

A creative and traditional industries hub in Sydenham: a preliminary SIA

Alison Ziller, Australia Street Company and
Peter Phibbs, Epic Dot Gov Pty Ltd
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SIA and the community submissions, and should propose actions to manage them within established timeframes. It should also be linked to a works program for the area which identifies infrastructure needs, costings and timeframes. The strategy should also link to a site specific Development Control Plan (DCP) for the precinct which would specify development requirements for new businesses.

Should the proposal proceed through Gateway, Council should develop such a strategy and associated DCP to guide the precinct's development and ongoing management.

FINANCIAL IMPLICATIONS

No financial commitments are required or recommended for this project at this stage of the process. Should the planning proposal receive Gateway determination, Council funding will be required to support the public exhibition, undertake an economic study and to develop a strategy for a DCP for the precinct that would include actions for public domain improvements. In the longer term, funding will be required for development of the DCP and the public domain works identified in the DCP.

PUBLIC PARTICIPATION

The public engagement process is discussed in further detail above. Relevant Council staff have been involved in this project at various stages in recent years, and some of these staff have been involved in the drafting of this report. As the precinct is well within the boundaries of the former Marrickville LGA, specific additional consultation with staff from former Leichhardt and Ashfield councils is not required. Should the planning proposal receive Gateway approval, a formal public consultation process will be undertaken that would include a minimum 8 week exhibition period.

CONCLUSION

Initial planning for the Sydenham Station creative precinct, including the development of a SIA and planning proposal, has been completed. Initial community consultation has generated extensive feedback – mostly in support, but valid concerns have also been raised by existing business operators. Though the proposal overall is considered to have strategic merit, changes to the proposal that was originally proposed are warranted, with the detail of, and rationale for these changes explained above. Accordingly, it is appropriate that the proposal proceed in accordance with the recommendations of this report – that a planning proposal be prepared and forwarded to the DP&E for Gateway determination.

To manage the precinct effectively, this report recommends the development of a strategy for the precinct. The strategy offers a sound means to communicate the aims of the project; identify matters requiring further work or improvement (including social and economic considerations and associated costs); and provide details to be included within an precinct-specific DCP. It is recommended that Council develop this strategy should the planning proposal receive Gateway approval.

ATTACHMENTS

1. Map showing proposed Sydenham Station creative hub precinct
2. Social Impact Assessment for Sydenham Station Creative Precinct
3. Engagement Report - Sydenham Creative Hub

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Australia Street Company, 48 Glover Street, Mosman NSW 2088

e: alison@australiastreetcompany.com.au

Contents

Introduction	4
Methods	4
The proposal	6
Definitions.....	7
Baseline and background information	10
Licensed premises in Marrickville LGA	11
Live music venues' liquor licences.....	13
Reported crime relevant to this proposal.....	13
Thumbnail history of live music in Sydney	14
Key social impact issues	17
1 Risks of alcohol-related harm	17
Liquor licences and trading hours.....	17
Density of licensed premises	19
Size of licensed premises	22
Controls exercised by OLGR	23
Controls exercised by councils.....	23
Noise and other amenity issues	25
A CTI AND an entertainment precinct?	25
Summary of key issues regarding a live music precinct.....	26
2 Risks to pedestrians.....	27
3 Employment risks	28
Assessment and recommendations	30
Recommendations	31
Alcohol-related harm minimisation.....	31
Pedestrian safety	31
Support creative and traditional industries.....	32
References	32

Introduction

Council resolved at its meeting on 2 September 2014 to:

"give in-principle support to the development of a long term vision for revitalisation of the industrial lands adjacent Sydenham Station for traditional industry, creative industry and business with a potential night economy;" and

"consider preparing a Planning Proposal to implement the vision for the precinct when the findings of the Marrickville Employment Lands Study Review and Future Cities Program are completed."

At a subsequent Council meeting on August 18th, 2015 Council resolved to proceed with the planning proposal and to fund a social impact study which could accompany the submission to the Department of Planning seeking a change in zoning for the precinct. The social impact study was considered necessary because under Marrickville DCP 2011 a social impact statement is required for proposals that serve liquor. Given that the planning proposal could result in land uses seeking liquor licenses, it was considered important to undertake an SIA on the proposed zoning changes.

The zoning change which will be sought in the planning proposal is to change the zoning in the precinct from IN1 General Industrial to IN2 Light Industrial in order to allow for a range of creative Industries to operate. It would also allow restaurants and small bars to open in the precinct. All existing industry would have a right to remain, but some industries, such as vehicle repair workshops, would be expected to phase out over time as properties turn over. Note that entertainment facilities are permitted under the current zoning (General Industrial) but there has been relatively little take-up.

A report to Council dated 18th August 2015, provides the context and the rationale for a social impact study. This study is a scoping exercise in which a preliminary assessment of likely risks and benefits are identified. This study precedes planning decisions and a full scoping of the proposal and is therefore indicative.

Methods

Research methods for this scoping study included:

- Review of council documents (including brief)

- Field visit to the precinct on 15 April 2016. This involved walking in every street in the study area, observing land uses, traffic conditions, employees and vacancies. It did not involve interviews.
- Perceptions were recorded through a series of photos and some notes
- Literature review (including some by the author)
- Information collected from public agencies including the Bureau of Crime Statistics and Research (BOCSAR), and the Office of Liquor Gaming and Racing (OLGR)
- The proposed precinct and the distribution of liquor licences in Marrickville were mapped by Council
- A review of regulatory processes for liquor licensing (assisted by review of submissions to recent inquiries)
- Examination of planning and strategy documents of relevant councils, especially The City of Sydney

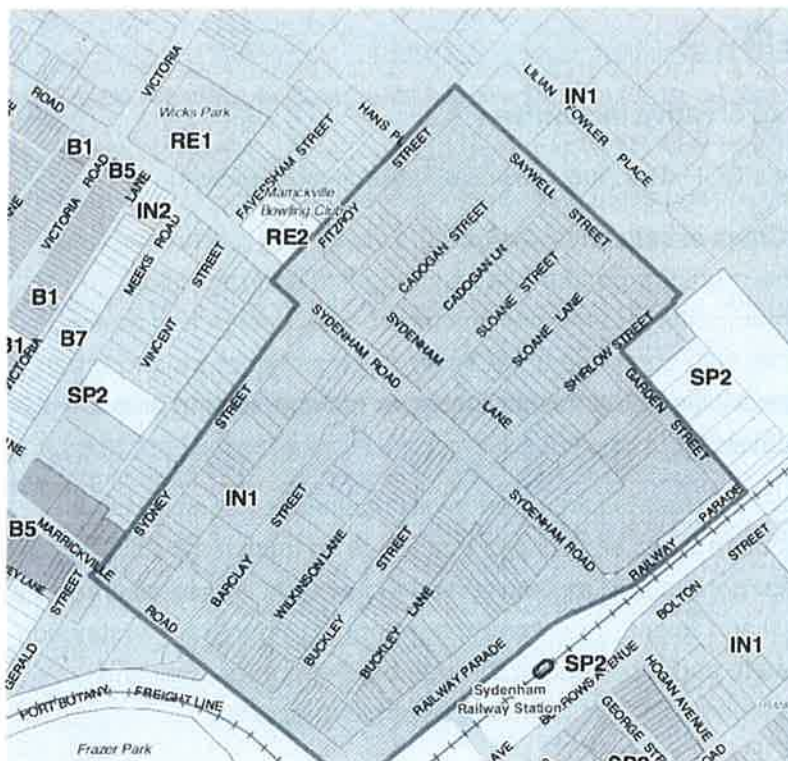
These sources were used to provide a series of observations about potential negative social impacts or risks arising from the proposal which are set out in this report. The report concludes with a suggested a series of measures to reduce potential negative social impacts.

The proposal

The proposal is for a creative and traditional industries precinct which is also an entertainment precinct, that is, there are two ideas to be explored.

The land area for this precinct is shown in the map below. This is the study area for this report.

Map 1: The proposed precinct



Source: Marrickville Council

The precinct is shown in Map 1. The proposal is to change the zoning from IN1 to IN2. The intention is to try to support the development of creative industries in the precinct. The narrative from Council, based on an analysis of their documents about the issue is can be summarised as:

- Marrickville Council values its industry, including its manufacturing sector, which remains alive and healthy.
- The council also wants to protect and support retail on other main streets.
- The trending decline in traditional manufacturing is likely to continue.
- New types of industry showing as “green shoots” are appearing in their formative stages in the precinct, including gourmet food, craft beer, small textiles, arts and cultural industries, places of entertainment and social

connection. These appear to be sitting comfortably with established enterprises.

- The changing demographic has broader interests and could support the development of these creative industries in the precinct;
- Some industrial enterprises, the arts, bars and entertainment need a buffer from residential and the complaints and pressures it imposes.
- The precinct could provide this sort of buffer.

Definitions

Definition of creative industries

Marrickville's DCP describes creative industries as follows:

"Creative industries' include the visual and performing arts, new media or multimedia including film and television, broadcasting, computer animation, web design and music. They also comprise other sectors like architecture and urban design, industrial design, designer fashion, writing and publishing.

Those industries are often micro businesses or small to medium sized enterprises that focus on local markets. They are best understood as businesses focused on individual creativity, skill and talent. They have the potential to generate sustained wealth and job creation through the generation, use and commercialisation of their intellectual property.'

[DCP section 6.5]

Definition of a CTI precinct - working definition

A creative and traditional industries precinct is area which supports traditional industry but provides opportunities for a range of creative enterprises which provide employment and entertainment opportunities for people in the local region. The transition to a creative economy could occur quite slowly and would be more based on the relative economic viability of land uses than on deliberate policies to drive changes in land use.

Definition of live music

The Western Australia Department of Culture and the Arts

defines live music venues as venues presenting original live music performances on a regular basis, including pop, jazz,

blues, country, rock, folk, soul, R&B, techno, hip hop, heavy metal and/or electronic dance music. Live music venues can include bars, hotels, nightclubs, music clubs, wineries, cafes, theatres, community centres, halls, pop-up venues and other spaces that host regular original music performances. DCA acknowledges that non-original music (such as cover bands) is also performed live in venues, WADCA, 2015, p5

Notwithstanding the intense debate about the definition of creative industries, live music is clearly one of the creative industries.

Definition of live music venues

The WA DCA again, says

Live music venues can be divided into small (capacity of up to 200 people) and medium-sized (capacity of 400-600), and can include bars, hotels, nightclubs, music clubs, wineries, cafes, theatres, community centres, halls, pop-up venues and other spaces that host regular original music performances. Perth's stadiums, outdoor festival sites and other specialist venues catering to non-contemporary music (such as the Perth Concert Hall) also make a contribution to WA's live music industry. WADCA, 2015, p7

The City of Sydney, in 2014, noted that live music venues range in size

From large venues hosting international performers to small and medium-sized venues supporting local acts, the live music and performance sector, like any healthy ecology, includes interdependencies – each part of the sector supports other parts in order for the whole to thrive. City of Sydney, 2014, p8

The City's Live Music and Performance Action Plan deals with small to medium sized venues, but these are not defined. However, NSW Small Bars legislation defines small bars as having a patron capacity of 60 and the NSW Office of Liquor Gaming and Racing's EVAT Tool treats medium size at 61 – 150 patrons – see section on size below.

Definition of an entertainment premises

The Oxford Dictionary defines entertainment as

The action of providing or being provided with amusement or enjoyment

<http://www.oxforddictionaries.com/definition/english/entertainment>

An entertainment premises is therefore a place where entertainment is provided.

Definition of an entertainment precinct

The Environmental Planning and Assessment Act does not define an entertainment precinct. As a general guide, we take an entertainment precinct to be a walkable area in which there are several venues offering entertainment. This definition does not particularly focus on live music as the source of entertainment and could, for example, include other audience activities (films, performance, stand up comedy), active participation venues (dance halls, discos), and more sedate activities such as poetry reading and book clubs.



Baseline and background information

Currently the precinct has the following features

- It is close to Sydenham station, however, pedestrian access, particularly from Sydenham train station to the proposed precinct, is poor.
- The area is bounded and dissected by heavily trafficked roads, many with substantial numbers of trucks
- Current uses largely take place in the working week and daytime, but there are exceptions: bakeries and other food manufacturing, micro-breweries
- The range of uses include:
 - clothing manufacturing and warehousing
 - panel beaters, car sales, tyre shops and mechanics,
 - timber yard,
 - printers, bookbinders, tv production, signs and splashbacks
 - cleaning products,
 - textiles, buttons, embroidery, knitwear manufacturers, , gymnasiums, importers and distributors of clothes, building materials, plastic bags,
 - foods - meat and small goods, fishmongers, noodles and dim sims, biscuit, cake and bread bakers, boutique and gourmet produce, beer brewers, creative industries such as TV production
 - Metal fabricators
 - Brothels and live music venues,
- Building types – these are mostly from the post-war period, lots of red textured brick. But many with stylised features and of interest. They are robust and adaptable, varied in size with a range of frontage widths, often large open spaces, dual frontages. They offer compactness in a convenient location.
- Street conditions - twisting lanes, heavy vehicle, harsh and hard. There is potential for them to be reclaimed.
- The precinct is a unique public domain – brick retaining walls, street art, the grit and grime, the authenticity, the water detention basin.
- The exceptional public transport infrastructure – many people know of Sydenham station to drive a car past but it is missing in the
- cognitive map of many because the journey is hostile, noisy and unsafe for the pedestrian.
- Various other proposals, especially West Connex and Sydenham to Bankstown Urban Renewal Corridor will have some effect on the growth and development of this precinct, however, urban renewal options will need to factor the flight path into consideration. It is difficult to know how West Connex will affect the

traffic patterns in and around this precinct without more information and a detailed traffic study.

Licensed premises in Marrickville LGA

On 1 April 2016, Marrickville LGA had the following current liquor licences

Table 1: Liquor licences in Marrickville, 1 April 2016

Licence Type	Current Licence Count	Extended Trading Auth Count	Trades After Midnight Count	24 Hour Trading Count
Liquor - club licence	11	1	10	10
Liquor - hotel licence	40	22	22	5
Liquor - limited licence	6			
Liquor - on-premises licence	117	20	18	2
Liquor other – notifications	2			
Liquor - packaged liquor licence	25	1		
Liquor - producer wholesaler licence	28			
Liquor - small bar licence	2			
Total	231	44	50	17

Source: OLGR premises list

The total number of licences is 231. Fifty (50) premises are licenced to trade after midnight. Ten (10) clubs, 5 hotels and 2 premises with on-premises licences are licensed to trade 24 hours on six days of the week. Note that on-premises licences are used by a variety of venues including restaurants and nightclubs. Of the four licensed premises already in the proposed precinct two have producer wholesaler licenses, one is a bottle shop and one is an on-premises licence.

Marrickville is estimated to have a population of 84,270 (June 30 2015 estimate by ABS (2016) making a licence rate of 274 per 100 000 population. This is higher than the NSW rate which is approximately 208 per 100 000 population.

Table 2: licensed premises per 100,000 persons, 2008 and 2016

	No. licenses 2008	Population 2006	Rate	No. licenses 2016	Population 2016	Rate
Marrickville LGA	165	71,813	230	231	84,270	274
NSW	14,400	6,549,177	220	15,885*	7,644,200*	208

As at September 2015 (OLGR premises data and ABS population estimate)

Between 2008 and 2014, the number of hotel licences in Marrickville increased by 21%, on-premises by 68% and packaged liquor licences by 80%. Between 2006 and 2016 the population grew by 17%. In Leichhardt – by way of comparison – hotels increased by 3%, on-premises by 24% and packaged liquor outlets by 80%. In Canterbury, packaged licenses increased by 56% and on-premises by 20% (Table 3).

Table 3: % increase in hotels, on-premises and packaged liquor outlets, 2008- 2014

LGA	2008			2014			Change		
	No. hotel licenses	No. on-premises licenses	No. packaged liquor licenses	No. hotel licenses	No. on-premises licenses	No. packaged liquor licenses	% increase in hotel licenses	% Inc. In on-premise licenses	% inc. in packaged liquor licences
Marrickville	33	73	13	40	123	19	21%	68%	46%
Leichhardt	35	127	15	36	158	27	3%	24%	80%
Canterbury	14	55	16	14	66	25	0	20%	56%

Source: Ziller, Rosen and Walsh 2015, p 182.

It is evident that there is already a significant cluster of licensed premises in the vicinity of the proposed CTI precinct.

Map 2: Hotels, on-premises, packaged liquor outlets and wholesale producer licenses within the vicinity of the proposed precinct



Source: Marrickville Council using OLGR data

Map 2 shows that there are already 12 licensed on-premises within a 1km walking distance of the northern edge of the proposed precinct. This is relevant to the discussion of density of licensed premises below.

Live music venues' liquor licences

Live music is diverse, the venues in which it can be provided are diverse and they operate under several liquor licence categories including small bars, hotels, clubs and on-premises. The City of Sydney notes live music venues include

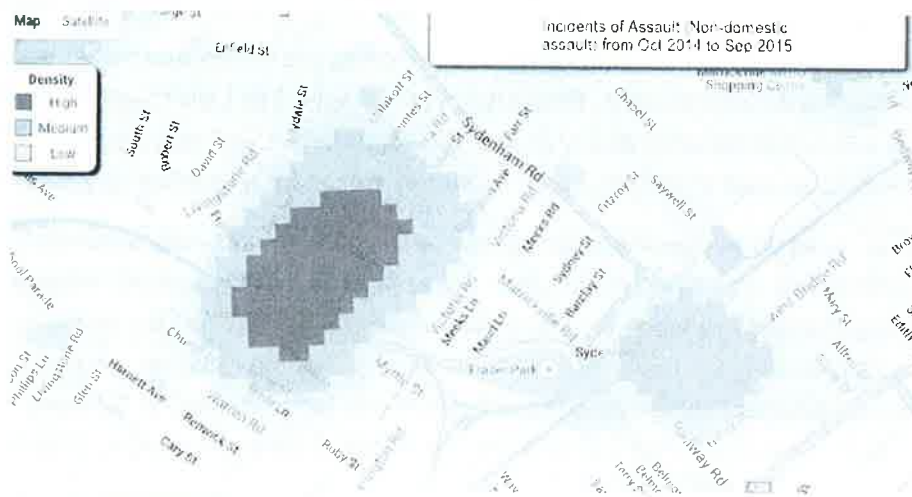
bars, pubs, theatres, restaurants and clubs as well as in non-traditional venues including carparks, warehouses and shops, and in public spaces in urban areas.

City of Sydney 2014, p21

Reported crime relevant to this proposal

There is a positive relationship between density of licensed premises and assault rates (Livingston, 2008). The most recent crime map from the NSW Bureau of Crime Statistics and Research (BOCSAR) shows clusters of non-domestic assaults (hot spots) on Marrickville and Illawarra Roads within the Marrickville commercial centre, and to a lesser extent around Sydenham Station (see Burgess 2011 for a further explanation of hotspots).

Map 3: Incidents of non-domestic assault, October 2014-September 2015

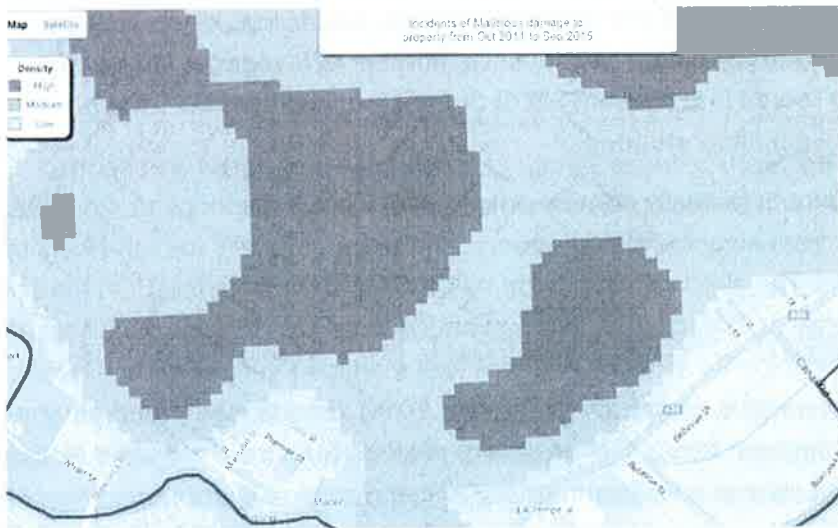


Source: BOCSAR crime maps

'Alcohol is an important contributor to many malicious damage offences' (Australian Institute of Criminology, 2015). Virtually the whole of Marrickville LGA appears as a malicious damage to property hotspot on the most recent

BOCSAR crime map and the area of the proposed precinct is no exception. While the distribution of malicious damage offences, Map 4, is similar to that reported by the Bureau for the City of Sydney. The Marrickville rate of 1004 incidents of malicious damage is larger than the NSW average of 875 per 100,000.

Map 4: Incidents of malicious damage to property, Oct 2014 – Sept 2015



Source: BOCSAR crime maps.

Note: Malicious damage to property includes vandalism, graffiti and defacement of public or private property

Thumbnail history of live music in Sydney

There are a number of agencies interested in the social and economic benefits that the live music industry offers and these include The Live Music Office which finds a 3:1 cost benefit ratio¹ and the City of Sydney which has been promoting live music as part of its Late Night Economy policy for a number of years.

However, while the enumeration of benefits is easy to find, explanations of the decline in live music venues are less available. The WA Live Music Venues Review identified reasons for the closure of some named venues but no clear trend accounting for their decline, commenting that the reasons required further research (p5). Campaigners against the current 'lockout laws' in Sydney, however, allege variously that the decline is due to lockouts reducing patronage which in turn reduces profits.

¹ http://livemusicoffice.com.au/research/#/research_category/executive-summary/

Speaking to *Fairfax*, The Basement and Plan B booker Nathan Farrell added: "There's less foot traffic, venues used to do early and late shows but they are now compacted into a one smaller night."

"There was a culture of young promoters doing interesting late night events that just isn't there any more. The Basement used to have a dinner and show before, say, Vince Jones, then as one set of fans would leave, another 400 younger fans would come in a different set of doors for a late night DJ. That's definitely stopped."²

The lockouts (actually no-new-entry times) were a response to a number of deaths from alcohol-related assault, and more generally to high levels of such assaults. The subsequent debate has tended to be polarised. On the one hand it is asserted that some late trading venues were not managing their responsible service of alcohol properly and that well managed venues should be allowed open doors till 3.0 am (City of Sydney, 2015). On the other hand emergency department doctors and other health professionals say they were seeing appalling injuries and their capacity to care for people who were otherwise in urgent need of medical attention was also being impaired (for example, Fulde et al., 2015)

These debates have tended to position live music as alcohol-dependent. This perception arises in part from the vehement campaign against the lockout laws asserting that live music requires both unrestricted entry and alcohol sales to survive (Barrie, 2016, Nicholls, 2016) It should be noted therefore that the lockout laws do not close a venue at the time alcohol service ceases, nor do they prevent live music. (NSW Department of Justice, 2016, paras 2.6.1 & 2.6.2)

In some respects this debate is a re-run of series of earlier concerns. For example that live music was not profitable for hotels who found they could make more money by installing gaming machines (ABC, 2000). A set of explanations preceded by a litany of fears.

... in 1990s Sydney, the jukebox seemed to be just the first chord in a rather long and torturous lament. Between costly licensing, anti-noise neighbours, super sports screens and poker machines, the city's once vibrant scene, which had

² <http://www.tonedeaf.com.au/471828/someones-finally-run-numbers-show-bad-sydneys-music-scenes-become.htm>

rocketed the likes of Midnight Oil and INXS onto the international charts, was slipping into decline. (Crittenden, 2014).

The live music website MESS+NOISE asserted in 2010 that poker machines were becoming less important as a revenue stream for venues

While some venues in NSW, mostly league clubs and RSL, still earn up to \$100 million a year from their machines – accounting for an estimated 60-80 percent of their total revenue – the coupling of gambling and live music isn't always a winning combination. In an [interview] (/articles/3991498) with *M+N* earlier this year, The Annandale's publican Dan Rule said punters – the gig-going kind – were not big gamblers. While the pub still has nine machines installed, they don't pay the bills (Levin, 2010)

Another recent report suggests that the live music scene is not so much declining as changing. This report found a loss of venues in Sydney due to the cost of a liquor licence and the relatively easier income source provided by poker machines (Brown S, 2015). However, the researcher also found that since the 1980s the number of bands in Sydney has increased but the number of performances has decreased, and there has been a clustering of venues, particularly in the City of Sydney across that time.

In 2016, the Live Music Office reported that declining attendance in the Kings Cross entertainment precinct predated the new no-new-entry rules (Live Music Office, 2016). Live Performance Australia reported declining attendance and revenue in this sector in 2011-12. The NSW /ACT Alcohol Policy Alliance (NAAPA) noted in a submission to the Liquor Law Review that

Such volatility has also affected Western Australia, where lockout legislation is not in place, with live music venue closures being described as an "emergency situation". (NAAPA, 2016, p4)

In summary, live music is relatively expensive for venues and as the ways in which the costs have been underwritten have changed, so have the venues, their location and their size. Some live music venues have benefited financially from clustering, increased size, and later trading. In combination these three features encouraged large numbers of people to attend and move between venues where alcohol was consumed.

Taylor whose research identifies the shapeshifting in this industry's sponsors also notes that bands are increasingly turning to internet sales (as reported in Brown S, 2015) . While a contributor to the acrimonious lockout debate in Sydney notes that constraints merely encourage live musicians to relocate to new and diverse locations including parks and backyards (Tan, 2016). Perhaps the best perspective is one that acknowledges that live music is an ancient tradition whose forms and locations are highly responsive to circumstance. It is not a creative industry about to expire.

Meanwhile a quite separate and extensive literature has demonstrated that a range of alcohol-related harms including assault, domestic violence, and serious illnesses increase where there are high densities of alcohol outlets, late trading and lower prices.

Key social impact issues

Based on the material available to the consultants and an inspection of the site, our preliminary analysis of the proposal has identified 3 issues for further examination:

- 1 Alcohol related harm from an increase in the number of licensed premises and/or extended trading hours.
- 2 Increased risks for pedestrians (particularly those affected by alcohol).
- 3 Potential loss of low skilled manufacturing jobs.

These are discussed below.

1 Risks of alcohol-related harm

Liquor licences and trading hours

Liquor licences for hotels, restaurants and premises operating with an on-premises licence have standard trading hours which are

5.0 am – Midnight, Monday to Saturday and
10.0am – 10.0 pm on Sunday³.

Small bars are permitted by legislation Liquor Amendment (Small Bars) Act 2013 to trade from midday to 2.0 am or, if they are located in a freeze precinct to

³ <https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/liquor-licences/liquor-trading-hours.aspx>

midnight. Section 20B of the Act provides an opportunity for a licensee to apply to trade later than these hours.

Registered clubs that existed prior to the commencement of the Liquor Act 2007 on 1 July 2008 have unrestricted trading rights and can trade up to 24 hours a day unless they have otherwise opted to limit their approved trading hours. Marrickville has 10 such clubs.

However, councils can approve later hours when considering a development application and licensees can apply to OLGR for extended hours. There is no general planning guide currently for councils regarding granting or withholding of extended trading hours.

Applications to OLGR for extended trading are required to have regard to s3(2) of the Liquor Act 2007 and show that extended trading will not result in increased alcohol-related harm or detract from the amenity of an area.

Importantly, the opportunities for council to manage trading hours are limited to the conditions imposed at the time a development application is approved. That is, it is a once only opportunity. In practice, the use of trading hour conditions by councils varies from omission (no specification) to liberal support for extended trading hours, for example in support of a late night economy (NTE) policy.

While the Office of Liquor, Gaming and Racing (OLGR) and the Independent Liquor Authority (ILGA) have more opportunities to manage and vary trading hours (for example via imposition of penalties) currently liquor licences are granted in perpetuity subject to the payment of an annual fee.

Finally licensees can manage trading hours on a voluntary basis via agreement in a Liquor Accord. A current example is the Newtown Liquor Accord.

The AHA's submission uses the inner-west suburb of Newtown as an example of how a 3am "no new patrons" policy can work. It notes the Newtown Liquor Accord, comprised of local hotels, introduced the policy in mid-2015 along with drink restrictions after midnight. It allows patrons who plan to arrive after 3am to book ahead - an aspect of the policy designed to prevent people being turned away at the door and left frustrated on the street. The policy is "the sensible and pragmatic alternative to a lockout" the submission says. "Existing patrons can leave to have a cigarette or obtain food whilst other persons can pre-plan their attendance and notify

the premises, with that position in the venue held for their arrival." (Nicholls, 2016)

Anecdotally we understand that the no-new-entry laws in other parts of the City of Sydney have resulted in increased patronage in licensed venues in Newtown but not increased levels of violence. However, we also understand that venues have improved their security and there is an increased police presence in the area especially at night. Note that the liquor accord agreement can change and the extra police are a cost.

Trading hours matter because of the live music industry's perception that late night patronage is essential to their cash flow. The cash flow is based on both entry charges and sale of alcohol. Meanwhile there is a well established literature demonstrating a relationship between later trading and alcohol-related harm. Basically for every additional hour after midnight that trading is permitted, there is an increase in alcohol-related harm. In the case of venues (as distinct from consumption in the home) these harms are assault, accidents, traffic accidents and damage to property (Hobday et al., 2015, Jones et al. 2009, Kypri et al, 2011, Kypri et al. 2014, Menéndez et al. 2015, Rossw and Norström, 2012).

Density of licensed premises

There is an extensive epidemiological literature reporting a relationship between the density of licensed premises and alcohol-related harm (Burgess and Moffat, 2011, Connor et al., 2011, Chen, Grube and Gruenewald 2010, Huckle et al., 2008, Kavanagh et al., 2011, Livingston, 2008 and 2011, Miller et al. 2011, WHO 2009). While the nature of the relationship varies with the type of licence and no threshold density has been established definitively for particular licence types, that there is a relationship is a consistent finding.

For example, the NSW Bureau of Crime Statistics and Research (BOCSAR) issued a media release on 24 February 2011 noting:

Liquor outlet density and assault 'Only 3 per cent of the Sydney LGA is within 20 metres of a liquor outlet, yet 37 per cent of assaults in Sydney LGA occur within 20 metres of a liquor outlet. More than half of the assaults recorded by police in the Sydney CBD occur within 50 metres of a liquor outlet. Each additional alcohol outlet per hectare in the Sydney LGA will result, on average, in 4.5 additional assaults per annum. These are the key findings to emerge from a study of assaults

in and around licensed premises in the Sydney Local Government Area (LGA).⁴

Despite the consistency in the literature, density is not mentioned in the Liquor Act 2007 as a criterion against which liquor licence applications are to be assessed. Nor is the issue mentioned in the Liquor Regulation 2008.

In March 2015, the Office of Liquor, Gaming and Racing adopted the Environmental and Venue Assessment Tool (EVAT) as a basis for making risk assessments for individual liquor licence applications. This tool recognises liquor licence density as an issue, but only regarding the 'average number of liquor licences within a 1 km radius' (NSW OLGR EVAT factsheet). Further, it appears that the average number can be ranked low, moderate or high in comparison with state average (NSW Department of Trade and Investment 2014, p 30) which means the measure relies on licensing decisions by the Department to create the norm. This measure is not a rate per 100 000 population and it is not clear how the NSW average is calculated (do they include farmland, national parks?). However, as the number of licences increases, so does the average.

No information is available as to the extent to which this criterion is used in an assessment by the Department. Further, the tool is applied on a new application case by case basis, and thus is not able to deal with density due to past decisions.

Similarly the Environmental Planning and Assessment Act 1979 makes no provision for density of liquor licenses to be a consideration regarding development applications for these premises. In 2010 the NSW Department of Planning published a draft Competition SEPP for consultation which proposed that restrictions on the number or proximity of particular types of retail premises should not be allowed (Part 2, sections 10 and 11). This draft SEPP has lapsed.

However, the provisions of the SEPP were endorsed by the Competition Policy Review Panel in March 2015 (at page 45) noting with regard to trading hours however that

Deregulating trading hours should not prevent jurisdictions from imposing specific restrictions on trading times for alcohol-retailing or gambling services in order to achieve the policy objective of harm minimisation. (Recommendation 12, p47)

⁴ http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2011/bocsar_mr_cjb147.aspx

The Australian Government's response to this (Government Response 2016) was to endorse the Review Report's recommendation, that is to leave matters in the hands of state authorities, where it remains unchanged.

Thus the current state of affairs is that the literature consistently documents a relationship between the density of licensed premises and alcohol-related harm while neither OLGR/ILGA nor the NSW Department of Planning have provided any signals to local planning authorities regarding the relevance of this literature to planning nor ways in which it should be taken into account. The impact of this vacuum can be seen in the proliferation of licensed premises in Kings Cross where the number of licensed premises increased from 12 to 70 in the six years 2007-2013 (Brown T 2013).

In 2013, the City of Sydney published Open Sydney, a Strategy and Action Plan which noted the problem but indicated the solution rested with state agencies, saying

3.2.1 Restricting growth in key locations

We will advocate for legislation which restricts growth of late-trading, high-impact licensed premises and takeaway food shops in areas where there are already significant problems.

We will advocate for the introduction of cumulative impact guidelines into the Liquor Act as introduced by the Victorian Government in late 2011 to guide where licensed premises can operate.

3.2.2 A more dispersed night-time economy

We will advocate to the NSW Government for 'anti- clustering' legislation, which would prevent very largepubs and nightclubs being side by side, making room for smaller fine grain shopping and dining spots in between the larger venues. ...and

In 2016, the City in submission to the Liquor Law Review included

Recommendation 15: Establish a definition of cumulative impact in the Liquor Act, considering:

- anti-clustering mechanisms to manage concentrations of high impact licenced premises; and
- limitations placed on the number and types of licenced premises permitted within a geographic area to encourage a diversity of licensed and non-licensed premises.

and

Recommendation 17: Geocoding of all existing and new licence premises; this information to be made available to all government agencies / local authorities.

Recommendation 18: Replace the existing liquor freeze with 'saturation zone' provisions in the Liquor Act, including:

- establishing a definition for a 'saturation zone' that considers:
- the number of licensed and late trading premises, and the distribution of particular licence categories;

(City of Sydney Submission 2016, pp 4-5)

In effect these documents signal the City's perception that it is unable to consider density when making decisions about development applications for licensed premises, that is when it is operating as a planning consent authority, and that it relies on the state government to manage density issues.

At the same time density is poorly addressed in both planning and liquor licensing regulation and practice and decisions once made cannot be revisited.

Further liquor licensing is a relatively volatile area of public policy experiencing frequent changes.

All this means that Marrickville Council should exercise caution in seeking to introduce live music venues to the Sydenham Creative and Traditional Industries Precinct so that in the context of poor density controls, it does not lose control of the density of such venues.

Size of licensed premises

The Small Bars Act 2013 currently limits these venues to a 60 patrons capacity. This is the only licence category with a size or patron capacity limit.

OLGR's EVAT tool includes patron capacity as a consideration for liquor licence assessment for which it has three categories: 60 patrons or less, 61-150 patrons and 151 or more patrons. It might be that these patron capacities reflect the categories small, medium and large in the view of OLGR.

The City of Sydney position is that live music requires a small to medium patron capacity.

"While the City recognises the value of the Small Bar Licence and the positive impact it has had in diversifying Sydney's night-time economy, the capping of allowable capacity for this

licence at 60 people limits its value to the live music and performance sector. A venue with a spatial capacity of only 60 people is frequently unable to support the programming of live music or performance beyond a single unamplified performer.” (City of Sydney, 2014, p51)

and

Recommendation 21: Change the liquor licence definition of the small bar licence category to increase the capacity limit from 60 to 120 patrons. (City of Sydney, 2016. p6)

However, size of venue is operating here as an indicator of costs of which the principle costs seem to be the costs of meeting regulatory and licence requirements, costs of renovating and upgrading venues, costs of equipment such as lighting, cost of meeting noise control requirements, as well as running costs (City of Sydney 2014, p 11, 27, 57).

The issue here is that the definition of small and medium is again seen by the City of Sydney to be in the hands of a state agency, and the definition is by no means fixed. As already noted, small is defined as 200 patrons in WA (see definitions above). If the City is successful in its submission ‘small’ will become up to 120 patrons and thus medium and large will have to be redefined. Again, its not just the live music industry that is volatile.

Controls exercised by OLGR

Another view in the current debate is that OLGR has a significant array of penalties that it can visit on erring licensees (Nicholls, 2016).

However, sections 144D(2)(c), 144G (2)(i)-(viii) and 144G(3) of the Liquor Act 2007 provide the Department and ILGA numerous opportunities to exercise discretion not to proceed with a second or third strike, and the OLGR Three Strikes website indicates a third strike (the ultimate penalty) rarely occurs (OLGR 2016).

The relevance of this to Council’s interest in this precinct is that the liquor licence penalty system is vulnerable to lobbying (Robertson 2016, Walton 2016).

Controls exercised by councils

Most councils’ planning instruments provide insufficient controls to limit densification or clustering of licensed premises. Such controls as exist, e.g. designated buffer zones between one kind of use and another, may also fail

where the council has another policy that encourages clustering and high density of licensed premises, that is, where there are conflicting or insufficiently specified policies.

As an example, the City of Sydney has a Late Night Trading DCP 2007 which includes 'proximity to ... other late trading premises' (Section 2.6a) as a matter for consideration for night trading premises, but it also has an Open Sydney Strategy and Action Plan 2013-2030 which promotes the night time economy.

The Strategy and Action Plan anticipates 'this will mean restricting growth of very late-trading licensed venues'(p15), managing 'pedestrian congestion in very late trading areas' (p18), the possible use of 'RSA-marshall-trained patrols in the public spaces of late-trading areas to respond to highly intoxicated people in public spaces' (p 22) and 'a venue dispersal plan' for very late trading premises (p 22). However, among the list of actions, there is no action to restrict the growth of very late-trading licensed venues, the council does not yet have a means of ensuring amenity near late trading premises is protected (Action 5.1.3 is to consider policy options to this effect) and a venue dispersal plan requires action by OLGR (Action 5.1.3).

While the DCP takes precedence over the Strategy, and mentions that size and concentrations of late night uses are 'matters for consideration' when assessing a development application, (City of Sydney 2007, sections 2.6 d and e) the DCP sets no standards against which such consideration should be made.

The point is that policies to promote live music do not operate in a political or a public health vacuum. Promotion of live music is such a politically hot potato that it requires a well thought out, robust and consistent policy framework, consistently reflected in both the LEP and DCP, where the considerable range of unintended and perverse consequences have been identified and neutralised or avoided altogether.

A good policy should do much more than champion the benefits of live music. It should also be formulated to take account of the epidemiology of alcohol-related harm, the frailty of public health in the lens of planning controls, and the vulnerability of licencing controls to an array of interests. Importantly a good policy should anticipate perverse consequences and proceed with caution (the precautionary principle) where adverse consequences are likely and difficult to prevent.

Finally, a packaged liquor outlet in some cases can be opened in an existing retail premise as complying development. Although retail premises are prohibited in the IN2 zone in Marrickville at the moment, if this is subject to

change, other measures should be taken to restrict the opening of retail bottle shops in the precinct.

Noise and other amenity issues

One of the costs faced by live music venue operators is acoustic treatment of the venue to capture amplified sound so as to contain the noise and ensure nearby residents are not disturbed.

However, noise is a continuing source of complaint regarding live music venues. This is in part due to failure of acoustic treatments, noise spills to outdoor areas of some venues and the noise made by patrons on arrival and departure.

3.2.3 Managing noise

...We will explore planning controls for the design of new late-trading premises in high-density residential areas to ensure venues can trade and have natural ventilation, but without the current impacts on residents. (City of Sydney, 2013, p16)

It is clear however, that there are other amenity issues. One of these is urine. The City of Sydney installed portable urinals in an attempt to prevent people urinating against buildings. But noted in its submission to the Liquor Law Review, that residents were tired of having to hose off walls and fences on weekend and Monday mornings. Urine also eats into Sydney sandstone.

Street violence is also a basic amenity issue. One submission to the Liquor Law Review (Barrie, 2016) notes that at least one king-hit death occurred before midnight. While the submission writer was using this as grounds for removing the restriction, he also exposed an amenity problem for pedestrians in entertainment precincts.

In the proposed precinct, the current building stock would require substantial acoustic treatment to meet current building code requirements. Council would also probably need to ensure that there were public toilets between the venue and the station. Maintenance of these would be a cost to Council.

A CTI AND an entertainment precinct?

Since live music is a creative industry, designation of the proposed precinct as both a CTI and a live music or entertainment precinct (as the Brief for this project might be seen to suggest) seems unnecessary and superfluous. It also has some risks attached. Labelling the area as an entertainment precinct might in time encourage clusters of live music outlets – the density risk. Given the large size of

some existing buildings, an entertainment precinct might create a presumption on the part of some operators that large venues will be permitted, a presumption they might be willing to test in court, with unpredictable results.

If Council wishes to support the live music industry as well as avoid some of the risks outlined above, it would be able to do so within the terms of definition of a CTI precinct and without the additional designation of an entertainment or live music precinct. The precinct is already home to a diversity of uses benefiting from the current zoning and affordable rental, features hospitable to start up bespoke and creative enterprises. These features are more likely to persist if Council's response is relatively low key.

Summary of key issues regarding a live music precinct

Live music is a traditional but also a highly flexible creative industry.

Live music venues can be expensive due to large set up and regulatory costs.

Live music venues have benefited financially from clustering, late trading and larger sizes.

There is an extensive literature demonstrating that late trading is associated with increased alcohol-related harm.

Marrickville Local Government Area has a significant number of licensed premises and late trading venues already and some concerning indicators of alcohol-related harm.

Unless an area is zoned with the risks of late trading in mind, councils only have one opportunity to control trading hours – at the time of DA consent.

There is also an extensive literature noting an association between density of licensed premises and alcohol-related harm.

Unless an area is zoned with the risks associated with density of licensed premises in mind, councils have little or uncertain opportunity to refuse a licensed premises on the basis of density.

It also appears that larger premises are more problematic in terms of alcohol-related harm, especially in the context of density and late trading.

Again councils have limited opportunities to manage the risk factors associated with the size of premises.

With regard to all three factors – trading hours, density and size – the difficulties are not only that planning law does not assist councils to manage these issues,

but also that both planning and liquor law are relatively volatile. A council cannot rely on the continuation of current definitions or controls managed by other agencies. Further, to be effective planning controls need to operate at LEP as well as DCP level and the provisions of each must be consistent.

As well, councils should ensure that policies to promote some industries do not conflict with other policies, in this case policies to promote live music should take account of the epidemiology of alcohol-related harm, the frailty of public health in the lens of planning controls, and the vulnerability of licencing controls to an array of interests.

Finally in addition to the costs experienced by live music venue operators, councils should have regard to costs occasioned by themselves and other public agencies. Council costs include salary and overtime rates for rangers and for specific positions managing the late night economy, installation of toilets, street cleaning, and possibly litigation costs if zone specifications are inadequate.

Other public agencies incurring costs are police and hospitals.

2 Risks to pedestrians

The precinct is currently very well serviced by public transport, due to its proximity to Sydenham Station, which has the highest service level of all of the Marrickville LGA's railway stations.

The precinct is however traversed by high levels of through traffic cars and heavy vehicles. Traffic is particularly heavy during weekday morning and afternoon peak periods. In particular, Sydenham Road, Victoria Road, Marrickville Road and the Railway Parade/Buckley Street one way couplet carry large volumes of traffic through the area.

Some of these roads play a role in the regional route that serves heavy vehicles travelling from Port Botany to Parramatta Road. Pedestrian and cyclist safety and amenity is particularly compromised by the one way road couplet of Railway and Buckley, intersection designs that favour fast moving vehicles, a lack of places to safely cross the road, traffic calming, landscaping and the quality of the public domain generally. (Marrickville Council 2015, pp 7 & 8)

If the rezoning of the precinct leads to the creation of a CTI hub particularly if there is an increase in licensed premises, there will be some increased risk for pedestrians. The current precinct carries risks for pedestrians since there is considerable traffic at the moment on Marrickville and Sydenham road as well as Buckley Street. This is exacerbated by the high volume of truck traffic associated with the proximity of the airport and Port Botany. There are limited pedestrian crossings in the precinct.

If the development of the CTI precinct led to an increase in licensed pedestrians this could lead to additional risks. The NRMA has highlighted (2007) the strong relationship between pedestrian injuries and fatalities and elevated blood alcohol readings, especially for males.

Some potential mitigation measures might include:

- Improve pedestrian routes to and between the precinct and major public transport routes aimed at separating pedestrians from major traffic routes;
- Improve lighting and increased pedestrian crossings;
- Investigate the feasibility, risks and possible benefits of a pedestrian tunnel between Sydenham station and the “western” Railway Parade.

Note that any traffic calming measures introduced would need to ensure that that they would not prevent truck deliveries to industrial operations.

The details of these mitigation measures would need to be the subject of more detailed traffic and pedestrian studies by Council at a later date, particularly after the impact of the Westconnex on traffic patterns in the area becomes clearer.

3 Employment risks

The Marrickville Employment Lands study was completed in 2014. It made a number of recommendations about the Sydenham/Marrickville employment lands including:

The SGS report’s recommended strategies and actions are as follows:

Strategy 1 – Protect sub-regionally significant industrial lands: ...

Action 1.1 – designate the Marrickville/Sydenham precinct as a sub-regionally significant industrial precinct and zone accordingly; ...

Action 1.2 – Restrict further subdivision and/or strata titling of larger lots in the – Marrickville/Sydenham precinct to prevent fragmentation; ...

Action 1.3 – Prevent the spread of retailing and services into the Marrickville/Sydenham precinct; ...

Action 1.4 - Lobby the NSW Government to consider the provision and protection of strategic industrial and employment lands at a subregional level; and ...

Action 1.5 – Consolidate planning and urban design guidance in a Marrickville/Sydenham precinct plan.

Council's own economic development officer made some strong points about the importance of the current precinct:

As this project unfolds it is important to be mindful that this is not an Industrial Area in decline but one that is highly successful and the prime contributor to the fact that manufacturing is still the biggest employer in Marrickville and the biggest contributor to Gross Domestic Product. The existing industries are extremely valuable to the local economy, utilising many other local services and products and providing a range of employment from unskilled to highly skilled, technical and creative. Staff employed in the existing local businesses support the local economy as contributors to lunchtime trade and shopping. The proposed live music and late night economy businesses have a much narrower range of employment opportunities but will augment the growing number of food and entertainment venues currently locating in the Marrickville CBD and periphery. New creative industries would provide greater depth to those already in existence and increase the skills pool for local consumption. Any laneway activation would have to be mindful of existing pickup and delivery services which often involve large vehicles. Competition for space for any new business in this precinct is extreme as it is a highly desirable and sought after area for relocation for like businesses moving from areas such as Alexandria.

Local commercial real estate agencies advise that landlords are now able to pick and choose who they want as tenants at substantially higher rents. The current vacancy rate (August 2015) is under 2%. Council should be cautious in applying anecdotal evidence and/or macro-economic findings to any

project being considered for this precinct to ensure its value to the local economy is enhanced not diminished.

Based on a tour of the precinct, many of the employees will be low income employees many from a NESB background. It is important that these local manufacturing jobs not be lost as the precinct develops. This will be assisted by the application of existing use rights and a focus on maintaining current subdivision patterns. If there is a gradual introduction of creative industries as existing firms seek to relocate to sites with larger footprints this will minimise the negative social impacts from the change in land use.

Assessment and recommendations

The night-time economy [NTE] is an important part of any modern city, providing entertainment for many and jobs for many others. It is a risk-laden environment. Some of that is attractive to patrons. An immense number of variables are at play in determining whether one individual suffers harm whereas another does not. Most do not; and most feel safe while visiting night-time entertainment districts. On the other hand, most of the general public that have not been to a licensed venue in the past 12 months are misinformed by sensationalist media painting scenes of gratuitous violence and hedonism. However, alcohol-related harm is a complex problem that requires a multifaceted and long-term primary prevention approach. The data presented in this report highlight the clear social and health imperatives to reduce overall alcohol consumption and better manage environments where alcohol is consumed. Many people do experience harm and communities need to be informed about the types and levels of harm occurring in the NTE to be able to decide what levels they are comfortable with experiencing.

(Miller et al., 2012, p188)

There are a number of risks inherent in establishing a CTI and entertainment precinct. These are identified above. At the same time, we identify a number of benefits could arise from facilitation of the creative and traditional industries already in the area by providing additional amenities, financial and management support for small scale initiatives to 'test the waters' for further initiatives, general improvements in urban design and amenity including traffic controls, improved access to Sydenham station and public toilet facilities.

Recommendations

Alcohol-related harm minimisation

- 1 Treat live music as one of the creative industries so as to avoid expectations and pressures associated with designating an entertainment precinct. This would also encourage day time creative activities and protect existing night time industries (e.g. bakeries) from incompatible nearby uses.
- 2 Prepare a creative and traditional industries precinct policy/strategy which takes account of the epidemiology of alcohol-related harm, diversity of current industries, diversity of industries in the precinct in future, the current built form and its limits and opportunities. Carry the strategy findings into both the LEP and the DCP.
- 3 Set clear and specific standards in the DCP to apply to development applications, including specific limits on the size and density of licensed premises, presence of packaged liquor outlets, and trading hours in the precinct and on its borders.
- 4 Establish a precinct-wide limit to service of alcohol of (say) 2.0 am (consistent with the proposal's emphasis on small bars) so as to ensure that the precinct's primary *raison d'être* is creative and traditional industries rather than an entertainment precinct.
- 5 Use the project to require improvements in acoustics when building are upgraded (to protect occupants from aircraft noise).

Pedestrian safety

- 6 Create a quieter precinct on weekends (perhaps via posted speed limit restrictions, traffic calming devices or possibly by re-routing of traffic from Buckley Street to Sydney Street on weekends), whilst ensuring trucks are able to access roads and lanes to deliver goods to factories.
- 7 Improve pedestrian routes between the precinct and major public transport routes aimed at separating pedestrians from major traffic concentrations. (For example, provide an access trail from Sydenham Station to Barclay Street along the (unnamed) lane connecting Railway Parade with Barclay Street).
- 8 Improve existing pedestrian crossings and increase pedestrian crossings. In the longer term, investigate the feasibility of a pedestrian tunnel running from Sydenham station to Railway Parade.
- 9 Improve street lighting and apply crime prevention through urban design principles to street improvements and upgrades.

Support creative and traditional industries

- 10 In order to reduce risks to existing industries use the proposed consultation strategy to anticipate impacts of any built form changes on business operation or viability (impact of street works on truck access).
- 11 Introduce a weekend street market (perhaps in Barclay Street) based on creative and traditional industries already in the area. Encourage traditional businesses to participate as a way of increasing their turnover.

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