

ANNEXURE A

- Report to Council 23/9/2019

**DECISION OF 3723rd COUNCIL MEETING
HELD ON MONDAY 23 SEPTEMBER 2019**

267. Item 10: Small Bars and Trading Hours in Kirribilli Village

Report of Lara Huckstepp, Executive Planner

On 24 September 2018 Council resolved to prepare a detailed report outlining options for implementation of extended trading hours and allowing small bars in Kirribilli, in response to the outcomes of community consultation. This report explores options for implementation.

It is recommended that a planning proposal be prepared to amend the North Sydney Local Environmental Plan 2013 to allow small bars as an additional permitted use on certain sites located in the Kirribilli Village which do not have an interface with a residential zone. It is considered that by limiting the location of small bars to properties fronting Broughton Street and Ennis Road, impacts to the surrounding residential properties will be minimised.

It is also recommended that the North Sydney Development Control Plan (NSDCP) 2013 be amended to extend the maximum allowable trading hours for these sites considered suitable for small bars (i.e. without a residential interface) until 12midnight (Thursday to Saturday); 11pm (Monday to Wednesday) with no changes to Sunday (10pm).

Trading within all other areas within Kirribilli Village is proposed to 11pm (Thursday – Saturday) and 10pm Sunday – Wednesday. This represents an extension of trading hours for a number of properties and in light of support for longer trading hours, is considered appropriate given their proximity to the residential zone interface.

Existing DCP controls are already in place to mitigate impacts of late night uses within all localities across the Council area which will continue to apply to the Kirribilli Village, such as requirements for acoustic reports and testing, closing of doors and windows at appropriate times and plans of management for small bars. A further DCP requirement is recommended to ensure that new small bars in Kirribilli have their patron entries to either Broughton Street or Ennis Road. Patron noise is often exacerbated when leaving premises. This control seeks to minimise impacts to surrounding residential properties.

The proposed amendments to Council's LEP and DCP controls are considered to respond to the community consultation outcomes supporting later trading hours and small bars in Kirribilli Village, while balancing the need to appropriately protect the unique local character.

No funding has been allocated. Funds previously spent for the consultation were within existing budget lines in 2018-2019.

Recommending:

1. THAT Council prepare a planning proposal to amend North Sydney Local Environment Plan 2013 to include an additional permitted use under Schedule 1 to allow small bars within those parts of Kirribilli Village that are not located adjacent to a residential interface.

2. THAT the Planning Proposal be referred to the Local Planning Panel for their advice prior to being reported back to Council for the purposes of seeking a Gateway Determination.

3. THAT Council prepare an amendment to North Sydney Development Control Plan 2013 Section 7 (Late Night Trading) to extend trading hours for the Kirribilli Village and strengthen development controls relating to small bars within Kirribilli Village.

4. THAT once resolution 3 has been completed, that the draft DCP amendment be reported back to Council for adoption and endorsement to be placed on public exhibition.

5. THAT the Planning Proposal and draft DCP amendment be exhibited concurrently.

The Recommendation was moved by Councillor Gibson and seconded by Councillor Brodie.

The Motion was put and **carried**.

Voting was as follows:

For/Against 7/2

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Y	
Beregi		N	Drummond	Y	
Keen	Y		Gunning	Y	
Brodie	Y		Mutton	Y	
Carr	Absent		Baker		N

RESOLVED:

- 1. THAT** Council prepare a planning proposal to amend North Sydney Local Environment Plan 2013 to include an additional permitted use under Schedule 1 to allow small bars within those parts of Kirribilli Village that are not located adjacent to a residential interface.
- 2. THAT** the Planning Proposal be referred to the Local Planning Panel for their advice prior to being reported back to Council for the purposes of seeking a Gateway Determination.
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- 5. THAT** the Planning Proposal and draft DCP amendment be exhibited concurrently.



Report to General Manager

Attachments:

1. Post Consultation Report to Council 24/9/2018
2. Detailed Comparison of the Objectives, Permitted Uses and Differences in Business Zones
3. Analysis of Likely Impacts of Small Bars on all Sites within Kirribilli Village

SUBJECT: Small Bars and Trading Hours in Kirribilli Village

AUTHOR: Lara Huckstepp, Executive Planner

ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

On 24 September 2018 Council resolved to prepare a detailed report outlining options for implementation of extended trading hours and allowing small bars in Kirribilli, in response to the outcomes of community consultation. This report explores options for implementation.

It is recommended that a planning proposal be prepared to amend the North Sydney Local Environmental Plan 2013 to allow small bars as an additional permitted use on certain sites located in the Kirribilli Village which do not have an interface with a residential zone. It is considered that by limiting the location of small bars to properties fronting Broughton Street and Ennis Road, impacts to the surrounding residential properties will be minimised.

It is also recommended that the North Sydney Development Control Plan (NSDCP) 2013 be amended to extend the maximum allowable trading hours for these sites considered suitable for small bars (i.e. without a residential interface) until 12midnight (Thursday to Saturday); 11pm (Monday to Wednesday) with no changes to Sunday (10pm).

Trading within all other areas within Kirribilli Village is proposed to 11pm (Thursday – Saturday) and 10pm Sunday – Wednesday. This represents an extension of trading hours for a number of properties and in light of support for longer trading hours, is considered appropriate given their proximity to the residential zone interface.

Existing DCP controls are already in place to mitigate impacts of late night uses within all localities across the Council area which will continue to apply to the Kirribilli Village, such as requirements for acoustic reports and testing, closing of doors and windows at appropriate times and plans of management for small bars. A further DCP requirement is recommended to ensure that new small bars in Kirribilli have their patron entries to either Broughton Street or Ennis Road. Patron noise is often exacerbated when leaving premises. This control seeks to minimise impacts to surrounding residential properties.

The proposed amendments to Council's LEP and DCP controls are considered to respond to the community consultation outcomes supporting later trading hours and small bars in Kirribilli Village, while balancing the need to appropriately protect the unique local character.

Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(2)

FINANCIAL IMPLICATIONS:

No funding has been allocated. Funds previously spent for the consultation were within existing budget lines in 2018-2019.

RECOMMENDATION:

- 1. THAT** Council prepare a planning proposal to amend North Sydney Local Environment Plan 2013 to include an additional permitted use under Schedule 1 to allow small bars within those parts of Kirribilli Village that are not located adjacent to a residential interface.
- 2. THAT** the Planning Proposal be referred to the Local Planning Panel for their advice prior to being reported back to Council for the purposes of seeking a Gateway Determination.
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Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(3)

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

Direction:	2. Our Built Infrastructure
Outcome:	2.2 Vibrant centres, public domain, villages and streetscapes
Direction:	3. Our Future Planning
Outcome:	3.4 North Sydney is distinctive with a sense of place and quality design
Direction:	5. Our Civic Leadership
Outcome:	5.1 Council leads the strategic direction of North Sydney

BACKGROUND

Council at its meeting held on 28 March 2018 resolved:

1. *THAT public consultation be undertaken to gauge community expectation in relation to both café and restaurant trading hours and the permissibility of small bars in Kirribilli Village and Milsons Point*
2. *THAT a draft consultation strategy be reported to the Legal and Planning Committee in May 2018 and include financial and resourcing implications and the strategy have particular regard to accessing the views of residents and small business owners in both Milsons Point and Kirribilli*
3. *THAT following the consultation period, a further report be submitted to Council.*

A further report including a draft Community Engagement Strategy was considered at the Legal and Planning Committee held on 7 May 2018. The minutes of this meeting were presented to the Council of meeting 25 May 2018, whereby Council resolved;

1. *THAT the small bars and Extended trading hours for Kirribilli Village – Draft Community Engagement Strategy report be noted.*
2. *THAT community consultation be undertaken in accordance with the draft Community Engagement Strategy*
3. *That the outcome of the consultation be reported back to Council.*

Consultation was subsequently undertaken between 19 July and 17 August 2018 in accordance with the adopted Community Engagement Strategy. The outcomes of the consultation were reported to Council on 24 September 2018 wherein Council resolved to prepare a detailed report outlining options for implementation of extended trading hours and allowing small bars in Kirribilli, in response to the outcomes of the community consultation. (Refer to Attachment 1). This report responds to this resolution.

Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(4)

CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the relevant requirements under the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation.

SUSTAINABILITY STATEMENT

The sustainability implications are of a minor nature and did not warrant a detailed assessment.

DETAIL

1. Definitions

The term *small bar* is defined under the Liquor Act 2007 as '*the premises to which a small bar licence relates*'.

A *small bar* licence is a type of license which was introduced as part of the Liquor Amendment (Small Bars) Act 2013. The new small bar licence authorises the licensee to sell liquor by retail on the licensed premises in accordance with strict conditions. These conditions include items such as:

- That liquor must be consumed on the licensed premises;
- That maximum capacity of patrons is 100 people;
- That the small bar must be open to the general public (minors will not be permitted during liquor trading hours); and
- That food must be available at the *small bar*.
- Gaming machines are not permitted on the premises of a licensed small bar.

A *small bar* license permits the sale of liquor between 12pm (midday) and 2.00am. However, when considering a development application for a *small bar*, Councils are able to specify hours of operation that are more, or less prescriptive than this.

2. Permissibility in the North Sydney Local Environmental Plan 2013

Small bars are defined under the North Sydney Local Environmental Plan 2013 (NSLEP 2013) as follows: *small bar means a small bar within the meaning of the Liquor Act 2007. Note: Small bars are a type of food and drink premises.*

Food and drink premises form a subsection of retail premises which are a substandard of commercial premises. Small bars are currently only permissible within the B4 Mixed Use and the B3 Commercial Core zones within the LGA under the group term 'commercial premises'.

Development within the B1 Neighbourhood Centre zone allows uses including restaurants, cafes, shops and take away food and drink premises however small bars or general bars are not permitted. Development permitted with consent in the B1 Neighbourhood Centre zone under the North Sydney Local Environmental Plan 2013 is:

Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Entertainment facilities; Health services facilities; Information and education

Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(5)

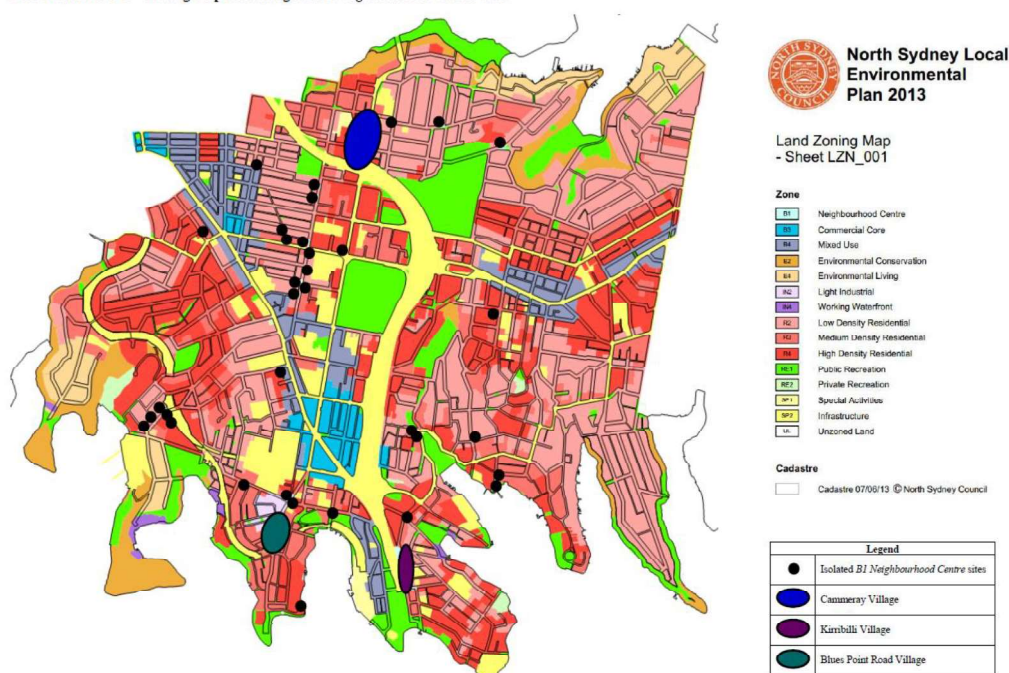
facilities; Kiosks; Medical centres; Neighbourhood shops; Neighbourhood supermarkets; Office premises; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Respite day care centres; Restaurants or cafes; Roads; Shops; Shop top housing; Signage; Tank-based aquaculture; Take away food and drink premises

Localities that are zoned B1 Neighbourhood Centre include Kirribilli Village, Cammeray, Blues Point Road in McMahons Point, Bay Road in Waverton and various other small groups of sites and isolated sites distributed throughout the LGA. The locations are generally illustrated below.

Figure 1: B1 zones across the North Sydney LGA

Small Bars in the Kirribilli Village

ATTACHMENT 1 – Zoning map indicating all B1 Neighbourhood Centre sites



3. Consultation Findings

As set out in Attachment 1, Council undertook a comprehensive engagement strategy to ascertain community views on trading hours and small bars in Kirribilli Village. This included direct letters to residents and businesses across the Kirribilli Peninsular (over 7,000 letters); notification on Council's website, Mosman Daily Advertisements together with social media posts and direct correspondence to government and industry stakeholders. A total of 918 survey responses and 9 individual submissions were received. Consultation outcomes are presented in the post consultation report to Council on 24/9/2018 (refer to Attachment 1). Key outcomes of the survey include:

- A total of 69% of respondents said yes they would like to see later trading hours in Kirribilli Village.
- The majority of respondents (62%) supported trading hours until 12 midnight Thursday – Saturday (weekends), with a further 18% of respondents supporting trading beyond 12pm

Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(6)

midnight.

- A total of 75% respondents said yes, that small bars should be permitted in Kirribilli Village.
- The majority of respondents 47% considered trading hours for small bars should be the same as other businesses and an additional 39% of respondents felt that trading hours for small bars should be longer than other businesses.

North Sydney Local Area Command were consulted and verbally advised they raised no objection in principle to considering extended trading hours and small bars in Kirribilli Village, subject to careful amenity impacts, particularly at the zone interface. Premises located on the interface with residential zones are likely to result in a greater level of amenity impact.

4. Options

The consultation outcomes outline community support for the introduction of small bars within the Kirribilli Village. Three options are available to implement these consultation outcomes, and are explored in the following subsections:

4.1 Option 1: Allowing small bars as a permitted use in the B1 Neighbourhood Centre zone

This option involves Council including small bars as a permitted use within the B1 Neighbourhood Centre zone. This zone is Council's lowest order business zone, comprising the smaller Villages of Kirribilli and Cammeray, as well as many isolated pockets and sites that are immediately surrounded by residential zones.

Allowing small bars as a permissible use across all B1 Neighbourhood Centre zone sites is considered likely to result in adverse amenity impacts at the residential interface, particularly within smaller centres and isolated sites. The impacts of these uses would generally be provided with no buffer to the small bars.

These centres and sites were reviewed as part of adoption of the North Sydney Local Environmental Plan 2013 and are considered to generally coexist appropriately in their surroundings and context. Allowing small bars across all of these sites would be contrary to the objectives of the B1 Neighbourhood Centre zone and contrary to the desired character in some localities. **It is not recommended this option be pursued.**

4.2 Option 2: Rezoning Kirribilli Village to an alternative business zoning

This option involves rezoning land within Kirribilli Village to a higher order business zone which permits small bars as a permitted use. Available options are the B4 Mixed Use or B3 Commercial core zones that are currently used by Council, or the B2 Local Centre zone that is currently not utilised with the NSLEP 2013. A detailed comparison of the objectives and permitted uses within the B1 Neighbourhood Centre zone and the differences with the B4 Mixed Use, B3 Commercial Core, and the B2 Local Centre, are found in Attachment 2 to this report. In summary:

- **B3 Commercial core zone** reflects the highest order commercial centre. The B3 Commercial core objectives and permitted uses provide employment opportunities and prohibit residential development. North Sydney CBD as well as small part of Crows Nest and St Leonards are zoned Commercial Core. The objectives of this zone do not include

Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(7)

retaining a residential character. The objectives and permitted uses within the B3 Commercial Core zone are inconsistent with the existing and desired character of the Kirribilli Village.

- **B4 Mixed Use zone** is a higher order zone to B1 Neighbourhood Centre zone, illustrated through the additional types of commercial activities that are permitted. This zone typically provides for larger scale retail and business uses, intended to serve the needs of a sub-regional catchment. The objectives and permitted uses within the B4 Mixed Use zone are inconsistent with the existing and desired character of the Kirribilli Village.
- **B2 Local Centre zone** is a new zone that is within the standard instrument however is not currently utilised in the NSLEP 2013. It is also higher order zone providing a focus on employment and does not include objectives on residential amenity. Whilst this zoning is the least intensive option of the rezoning options available to Council, it remains a higher order zone that is considered to be inconsistent with the existing and desired character of the Kirribilli Village.

It is not recommended that any of these options are pursued because each would likely change the character of the Kirribilli Village. The consultation outcomes overwhelmingly supported the existing character of Kirribilli Village. Future planning for this area should retain the existing character whilst complementing these use, rather than changing the character.

4.3 Option 3 – Small bars as an additional permitted use on certain sites within the Kirribilli Village (Preferred Option)

The community consultation reinforced support for the existing character of Kirribilli Village. Kirribilli has a unique local character, providing a successful and vibrant local centre, with a popular restaurant economy during the evening. Its high accessibility to Milsons Point Railway Station provides opportunity for visitors. Its current zoning of B1 Neighbourhood Centre best reflects its existing and desired future character.

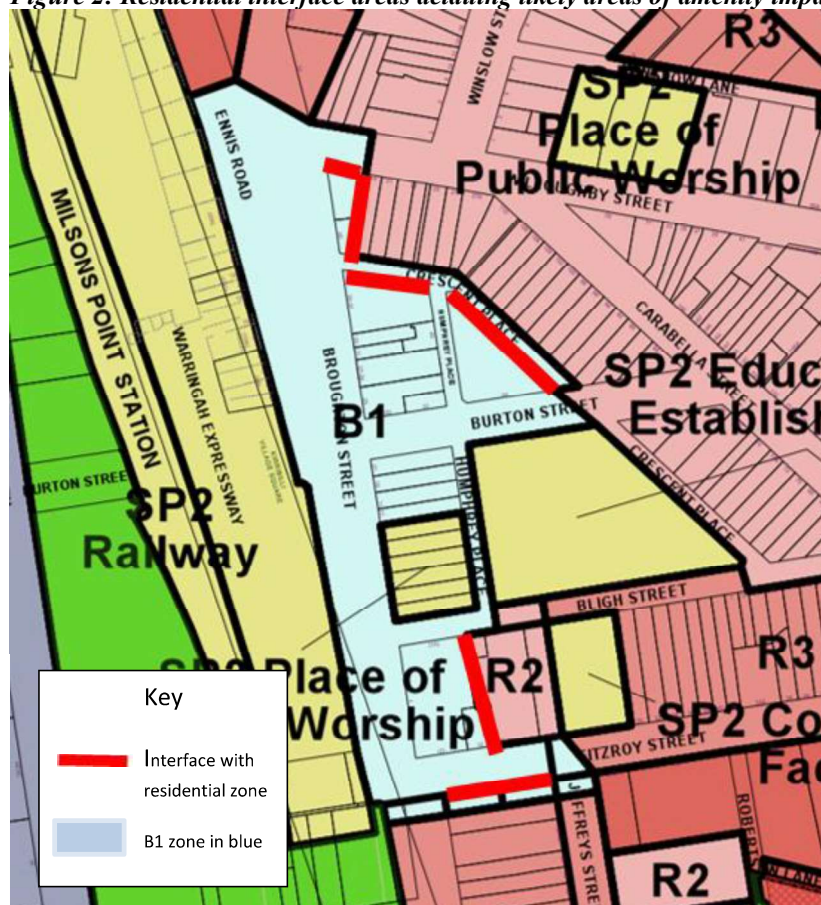
Impacts from uses such as small bars include noise from the use of the premises as well as patron dispersal at the end of the evening. This report seeks to minimise these impacts by allowing small bars in localities without a residential interface. Each site within Kirribilli Village has been examined in respect to its proximity to a residential interface. Attachment 3 provides a site assessment of each land parcel. The areas of greatest potential impact are presented in Figure 2.

This option involves maintaining the existing B1 Neighbourhood Centre zone and seeking to enable small bars to be included as an additional permitted use under Schedule 1 NSLEP 2013 to a number of sites within the Kirribilli Village which do not have an interface with adjoining residential zones. This option is recommended as it is considered to implement the outcomes of the community consultation.

Report of Lara Huckstepp, Executive Planner
 Re: Small Bars and Trading Hours in Kirribilli Village

(8)

Figure 2: Residential interface areas detailing likely areas of amenity impacts



The analysis of sites within Kirribilli Village revealed that the use of properties located south of Bligh Street and north of Crescent Place for small bars, would be more likely to result in adverse impacts to surrounding properties given their proximity to the residential interface.

Further, it is considered patron dispersal to a laneway or secondary street frontage other than Broughton Street would also be likely to result in increased amenity impacts, with the exception of Burton Street (west of Humphrey Place) given its adequate setback distance from a residential zone.

The Kirribilli Hotel at 35-37 Broughton Street is recommended for exclusion as Clause 13 to Schedule 1 permits a pub as an additional permitted use with development consent. As this is a similar but more intense type of use to a small bar, there is no need to include it.

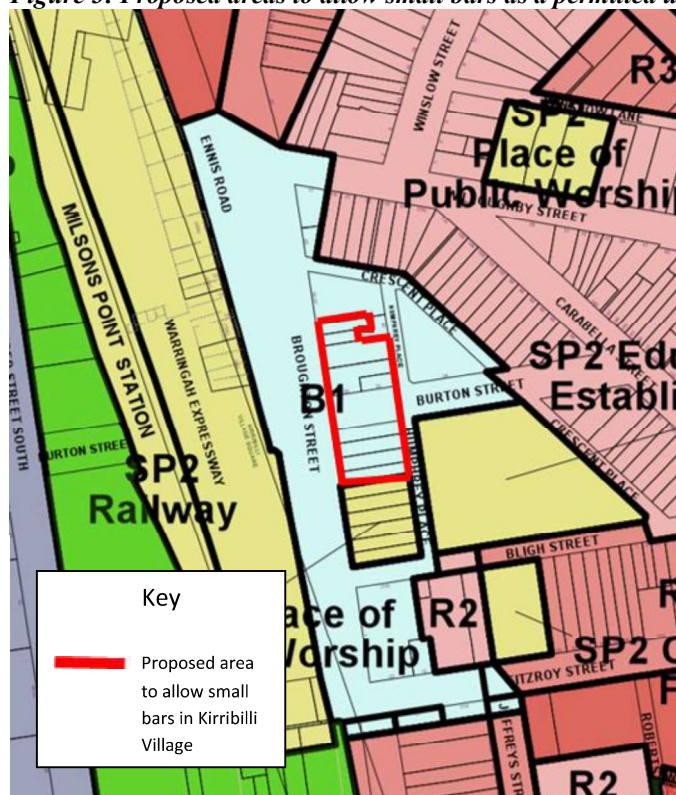
Report of Lara Huckstepp, Executive Planner
 Re: Small Bars and Trading Hours in Kirribilli Village

(9)

The localities in Kirribilli Village considered to be suitable for small bars are listed as follows and detailed below (Figure 3):

- 11-17 Broughton Street
- 19 Broughton Street
- 21 Broughton Street
- 23-25 Broughton Street
- 32 Burton Street
- 27-29 Broughton Street
- 31 Broughton Street
- 33 Broughton Street

Figure 3: Proposed areas to allow small bars as a permitted use under Schedule 1 NSLEP 2013



Those areas where the introduction of small bars are not recommended will operate as buffer areas for adjoining residential zones. These sites will continue to provide important retail, restaurant, café and a variety of other opportunities, ensuring that a mix of uses will continue to be offered throughout the Village. Notwithstanding this, on sites where small bars are considered suitable, the uptake of small bars will be a market decision.

Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(10)

4.3.1 Ennis Road, Milsons Point

The Ennis Road bays are located on the eastern side of Milsons Point Railway Station, within the arches of the Sydney Harbour Bridge. These bays are zoned SP2 Infrastructure (Classified Road). However, Clause 14 Schedule 1 NSLEP 2013 sets out:

Use of certain land at 2-28 Ennis Road, Kirribilli

(1) This clause applies to land at bays 24 – 44, 2-28 Ennis Road, Kirribilli, being cubic spaces under the Warringah Expressway.

(2) Development for the purposes of any permissible use in Zone B1 Neighbourhood Centre is permitted with development consent.

Accordingly, small bars are similarly not currently permitted within the Ennis Road Bays. It is considered that if these Bays are to be used as a small bar, then they should provide an adequate separation (at least) to the nearest residential property. These bays are accessible to Milsons Point train station and are also considered suitable to be used as small bars given the separation to residential properties. It is therefore recommended that Clause 14 Schedule 1 be amended to include ‘small bars’ as a permissible use within the Ennis Road Bays.

5. NSW Department of Planning, Industry and Environment (DPIE) resistance to subzones

The DPIE have issued guidance on the creation of “subzones”. A subzone is an area within a zone where different land uses are permissible or prohibited compared to the rest of the zone. DPIE advises subzones are not permitted as they are considered to diminish the clarity and certainty of zoning controls.

The proposal to permit small bars in some localities mostly with a frontage to Broughton Street and Ennis Road, technically could be a subzone. However, it represents a relatively small number of properties and is not considered to be inconsistent with the intent of the LEP standard zoning.

Council has written to DPIE requesting preliminary advice on the approach discussed within this report. No written response was received to Council’s query regarding consideration of subzones. The issue was however discussed informally with DPIE staff who were of the view that an additional permitted use as proposed could be considered as not comprising a subzone, on the basis that:

- The number of properties was limited;
- The inflexibility of the standard instrument LEP to include subzones was acknowledged and there was no other existing zones capable of achieving the outcomes of the issue;
- The unique interfaces of the subject land in comparison to other B1 zoned land within the LGA (isolated sites, and those which had direct interface with residentially zoned land) was also acknowledged.

The DPIE recommended that any planning proposal would have to be sufficiently justified addressing at least the identified matters above, however could not provide any guarantee that a planning proposal could be supported past Gateway Determination.

Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(11)

6. Trading Hours

Community consultation outcomes supported later trading hours within Kirribilli Village. The options for extended trading hours, whilst ensuring a reasonable level of residential amenity is maintained to residential properties in close proximity, is explored below.

6.1 North Sydney Development Control Plan (NSDCP) 2013

Section 7 (Late night trading) sets maximum trading hours for all properties throughout the LGA as follows:

Figure 4: DCP Exert Section 7 Late Night Trading and Trading Hours (Existing)

Table B-7.1 Maximum trading hours			
Zone		Trading hours	
		Indoor	Outdoor
B3 Commercial Core *Refer to P2 and P3		6am to Midnight	7am to 11pm
B4 Mixed Use		7am to 11pm (Mon-Wed) 7am to midnight (Thurs-Sat) 7am to 10pm (Sun)	7am to 10pm
B1 Neighbourhood Centre	1) Properties with a frontage to Broughton Street, 2-28 Ennis Road, Milsons Point 2) Properties with a frontage to Miller Street, Cammeray 3) Blues Point Road, McMahon's Point	7am – 10pm (Sun – Wed) 7am – 11pm (Thurs – Sat)	7am to 9pm
	All other locations	7am – 10pm	8am to 8pm
All other zones		7am to 10pm	8am to 8pm

As can be seen above, properties with a frontage to Broughton Street and Ennis Road are permitted to trade until 11pm (Thursday – Saturday) and 10pm on other days. In accordance with the outcome of the community consultation, it is recommended that those properties identified with this report as being suitable for small bars (i.e. with no direct residential zone interface) be afforded later maximum trading hours of 12 midnight (Thursday – Saturday); 11pm (Monday-Wednesday) and 10pm (Sundays). Outdoor trading is recommended until 10pm. These trading hours are consistent with those in the mixed-use zone.

It is recommended that all other properties within Kirribilli Village be permitted to trade until 11pm (Thursday – Saturday) and 10pm (Sunday), with outdoor trading is recommended until 9pm. Whilst properties with a frontage to Broughton Street are already permitted to trade up until these hours, this will represent an extension in trading hours for other properties.

Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(12)

It is further recommended that given the detailed nature of the properties identified in tables B-7.1 and B-.2, that this be further illustrated with a map to clarify the extent of this application.

This report recommends draft DCP amendments be prepared for exhibition to extend trading hours as follows:

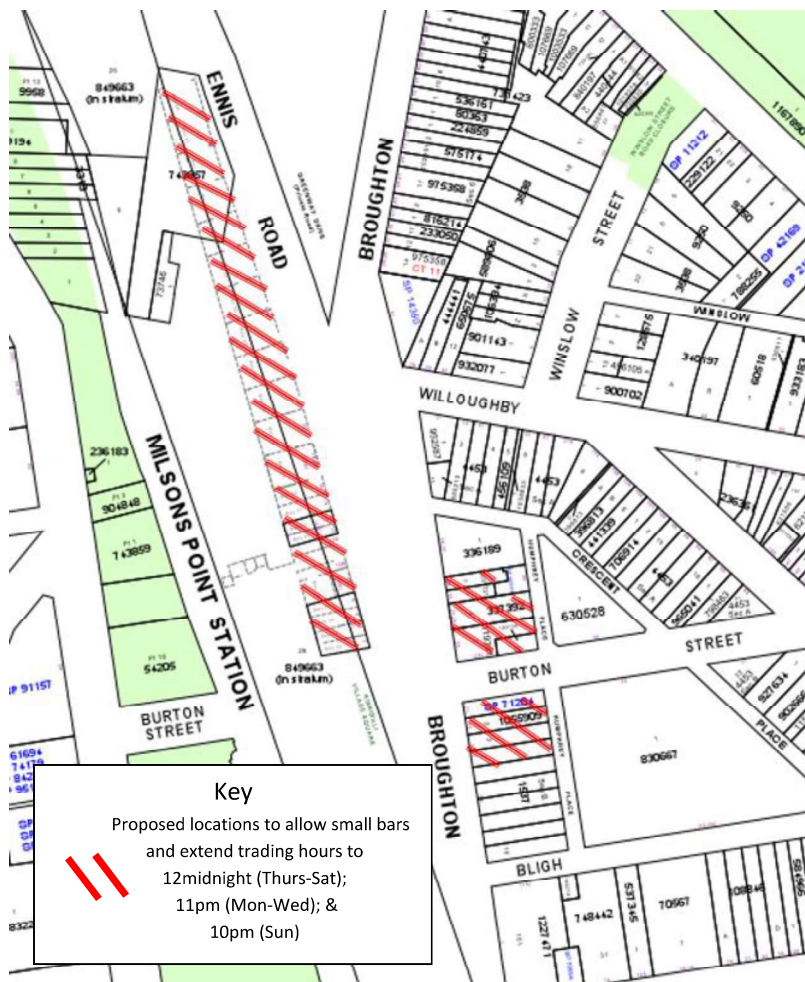
Figure 5: Proposed draft DCP Amendments

Table B-7.1 Maximum trading hours			
Zone		Trading hours	
		Indoor	Outdoor
B3 Commercial Core *Refer to P2 and P3		6am to Midnight	7am to 11pm
B4 Mixed Use		7am to 11pm (Mon-Wed) 7am to midnight (Thurs-Sat) 7am to 10pm (Sun)	7am to 10pm
B1 Neighbourhood Centre	Properties in Kirribilli Village detailed in Figure 6 below (including 2-28 Ennis Road)	7am to 11pm (Mon-Wed) 7am to midnight (Thurs-Sat) 7am to 10pm (Sun)	7am to 10pm
	1) Properties in Kirribilli Village (other than those detailed above) 2) Properties with a frontage to Miller Street, Cammeray 3) Blues Point Road, McMahon's Point	7am – 10pm (Sun – Wed) 7am – 11pm (Thurs – Sat)	7am to 9pm
	All other locations	7am – 10pm	8am to 8pm
All other zones		7am – 10pm	8am to 8pm

Report of Lara Huckstepp, Executive Planner
Re: Small Bars and Trading Hours in Kirribilli Village

(13)

Figure 6: Proposed locations to allow small bars and extend trading hours



DCP provisions will continue to apply to late night trading premises and likely impacts will be carefully managed through the development assessment process. Council's amenity controls currently set out in Section 7 Late Night Trading continue to apply, where any premises would need to satisfy the relevant provisions to obtain development consent including acoustic testing, requirements for door and window closures and various other controls. Trial periods can be imposed where an impact is likely to have an adverse impact.

The impacts arising from patron dispersal from a small bar premises can be minimised where the primary entry/exit is onto Broughton Street, Ennis Road or Burton Street (west of Humphrey Place). A DCP amendment is also recommended to address this, to require patron egress from these primary frontages.