small-scale cultural uses would be able to occur without approval in business and industrial zones in the city, as shown in the map on the following page. As noted above, amplified music in relation to these uses would not be allowed in zones which permit residential uses (other than B8 City Centre).

Capacity

We can limit the capacity of a cultural event to 1 person per square metre of floor space and no more than 50 people in total, including staff and performers. This will limit amenity impacts and ensure the spaces are safe. Research commissioned by the City has shown the safety of events of this size can be managed when the right fire approvals are in place.

Frequency and hours of operation

Small-scale cultural uses are generally held in the evenings and after the main business closes for the day. If an event was held too late or too frequently it might negatively affect neighbours and not have minimal impact.

Limiting how often and when the activity can happen allows a balance between the activity and neighbour amenity and maintains the temporary nature of the use.

Small scale cultural uses could happen:

- from 8am to 9pm Sunday to Thursday and from 8am to 10pm on Fridays and Saturdays
- for no more than 4 hours on any one day, not including event set up and pack down
- up to 26 days a year and no more than 8 days a month and two days in a row

For example, this could allow a cultural use, such as a pop-up performance, each Friday and Saturday night for about three months.

A different option could be to allow longer hours or more frequent events for buildings in zones that have only commercial and industrial uses.

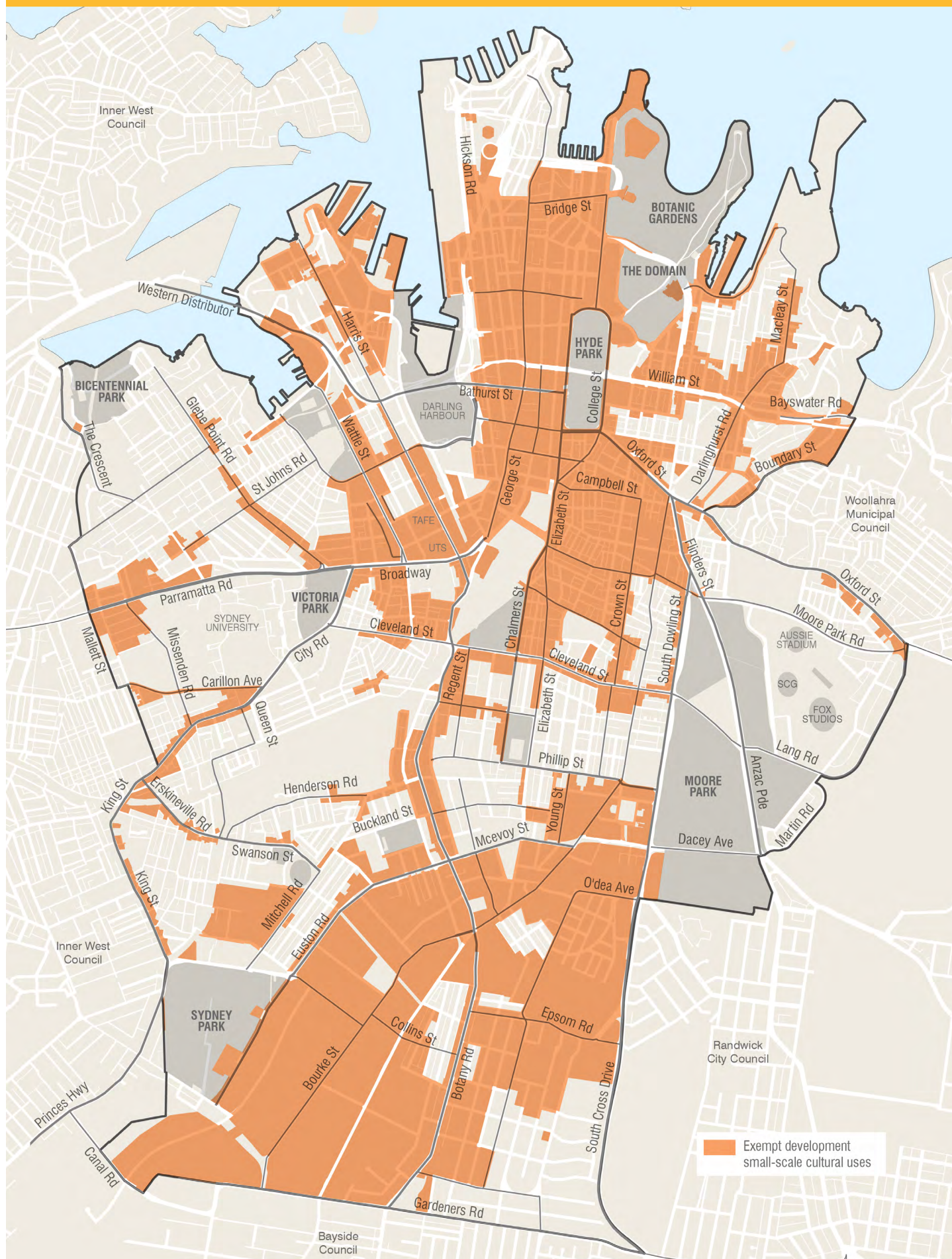


Figure 4 – Areas where small-scale cultural uses could happen without Council approval



Amplified music

Noise and amplified music is one of the main impacts on surrounding neighbours or other businesses. For proposals with amplified music, technical assessments undertaken by professional acoustic consultants at the applicant's cost are usually needed to help the City assess impacts. Without these assessments, the City would either need to separate the noise from sensitive uses or limit times, frequency and duration of the event to ensure that the impacts are minimal.

The City comprises many areas that combine houses and apartments with activities such as retail, entertainment, and dining. There are very few areas where residents are completely separated from these other uses.

To ensure minimal noise impacts, we are considering allowing exempt activities to have amplified music only if they occur in areas with less residential development, such as in Central Sydney or industrial and business only zones.

The areas where amplified music could be carried out in this situation without approval are shown in the map on the following page. These areas include the B3 Commercial Core, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 General Industrial zones. This means that cultural activities with amplified music could occur without approval in Central Sydney or the Alexandria industrial area.

A similar activity on village high streets, such as King Street, Newtown, or Oxford Street, Darlinghurst, could not have amplified music. If the small-scale cultural use required amplified music (such as the performance of electronic music or backing music for a dance performance) they would need to apply for development consent so that the potential impacts can be assessed by the City. They may also need to get professional acoustic advice.

Other options we could consider include expanding the opportunity for amplified music to areas where there are residential uses, such as in the mixed use zone, if it is for shorter periods, stops earlier in the evening or if neighbours are notified.

Alcohol service

Small-scale cultural uses taking place without development consent could serve alcohol in limited circumstances.

The first circumstance is where the premises already holds a liquor licence and **is not a hotel or small bar**. In these instances, alcohol can be served as long as it is in consistent with the conditions of that liquor licence. These conditions will generally include the capacity of the premises, the areas where alcohol can be served and consumed, and the hours of service.

The second circumstance is where the operator engages an outside caterer to serve food or drinks. In this instance, the outside caterer is required to hold a liquor licence (an 'off-premises authorisation') which will also have conditions. The outside caterer will be required to notify Council and the local police at least two weeks before the event.

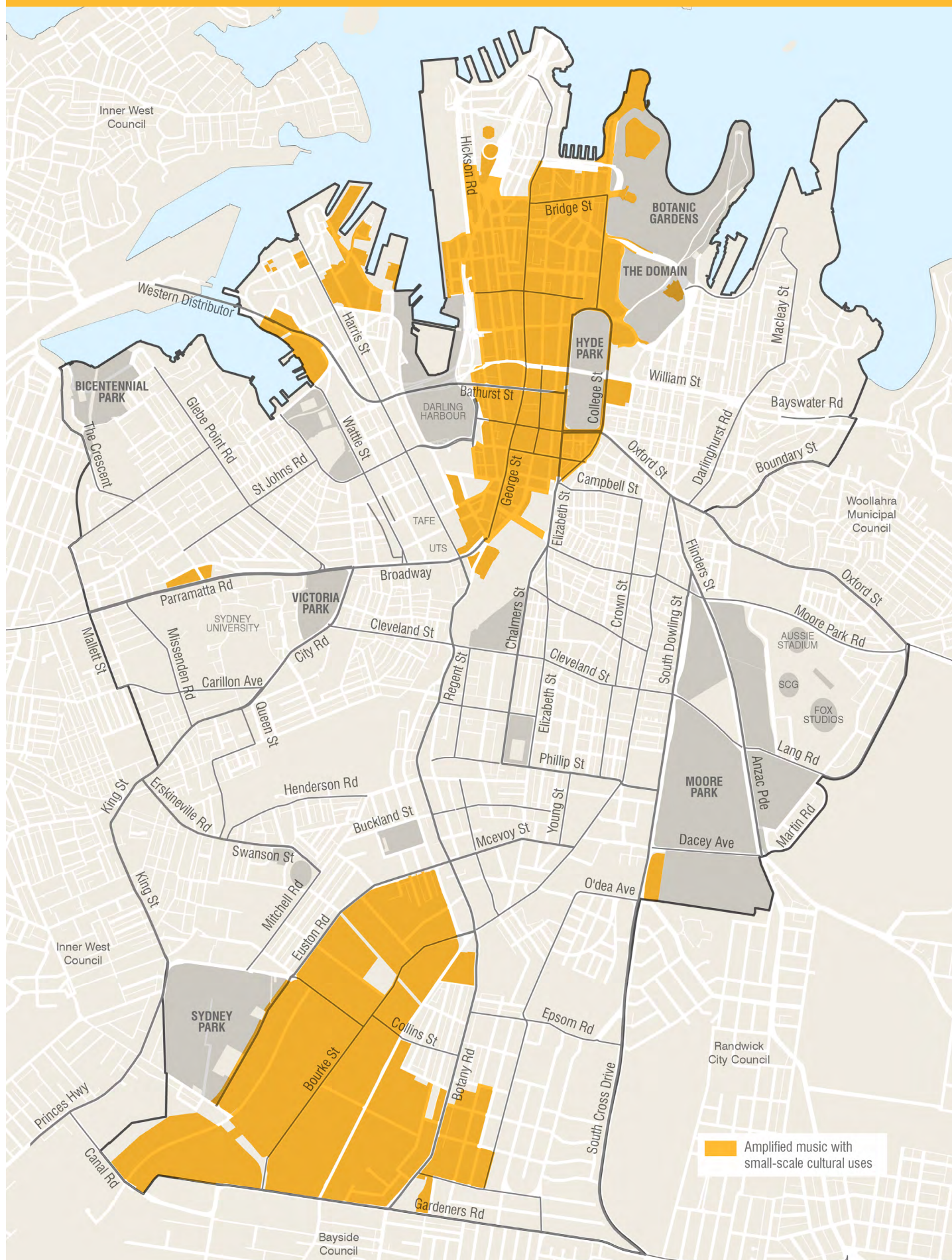


Figure 5 – Areas where small-scale cultural uses that do not need approval from Council, can use amplified music

Discussion

- Would the proposals be useful for those seeking to present cultural activity?
- Does our definition of small-scale cultural uses capture all of the uses that may be proposed?
- Are there enough protections for neighbours for uses that don't need an approval? What other impacts are there?
- Do you think the proposed criteria, including 50 person capacities, hours of operation and limits on the number of events, will allow more cultural activity to happen and also protect amenity for neighbouring residents and businesses?
- Should we allow amplified music without a development application? If so, how could the impacts be managed, if they arise?
- Could we allow the use of amplification for other types of sound? This could be background music at a performance, or the use of a microphone for public lectures. How could we make sure that these types of amplification could happen, while not causing disturbance for neighbours?
- For these cultural activities, do you agree with the proposal to allow the service of alcohol as long as the right type of licence is in place? Does it matter that there is no need for a development application?

Case Study: South Australia

Other states have taken different steps to promote cultural and entertainment activities. In South Australia, there was confusion over whether adding low impact entertainment was actually a change of use.

In January 2017 the South Australian Government introduced the Development (Low Impact Entertainment) Variation Regulations 2017. The regulation identified that low impact live entertainment was not considered development (and therefore didn't require a development application) if it occurred:

- inside a building
- in accordance with the lawful use and occupation of the premises
- in compliance with the Environment Protection Act 1993

But does not include:

- prescribed entertainment within the meaning of section 105 of the Liquor Licensing Act 1997 or
- entertainment that is to be carried on in connection with a proposed change of use of the premises

The regulation was introduced as part of the Streamlining Live Music Regulation 90 Day Project. This ensured that having low impact entertainment in premises other than residential accommodation was not considered development. This was as long as it could be considered reasonably incidental or ancillary to the use in the development approval. If the entertainment or activity constituted a 'change of use' from the premises planning consent, then a development application would still be required.

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This example has limited relevance to Sydney. Premises such as hotels, bars, restaurants and cafes can already have entertainment including live music without needing any new development consent.

The challenge we are facing is how to reduce the requirements for development applications when there is a change of the use, albeit only temporary.



Fine Fellow - Foley Street, Darlinghurst / Image: courtesy of Giuseppe Santamaria

Action 4

Establish new planning controls specifically for cultural uses that may have some impacts and need development consent, to provide better guidance and greater certainty

These new planning controls would be in the Sydney Development Control Plan and provide simple solutions to common issues. The controls will reasonably manage neighbourhood amenity and ensure compliance with the National Construction Code. It should be possible to avoid much of the costly expert advice often needed to support a development application. The controls will also help applicants choose and design spaces suitable for events.

This option would support ongoing cultural spaces, or new operators seeking to establish a new primary purpose cultural space, such as artist run initiatives, small performance spaces and multi-purpose creative hubs. It would also be used for smaller scale cultural uses that don't meet all the criteria for exempt development and need development consent and a new occupation certificate.

Complex issues such as noise may still require technical assessments and larger, more frequent uses can still be proposed but may need a more detailed assessment.

We will also develop guidance on solutions for fire safety and building compliance standards for cultural activity taking place in existing building spaces 499 square metres or less.

This will include specifications to provide greater certainty that the renovation and adaptation of older buildings can happen without the need for a significant and costly upgrades under the construction code.

However, this will not provide complete certainty as a certifier, not the planning authority, is responsible for deciding whether a proposal complies with the construction code.

Suggested standards for these planning controls include events, venues and activities which:

- take place in space of 499 square metres or less and accommodate no more than 120 patrons
- finish no later than 9pm Sunday to Thursday and 10pm Friday and Saturdays
- include building works which comply with the City's guidance on solutions to ensure compliance with the building code
- prepare a plan of management
- include the supply or sale of alcohol subject to a liquor license
- have amplified music subject to an acoustic report where one is required.

Discussion

- Would the new proposed planning controls be helpful for those seeking to establish new cultural spaces?
- Do you think the proposed criteria, including 120 person capacities and hours of operation will allow both more cultural activity and protect residential amenity?
- Do you think cultural uses of this size should be required to have development consent?

Case Study: Edinburgh

To make it easier to create temporary venues during the Edinburgh Fringe Festival and maintain standards of building, the City of Edinburgh developed a Temporary Theatre Licence process. This is required under UK law to perform theatre in public.

City of Edinburgh staff provide advice and assistance to the applicant to make sure the premises will be suitable, as well as advice regarding seating layouts, exits, temporary structures and electrical installation. Applications take around four weeks, with the cost of application varying according to venue size and the nature of the application, ranging from £112 (approximately A\$185) for charitable or non-profit organisations, to £2,702 (approximately A\$4,450) for commercial ventures with a capacity greater than 1,000 people.

After this process, the operator still needs to get a separate development consent from the City of Edinburgh. This has its own fees in addition to those described above.

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Our situation is different in Sydney. Places of Public Entertainment licenses were abolished in 2009 and issues are covered by planning and construction approvals. The City provides similar assistance where selected development assessment planners work as 'cultural champions'. They act as a single, consistent point of contact about the application and coordinate advice from different experts within the City.

Development application fees are set by NSW Government regulation and are determined by the scale or cost of the development.

Action 5

Identify opportunities to reduce or remove notification periods for development applications for small-scale cultural uses

We will clarify the requirements for when a small-scale cultural use needs to be notified to neighbours.

Currently applications for events may be subject to notification periods of 14 or 21 days. For some events in locations with less residential development, notification may not be necessary. In others areas, given the temporary nature of events, notification periods could be reduced to let consultation happen in a shorter timeframe.

Discussion

- Do you think it would be ok to not have some events notified to neighbours? In which areas or situations could we reduce or remove the need for notifications?
- What sort of events should be notified for public comment? If we decide to publicly notify an event, how long should we notify it for and how widely?
- What other planning controls or guidance would be useful for applicants?



06

Entertainment noise

We are proposing changes that will manage noise in a way that is fair and clear for venues and residents.

Live Music Performance and Action Plan

The Sydney live music and performance sector makes a substantial social, economic, and employment contribution to Sydney and is vital to the City's cultural life. In 2014, the City adopted both its Live Music and Performance Action Plan and Creative City Cultural Policy and Action Plan. Within these documents, the City committed to investigating planning reforms to support venues, musicians, audiences and the communities that make live music and performance such an integral part of the City.

The planning reforms discussed in this paper support live music and performance in Sydney by:

- Reducing operational uncertainty and complexity for new and existing live music and performance venues to preserve areas with strong traditions of live music and performance
- Managing entertainment sound levels in a way that protects the broader community from possible adverse health impacts.

Challenges for live music venues

Changing neighbourhood land uses and expectations creates uncertainty for venues. Live music venues are vulnerable to complaints from residents about noise from the entertainment they host. This can happen even for venues where operations are consistent with their development consent, or for long-standing music venues, when new residential development is built nearby and new residents are affected by the entertainment noise. This uncertainty can be very difficult for venue operators to plan for their business. They have no certainty that even if they invest money to manage noise, that they will be able to continue operating.

The current laws are based on the 'polluter pays' principle, which requires the 'polluter' to manage all the impacts of their development. This means live music and performance venues are solely responsible for limiting the impacts of entertainment noise, generally through sound limits placed on the venue through a development approval or liquor licence.

Under this approach, noise limits are determined by impacts on the nearest residential premises. When a new residential development is built nearby, the live music venue may have to reduce their noise emissions. This can be unreasonable for venues as they may need to undergo an expensive refit of their venue because of a new residential development that came after they started operating.

Overlapping legislation also contributes to uncertainty for venues. The Environmental Planning and Assessment Act 1979 (EP&A Act), Protection of the Environment Operations Act 1997 (POEO Act), and Liquor Act 2007 all deal with entertainment noise. Any or all of the City of Sydney, Liquor and Gaming NSW or the NSW Police may issue warnings or fines under various legislation. Sometimes the conditions of consent imposed under the different legislation are not consistent.

This creates uncertainty for venues, even after getting a liquor licence and development consent. For example, if a noise complaint is made about a venue operating within its consent or licence conditions, it could still face infringement notices or fines for causing 'offensive noise' under the POEO Act. This is because the offensive noise test is subjective and does not consider the noise the venue is allowed to make under its consents.

Proposed changes

Action 6

Fair management of noise impacts by applying the 'agent of change' principle

The 'agent of change' principle is a planning approach that requires new development (the 'agent of change') to consider existing land uses. It asks new development to manage noise impacts through the design and construction of the building or the operations in the building. This could be applied to new live music venues and new noise-sensitive uses such as residential accommodation and hospitals, affected by noise from an existing live music venue.

Under this approach, a new residential development within 100 metres of an entertainment venue will have to assess the noise from the venue and design and build to manage the noise.

Similarly, a new live music venue or an existing venue intensifying its use would be required to protect existing noise-sensitive development from the noise it will make.

Applying the 'agent of change' principle is similar to the 'order of occupancy' approach used in liquor licensing. It aims to allocate responsibility for managing noise impacts in a fair manner. It creates more certainty for venues and residents when new development happens.

Case Study: Victoria

Victoria introduced the agent of change approach, which required new venues to be designed to protect any noise-sensitive residential uses within 50 metres. It also required new noise-sensitive residential uses to consider existing venues by meeting fixed internal noise levels in the dwellings. A design and development overlay was also introduced around the Etihad Stadium and North Melbourne industrial area, which required new residential or noise-sensitive uses, including refurbishments and conversions, to have noise reduction measures to achieve a specified maximum noise level in habitable rooms.

Case Study: San Francisco

The City of San Francisco addresses potential conflicts between entertainment venues and residential development by:

- informing residents about possible noise levels near venues (within roughly 100 metres) in industrial, commercial and mixed-use neighbourhoods
- requiring design features in new residential construction to promote the compatibility of residential uses and entertainment uses
- encouraging residential development and existing venues to use the best available noise control technologies and management practices

Discussion

- Do you think the 'agent of change' principle is a fair approach in determining who bears the responsibility for managing noise impacts?
- What risks does the 'agent of change' principle have for the establishment of new live music and performance venues?
- Will applying 'agent of change' within 100 metres of a venue capture development potentially affected by entertainment noise? Should a shorter or longer distance be used?
- How should we define venues and noise-sensitive uses?
- Should we keep a register of existing venues? Would it help manage future residents' expectations about the noise characteristics of the area? Would it help protect venues when development occurs nearby?
- Are there other approaches for fairly managing noise?



Figure 6 – Agent of change

Action 7

Planning controls for new venues and for new noise-sensitive development

The City's current planning controls place the responsibility for sound management solely on new venues, and are based on the distance to the nearest noise-sensitive receiver. The noise management requirements for a venue could change if a new residential development is built nearby.

To apply the agent of change principle, we need planning controls that fairly allocate responsibility for limiting noise impacts. These planning controls need to consider the nature of new developments and their context.

This will provide clearer and more appropriate requirements that will enable new venues and new residential or noise-sensitive development to better respond to their surrounding noise environment.

New venues

Currently, when a new venue is proposed it has to manage its noise impacts on neighbours. This is expressed in its development consent as 'decibels above background noise' measured at the closest neighbour. This is a relative level for the venue because it is set relative to the background noise and the distance from residential development. If either of these change, so does the amount of sound a venue can make.

We propose to improve certainty by converting this relative criteria to a fixed criteria, which will remain the same despite future changes to background noise and neighbouring development.

A new venue will be built and operated to achieve the 'venue design criteria', which will remain a 'decibels above background' level to protect residential amenity. Before the venue opens, noise testing will be used to set a fixed 'compliance level' immediately outside the venue. A 'monitoring level' inside the venue will also be set so the venue can easily check whether it's likely to breach the compliance level. The venue design criteria is proposed to be set at the threshold of hearing above background noise.

We will also encourage existing venues to apply to have the noise condition on their development consent changed from a 'decibels above background' to the fixed 'venue design criteria'.

New residential development

New residential or other noise-sensitive development will have to measure the existing noise within the neighbourhood. New buildings must be designed and constructed to maintain a reasonable overall noise level for the people who live and work in them.

To make sure this happens, new residential development will be required to meet a fixed 'residential design criteria' level. We can put conditions on the development consent that require specific design performance standards for noise management to ensure the criteria is met.

This approach will balance the residents' needs to have appropriate sound levels in their homes with the operational needs of businesses, including live music and performance venues.

We're also proposing to change the technical noise criteria including how noise is measured and the times at night when stricter noise levels are applied. These changes are discussed in the following section 'Technical changes to noise criteria and measurements'.

Discussion

- Do you agree with the proposed approaches for new residential development and new venues?
- Are there other ways to manage entertainment noise in areas with a mix of uses?



Action 8

New noise compliance guidelines to provide greater certainty and consistency

The overlap of planning, liquor and environmental legislation creates uncertainty and confusion for venues and the community. A venue may have a noise condition on its development consent, a different condition on its liquor license and still have an offensive noise complaint (with subjective criteria) under the POEO Act.

While the City cannot change NSW legislation, we can set processes to achieve more consistent outcomes when we're responsible for noise compliance. We will also work with NSW Government agencies on opportunities to remove inconsistencies.

The POEO Act has a subjective test for offensive noise, and defines it as any noise that because of its nature, level, character, quality or time:

- could be considered as harmful or likely to be harmful to a person outside the premises or
- interferes unreasonably with or is likely to interfere unreasonably with the comfort or repose of a person who is outside the premises.

Offensive noise can be assessed without a scientific noise measurement and without considering the noise level set by a development consent, which had undergone a thorough assessment.

To provide more certainty we'll prepare a noise compliance guideline that will aim to reduce inconsistencies between our compliance processes for offensive noise and development consents.

The City's officers can apply discretion when assessing noise complaints. The guideline will set objective criteria that an officer can use when applying their discretion. The proposed criteria are:

- the noise level a venue can make based on its development consent conditions
- the 'venue design criteria', if there is no noise condition on the development consent.

This will provide an objective criteria to support the officer's judgment of whether the noise should be considered offensive.

For example, an officer responding to a noise complaint relating to a venue must consider the noise it can make based on its consent conditions. If the level of noise the venue is making is within the allowable levels set in its conditions of approval, the officer may apply discretion to not take regulatory action.

Discussion

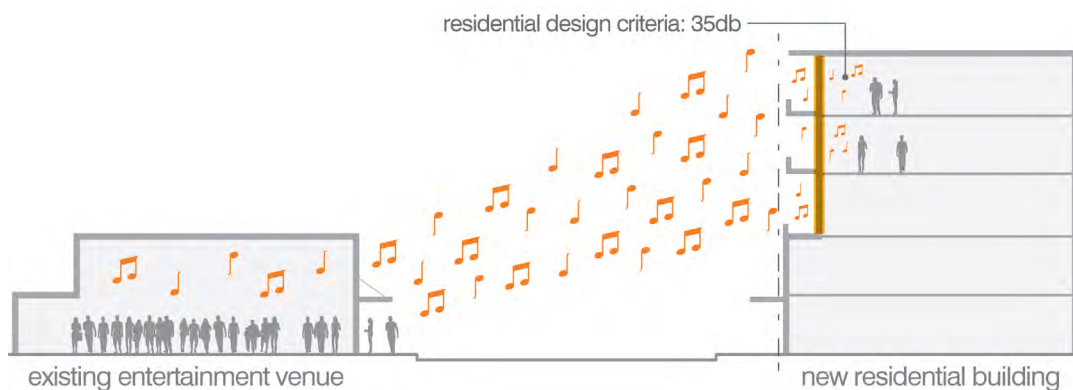
- What do you think about the proposed policy position relating to "offensive noise"? Do you think it's fair and reasonable?



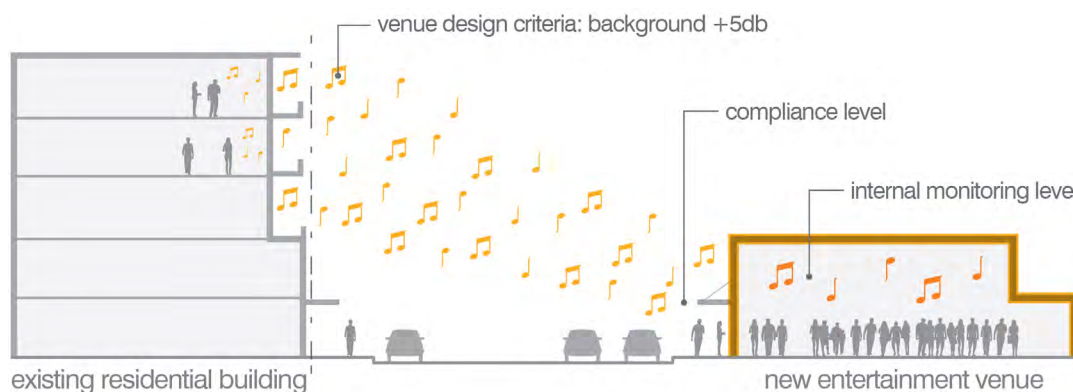
The current approach determines noise limits based on the nearest residential building. Existing venues may have to reduce their sound levels when a new residential building is built nearby.



The developer of a new residential building in the vicinity of an existing venue must undertake an acoustic assessment and will be responsible for protecting residents from noise in the area.



New residential development will need to be built to a 'residential design criteria' that protects residents from the sound a nearby venue can make.



New venues must be built to meet an acceptable noise level ('venue design criteria') at the residential boundary. Noise testing will set a 'compliance level' immediately outside the venue and a 'monitoring level' inside the venue.

Figure 7 – Noise criteria



Venue 505, Surry Hills / Image: Jamie Williams

Technical changes to noise criteria and measurements

We are proposing to include technical criteria in our development control plan to support our planning for entertainment noise. We will include an internal noise amenity criteria for new residential and noise-sensitive development and refine the noise criteria applied to new venues.

New residential development must be designed and built to manage existing noise levels in the area including the noise existing venues nearby can make. They will need to achieve an acceptable noise level inside the dwellings – the **residential design criteria**.

The criteria for new venues will be at the level where it becomes audible above the existing rating background noise level. This will maintain the amenity of existing noise-sensitive development. The **venue design criteria** will be set in decibels as a condition of consent for the venue. It will be calculated to represent the maximum sound levels that a venue can make at the boundary of the closest existing noise-sensitive development.

The proposed criteria for new residential or noise-sensitive development and venues are detailed in the table below.

Area	Noise Criteria	Technical Description
New residential/ noise-sensitive development	Residential design criteria	Bedrooms $L_{Aeq,(period)} < 35dB(A)$, day and evening $L_{Aeq,(period)} < 30dB(A)$, night time Other habitable areas $L_{Aeq,(period)} < 35dB(A)$, all times
New venues	Venue design criteria – set relative to existing rating background noise level and closest existing noise-sensitive receiver	Day and evening: $L_{Aeq, 5min} = \text{Rating background level} + 5 \text{ dB}$ Night time: $L_{Aeq, 5min} = \text{Rating background level} + 0 \text{ dB (current practice)}$

The City is considering using the following technical parameters to support the criteria for each development type:

Parameter	Proposal/Options
Sound level descriptor	Leq (equivalent continuous sound level)
Measurement period	<p>New residential/noise-sensitive development: 5-minute or 1-hr measurement period</p> <p>New venues: 5-minute measurement period for new venues</p>
Low-Frequency noise	<p>New residential/noise-sensitive development:</p> <p>Option 1</p> <hr/> <p>$L_{Ceq,5min} - L_{Aeq,5min} < 20$ dB, or</p> <p>If $L_{Ceq,5min} - L_{Aeq,5min} > 20$ dB, logarithmic summation of 10–80 Hz 1/3 octave bands shall not exceed $L_{Aeq,5min}$ 25 dB(A)</p> <p>Option 2</p> <hr/> <p>Not greater than $L_{Leq,5min}$ 43 dB in any one-third octave band between and including 31.5 Hz to 125 Hz in a bedroom not associated with the development, and</p> <p>Not greater than $L_{Leq,5min}$ 45 dB in any one-third octave band between and including 31.5 Hz to 125 Hz in a living room not associated with the development.</p> <p>New venues:</p> <p>Option 1</p> <hr/> <p>Broadband dB(A) criteria and 1/1 octave bands 63 Hz-125 Hz inclusive</p> <p>Option 2</p> <hr/> <p>Broadband dB(C) criteria and 1/3 octave bands 63 Hz-125 Hz inclusive</p>
Night time	<p>Inaudibility: No inaudibility criteria for night time</p> <p>Duration: 7 hours (current practice) or 8 hours (based on Night Noise Guidelines for Europe)</p> <p>Time/options: From 10pm, 11pm, or 12am Different time for weekend nights</p>
Measurement location	<p>New residential/noise-sensitive development: Measured inside bedrooms and other habitable areas in dwellings (current practice)</p> <p>New venues: Measured at the boundary of the closest affected existing noise receiver (current practice)</p> <p>Self-monitoring for venues: The fixed venue design criteria will be converted to an internal monitoring level, to allow venues to monitor their own noise from inside the premises.</p> <p>Compliance for authorities: The venue design criteria will be converted to an external compliance level, measured immediately outside the venue so that compliance authorities can assess noise without having to enter the venue.</p>

Sound level descriptor

Leq, or 'equivalent continuous sound level', is a widely-used parameter used for sound levels that fluctuate over time. This parameter better represents the noise a person is exposed to due to entertainment uses, compared to **L10**, that only represents the noise level exceeded just for 10% of the measurement period or **LMax** that describes the highest sound level spike during measurement. This parameter is also easier to apply as it is more mathematically robust when considering contributing levels from various noise sources.

Period

A 5-minute measurement period is proposed for new development. This will account for short-term changes to noise levels. Noise level changes are typical in areas with entertainment uses where sound levels fluctuate with activity, such as people opening doors or temporarily gathering in one area.

Alternatively, the 1-hour measurement period based on Sydney Development Control Plan requirements could be retained for new residential development.

Low frequency noise

Low frequency noise is difficult to mitigate as it passes through most building materials. Standard double glazing can block out mid-range noise such as people talking or traffic. However, low frequency, or bass, will still pass through. Its impact could therefore be accentuated due to its rhythm and the lack of mid-range noise to mask it.

The City is considering the following options on how to resolve issues with low frequency noise based on accuracy and simplicity of assessment:

New residential or noise-sensitive development

Option	Parameter	Description
1	<p>$L_{Ceq,5min} - L_{Aeq,5min} < 20 \text{ dB}$, or</p> <p>If $L_{Ceq,5min} - L_{Aeq,5min} > 20 \text{ dB}$, logarithmic summation of 10–80 Hz 1/3 octave bands shall not exceed $L_{Aeq,5min} 25 \text{ dB(A)}$</p>	<p>A two-step approach that checks the presence of low frequency noise and analyses ways of managing it</p> <p>The assessment uses the equivalent continuous technique analysed over a five minute period across the low frequency noise spectrum</p>
2	<p>Not greater than $L_{Leq,5min} 43 \text{ dB}$ in any one-third octave band between and including 31.5 Hz to 125 Hz in a bedroom not associated with the development, and</p> <p>Not greater than $L_{Leq,5min} 45 \text{ dB}$ in any one-third octave band between and including 31.5 Hz to 125 Hz in a living room not associated with the development</p>	<p>The assessment uses the equivalent continuous technique analysed over a five minute period across the low frequency spectrum of noise</p> <p>This is a variation of the Fortitude Valley Special Entertainment area approach in Brisbane</p> <p>The requirement is set as an internal noise level instead of a reduction coefficient at the facade</p>

New venues

Option	Parameter	Description
1	Broadband dB(A) criteria and 1/1 octave bands 63 Hz-125 Hz inclusive	Generally addresses patron and mid-range amplified frequency noise
2	Broadband dB(C) criteria and 1/3 octave bands 63 Hz-125 Hz inclusive	Generally addresses patron and mid low-frequency noise

Night-time period and audibility

The current approach to entertainment noise applies an inaudibility criteria between 12am to 7am for new development. However, audibility is subjective and difficult to predict. This contributes to uncertainty for venues and often leads to overly conservative and costly requirements to new development.

We propose to no longer use an inaudibility criteria in the night time period. Instead, new residential development will have to design to a fixed criteria of 30dB(A) to reduce sleep disturbance as suggested by the World Health Organisation's Guidelines for Community Noise. New venues will have a rating background noise level + 0dB consistent with the City's current practice and the NSW Industrial Noise Policy.

We will also consider changing the hours of the night time period when stricter noise levels are set. Currently, the night time period is for 7 hours from 12am to 7am. The Night Noise Guidelines for Europe suggest a minimum of 8 hours of night-time to protect 50 per cent of people from sleep disturbance. Depending on feedback we will consider alternatives such as an 8-hour period, starting the period at 10pm, 11pm or 12am and having a different period on weekend nights.

Measurement location

New residential development will be required to achieve the residential design criteria. This is a fixed internal sound level measured within bedrooms and other habitable areas, consistent with the City's current practice.

For new venues, the venue design criteria will be set at the property boundary of the closest affected existing noise receiver. Again, this is a continuation of current practice.

We will introduce two new locations where monitoring of noise can be carried out without access to either a dwelling or a venue. There will be an internal monitoring level to allow venues to monitor their own noise levels against their development consent. There will also be an external noise level to allow compliance authorities to check that the noise from the venue is consistent with that consent. These measuring locations are shown in Figure 7.

Noise measurement and natural ventilation

Measuring noise levels at residential dwellings with windows open for natural ventilation could make it very difficult and costly for new venues to meet the proposed noise criteria.

For new residential development, we propose to maintain the City's current practice of measuring noise levels with windows closed, as long as the building is designed to still get natural ventilation.

New residential buildings may need to employ good design to both manage the noise from venues and achieve natural ventilation.

This would allow commercial and night time areas of our city to maintain the entertainment and activity they have always had.

For new venues, the acceptable noise level will need to be achieved outside a dwelling at the property boundary of the closest existing residence. This will enable windows to be opened for natural ventilation or closed for additional protection from noise.

Discussion

- What do you think of the proposed criteria for new residential development and new venues?
- Do you agree with the proposed sound level descriptor and measurement periods?
- Can you think of other ways for the City to monitor compliance when responding to noise complaints?
- How could the City promote better self-monitoring of noise levels for venues?
- What time should the nominated night time be? Should it be from 10pm, 11pm, or 12am? Should it be for 7 or 8 hours?
- Should the night-time period vary on Friday and Saturday nights?
- How should the City deal with low frequency noise?
- Should the City measure noise with windows open or closed?





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