



30 November 2021

Attention:

[REDACTED]  
[REDACTED]

Department of Planning, Industry and Environment  
Locked Bag 5022  
Parramatta NSW 2124

**Inner West Council submission on the Fun SEPP Explanation of Intended Effect**

Dear [REDACTED]

Please consider this Inner West Council's submission on the Explanation of Intended Effect (EIE) for the Fun SEPP. We thank the Department for the opportunity to provide comment on the proposed reforms.

The bulk of this submission analyses the differences between the proposed complying development pathway for a small live music or arts venue in the Fun SEPP and the temporary small scale cultural activities reforms that were proposed under the Open and Creative Inner West planning proposal. This gives insight into why Council proposed certain limitations, and where the gaps are between the two.

We have also provided insight into how some of the other reforms proposed may impact on Council and how these uses are currently managed.

**1. Small live music or arts venues**

**"Open and Creative Inner West"**

Background

On 27 October 2020 Inner West Council resolved to endorse the *Open and Creative Inner West* planning proposal and forward it to the Department of Planning, Industry and Environment (DPIE) for a gateway determination. It was submitted to DPIE on 22 December 2021 and is currently under review. These upcoming reforms were flagged by DPIE and Council understands they are the reason it has not progressed.

There were two intentions of this proposal:

1. make it easier for shops, business premises and kiosks to open longer, and
2. make it easier to carry out small scale cultural activities within existing buildings.

To achieve this it was proposed to amend the three Inner West LEPs (or new Inner West LEP depending on the timing of gazettal) to create a new exempt development clause for the trading of shops, business premises and kiosks till 10pm (part 1) and a new Complying Development Certificate (CDC) approval pathway for temporary small scale cultural uses in certain business and industrial zones (part 2).

The intention of making it simpler for cultural activities to take place largely aligns between the Open and Creative Inner West proposal and the Fun SEPP. This submission outlines the differences between the proposals and makes recommendations for where these gaps may be closed. Although it is encouraged that the extended trading reforms are also made, Council understand that extended trading was identified under the supporting material for the Building Business Back Better reforms, and therefore are not discussed in this submission.

#### Council's Open and Creative Inner West Planning Proposal limitations

There are many similarities and differences between the provisions proposed under the Fun SEPP EIE and the Open and Creative Inner West planning proposal. For a simple comparison, a table is attached to this submission as Attachment 1. For convenience a copy of the Open and Creative Inner West Planning Proposal is attached to this submission as Attachment 2. Some of the significant gaps between the policies are discussed below.

#### *Definition of activities*

The intention in defining the range of activities that could take place under Council's planning proposal was to ensure that a vast range of possible cultural activities could take place. This includes activities that Council officers weren't aware of, or activities that may not be common place yet, so as not to stymie innovation and progress in the industry.

There is also an identified lack of not only performance and exhibition spaces, but rehearsal spaces for artists, musicians, dancers, actors and other creative industry workers. Any definition should also cater for this aspect of cultural production.

Whilst it's understood the definition of the activities that can take place may be premature in the EIE, the final definition should be broad enough to include the vast range of possible activities, as well as promote innovation and experimental activities in NSW.

### *Temporary or permanent*

Council's planning proposal intended to permit the activities through CDCs on a temporary basis, with a maximum of 52 days within a 12-month period. No such limit is identified in the Fun SEPP EIE.

Making activities temporary was done so for several reasons, including:

- Allowing permanent conversion of industrial buildings to cultural uses would create additional competition for space in industrial areas, possibly pushing out industries that require these spaces.
- It would give reprieve to neighbouring residents from noise and other amenity issues that may arise.
- It allows the introduction of these activities through a simplified CDC process as a trial, allowing Council to monitor for issues without the risk of permanent uses establishing.
- Planning Priority E4 of the Eastern City District Plan supports the use of exempt and complying pathways for arts and creative uses on a temporary basis. Inner Wests Local Strategic Planning Statement and Employment and Retail Lands Strategy align with this section of the District Plan.

### *Hours of operation*

Unlike the other provisions, Council's proposal goes further in permitting activities later into the night, up until midnight on Friday, Saturday and the day before a public holiday. These hours were selected for the following reasons:

- There is a general acceptance in most of the Inner West community that premises within business and industrial zones will trade until (and in some areas past) midnight on weekends.
- The hours proposed align with provisions under *Protection of Environment Operations Act 1979* (POEO Act) that manage noise. Division 7 of the *Protection of the Environment Operations (Noise Control) Regulation 2017* requires that noise from sound equipment and musical instruments not be heard in habitable rooms of residential premises outside of the hours identified in Council's proposal, being until 10pm Sunday to Thursday and midnight on Friday, Saturday and days before a public holiday. Whilst this provision manages noise from residential premises to residential premises, it is considered the best indication of community expectations.
- Feedback from local industry figures informed Council that in order for activities to be feasible, midnight trading was required on Friday and Saturday nights.

Whilst a midnight finish may not be acceptable for many local and neighbourhood centres, for the reasons listed above, Inner West would like the opportunity to expand the potential hours of operation with the LGA, or at least within certain areas. As an example, Council is entering into a

pilot program to deliver a Special Entertainment Precinct along Enmore Road. This precinct will be well suited to later trading limitations.

## **2. Amendments to the National Construction Code**

In developing Council's planning proposal, a significant barrier identified was the onerous building requirements imposed on class 9B building. Lowering the class of building for such uses to a class 6 is supported by Inner West and it achieves Action 1.8.7 of the Inner West Employment and Retail Lands Strategy which states: "Advocate for reforms to the National Construction Code to reduce regulatory requirements for small scale cultural venues and production spaces."

## **3. Outdoor Dining**

Inner West Council have seen a large influx of outdoor dining applications in the lead up to the 2021 summer. This was largely due to the inclusion of pubs and small bars in the exempt provisions for outdoor dining on footpaths as well as Council's own outdoor dining initiatives. Initiatives included waiving all outdoor dining fees, expanding outdoor dining onto the road way and opening up grants for businesses to employ musicians and entertainers in outdoor dining areas.

Inner West supports the continued exempt development pathway for pubs and small bars, as well as provisions under the Roads Act 1997 and Liquor Act 2007, giving Council the ability to reallocate road space and footpaths to other uses.

## **4. Artisan Food and Drink Industry**

Since this new land use definition was adopted in August 2018, The Marrickville industrial area near Sydenham Station has seen an influx of artisan food and drink premises. Whilst these new premises have diversified the hospitality offering in the area, they also pose a threat to industrial areas, as they push out uses that cannot operate in other business zones and increase land values.

Inner West's Employment and Retail Lands Strategy and Study considered the impact artisan food and drink premises are having on industrial lands. Action 2.6.1 of the strategy is to reduce the size of the retail component to 100sqm or 20% of GFA, whichever is lesser, as well as limiting the restaurant area to 150sqm. This is to ensure that manufacturing remains the primary purpose on site and any hospitality offering is ancillary.

The draft Inner West LEP partially aligns with this action, limiting the retail sales floor area to as described above. No limit has been placed on the restaurant/cafe component.

Inner West support artisan food and drink as a use, however urge caution in allowing this use to proliferate unchecked in industrial areas, with the unintended consequence of pushing industrial and urban services uses out of these areas. As unlike artisan food and drink premises, many uses involving industrial activities cannot exist in other business zones. They require ample separation from sensitive residential and commercial uses.

## **5. Temporary Events**

### Council owned and managed land

Inner West hosts a number of a large events on public land, including Newtown Festival, EDGE events, and other private events in Council parks and streets. To facilitate these events, Council typically utilise Section 68 of the Local Government Act 1993 to give approval.

Section 68 has proved to be a useful tool in issuing such approvals without requiring a development application. No specific changes are identified in the EIE apart from wrapping multiple clauses into one. No issue is raised with this change.

### Private Land

Under the Ashfield LEP 2013, events on special purpose zone, recreation zone or on unzoned land are permitted as exempt development, so long as they do not occupy the road or footpath or involve demolition or excavation, only occur during daylight hours and are no longer than 1 day.

This clause in the Ashfield LEP is set to expire with the future gazettal of the Inner West LEP, which does not include this clause.

Apart from this, Inner West has no other exemptions for events to occur on public or private land, with all events either requiring a Section 68 approval or a DA to Council.

Council staff do see scope for events of certain scales on private land to take place without the need for a DA, however the operational parameters and possible impacts have not been researched enough to give a considered response to the limitations listed in the Fun SEPP EIE.

However, some initial concerns that Council have include the following:

- Many smaller B1 – Neighbourhood Centre , B2 – Local Centre or other business zones are located within close proximity to residential land uses, and may have residential uses on site. 300 persons on these smaller sites may create unreasonable amenity issues such as noise, crowding, parking, traffic and poor waste management.
- Multiple adjacent sites may make use of these exempt provisions simultaneously in an orchestrated fashion. This could create large events with considerable impacts.

- It must be made clear that notification to Council is required, and that the site must be accurately identified, so Council are able to keep records on when events are taking place to ensure the frequency limits are not exceeded
- Bump in and bump out times (set up and pack up periods) need to be considered so that the impacts end at the desired time.
- When notified, adjacent residents should be given the contact details of event organisers.

## 6. Filming

Council do not object to increasing the number of days private land can be used consecutively for filming. A complete removal of the cap is however worrying, as it may turn highly desired sites into ongoing film locations, with all the associated impacts that follow. There are a number of such sites in the Inner West. Council recommend that the cap is raised, so that sites do not become quasi film studios without the proper operational considerations.

Any questions on the contents of this submission should be directed to [REDACTED]

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

## 7. Attachments

Attachment 1 – Comparison table of the Fun SEPP EIE and Open and Creative Inner West provisions

Attachment 2 – Open and Creative Inner West Planning Proposal



Table comparing the Open and Creative Inner West (OCIW) planning proposal and Fun SEPP provisions.

Shaded green rows identify an alignment in the policies.

Consideration	Open and Creative Inner West	Fun SEPP EIE	Comment
Use definition	<p>“A small-scale cultural activity” is defined as one or more of the following activities:</p> <ul style="list-style-type: none"> <li>• Live entertainment, including the presentation and/or rehearsal of music, film, theatre, spoken word, comedy, dance and/or the like, and/or</li> <li>• Exhibition and/or production of artwork, craft, design, media, film, music, image, immersive technology and/or the like, and/or</li> <li>• Teaching and/or discussion related to any of the above and/or skills, and public and social affairs</li> </ul>	Provide cultural activities to the public such as live music, visual arts displays, dancing, poetry and spoken word performances	Through consultation with the City of Sydney and local industry, Council identified a desire to keep the definition broad so as not to exclude forms of cultural expression.
Location	<p>Within; B2 – Local Centre, B5 – Business Development, B6 – Enterprise Corridor, IN1 – General Industrial or IN2 – Light Industrial zones</p> <p>May only take place on the ground floor of an existing building</p>	<i>No defined geographical area</i> not occupy more than 2 storeys in a building, including the ground floor	Specific zones were identified for activities under OCIW. This is to contain activities to existing centres and keep activities out of sensitive residential zones.

			This also compliments the capacity limits being higher in industrial zones where there is a lower likelihood of amenity conflicts.
Capacity	<p>The premises may accommodate 1 person (inclusive of staff, performers and patrons) per square metre of the area accessible by all patrons, up to a maximum of:</p> <ul style="list-style-type: none"> <li>• 80 persons in the B2 – Local Centre and B5 – Business Development, or</li> <li>• 150 persons in the IN1 – General Industrial, IN2 – Light Industrial and B6 – Enterprise Corridor zones</li> </ul>	Have a maximum occupancy limit of 300 people (including staff and performers) or 50 people if food and drink are provided	OCIW capacity limits were set prior to the lowering of the BCA class threshold. Lowering the capacity to 50 when food and drink is provided may create issues. Further explanation is required on whether this includes if just drinks are provided. Consultation with industry informed Council that food and/or drink sales are crucial to the financial viability of events and activities.
Sound management	The use must not result in the generation of “offensive noise” as defined in the <i>Protection of the Environment Operations Act 1997</i> at any affected residence or noise sensitive premises. This includes residential premises within the same site and building, as well as surrounding residences	<i>Not identified</i>	<i>No comment</i>



Hours of operation	<p>Restricted to between:</p> <ul style="list-style-type: none"> <li>• 8am and 10pm, Sunday to Thursday, and</li> <li>• 8am and midnight, Friday, Saturday and a day immediately before a public holiday</li> </ul>	<p>May operate from 7.00 am to 10.00 pm Monday to Saturday and 7.00 am to 8.00 pm on a Sunday or a public holiday</p>	<p>OCIW hours of use largely align with noise control conditions imposed by Council and Liquor and Gaming NSW. This is discussed further in the submission.</p>
Approval pathway	Complying development	Complying development	<i>Aligned</i>
Maximum floorspace	<i>No maximum</i>	300sqm	<i>No comment</i>
Pyrotechnics	Prohibited	Prohibited	<i>Aligned</i>
Fire safety	The premises must have a current annual fire safety statement	Display fire safety approvals such as a current fire safety certificate and emergency evacuation diagram	<i>Partially aligned</i>
Sanitary facilities	<i>No provision</i>	Provide sanitary facilities based on employee and patron numbers in F2.3 and Table F2.3 of the BCA for a Class 6 pub, restaurant, café, bar or equivalent	It is Council's understanding that this is required under the BCA regardless of a specific provision being in place.
Length of use	Temporary - may operate for no more than 52 days within a 12-month period and no longer than 4 consecutive days in a row.	<i>Not identified, assuming no limit</i>	<p>OCIW imposed a limitation due to a number of reasons:</p> <ul style="list-style-type: none"> <li>• It will not displace industrial and employment generating industries from industrial zones</li> <li>• It provides respite to neighbours</li> </ul>

			<ul style="list-style-type: none"> <li>It's in line with Clause 2.8 of the Marrickville LEP 2011</li> </ul> <p>This is discussed further in the submission.</p>
Waste collection	Where there is no condition relating to waste management, waste must not be placed on the public way at any time, and glass is not to be emptied or transferred anywhere in a public place. Collection may only take place between 7am and 7pm, daily	<i>Not identified</i>	The collection of waste for commercial uses can create significant ongoing amenity issues for neighbours. A condition should be imposed on all CDC's to limit waste collection times, and the collection of un-smashed glass in a public place due to the noise levels it creates.



# **Inner West Council**

**Planning Proposal**

***Open and Creative Inner West: facilitating  
extended trading and cultural activities***

**IWC/PPAC/2020/0005**

**Planning Proposal**

**Open and Creative Inner West: facilitating extended trading and cultural activities**

**IWC/PPAC/2020/0005**

**Date: 15 December 2020**

**Version: 2**



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## Introduction

A vibrant, diverse and safe night-time economy is crucial to the liveability of the Inner West for local residents, workers and visitors. The night-time economy also presents opportunities for the expansion of the creative and cultural sectors, that are strongly tied to the identity, vibrancy and diversity of the night-time economy. It's also an opportunity to expand land use efficiencies, with the utilisation of land for a variety of purposes throughout the day, evening and into the night.

The creative sector is intrinsic to the identity of the Inner West. Council data values local creative and cultural industries at \$1.4 billion per annum, employing 6,500 people. It's estimated to employ 1 in 10 Inner West residents, with over half of these in the cultural production space. This is the highest of all Australian creative hotspots. It is crucial that Council protect and grow this sector through initiatives that make it easier to establish spaces for the production and exhibition of culture.

Certain pockets of the Inner West are established night-time economies, including Newtown, Enmore, Leichhardt, Balmain, Rozelle and Ashfield. There are also areas with emerging night-time economies, including Marrickville, Summer Hill and Dulwich Hill. These established and emerging areas will benefit from changes in local planning provisions to expand business offerings and cultural activities throughout the day and into the night.

Whilst the lock out laws did not directly affect the Inner West, the narrative of Sydney as a night-time City has taken a severe hit since their introduction in 2014. Since then a number of smaller and larger venues have closed. These changes will help to reverse this reputational damage and make spaces for artists, performers and other cultural producers to interact with residents, workers, visitors and tourists.

This impact has been amplified with the COVID-19 pandemic. The cultural and creative sectors have taken a huge hit during this time, with many individuals and businesses not able to work throughout the pandemic. Ongoing risks and changes to the operation of premises continue to keep this industry in a state of uncertainty. Amendments to planning controls to support these sectors is crucial.

In order to boost the local economy, this planning proposal proposes two new clauses under the three relevant Inner West Local Environmental Plans (LEPs); Leichhardt LEP 2013, Marrickville LEP 2011 and Ashfield LEP 2013;

1. **Extended trading** – make a new exempt development clause to permit lawful shops, business premises and kiosks to trade between 7am and 10pm, seven days per week in local centres.

2. **Cultural activities** – make a new complying development clause to facilitate temporary small-scale cultural activities in local centres, industrial areas and other business zones.

These changes will reduce regulatory barriers for participation in the night-time economy. They will remove approval processes for certain businesses trading till 10pm in local centres and establish simpler approval pathways for cultural activities in existing buildings.

This planning proposal seeks to introduce exempt and complying development provisions that will facilitate the above uses while ensuring neighbourhood amenity, fire safety, crowding, noise and land use are protected.

Exempt development is low impact development that can be carried out without the need for any formal approval. In order to be considered exempt, a development must however match a set of provisions under an Environmental Planning Instrument, such as an LEP.

Complying development enables development without the need to obtain development consent from Council, but rather issue of a Complying Development Certificate from a Principle Certifying Authority (PCA). Similar to exempt development, to be considered complying development the proposal must meet a set of criteria set out under an Environmental Planning Instrument.

This Planning Proposal has been made in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* and the Department of Planning, Industry and Environment's 'A guide to preparing planning proposals' and 'A guide to preparing local environmental plans'.

The draft Inner West LEP 2020 is currently with the Department of Planning, Environment and Industry awaiting finalisation. Although it's likely to be in force when this proposal is being formally drafted, this Planning Proposal proposes amendments to the three existing Inner West LEPs, being;

- Leichhardt LEP 2013 (LLEP 2013),
- Marrickville LEP 2011 (MLEP 2011), and
- Ashfield LEP 2013 (ALEP 2013).

For brevity's sake, they shall be referred to in this report as "the three Inner West LEPs".

## Background

Council has endorsed Notices of Motion and resolutions supporting the development of this planning proposal. These are listed below:

- On 24 October 2017, Council instructed staff to work collaboratively with City of Sydney counterparts to reduce inconsistencies between planning controls on either side of King Street, Newtown. It also requested staff begin work on new planning

controls to encourage late night trading and small-scale arts, live performances and cultural activities without needing to obtain development consent from Council.

- In May 2018, Council considered a report explaining the possibilities and implications of utilising exempt and/or complying development to facilitate extended commercial trading and small-scale cultural uses. In response to this, Council endorsed the continued collaboration between Inner West and City of Sydney staff.

Since this time, City of Sydney and Inner West Council staff have met multiple times and separately worked to refine provisions for their respective Council areas.

In June 2020, the City of Sydney Council endorsed their Open and Creative City suite of reforms for submission to the Department of Planning, Industry and Environment for a Gateway determination. This included, among other things, amendments to the Sydney LEP 2012 to include;

- Exempt development for the extended trading of shops, businesses premises and kiosks between 7am and 10pm within certain zones and to certain criteria, and
- Exempt development for temporary small-scale cultural activities between 7am and 10pm for a maximum of 26 days per year.

To achieve greater business participation in the night-time economy, Inner West proposes exempt provisions for extended trading hours of shops, business premises and kiosks that are largely similar to the City of Sydney. This is considered the best approach to facilitate a vibrant and balanced night-time economy in local centres and achieve greater consistency along King Street, Newtown which is the border of the LGAs.

The approach proposed for the Inner West to support the growth and establishment of small-scale cultural activities differs from that of the City of Sydney, seeking to facilitate a complying development approval pathway for temporary small-scale cultural activities. This is due to the limitations of exempt development and the desire for more intense activities with longer trading hours and greater number of days, alcohol service and larger capacities.

External consultation has been undertaken in the form of a roundtable discussion late in 2019. This included local creative and cultural industry figures, State Government agencies, local professionals in the compliance, building and planning industry and Inner West Council staff.

Internal consultation has also been undertaken, with Council's Legal, Building Services, Environmental Health, Compliance, Development Assessment, Social and Cultural Planning and Living Arts sections.



## Part 1 Objectives and intended outcomes

The objectives of this proposal are to;

- Encourage a diverse, vibrant and safe day and night-time economy throughout Inner West main streets and local centres, as well as in cultural and creative sector hot spots,
- Strike a balance between a strong night-time economy and residential amenity,
- Reduce regulatory barriers to the establishment of new cultural production, exhibition and teaching spaces,
- Create opportunities for residents, workers, visitors and tourists of the Inner West to experience the work of local cultural and creative sectors,
- Align with similar initiatives undertaken by the City of Sydney Council, especially along King Street which comprises the boundary between the LGAs.

To achieve the intended outcomes, it is proposed to amend the three Inner West LEPs to:

1. Permit extended trading of shops, business premises and kiosks between 7am and 10pm, seven days per week in local centres as exempt development, and
2. Make a new complying development approval pathway for the establishment of temporary small-scale cultural activities in certain zones and consistent with specific criteria.

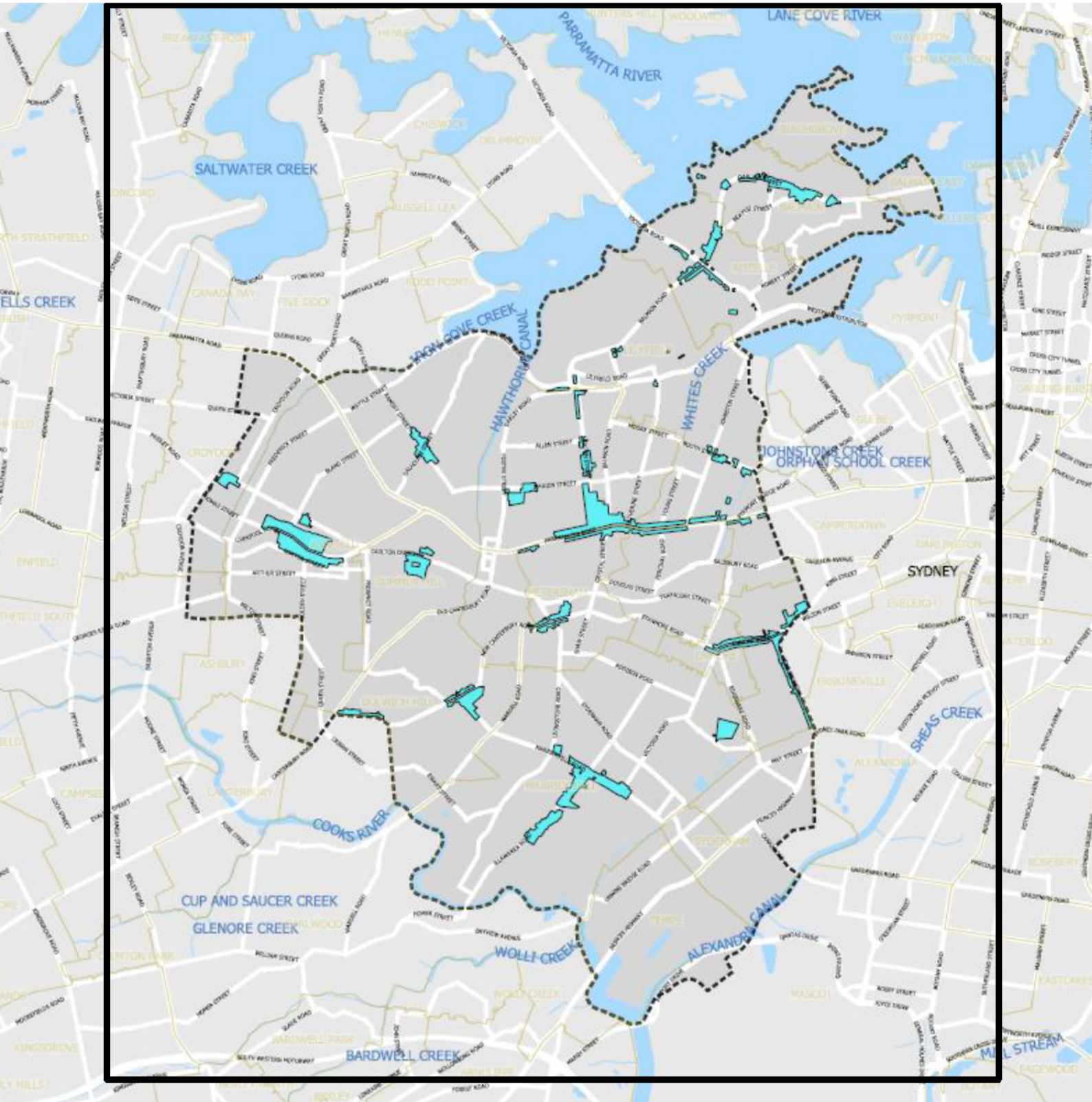
## Part 2 Explanation of provisions

This Planning Proposal seeks to make two amendments to the three Inner West LEPs. These amendments are detailed below.

### 1. Extended trading

The intent of this amendment is to make it easier for shops, business premises and kiosks to open longer. To achieve this, amendments are proposed to Schedule 2 of the Inner West LEP 2020 to allow these uses to trade between 7am and 10pm, seven days per week as exempt development. That is, a lawful use can trade in accordance with these hours without the need to obtain approval, provided specified criteria are satisfied.

To ensure impacts to the neighbourhood amenity are limited, this amendment will only apply in the B2 – Local Centre zone. This zone covers Council's larger and established local commercial centres that are active throughout the day and night and are typically located along main roads. Figure 1 below identifies the applicable land.



Blue

The hours of 7am to 10pm were selected as these are the typical hours of trade expected and experienced in local centres and eligible uses are unlikely to generate amenity issues

between these hours. Licensed premises have been excluded. This lowers the risk generated by the sale and/or consumption of alcohol on site. To further reduce the potential for noise impacts, outdoor areas are also excluded from being used via the proposed exempt development provisions. The hours are also consistent with those proposed by the City of Sydney. This will make exempt trading hours for these uses consistent along King Street.

Provisions are recommended to ensure that existing conditions applying to the site from an active consent are adhered to if they relate to noise, car parking, loading and unloading, vehicular movements, traffic generation, waste management and/or landscaping. If a condition for waste collection times is not present, the exempt provisions will require that waste collection only be carried out between 7am and 7pm, seven days per week. Applying existing conditions from a valid consent ensures that nuanced development assessment matters already conditioned by Council will continue to apply to a site, reducing the potential for amenity issues and conflicts to arise from the extended trading hours.

It is proposed that Schedule 2 of the three Inner West LEPs be amended in the following manner:

- Include a new clause that permits a lawful shop, business premises or kiosk to trade between 7am and 10pm, seven days per week as exempt development, subject to the following criteria;
  - be located in a B2 - Local Centre zone,
  - not be a licensed premises in accordance with the definition under the *Liquor Act 2007*,
  - exclude the operation of outdoor areas,
  - not contravene existing conditions of an active consent in regards to noise, car parking, loading and unloading, vehicular movements, traffic generation, waste management or landscaping, and
  - If no existing condition applies to waste collection, that collection of waste only be carried out between the hours of 7am and 7pm, seven days per week.

## **2. Small-scale cultural activities**

The intent of this amendment is to make it easier to carry out small-scale cultural activities within existing buildings. These activities are intended to be held during the day and night in commercial, industrial and employment areas throughout the LGA.

To achieve this, amendments are proposed to Schedule 3 of the three Inner West LEPs to make a new development approval pathway for the use of existing premises for temporary small-scale cultural activities.

### Defining a small-scale cultural activity

A small-scale cultural activity is defined as one or more of the following activities:

- Live entertainment, including the presentation and/or rehearsal of music, film, theatre, spoken word, comedy, dance and/or the like, and/or
- Exhibition and/or production of artwork, craft, design, media, film, music, image, immersive technology and/or the like, and/or
- Teaching and/or discussion related to any of the above and/or skills, and public and social affairs.

The definition is intended to be broad enough to capture all facets of cultural production, exhibition, performance and teaching. It's also intended to allow for ancillary activities to take place, such as the retail of goods that are related to a class being held on site.

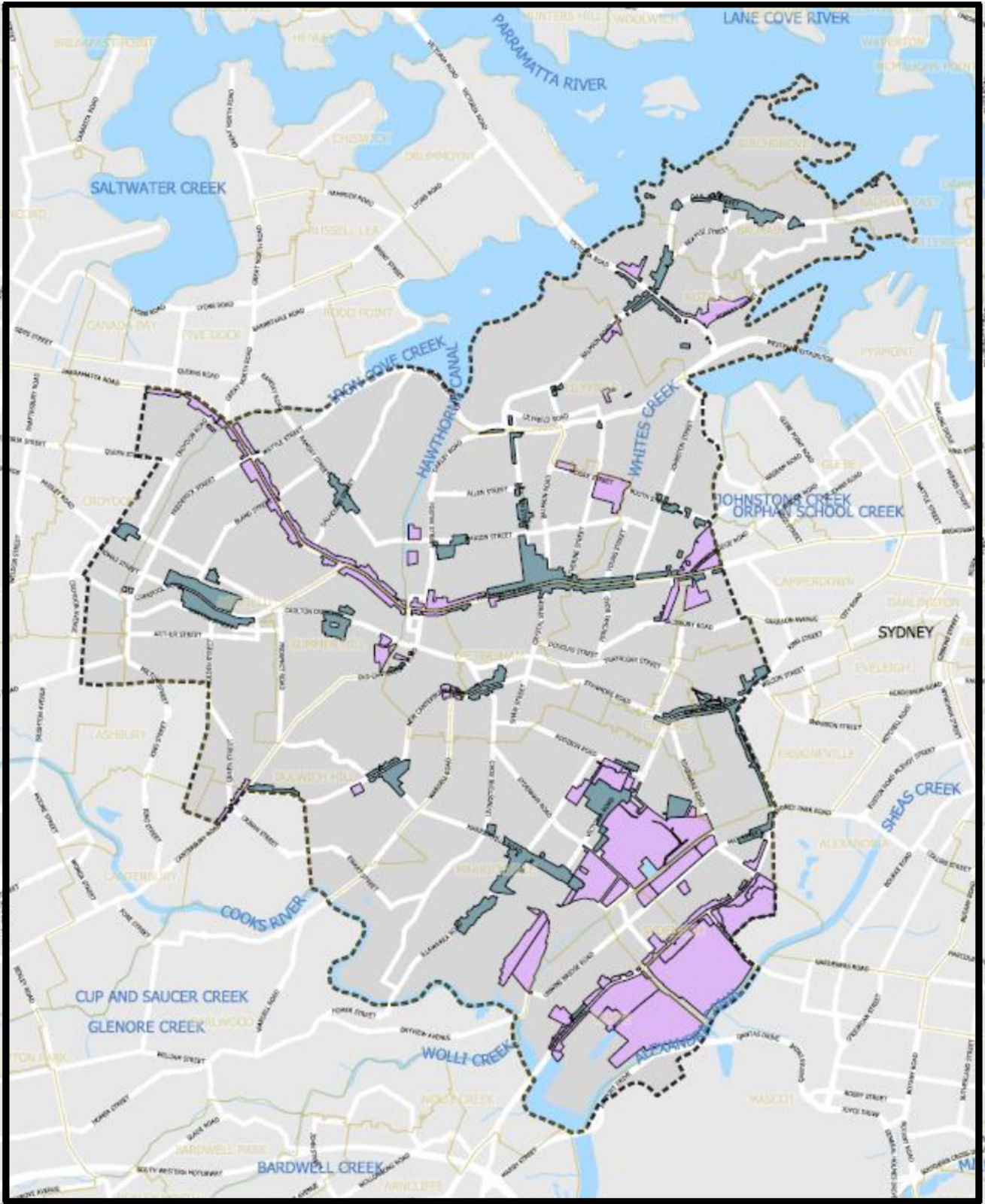
### Applicable zones

Activities permitted under these provisions will be limited to certain business and industrial zones. This is to ensure uses are focussed in areas which currently experience higher levels of activity and noise, as well as strategically locating these activities in areas that are well serviced by public transport. Locating uses within established centres and areas of high economic activity is also considered to have an economic benefit to existing businesses.

The applicable zones are:

- B2 – Local Centre,
- IN1 – General Industrial,
- IN2 – Light Industrial,
- B5 – Business Development, and
- B6 – Enterprise Corridor.

Figure 2 below shows the applicable zones as highlighted throughout the LGA.



activities through the proposed provisions. Dark blue indicates a maximum capacity of 80 persons and purple a maximum of 150 persons

### Temporary nature

It is proposed that the complying development approval pathway will only enable small-cultural activities to be carried out on a temporary basis. Complying development does not allow for a comprehensive assessment of potential issues, and to allow the activities in perpetuity could displace valuable uses, particularly in the IN1 and IN2 zones.

Council has proposed that Clause 2.8 of the Draft Consolidated Inner West LEP permits the temporary use through a DA for a maximum of 52 days in a 12 month period. The limitation applies, in part, to protect surrounding amenity. For consistency, the 52 day limitation established under this clause is being carried over to these provisions.

As well as limiting the number of operating days within a 12 month period to 52, activities will also be limited to operating no more than four consecutive days in a row. This will give respite to the surroundings from a prolonged, uninterrupted use of a premises.

### Hours of operation

The proposed maximum hours of operation under the provisions are:

- 8am and 10pm, Sunday to Thursday, and
- 8am and midnight, Friday, Saturday and a day immediately before a public holiday.

These hours were specifically chosen to address three considerations; community expectations, existing legislation and feasibility of the use. The rationale is explained below.

#### *Community expectations*

The hours generally align with community expectations and existing hours of use within the applicable zones, being within local centres, industrial and employment areas and along main roads. Many cafes, shops, business and office premises open well before 8am, however due to the intensity and possibility of live performance, 8am was deemed an appropriate opening time.

Similarly, a 10pm finishing time between Sunday and Thursday is generally expected in these areas, with restaurants, bars, pubs and other hospitality, entertainment and food and drink uses operating to these times.

#### *Existing legislation*

The hours proposed align with provisions under *Protection of Environment Operations Act 1979* (POEO Act) that manage noise. Division 7 of the *Protection of the Environment Operations (Noise Control) Regulation 2017* requires that noise from sound equipment and musical instruments not be heard in habitable rooms of residential premises outside of the hours identified by this proposal.

Whilst this provision manages noise from residential premises to residential premises, it is considered the best indication of community expectations.

#### *Feasibility*

During a roundtable discussion, local creative and cultural industry figures informed Council that for activities of the proposed scale to be feasible, operating past 10pm on Friday and Saturday nights is crucial, especially if the consent is temporary.

Whilst opening to midnight on Fridays and Saturdays does raise the possibility for disturbance to amenity, these uses will be located within existing local centres and employment areas, many with existing and emerging night-time economies. The relatively low capacity limits will ensure that the intensity of uses and noise created by patrons is limited.

### Capacity limits

Limiting capacity of a premises is an efficient tool to manage the intensity of a use and the impact on surrounding amenity. As the activities are to be facilitated across several zones with varying levels of baseline amenity, different capacity limitations are proposed to be implemented dependent on the zone.

Under the proposed consolidated Draft Inner West LEP, residential uses are permitted with consent in the B2 – Local Centre and prohibited within the B5 – Business Development zone. Additional permitted uses allowing certain types of residential accommodation apply to many B5 zones in the LGA. Due to this, the maximum capacity of a premises utilising these provisions is proposed to be 80 persons. This includes staff, patrons, performers, etc.

Within IN1 – General Industrial, IN2 – Light Industrial and B6 – Enterprise Corridor zones, a maximum capacity of 150 persons is proposed. This will permit larger gatherings and more intense activities in areas with limited residential uses and less opportunities for conflicts in amenity.

The additional capacity afforded to IN1, IN2 and B6 zones is higher as these areas are less prone to amenity conflicts, as residential uses are not typically permitted. Many of these zones accommodate businesses and uses that trade well into the night and often 24 hours. The building typology typical of these zones lends itself to higher capacities without causing alarm for the safety and comfort of the occupants

Regardless of the zone, a maximum of 1 person per square metre is proposed to ensure that there is adequate space within a premises to ensure the health and safety of occupants. This is also consistent with recommended capacity limitations under the National Construction Code (NCC).

These capacity limits were selected to strike a balance between protecting amenity, meeting the needs of industry regarding feasibility and respecting the limits of complying development for the approval of such uses.

### Alcohol

During preliminary consultation with industry figures, advice was received that selling alcohol is a significant income stream for cultural events. Often it is the tipping point to make

an event financially feasible. Selling alcohol for consumption on site is not proposed to be excluded from the provisions. This will allow operators to either utilise an existing licence on site, obtain a new liquor licence or alternatively contract a caterer with their own licence to provide alcohol on site.

There are potential issues that arise from selling alcohol, however it is considered that with strict regulation already in place, the temporary nature of the uses and location in areas with established and emerging night-time economies, the benefits outweigh the potential impacts. This is discussed in greater detail within the answer to question nine under Part 3, Section C of this planning proposal.

### Noise

The impact of noise generated by activities has been a central consideration in the formulation of the provisions. The applicable zones, temporary nature, hours of operation and capacity limits discussed thus far have been prepared with consideration of the potential for noise being generated by the activities and creating disturbance for neighbouring residents.

Noise limitations are already in place through existing NSW legislation. Under the POEO Act 1997 any noise considered offensive is not permissible. Whilst it can be hard to determine what constitutes offensive noise, there is NSW case law and guidelines established to define such noise.

Due to the existing complexity of noise regulations, it was considered regressive to impose another level of regulation. The limiting factors imposed by the aforementioned provisions, utilisation of the existing offensive noise test and the powers Council has to impose orders to prevent ongoing offensive noise, are considered the most appropriate methods of limiting noise.

A sign will be required to be installed during the operation of small-scale cultural activities giving the public direct contact details to the operator(s) of the activity. This will ensure if any issues arise, they will be able to be dealt with quickly and directly.

### Fire safety, disability access and access to sanitary facilities

The safety of patrons, staff and performers within host buildings has been a primary consideration in the development of provisions. Using complying development as an approval pathway, there are a number of checks and considerations that are required by a principle certifier to ensure a building is appropriate for a specified activity. Utilising these provisions does not exempt an activity from strict compliance with the National Construction Code (NCC).

A provision is also proposed to limit activities to the ground floor of existing buildings. Ground floor premises are better equipped to providing adequate fire safety and disability access, limiting potential for the use of inadequate premises.

### Other criteria



A number of other criteria are proposed to ensure the operation of cultural activities align with community expectations and are compatible to neighbourhood amenity.

It is proposed that the conditions of any active consent on the site relating to car parking, vehicular movement, traffic generation, loading or waste management are adhered to. If no condition is present for waste management, waste collection from the premises must take place between 7am and 7pm, seven days per week.

It is proposed that Schedule 3 of the three Inner West LEPs be amended in the following manner:

- Insert a new clause that creates a complying development approval pathway for small-scale cultural activities, subject to the following criteria;
  - Small-scale cultural activities be defined as one or more of the following:
    - Live entertainment, including the presentation and/or rehearsal of music, film, theatre, spoken word, comedy, dance and/or the like, and/or
    - Exhibition and/or production of artwork, craft, design, media, film, music, image, immersive technology and/or the like, and/or
    - Teaching and/or discussion related to any of the above and/or skills, and public and social affairs.
  - Must be located in the B2 – Local Centre, B5 – Business Development or B6 – Enterprise Corridor zones, IN1 – General Industrial or IN2 – Light Industrial zones.
  - The activity may only take place on the ground floor of an existing building.
  - Hours of operation are restricted to between:
    - 8am and 10pm, Sunday to Thursday inclusive, and
    - 8am and midnight, Friday and Saturday and a day immediately before a public holiday.
  - That activity is temporary and may operate for no more than 52 days within a 12-month period and no longer than 4 consecutive days in a row.
  - A logbook of the hours and days the activity has taken place must be kept on site and be reviewable by Council officers upon request.
  - The premises may accommodate 1 person (inclusive of staff, performers and patrons) per square metre of the area accessible by all patrons, up to a maximum of:
    - 80 persons in the B2 – Local Centre and B5 – Business Development, or

- 150 persons in the IN1 – General Industrial, IN2 – Light Industrial and B6 – Enterprise Corridor zones.
- The premises must have a current annual fire safety statement
- There must be no building works undertaken, unless works constitute exempt development, are approved through a Complying Development Certificate, or have development approval.
- The use of pyrotechnics, theatrical smoke, nitrate films and dangerous goods are prohibited.
- The activity must not contravene any existing condition of any active development consent that applies to the land relating to car parking, vehicular movement, traffic generation, loading or waste management. Where there is no condition relating to waste management, waste must not be placed on the public way at any time, and glass is not to be emptied or transferred anywhere in a public place. Collection may only take place between 7am and 7pm, daily.
- During an event, display in a clearly visible public place outside of the premises, a sign including the following information in bold letters not less than 25mm in height on a contrasting background:
  - The event name, including the duration and completion date, and
  - The name and contactable telephone number of the person responsible for the event whilst in operation.
- Public liability insurance to the minimum insured value of \$20,000,000 must be maintained throughout the operation of the venue.
- The use must not result in the generation of “offensive noise” as defined in the *Protection of the Environment Operations Act 1997* at any affected residence or noise sensitive premises. This includes residential premises within the same site and building, as well as surrounding residences.

## Part 3 Justification

### Section A – Need for the planning proposal

#### Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

The planning proposal is a response to actions in Council’s recently endorsed Local Strategic Planning Statement (LSPS) as well as other external triggers. These triggers include the progress of similar reforms being undertaken by neighbouring City of Sydney Council, whom Inner West have collaborated with throughout the development of this planning proposal.

The strategies, reports and other triggers that support the planning proposal are discussed below.

#### Local Strategic Planning Statement (LSPS) & Employment and Retail Lands Strategy (ERLS)

Endorsed in March 2020 by Council and the Greater Sydney Commission, the LSPS sets out the vision for the Inner West in 2036 and lays out a set of actions that will be taken to achieve that vision. It is organised into 14 planning priorities. Planning Priority 9 – “a thriving local economy” directly supports this planning proposal. This planning priority is accompanied by a single action; Action 9.1 to implement the ERLS.

The ERLS provides a strategic approach for the management of land within the LGA to; maximise productivity, facilitate job growth and contribute to the long-term prosperity of the Inner West. It includes actions to support a vibrant night-time economy. This includes three actions directly achieved by this planning proposal. They include the following:

- Action 1.8.3: Investigate exempt development approval pathways for night-time trading by certain commercial uses.

The proposal to implement exempt development pathways for shops, business premises and kiosks in the B2 – Local Centre zone supports this action. These commercial uses have been specifically chosen as they are most likely to operate within and add vibrancy to the night-time economy without compromising neighbourhood amenity. Including other uses like food and drink premises has the potential to create issues requiring a level of assessment with nuanced considerations and conditions. They are not appropriate for exempt development.

- Action 1.8.4: Investigate exempt and/or complying development approval pathways for small scale, low impact cultural uses and production venues.

The proposal to implement a complying development approval pathway for small-scale cultural activities directly achieves this action. In order to identify the right approval pathway, consideration was given to both exempt and complying development. Due to the complexity of considerations and the limitations of self-assessment (which would be necessary under exempt development), complying development was deemed the best approach. As discussed in the previous section, a number of limitations on the activities are proposed to contain potential impacts. These include the temporary nature, capacity limits, hours of operation limits and applicable zones.

- Action 1.8.7: Work with the City of Sydney to develop a joint strategy for land use planning and night time economy on King Street, Newtown.

The City of Sydney has been an earlier adopter and major influence in this area of reform. Their Open and Creative City body of work has been a matter of public discussion for a number of years and Council recently endorsed a planning proposal for submission to Gateway. The proposal includes exempt provisions for extended trading of shops, business premises and kiosks as well as exempt provisions for temporary small-scale cultural activities.

Inner West Council officers have been in communication with counterparts from the City throughout the development of our planning proposals. The Inner West proposal is made partly in response to that of the City and with consideration of the benefits of keeping relative harmony in planning controls along King Street, Newtown which comprises a boundary between the Councils.

The main difference between the proposals for small-scale cultural activities is that the City of Sydney are pursuing exempt development provisions. The decision to permit these activities as complying development in the Inner West has resulted from consultation with industry and internal advice from Council's Building Services Unit.

#### Other external triggers

- Sydney Fringe Festival: An Anthology of Space 2015-2018

In 2018, Sydney Fringe Festival published a report regarding the experiences of artists and event operators utilising different premises in Sydney for creative industries and the performing arts sector.

Among other things, they concluded that Council development assessment processes were onerous for temporary uses and require considerable information that is expensive to obtain. The process is also lengthy which incurs costs and effects feasibility. Uncertainty in the process was also identified as a key inhibitor.

A number of recommendations came out of this report. Among these were the creation of clearer pathways and streamlined applications for temporary uses.

This planning proposal directly addresses these two recommendations by making simpler and clearer complying development provisions for temporary small-scale cultural activities. The definition of a cultural activity has been devised in part to permit the range of activities identified in this report and hosted by the Sydney Fringe Festival.

Other barriers identified in this report, specifically those created by onerous building classifications under the National Construction Code (NCC) cannot be directly solved by Council through planning reform. These issues will continue to persist until amendments are made to the NCC which remove the requirement for small-scale uses to comply with the 9B (assembly building) building classification.

The COVID-19 pandemic has had a considerable impact on the already struggling performing arts, cultural, creative and hospitality industries. Ongoing risks and changes to the operation of premises continue to keep this industry in a state of uncertainty. Amendments to planning controls to support these sectors will be crucial to the post COVID-19 economic recovery in the Inner West and Sydney.

Finally, the work being undertaken by the City of Sydney has been another driver. This planning proposal will create a more consistent approach to planning for the night-time economy and will allow greater economic and social vibrancy along King Street.

## **Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

In consideration of the intended purposes of this proposal, two options were explored. These are discussed below.

### Option 1 - Streamline DA processes

One option considered to facilitate temporary cultural activities was refining Council's development assessment process to create simplified approval pathways. This would not require changes to the LEP, but may trigger changes to Council's DCPs to incorporate new assessment criteria for such activities.

This option would not provide the clear pathway and certainty required. This is largely due to Council's inability to amend the considerations for assessment under the EP&A Act for certain application types and the requirement for Council to uphold these considerations for all development applications. Regardless of the DCP or any other Council policy, it was likely that many DAs would encounter issues that would lead to extended delays and incur significant costs, which would be borne by applicants.

### Option 2 – Exempt and Complying approval pathways (selected)

It was considered that exempt and complying development provide the clearest pathways to approval and are less onerous with lower associated costs and shorter turn-around times than the DA process.

Complying development requires a level of assessment that is adequate for smaller temporary uses. This includes ensuring the zone is applicable, the activities fit within the definition of a small-scale cultural activity and that conditions are reiterated to event organisers and managers regarding hours of operation, duration, capacity limitations and prohibition of certain activities such as use of pyrotechnics and nitrate films. It also requires that inspections are completed by a Principal Certifying Authority, ensuring that the building is adequate for such an activity in terms of fire safety, ventilation, access for persons with a disability and sanitary facilities.

Due to these considerations, option 2 was selected as the best approach to achieving the objectives relating to small-scale cultural uses.

A planning proposal is the only means available to Council to introduce exempt and complying development provisions for extended commercial trading and small-scale cultural activities.

## **Section B – Relationship to strategic framework**

**Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?**

### ***Greater Sydney Regional Plan: A Metropolis of Three Cities***

The Plan sets a 40-year vision (to 2056) and a 20-year plan to manage growth and change. It sets an overarching strategic planning policy to align land use, transport and infrastructure outcomes for Greater Sydney concurrently with Future Transport 2056 (Transport for NSW) and State Infrastructure Strategy (Infrastructure NSW). The Plan provides a set of objectives under the 10 Directions set out in Directions for a Greater Sydney 2017-2056.

Objective 9 of the Plan is directly relevant to this proposal. It states that “Greater Sydney celebrates the arts and supports creative industries and innovation”. This objective seeks to foster and grow Sydney as a creative region with artistic and cultural expression encouraged. To do this, it suggests the simplification of development approval processes or the use of exempt and complying development approval pathways for temporary creative uses in the night-time economy.

The objective pushes for the growth of a vibrant and safe night-time economy that will enhance Sydney’s standing as a global city and meet the social and recreational needs of residents, workers, tourists and visitors.

This planning proposal will assist in achieving this objective. It will unlock potential for the extended trading of businesses without needing regulatory approval. Removing this barrier will add to the vitality and diversity of commercial services in established local centres throughout the day and into the night.

The proposed complying development provisions create a clear approval pathway for the establishment of temporary uses for cultural activities, reducing regulatory burden and fostering innovation and entrepreneurship. This will create opportunities for cultural experiences in the night-time economy, complimenting existing businesses and making use of under-utilised spaces.

### ***Eastern City District Plan***

This Eastern City District Plan is a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney. It further explores the objectives of the Greater Sydney Regional Plan as discussed above.

A number of Planning Priorities under the Plan are directly supported by this proposal. They include;

- E4 – Fostering healthy, creative, culturally rich and socially connected communities.

The Inner West is specifically mentioned under this planning priority with relevance to this proposal. It states that “...it is important that the capacity for creative industries, arts and cultural uses near to major cultural institutions be protected, for example in the areas of the Inner West...”.

The Inner West is home to a number of cultural institutions. Some of these include the Enmore Theatre, Carrington Road creative precinct, the Red Rattler and Factory Theatres in Marrickville and The Bridge Hotel in Rozelle.

This proposal supports the establishment of new temporary creative and cultural venues through simplified approval processes. This will unlock the capacity of land surrounding these major cultural institutions for use by the cultural and creative sectors, enabling opportunities for residents, workers, visitors and tourists to engage with creatives. In turn supporting the local economy and contributing to a sense of local identity.

- E6 – Creating and renewing great places and local centres, and respecting the District’s heritage.

Greater places and local centres are identified in their unique character and distinctive mix of land uses and activities. They are culturally rich and diverse with ample opportunities for social connectivity.

Great places within the Inner West are mentioned under this planning priority, including Marrickville and Newtown. The continued cultural richness of these areas and numerous others is supported by this proposal.

This priority also supports the growth of the night-time economy and integration and support of arts and creative enterprise expression. Temporary and interim uses are also identified as a means of achieving this priority.

- E11 – Growing investment, business opportunities and jobs in strategic centres, and
- E13 – Supporting growth of targeted industry sectors.

The planning proposal supports innovation in the night-time economy and encouragement of the creative sector. It reduces regulatory burden through the use of exempt and complying provisions, making it simpler for creative enterprises to open in the night-time economy and provide culturally rich experiences in the Inner West.

#### **Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

##### ***Our Inner West 2036 - Council's Community Strategic Plan, 2018***

The Inner West Community Strategic Plan (CSP) identifies the community's vision for the future, long-term goals, strategies to get there and how to measure progress towards them. Strategic direction 3 of the plan regards creative communities and the local economy. This planning proposal makes progress towards achieving several outcomes and strategies identified under this direction, including the following:

- 3.1 Creativity and culture are valued and celebrated
  - Grow Inner West's reputation as a leading creative and cultural hub celebrating and supporting diverse creative industries and the arts
  - Create opportunities for all members of the community to participate in arts and cultural activities
- 3.2 Inner West is the home of creative industries and services
  - Position Inner West as a place of excellence for creative industries and services and support them to thrive
  - Encourage the establishment of new enterprises in Inner West
  - Facilitate the availability of affordable spaces for creative industries and services
- 3.5 Urban hubs and main streets are distinct and enjoyable places to shop, eat, socialise and be entertained



- Promote unique, lively, safe and accessible urban hubs and main streets – day and night
- Enliven community life by delivering and supporting events, public art, cultural celebrations and entertainment
- Promote the diversity and quality of retail offerings and local products

### ***Our Place Inner West - Local Strategic Planning Statement***

The planning proposal gives partial effect to Planning Priority 9 – A thriving local economy, namely the following objectives under it:

- The local economy is diverse, strong and resilient
- Inner West has a thriving and diverse evening and night-time economy
- Zoning and planning provisions accommodate affordable entry points for a range of industries
- Inner West continues to grow as a leading creative and cultural hub
- Main streets and centres are designed to be unique, lively, safe and accessible

There is a single action under this planning priority, to implement the Employment and Retail Lands Strategy (ERLS), when approved. The ERLS includes actions relevant to this proposal. They have been discussed within the answer to question one above.

### ***Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?***

The new provisions intersect considerably with those under *SEPP (Exempt and Complying Development Codes) 2008*. Several of the SEPP provisions apply generally to complying development under other Environmental Planning Instruments (EPIs), including the three Inner West LEPs. A full understanding of how these provisions interact is crucial to realising how the proposal will function.

Clause 1.17A of the SEPP lists the requirements for complying development for all EPIs. The SEPP prohibits the use of complying development on heritage listed sites and sites upon which a heritage item is located. While this will restrict the application of the proposed complying development provisions, the outcomes of the proposal will not change significantly as the majority of sites within the B2 zone are not subject to heritage listing and even fewer are subject to such in the B5, B6, IN1 and IN2 zones.

There are currently no exempt provisions under the SEPP which allow the extended trading of commercial uses that have not already been established. Complying development provisions within the SEPP are however in place allowing certain uses to trade till 10pm with a Complying Development Certificate (CDC).

A CDC for first use of a premises under the SEPP allows the trading for a number of commercial uses including those identified with this proposal. Amongst other criteria, the hours of operation are permitted to a maximum of between 7am and 10pm, Monday through Saturday and till 8pm on Sundays. This proposal will have the effect of permitting and extension of hours on Sunday till 10pm for shops, business premises and kiosks in the B2 – Local Centre zone without need for further approval.

***Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?***

Section 9.1 directions are directions to councils from the Minister for Planning, Industry and Environment that need to be considered or given effect to in the preparation of draft LEPs.

The planning proposal has been assessed against each Ministerial direction. The consistency of the planning proposal with these directions is shown in the table below.

<b>Consistency with Ministerial Directions that apply to the LGA</b>	
<b>Directions under s.9.1</b>	<b>Consistency</b>
1.1 Business and Industrial Zones	<p><b>Yes</b></p> <p>The proposal supports opportunities for employment in accessible commercial and industrial locations.</p> <p>Imposing limitations on activities to be temporary retains the industrial zones for their intended purpose.</p> <p>Reducing regulatory barriers to expanding the day and night-time trading of businesses and cultural activities supports the viability of centres. Cultural activities are likely to have an economic multiplier effect, positively impacting surrounding businesses.</p>
1.2 Rural Zones	<b>Not relevant</b>
1.3 Mining, Petroleum Production and extractive Industries	<b>Not relevant</b>
1.4 Oyster aquaculture	<b>Not relevant</b>
1.5 Rural Lands	<b>Not relevant</b>
2.1 Environment Protection Zones	<b>Not relevant</b>
2.2 Coastal Management	<b>Not relevant</b>
2.3 Heritage Conservation	<p><b>Yes</b></p> <p>Complying development is prohibited from being carried out on heritage listed sites and sites containing heritage items.</p> <p>The proposed provisions will not facilitate works to heritage items or in conservation areas.</p>
2.4 Recreation Vehicle Areas	<b>Not relevant</b>

2.6 Remediation of Contaminated Land	<b>Not relevant</b>
3.1 Residential Zones	<b>Not relevant</b>
3.2 Caravan Parks and Manufactured Home Estates	<b>Not relevant</b>
3.3 Home Occupations	<b>Not relevant</b>
3.4 Integrating Land Use and Transport	<p><b>Yes</b></p> <p>The proposed provisions are applicable to business, industrial and employment zones only. These zones are considered to have adequate access to public transport throughout their intended hours of operation.</p> <p>Additional car parking is not required to utilise the proposed provisions.</p>
3.5 Development near Regulated Airports and Defence Airfields	<p><b>Yes</b></p> <p>The Inner West is heavily impacted by aircraft noise. Being commercial activities, they are not overly sensitive to the impacts of aircraft noise and considered consistent with the direction.</p>
3.6 Shooting Ranges	<b>Not relevant</b>
4.1 Acid Sulfate Soils	<b>Not relevant</b>
4.2 Mine Subsidence and Unstable Land	<b>Not relevant</b>
4.3 Flood Prone Land	<p><b>Yes</b></p> <p>Whilst many of the relevant zones are located within flood prone land, the provisions do not permit the development or alteration of buildings which may impact flooding.</p>
4.4 Planning for Bushfire Protection	<b>Not relevant</b>
5.10 Implementation of Regional Plans	<b>Not relevant</b>
5.11 Development of Aboriginal Land Council Land	<b>Not relevant</b>

6.1 Approval and Referral Requirements	<b>Not relevant</b>
6.2 Reserving Land for Public Purposes	<b>Not relevant</b>
6.3 Site Specific Provisions	<b>Not relevant</b>
7.1 Implementation of a Plan for Growing Sydney	<p><b>Yes</b></p> <p>This direction requires planning proposals to be consistent with A Plan for Growing Sydney. A Plan for Growing Sydney was superseded by the Greater Sydney Region Plan (GSRP) in March 2018.</p> <p>The proposal is consistent with the Greater Sydney Region Plan as outlined in response to Q3.</p>
7.3 Parramatta Road Corridor Urban Transformation Strategy	<p><b>Yes</b></p> <p>The proposed exempt and complying provisions will apply to many areas along the Parramatta Road Corridor. They will not impede development within the Parramatta Road corridor.</p>

## Section C – Environmental, social and economic impact

### Q7. Is there any likelihood that critical habitats or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. This planning proposal relates to the use of land within established business and industrial zones. No critical habitats, threatened species, populations or ecological communities are identified within these zones in the Inner West.

### Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

As the planning proposal relates only to the use of existing premises within established and business and industrial areas, the risk of environmental impacts is low.

There is potential for the use of premises to lead to unauthorised works due to ignorance on the part of operators. To limit potential impacts, provisions have been proposed to strictly prohibit works that are not already approved or do not constitute exempt development.

Further to this, CDCs will not be able to be issued for small-scale activities within heritage listed buildings in accordance with Clause 1.17A of the (exempt and complying development codes) SEPP 2008.

### **Q9. Has the Planning Proposal adequately addressed any social and economic effects?**

Overall, the economic and social effects resulting from the planning proposal are expected to be positive. The potential positive and negative outcomes are discussed below.

#### Economic impacts

Simpler approval pathways for temporary small-scale cultural activities and removing barriers for shops, businesses premises and kiosks to extend trading will have a positive economic impact on the Inner West, particularly within the night-time economy where these provisions are predominantly expected to be utilised.

Locating these uses in established business and employment centres will draw patrons into areas with other businesses that will benefit from the increased foot traffic. An economic multiplier effect is also expected from the patronage to cultural activities.

When attending events and venues like live music gigs, art classes, theatre, art galleries and other cultural uses, patrons are likely to visit complimentary businesses during their outing. These businesses typically include restaurants, bars, take-away food premises, shops and business premises. Cultural activities are considered to have a significant economic multiplier effect for their surrounding area.

Council values and aims to protect cultural venues throughout the Inner West. As the provisions only allow the establishment of temporary uses, they are not likely to compete with and displace existing businesses. It will also ensure that the Inner West's employment lands remain available for industrial uses and urban services required to meet local needs. Council's ERLS identifies that there is likely to be a shortfall in industrial and urban service floor space of around 432,540sqm by 2036.

#### Social Impacts

By creating new opportunities for residents, workers, visitors and tourists to interact with local creative and cultural sectors, there is expected to be a positive social outcome. These premises will be focal points for social interaction and opportunities to experience the cultural offerings of the Inner West.

Whilst considered unlikely, there are opportunities for negative social impacts to arise from the new provisions. Alcohol consumption leading to anti-social behaviour, as well as

possible noise impacts on residential uses are possible unintended consequences of these provisions. These issues are discussed below.

### *Alcohol consumption, anti-social behaviour and noise*

The ability to utilise an existing licence, apply for a new temporary licence or use a caterer during activities means there may be alcohol consumed on site. With the consumption of alcohol there is potential that this leads to anti-social behaviour within and surrounding the premises.

Allowing alcohol to be consumed on site is a deliberate measure by Council. Consultation with local arts, cultural and creative industry figures informed Council that the revenue generated from selling alcohol during events is crucial to the feasibility of many uses, particularly when performance is involved.

To counteract issues, several measures were in part put in place to limit potential impacts. These are described below:

- Activities are limited to commercial and industrial zones. These areas tend to have active or emerging night-time economies, with higher levels of foot traffic, passive surveillance from surrounding buildings and higher traffic volumes. This limits opportunities for anti-social behaviour. It also prohibits proliferation of these activities in predominantly residential areas where impacts on amenity and safety would be a greater nuisance.
- Temporary activities capped to 52 days per year and no longer than 4 consecutive days in a row will limit impacts to a specific area.
- Existing responsible service of alcohol laws will apply to all venues where alcohol is served and consumed.
- To obtain a new liquor licence, operators will have to go through existing processes. This includes an assessment of the application as well as public notification.
- Activities are limited to operation until 10pm, Sunday through Thursday and until midnight on Friday and Saturday and the day before a public holiday. This is generally in line with community expectations for businesses trading within established commercial and industrial areas and commensurate with public transport services available throughout the Inner West to ensure patrons and can leave an area efficiently.

In addition, activities established under these provisions are not exempt from existing laws and compliance enforcement. Council officers, Liquor and Gaming and NSW Police continue to have the obligation to enforce reported non-compliances and there are mechanisms in place to penalise venues that do not comply.

## Section D – State and Commonwealth interests

### Q10. Is there adequate public infrastructure for the planning proposal?

Adequate public transport is crucial to a safe night-time economy. Closing times established by these provisions need to be consistent with the availability of public transport in applicable areas.

Public transport accessibility varies across the Inner West. Train services typically operate till 1am and service multiple local centres and areas, including Newtown, St Peters, Sydenham, Marrickville, Dulwich Hill, Stanmore, Petersham, Lewisham, Summer Hill, Ashfield and Croydon.

The Inner West light rail line services several centres across the northern and western edges of the LGA up until around 11:30pm during weekdays and past midnight on weekends. It services centres to which the proposed provisions will apply, including Leichhardt, Lilyfield, Haberfield, Summer Hill, Lewisham and Dulwich Hill.

There are also significant bus corridors that are serviced up to and past midnight. These include Parramatta Road, Victoria Road, Darling Street, King Street and Enmore Road. Bus routes along these corridors service applicable centres including the length of Parramatta Road, Rozelle, Balmain, Leichhardt, Newtown, Enmore and Marrickville.

These provisions will apply to locations that are well serviced by public transport, many with existing or emerging night-time economies. The services are considered adequate for the scale of activity and align with the proposed hours of operation.

### Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

The relevant State Government agencies and stakeholder groups to be consulted will be determined through the Gateway process.

It is considered that benefit would however be derived from consultation with the following:

- Adjoining Councils;
  - Council of the City of Sydney,
  - Canterbury Bankstown Council
  - Bayside Council
  - Canada Bay Council
- NSW Police
- NSW Live Music Office
- Liquor and Gaming NSW



## Part 4 Mapping

The planning proposal does not require additional mapping. All location specific provisions rely on existing zoning and heritage maps.

## Part 5 Community Consultation

Stakeholder and community consultation will be undertaken in accordance with the legislative requirements, any conditions of a Gateway determination and Council's Community Engagement Framework.

## Part 6 Project timeline

The anticipated timeframe for the planning proposal is shown in the table below.

Action	Date
Submit Planning Proposal to DPIE for Gateway consideration	December 2020
Receive Gateway determination	January 2021
Complete any changes required by Gateway Determination	January/February 2021
Public exhibition & government agency consultation	March 2021
Consideration of submissions	May 2021
Post-exhibition report to Council	July 2021
Drafting of instrument	August 2021
LEP made (if delegated)	September 2021
Plan forwarded to DPIE for notification	September 2021