

Place, Design and Public Spaces

IRF20/3619

Gateway determination report

LGA	Sydney Local Government Area
PPA	City of Sydney Council
NAME	Open and Creative Planning Reforms
NUMBER	PP_2020_SYDNE_005_00
LEPs TO BE AMENDED	Sydney Local Environmental Plan 2012 (Sydney LEP 2012); Sydney LEP 2005; Sydney LEP (Green Square Town Centre) 2013; Sydney LEP (Green Square Town Centre Stage 2) 2013; Sydney LEP (Glebe Affordable Housing Project) 2011; Sydney LEP (Harold Park) 2011; South Sydney LEP 1998; South Sydney LEP No. 114 (Southern Industrial and Rosebery/Zetland Planning Districts).
LAND TO WHICH THE LEP RELATES	Sydney Local Government Area
RECEIVED	17 July 2020
FILE NO.	IRF20/3619
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend the following standard and pre-standard planning instruments identified in **Table 1**.

Table 1: Local Environmental Plans this planning proposal seeks to amend

Standard Instruments	Pre-Standard Instruments
<ul style="list-style-type: none"> Sydney Local Environmental Plan 2012 (Sydney LEP 2012) Sydney LEP (Green Square Town Centre) 2013 Sydney LEP (Green Square Town Centre Stage 2) 2013 Sydney LEP (Glebe Affordable Housing Project) 2011 Sydney LEP (Harold Park) 2011 	<ul style="list-style-type: none"> Sydney LEP 2005 South Sydney LEP 1998 South Sydney LEP No. 114 (Southern Industrial and Rosebery/Zetland Planning Districts)

It is proposed to amend Schedule 2 Exempt Development, land use tables and associated permissible uses within the LEPs to:

- enable shops, kiosks or business premises in B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Centre, B4 Mixed Use or B8 Metropolitan Centres to trade till 10pm as exempt development;
- enable small scale cultural activities to take place in existing office, industrial, retail and community facility buildings as exempt development subject to certain criteria;
- amend the Zone B2 Local Centre land use table to insert 'Light Industry' as a use permitted with consent; and
- insert 'Entertainment facilities' as an additional permitted use with consent applying to Erskineville Town Hall under Schedule 1.

1.2 Background

City of Sydney Council exhibited Open and Creative City Discussion paper on 25 October 2017 to 13 December 2017. The actions within the discussion paper included:

- a diverse evening economy – allowing shops and businesses to extend trading hours within Central Sydney and villages centres to between 7am and 10pm, 7 days a week as exempt development;
- small scale cultural uses – allowing small scale cultural uses with minimal environmental impact to take place in existing buildings as exempt development; and
- fair management of entertainment sound – introducing the agent of change principle which requires new development to manage and respond to sound conditions in their neighbourhood.

The key matters which arose from the consultation included:

- support for small scale cultural activities with minimal impacts and without development consent;
- support for more flexible rules for small scale cultural uses, including the limit on patrons and frequency of events, but also concern about potential sound impacts on nearby residents;
- support for shops and local business to trade until 10pm without development consent in established retail areas; and
- strong support for the 'agent of change' principle where new residential development located near existing live music performance venues would need to be designed and built to manage the existing sound conditions in their neighbourhood.

Council has adopted strategies such as the Creative City Cultural Policy and Action Plan 2014-2024 and Live Music and Performance Action Plan. Actions within these strategies identify actions to review the planning controls to support live music, performance and cultural activity. These include Action 3.2 of the Live Music and Performance Action Plan, which is 'investigate opportunities in City of Sydney planning controls to streamline approval processes for low impact live music and

performance activity, including consideration of expanded Exempt and Complying Development provisions in the Sydney LEP 2012.

1.3 Site description

The planning proposal applies to business and industrial zones within the standard instruments for the Sydney LGA, varying for each proposed change. **Table 2** outlines the zoning to which each proposed change applies to. The relevant figures below illustrate the land to which each proposed change is applicable.

Table 2: Zoning to which the proposed changes apply

Proposed Changes	Zoning to which the proposed changes apply to
Late opening shops and businesses (Figure 1)	<ul style="list-style-type: none"> • B2 Local Centre • B3 Commercial Centre • B8 Metropolitan Centre
More small-scale cultural activities (Figure 2) (amplified sound as exempt development only applies to the zones marked as '+', Figure 3)	<ul style="list-style-type: none"> • B2 Local Centre • B3 Commercial Core + • B4 Mixed Use • B5 Business Development + • B6 Enterprise Corridor + • B7 Business Park + • B8 Metropolitan Centre + • IN1 Industrial Zone +
Creative workspaces	<ul style="list-style-type: none"> • B2 Local Centre

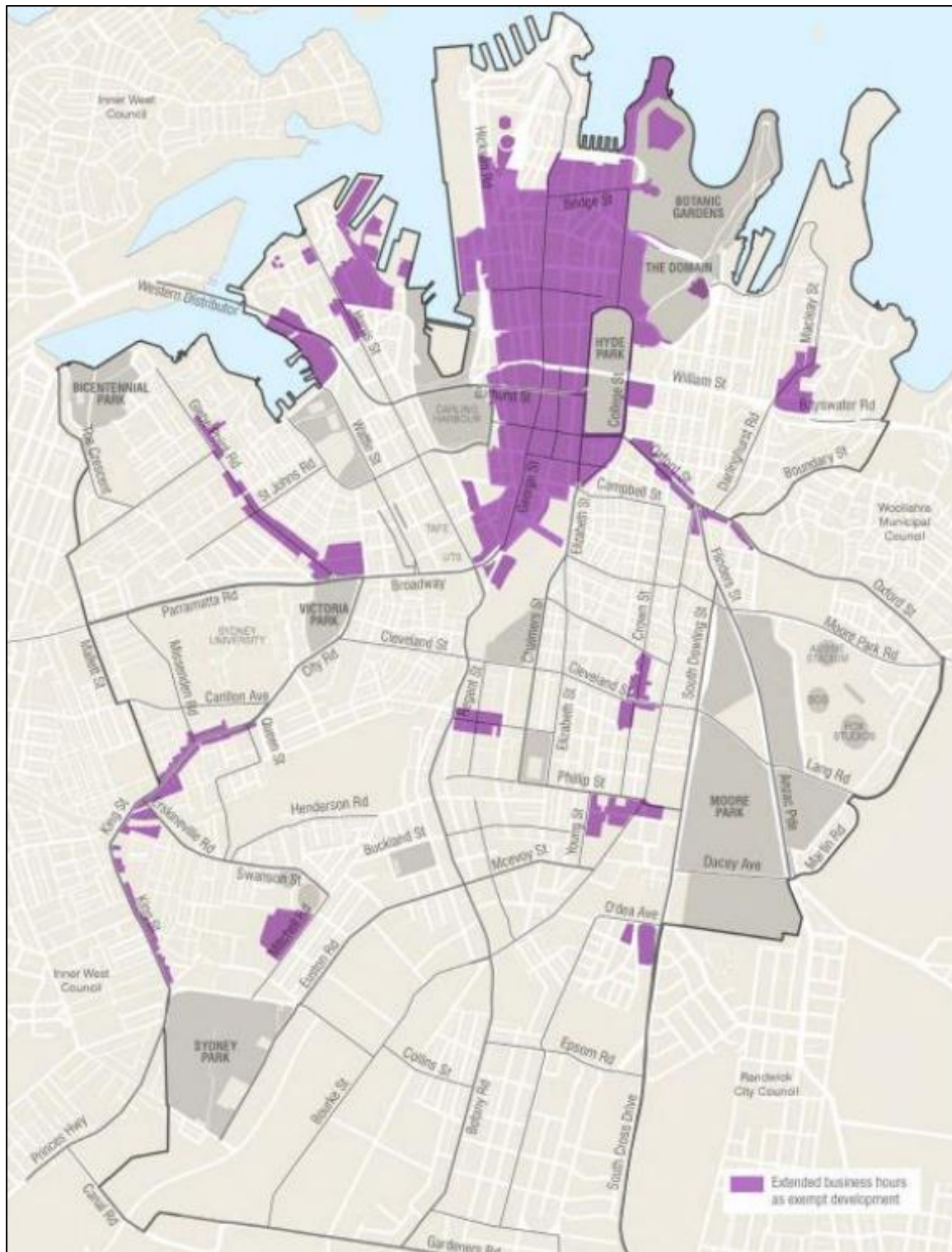


Figure 1: Locations where businesses could extend trading hours until 10pm as exempt development (shown in purple) (Source: Council's Planning Proposal)

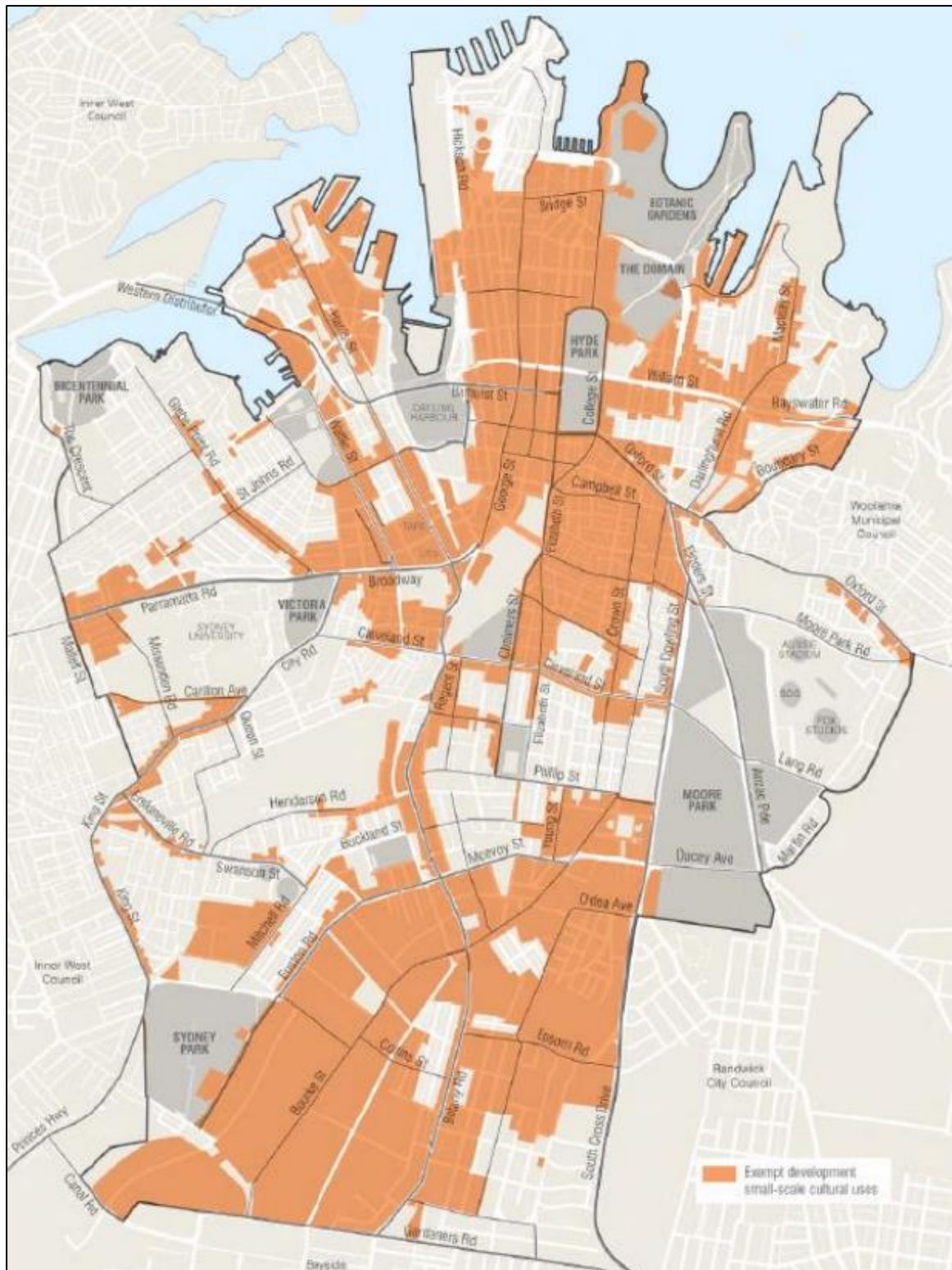


Figure 2: Locations where small-scale cultural activities could occur as exempt development (shown in orange) (Source: Council's Planning Proposal)

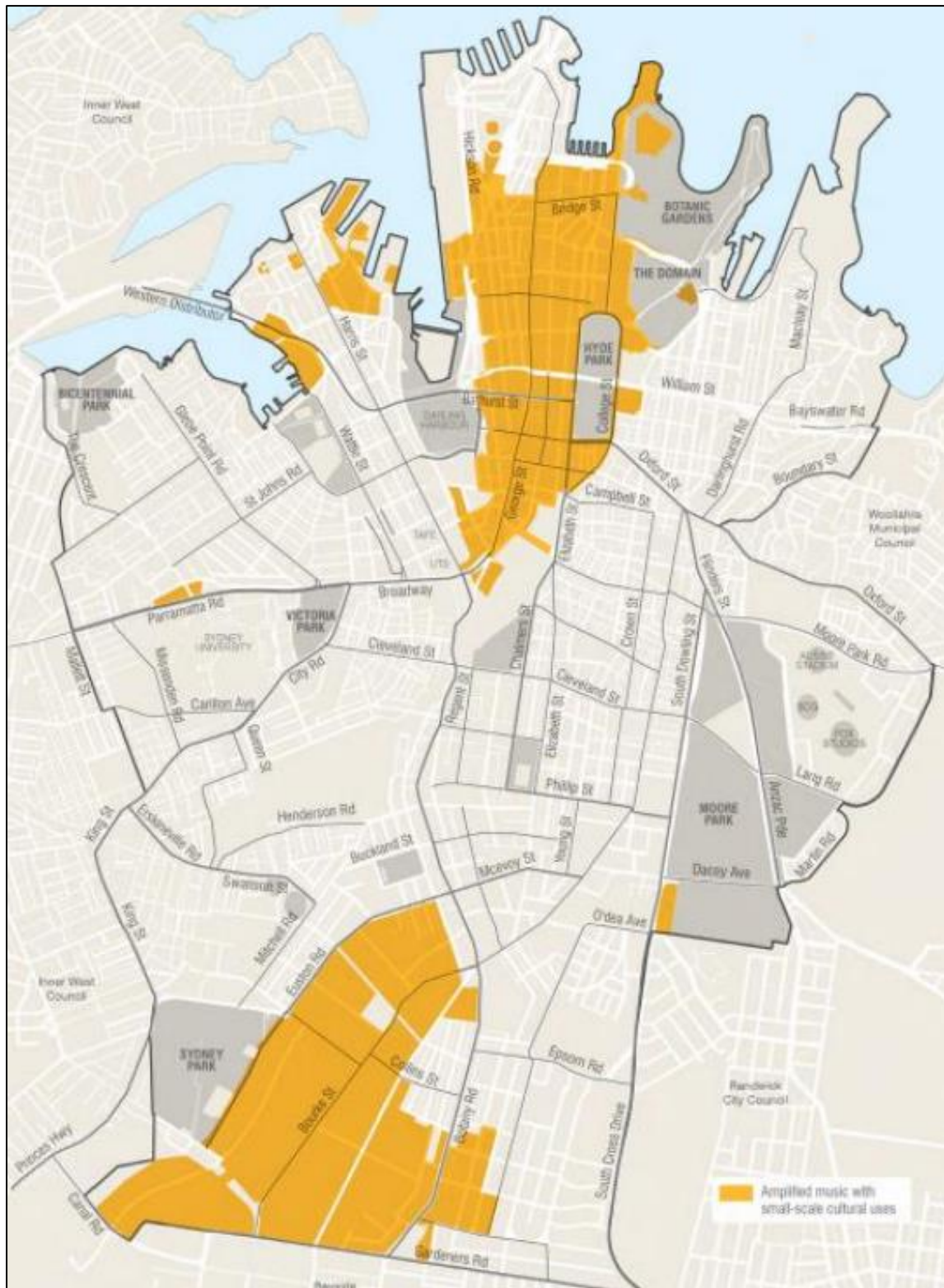


Figure 3: Locations where small-scale cultural activities with amplified music could occur as exempt development (shown in yellow) (Source: Council's Planning Proposal)

1.3.1 Erskineville Town Hall

The Erskineville Town Hall is located at 104 Erskineville Road, Erskineville. The venue consisting of a large hall and committee room is currently available for hire, with Council stating it is suitable for rehearsals, community meetings, conferences

and small private functions. The hall is approximately 84m² in size, and the committee room is approximately 30m² in size. The maximum capacity is 80 people for dinners, cocktail parties and theatre uses.



Figure 4: Erskineville Town Hall shown in red (Source: Nearmap)



Figure 5: Erskineville Town Hall (Source: Council's website)



Figure 6: Town Hall space (Source: Council's website)

1.4 Existing planning controls

The Erskineville Town Hall is zoned B1 – Neighbourhood Centre under the Sydney LEP 2012 (**Figure 7**). This zoning currently prohibits entertainment facilities.

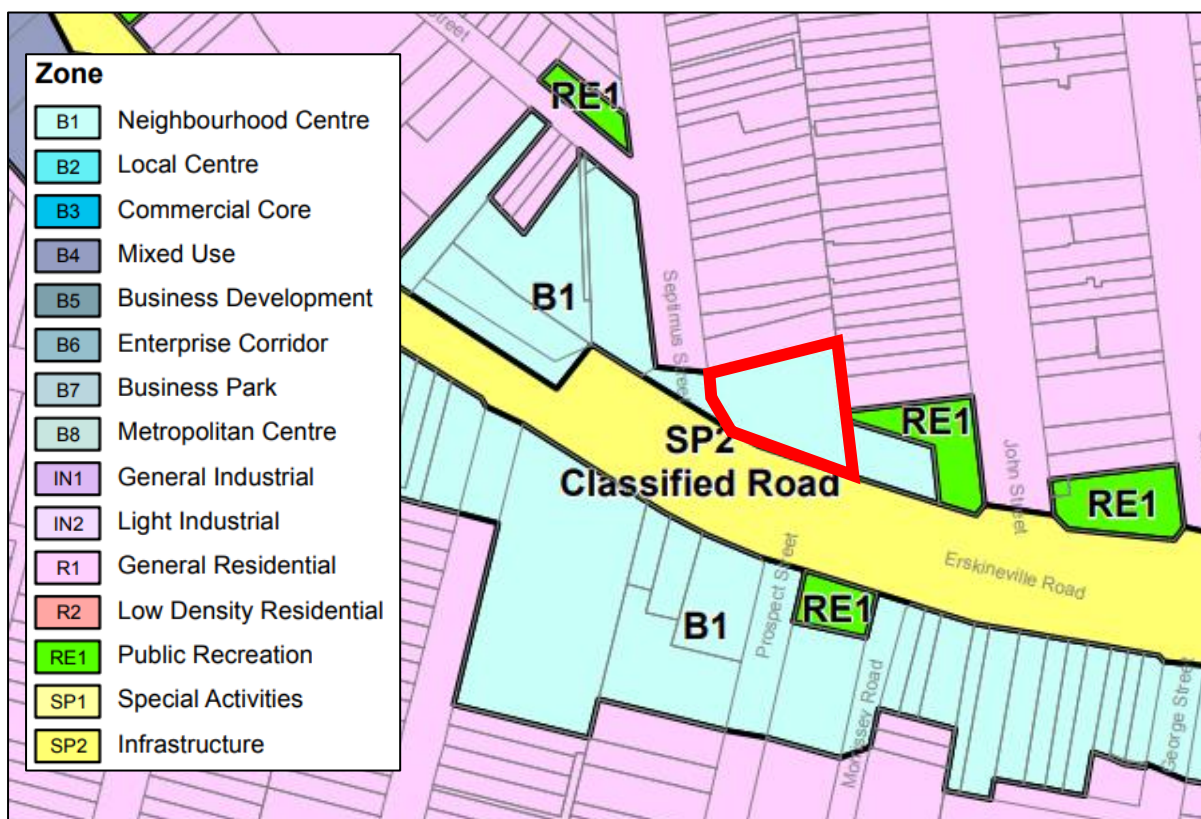


Figure 7: Land zoning for Erskineville Town Hall, shown in red (Source: Sydney LEP 2012)

2. PROPOSAL

2.1 Objectives or intended outcomes

Council state the objective of this planning proposal is to implement changes to planning controls in the Sydney LEP 2012 and other relevant LEPs:

- make it easier for shops and business to trade in central Sydney and village centres from 7am to 10pm, seven days a week;
- make it easier for small scale cultural activities to take place in existing office, industrial, retail and community facility buildings;
- make it possible for creative and maker tenants to operate in Local Centres, and
- increase the range of cultural activities that may be undertaken in the Erskineville Town Hall community facility.

2.2 Explanation of provisions

The planning proposal seeks to amend the following instruments:

- Sydney LEP 2012;
- Sydney LEP 2005;
- Sydney LEP (Green Square Town Centre) 2013;
- Sydney LEP (Green Square Town Centre Stage 2) 2013;
- Sydney LEP (Glebe Affordable Housing Project) 2011;
- Sydney LEP (Harold Park) 2011;
- South Sydney LEP 1998; and
- South Sydney LEP No. 114 (Southern Industrial and Rosebery/Zetland Planning Districts).

The instruments are categorised as either standard or pre-standard instruments, which is shown in **Table 1**. The proposed amendments and drafting of provisions are shown in **Table 3**.

Table 3: Proposed amendments and drafting of provisions

Standard LEPs	
Late Opening Shops and Businesses	
Schedule 2 Clause 3.1: Exempt Development	New provision: Development with lawful consent to operate as a shop, kiosk or business premises which trades until 10pm indoor (outdoor trading is not included) as exempt development, on the basis the shop or business use must: <ul style="list-style-type: none">• be located on land zoned B2 Local Centre, B3 Commercial Centre or B8 Metropolitan Centre;• not be a licensed premises in accordance with the definition under the Liquor Act 2007; and• not, as a result of the exempt development, contravene any existing condition of any active development consent that applies to the premises relating to noise, car parking, loading or waste management.
Small-scale cultural activities	
Schedule 2	New provision:

<p>Clause 3.1: Exempt Development</p>	<p>Small scale cultural activity, occurring in a building with lawful consent to operate as a retail, industrial, office or community facility as development exempt from consent on the basis of meeting criteria:</p> <ul style="list-style-type: none"> • only take place in a building which can be lawfully used for the purposes of a retail, office, industrial or community facility • only take place on the ground floor of the retail, office, industrial or community facility • only take place in a building with a current annual fire safety statement which enables occupation of the building for its current approved use • not involve building works, unless those works are otherwise exempt or approved development • only take place on land in the B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 General Industrial zones • only occur between the hours of 7am and 10pm • have a maximum duration of 4 hours on each day, excluding set up and pack down • not occur more than 26 days in a 12 month period, 4 days in any single week and 8 days in any single calendar month • accommodate no more than 1 person per square metre in the area accessible by patrons, up to a maximum of 70 people, including patrons, staff and performers. • not include the use of pyrotechnics, theatrical smoke, or dangerous goods. • only include the service of alcohol if it is consistent with an existing liquor license issued under the Liquor Act 2007, or served under a caterers authorisation issued under the Liquor Act 2007 • provide adequate access to sanitary facilities • only have amplified sound if the activity is in a B3 Commercial Core, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre or IN1 General Industrial zone. For the purposes of this clause, amplified sound means sound which is generated, provided or aided through the use of any electrically powered device. This includes but is not limited to the following: use of a public address system, bullhorn/megaphone, loudspeaker or any speaker or subwoofer, power amplifier, stereo system. It includes both background music and foreground music • may, outside of the B3 Commercial Core, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 General Industrial zones, include the use of a microphone through one small speaker and/or include background music for the duration of the event. For the purposes of this clause: <ul style="list-style-type: none"> • Background music means pre-recorded music played through no more than two electrically amplified speakers, which is intended as an accompaniment rather than the main focus of an audience/event. It is played at a soft, low volume / low amplification level which does not require persons to elevate their voices to hold conversations. It is not audible within any separate premises and does not create nuisance. • Foreground music means any music or sound, amplified or not, which is directly played as a primary source of entertainment. • 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 be removed from the premises and not placed on the public way at any
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	<p>time, and glass is not to be emptied or transferred anywhere in a public place</p> <ul style="list-style-type: none"> • ensure the orderly entry and egress of patrons and not detrimentally affect the amenity of the neighbourhood, including queueing of patrons while ensuring adequate public access to other pedestrians on footpaths. • five to seven days prior to the commencement and during the event, display in a clearly visible public place outside of the premises, a sign including following information in bold letters not less than 25mm in height on a contrasting background: <ul style="list-style-type: none"> (a) the event name, including a description of the nature of the event, commencement, duration, and completion date (b) the name and telephone number for contacting the person responsible for the event at all hours during which the premises is operating <p>Small scale cultural activities will be defined as activities including:</p> <ul style="list-style-type: none"> • live entertainment, (being an event at which one or more persons are engaged to play or perform live or pre-recorded music, or a performance at which at least some of the performers are present in person), including the presentation or rehearsal of music, film, theatre, spoken word, comedy or dance, or • the production, or an event in association with an exhibition of art, craft, design, media, image or immersive technology, or • teaching or discussion related to (a) or (b). <p>While the exempt criteria has been set to minimise impacts on neighbours, relevant provisions of the Protection of the Environment Operations Act 1997 will continue to apply and persons undertaking exempt activities will have to ensure that offensive noise is not created.</p>
Creative work spaces	
Part 2: Land Use Table	Amend the Zone B2 Local Centre land use table to insert 'Light Industry' in 3 Permitted with consent.
Erskineville Town Hall	
Schedule 1	Insert 'Entertainment facilities' as an additional permitted use with consent applying to Erskineville Town Hall (104 Erskineville Road, Erskineville being Lot 1 DP 664780 and Lot 14 DP 663317).
Pre-Standard LEPs	
Late Opening Shops and Businesses	
<ul style="list-style-type: none"> • Part 3, Clause 16 of the Sydney LEP 2005 • Schedule 3 of the South Sydney LEP 1998 • Part 3, Clause 30 of the South Sydney LEP No. 114 (Southern Industrial and Rosebery/Zetland Planning Districts) 	<p><u>New provision:</u> Clause 3.1 of, and Schedule 2 to the Sydney LEP 2012 (to the extent that they specify development with lawful consent to operate as a shop which trades until 10pm as exempt development) apply to development on land to which this plan applies in the same way as they apply to development on land to which that Plan applies.</p>
Small-scale cultural activities	
<ul style="list-style-type: none"> • Part 3, Clause 16 of the Sydney LEP 2005 	<p><u>New provision:</u> Clause 3.1 of, and Schedule 2 to, the Sydney Local Environmental Plan 2012 (to the extent that they specify development with lawful consent to</p>

<ul style="list-style-type: none"> • Schedule 3 of the South Sydney LEP 1998 • Part 3, Clause 30 of the South Sydney LEP No. 114 (Southern Industrial and Rosebery/Zetland Planning Districts) 	operate as a retail, office, industrial premises or community facility which is a small scale cultural activity, as development exempt from consent on the basis of meeting criteria) apply to development on land to which this plan applies in the same way as they apply to development on land to which that Plan applies.
Creative work spaces	
Part 3, Clause 87 of the Sydney LEP 2005	Amend the Residential-Business zone to include 'Light Industry' as permitted with consent.

Exempt Development (all proposed changes)

The key proposed change of the planning proposal centres around types of development now being exempt. This includes allowing shops and businesses to operate until 10pm and use of existing buildings for small-scale cultural activities as exempt development, subject to certain criteria.

In accordance with Sydney LEP 2012, exempt development is development specified in Schedule 2 that meets the standards specified in that schedule and complies with the requirements of Part 3 of the LEP. Part 3 requires that exempt development:

- must meet the relevant 'deemed-to-satisfy' provisions of the Building Code of Australia or be structurally adequate if there are no such relevant provisions;
- must not, if it relates to an existing building, cause the building to contravene the Building Code of Australia;
- must not be designated development;
- must not be carried out on land that comprises an item that is listed on the State Heritage Register or is subject to an interim heritage order under the Heritage Act 1977; and
- must not be carried out on land within any environmentally sensitive area (as defined in clause 3.3(2)).

Specified development can be declared as exempt development, provided the proposed activities satisfy the above requirements and meet the standards that will be placed into Schedule 2.

The Department considers the proposed amendments to be adequate for exhibition however the final drafting is subject to legal drafting by Parliamentary Counsel.

Later Trading Hours

The proposals aim to meet the targets in OPEN Sydney strategy to provide more non-alcohol based shops and businesses after 6pm, and attract a greater range of age groups and interests out at night.

The proposed provision applies to the B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Centre, B4 Mixed Use and B8 Metropolitan Centres zones, which include the city centre and local centres.

The planning proposal states that shops to open until 10pm in the B1, B2, B3, B4 and B8 zones is consistent with the objectives of these zones to provide a mixture of compatible land uses in accessible locations to encourage the availability of services for communities.

Small Scale Cultural Activities

The exempt provision will only be applied in business and industrial zones in the city, where the mixed use activity is already established. These areas include the B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre and IN1 General Industrial zones.

Noise

Amplified music will be defined in the proposed clause and only be permitted as exempt development in Central Sydney or industrial and business only zones. With B4 Mixed Use zones being excluded from this provision (as shown on the map identified in **Figure 3**), the Department considers this reduces the risk of residential amenity being comprised by amplified music.

In areas outside where amplified music is permitted, the proposed exempt provision allows the use of background music and the use of a microphone for the duration of an event. This will support activities such as education seminars.

The planning proposal defines amplified music as sound which is generated, provided or aided through the use of any electrically powered device. Amplified music includes both background and foreground music. Council advises this definition has been developed in consultation with acoustic specialists.

The planning proposal defines background music as pre-recorded music played through no more than two electrically amplified speakers, and played at a soft, low volume level.

Council advises it is difficult to impose a noise level such as decibels on amplified sound or background music due to the inability of operators to self-assess noise levels. Council considers noise can be managed through the *Protection of the Environment Operations Act 1997*.

Departments notes Council's intent with the proposed exempt provision for background and amplified music. The final drafting of the provision will be subject to legal drafting by Parliamentary Counsel. Should any revisions be required to further specify noise levels it can be addressed before finalisation.

Amenity

To ensure the operation of the main use of the building is not affected and the cultural use does not create adverse impacts on neighbours, the small-scale cultural activities will be required to comply with conditions of the existing development consent for the main use of the building relating to car parking, vehicular movement, traffic generation, loading and waste management. If there is no waste condition

within the consent, the provision will require that waste is removed from the premises and not placed on the public way.

The proposed exempt provisions will allow for the cultural activity to occur until 10pm. To minimise impacts on neighbours, the provisions requires for:

- the orderly entry and egress of patrons;
- signage be displayed in a visible place within the premises five to seven days before and during the event describing the activity and include contact details for the person operating the event;
- provide access to sanitary facilities; and
- no more than 70 people in total, including staff and performers.

The Open and Creative City Discussion Paper proposed a 9pm closing time for weekdays, however submissions received from the cultural sector during the 2017 exhibition indicated this was overly restrictive. The timeframe was extended until 10pm, which is viewed as having minimal impact, due to many of Council's noise complaints are not related to activity within this timeframe.

The rationale to require the orderly entry and egress of patrons reflects the wording of conditions of consent for retail and licensed premises.

Council has outlined the requirements for signage, including the details required to be presented in a bold font 25mm in size, will ensure the signage is visible and readable, and effective in community the relevant information to the community. This will reduce the risk of illegible signage being classified as exempt development.

Exempt activities must provide adequate access to sanitary facilities, which means that some retail or industrial premises may not be able serve a maximum of 70 patrons attending a temporary cultural activity. Given the limited duration and temporary nature of the small scale cultural activity it is considered appropriate that shared facilities located within a reasonable distance may be utilised to serve the activity. This is appropriate as shared facilities can be approved under the National Construction Code for small bars and restaurants which have similar space constraints.

The Open and Creative City Discussion Paper proposed a limit of 50 patrons for exempt small-scale cultural activities, which was benchmarked from the change of use of premises provisions within *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). This limits food and drink premises to 50 seats. Council suggests the increase from 50 to 70 patrons remains within the fire safety occupancy threshold for activities within existing retail and business buildings.

The Department considers the proposed parameters to protect amenity that is currently available to neighbouring sites is adequate. However, the final drafting of the provisions will be subject to legal drafting by Parliamentary Counsel.

Fire Safety

Any exempt development must ensure developments comply with the NCC fire requirements, particularly in the aspect of fire safety and fire-fighting equipment, requirements for a fire safety certificate/statement and the maximum capacity of the venues.

The planning proposal states that the safety of events can be managed, as the exempt provision only allows activities to take place within office, retail, business and community facility premises with a current Annual Fire Safety Statement (AFSS). The AFSS ensures the proposed space can be occupied safely for its approved base use.

Further, the exempt provision will require that small scale cultural activities only occur on the ground level of buildings to ensure that spaces are designed and approved with the appropriate fire safety measures and for an increased capacity, rather than the potential for first floor spaces that may not be appropriate or designed for that type of activity.

Creative Work Spaces

The planning proposal seeks to include light industrial uses within the B2 Local Centre zone. Council advises this will encourage a diversity of creative uses within the local centres throughout the LGA.

Light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- a) high technology industry;
- b) home industry; or
- c) artisan food and drink industry.

B2 Local Centres zones are located on Harris Street, Pyrmont, Glebe Point Road, Glebe, Redfern Street, Redfern, Danks Street, Waterloo, Oxford Street, Darlinghurst, King Street, Newtown, Darlinghurst Road, Kings Cross, Crown Street, Surry Hills, and Defries Avenue, Zetland. The planning proposal will also amend the Business-Residential Zone on the Central Park site on Broadway, Chippendale for the pre-standard instrument LEPs.

Any proposed development will still be required to obtain consent through a development application. The Department considers inserting light industry as a use permitted with consent within the B2 Local Centre Zone to be acceptable.

Erskineville Town Hall

The planning proposal seeks to include entertainment uses at the Erskineville Town Hall as an additional permitted use under Schedule 1. Entertainment uses, as per the Sydney LEP 2012, include uses such as theatre, music hall, concert hall, dance hall but does not include a pub or registered club.

Any potential environmental impacts will be considered through future applications for consent. The Department considers the inclusion of entertainment uses as an additional use permitted with consent at Erskineville Town Hall to be acceptable.

Relationship with existing Development Consents and Conditions

The planning proposal seeks to enable shops and businesses to operate until 10pm, and use of existing buildings for small-scale cultural activities as exempt development, subject to certain criteria. There is the potential for existing development consents and conditions to overlap with the exempt development provisions.

Council advises there is no contravention of any existing condition of the active development consent relating to noise, car parking, loading and waste management. In addition, small-scale cultural activities will be required to comply with conditions of the active development consent for the main use of the building relating to car parking, vehicular movement, traffic generation, loading and waste management.

The proposed exempt development will unlikely impact existing development consents and conditions, provided that those existing consents and conditions are not breaches.

Draft Sydney Development Control Plan 2012 Amendments

Council has prepared a draft Development Control Plan (DCP) which accompanies the proposed amendment. The draft DCP controls aim to:

- outline thresholds of activity for small scale cultural and performance activities which are considered to be low impact;
- outline the matters to be addressed in Plans of Management for small scale cultural and performance activities;
- permit the approval of cultural and performance activities without requiring full National Construction Code upgrades, provided that appropriate alternative solutions are implemented;
- outline amenity requirements for new entertainment sound-generating entertainment development;
- outline amenity requirements for new entertainment sound affected development;
- outline the methodology and matters to be addressed in a Noise Impact Assessment submitted with development applications for entertainment sound-generating uses, or noise-sensitive uses which may be affected by an existing adjacent sound-generating development; and
- include new maps identifying land that may be affected by entertainment sound and the criteria for acceptable sound levels that must be met by development.

Draft Technical Guidelines - Small Scale Cultural Activities in Spaces less than 500 square metres

Council has prepared draft technical guidelines for small scale cultural activities which occur in spaces less than 500m². The guidelines provides advice for cultural producers about the type of buildings or spaces that may be used and adapted for small scale cultural activities. The guidelines consist of a checklist which may assist operators in choosing the right types of buildings and ensure that minimal works are required.

Both the draft DCP and draft Technical Guidelines will be publicly exhibited together with the planning proposals.

2.3 Mapping

The planning proposal does not propose any mapping amendments to any of the applicable LEPs.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is the result of the OPEN Sydney Strategy and Action Plan, Creative City Cultural Policy and Action Plan, Live Music and Performance Action Plan and Council's Open and Creative City Discussion Paper. These strategies have envisioned to create a strong cultural city, which aims to enhance culture, night time economy and the live music and performance industry.

Council advises small-scale cultural activities have the potential to be held at vacant or underused retail, office, business and community facility buildings, but the regulatory barriers creating costs and onerous requirements discourage such events.

A planning proposal needed to amend the Local Environmental Plans to allow the proposed changes to be exempt development under the standard and pre-standard instruments.

4. STRATEGIC ASSESSMENT

4.1 District Plan

Eastern City District Plan

The Eastern City District Plan, released in March 2018, identifies 22 planning priorities and associated actions that are important to achieving a liveable, productive and sustainable future for the district, including the alignment of infrastructure with growth. The planning proposal is consistent with the key planning priorities in the District Plan as demonstrated in **Table 4**.

Table 4: Consistency with Eastern City District Plan

Consistency with Eastern City District Plan	
Priority	Comment
Planning priority E3: Provide services and social infrastructure to meet peoples changing needs;	The Department considers the proposal to be consistent with this priority as it will promote flexibility for shops to trade later into the evening, and encourage cultural and creative uses within the CBD and local centres.
Planning priority E4: Fostering healthy, creative, culturally rich and socially connected communities;	The Department considers the proposal to be consistent with this priority as it provides an opportunity to revitalise local centres across the LGA through creative and cultural events.
Planning priority E7: Growing a stronger and more competitive Harbour CBD;	The Department considers the proposal to be consistent with this priority as it will encourage later opening shops and offer further cultural and creative uses within the CBD.
Planning priority E8: Growing and investing in health and education precincts and the innovation corridor;	The Department considers the proposal to be consistent with this priority as it will encourage later opening shops, and offer further cultural and creative uses within locations within the innovation corridor, such as Camperdown, Redfern, Pyrmont-Ultimo and Chippendale.
Planning priority E11: Growing investment, business opportunities and jobs in strategic centres.	The Department considers the proposal to be consistent with this priority as it will encourage later opening shops, and cultural events within the CBD and local centres across the LGA.

4.2 Local

Sustainable Sydney 2030

Council's Sustainable Sydney 2030 Community Strategic Plan is the vision for the sustainable development of the City of Sydney to 2030 and beyond. It includes 10 strategic directions to guide the future of the City and 10 targets against which to measure progress. This planning proposal is consistent with key directions of the strategic plan as demonstrated in **Table 5**.

Table 5: Consistency with Sustainable Sydney 2030

Consistency with Sustainable Sydney 2030	
Direction	Comment
Direction 1 – A Globally Competitive and Innovative City	The planning proposal will extend night time shop trading until 10pm which encourages a late night cultural offering within local centres.
Direction 2 – A Leading Environmental Performer	The planning proposal encourages the use of existing buildings and spaces for temporary cultural activities utilising existing infrastructure.
Direction 5 – A lively and engaging city centre	The planning proposal encourages a livelier and more engaging CBD and local centres.
Direction 6 – Resilient and inclusive local communities	The planning proposal supports businesses within the CBD and local centres by allowing later opening shops.
Direction 7 – A cultural and creative city	The planning proposal introduces small scale cultural activities into the LEP.
Direction 8 – Housing for a diverse community	The planning proposal will ensure future housing locations have access to later opening shops and cultural activities.
Direction 9 – Sustainable development, renewal and design	The planning proposal encourage small scale cultural activities promoting a healthier and livelier community.

Local Strategic Planning Statement

City of Sydney's Local Strategic Planning Statement (LSPS) was assured by the Greater Sydney Commission in March 2020. The LSPS sets out the land use planning context and 20-year vision to positively guide change towards the City's vision for a green, global and connected city. The planning priorities and actions in the LSPS are provided to achieve the vision

The Department considers that the principles of the planning proposal are generally consistent with the LSPS (**Table 6**).

Table 6: Consistency with Draft Local Strategic Planning Statement

Priority	Comment	Complies
Priority I1: Movement for walkable neighbourhoods and a connected city Priority I3: Supporting community wellbeing with infrastructure Priority L1: A creative and socially connected city Priority L2: Creating great places Priority P1: Growing a stronger, more competitive Central Sydney Priority P2: Developing innovative and diverse business clusters in the Sydney Fringe Priority P3: Protecting industrial and urban services in the Southern Enterprise Area and evolving businesses in the Green Square-Mascot Strategic Centre	The Department considers the planning proposal is consistent with the LSPS as: <ul style="list-style-type: none"> • it encourages more walkable neighbourhoods by allowing later opening shops within the CBD and local centres; • it will permit cultural and community uses at Erskineville Town Hall; • it will encourage an appropriate mix of land uses including retail, cultural, and entertainment activities; • it will support growth of the cultural industries. 	Yes

4.3 Section 9.1 Ministerial Directions

The proposal is consistent with the following applicable section 9.1 Ministerial Directions as identified in **Table 7**.

Table 7: Consistency with Ministerial Directions

Section 9.1 Direction	Consistent	Comment
1. Employment and Resources		
1.1 Business and Industrial Zones	Yes	The objectives of this direction are to: <ul style="list-style-type: none"> • encourage employment growth in suitable locations; • protect employment land in business and industrial zones; and • support the viability of identified centres. The planning proposal is consistent with the objectives and requirements of this Direction as it seeks to retain the existing zoning and encourage employment growth through small-scale cultural activities and later opening shops.
2. Environment and Heritage		
2.3 Heritage Conservation	Yes	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The planning proposal is consistent with the objectives and requirements of this Direction as small-scale cultural activities and later opening shops will not be classified

Section 9.1 Direction	Consistent	Comment
		exempt development if it is on land containing a heritage item, within a heritage conservation area or special character area. In addition, provisions relating to entertainment sound do not contradict with provision relating to heritage conservation.
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	Yes	<p>The objectives of this direction are:</p> <p>(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</p> <p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and (c) to minimise the impact of residential development on the environment and resource lands.</p> <p>The planning proposal is consistent with the objectives and requirements of this Direction, as it allows residential areas access to later opening shops and more small-scale cultural events. Although the B2 Local Centres zones may be within close proximity to residential zones, the provisions for exempt development ensure there are minimal amenity impacts to nearby residents.</p>

4.4 State environmental planning policies (SEPPs)

The proposal is considered consistent with and is not expected to hinder the application of any relevant SEPPs.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

This Policy aims to provide streamlined assessment processes for development that complies with specified development standards.

This planning proposal seeks to include provisions to allow later opening shops and allow some small-scale cultural activities to occur as exempt development.

In regard to extending shop and business opening hours as exempt development, the Department considers Councils are in the best position to set thresholds and criteria regarding timing and zonings to encourage late-night economic activities, as they are aware of their local community's expectations/perceptions of night time activities.

The NCC fire requirements must still be met for the use of existing buildings for small-scale cultural activities as exempt development. This includes the aspect of fire safety and fire-fighting equipment, and requirements for a fire safety certificate/statement and the maximum capacity of the venues.

Temporary small scale cultural activities can only take place in a building with a current annual fire safety statement.

Section 1.9 of the Exempt and Complying SEPP applies in the event of any inconsistencies between the SEPP and LEP.

The activities specified as exempt development which are not already considered exempt or complying under the Codes SEPP, the SEPP will not affect the operation of the LEPs in relation to that exempt development.

The Department considers the planning proposal to not have any impacts or contradictions with the Exempt and Complying Development SEPP.

State Environmental Planning Policy No 64 – Advertising and Signage

This Policy aims to ensure that signage (including advertising) is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations, and is of high quality design and finish.

This planning proposal seeks to allow some small-scale cultural activities to occur as exempt development, subject to certain criteria.

The criteria states five to seven days prior to the commencement and during the event, display in a clearly visible public place outside of the premises, a sign including following information in bold letters not less than 25mm in height on a contrasting background:

- a) the event name, including a description of the nature of the event, commencement, duration, and completion date
- b) the name and telephone number for contacting the person responsible for the event at all hours during which the premises is operating.

In the event of any inconsistency between an LEP and this SEPP, the provisions within this SEPP will prevail.

The Department considers the planning proposal to not have any impacts or contradictions with State Environmental Planning Policy No 64 – Advertising and Signage.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal seeks to amend various LEPs to allow later opening shops and small-scale cultural activities to occur as exempt development, subject to certain criteria. The planning proposal identifies the following social benefits:

- later opening shops will provide more flexibility for residents;
- reduce regulatory barriers for the creative and cultural industries;
- small-scale cultural activities will contribute to the vibrancy of an area, including local centres;
- more diverse social and cultural activities will enhance liveability for growing and changing areas;
- crowds at night will enhance the safety of certain areas; and
- increase the numbers of activities that may be undertaken at Erskineville Town Hall.

The Department understands the benefits to allowing later opening shops and small-scale cultural activities to occur as exempt development. However, it could potentially result in social and amenity impacts to the community. Impacts may be positive and/or negative and its cumulative effects need to be considered. To minimise potential negative impacts, mechanisms should be in place to ensure these impacts can be readily managed and monitored. The proposed exempt development relies on self-assessment by the operator to ensure compliance. The Department is

of the view that if appropriate tools are in place for management and monitoring of these activities it will reduce non-compliance and allow Council to take enforcement action and monitor activity. Therefore, the Department recommends that prior to finalisation, the planning proposal be updated to consider appropriate and effective mechanisms to manage and monitor potential social and amenity impacts, and non-compliance associated with the proposed amendments.

5.2 Environmental

The planning proposal is unlikely to adversely affect any critical habitat or threatened species, populations or ecological communities or their habitats.

The proposed amendments are not likely to create any environmental effects that cannot be readily controlled. The proposed controls seek to ensure minimal noise impacts from small scale cultural events on surrounding community and businesses by only allowing exempt activities to have amplified music only if they occur in areas with less residential development, such as in Central Sydney or industrial and business only zones.

5.3 Economic

The planning proposal seeks to:

- support the night time economy of the CBD, which is worth \$4.1 billion;
- support the cultural sectors which is worth \$1.4 billion; and
- reduce unnecessary regulatory costs on business owners.

According to the Australian Bureau of Statistics Business Indicators, the COVID-19 pandemic has negatively affected the night time economy and the creative sector, with only 47% of arts and recreation industries operating in the week commencing 30 March 2020.

The proposed amendments will encourage the use of vacant or underused retail, office, business and community facility buildings that could host cultural events, but which are not used due to regulatory barriers which create costs and onerous requirements and discourage these temporary activities from occurring. Removing the need for development consent for temporary activities with only minor impacts, may reduce the cost and regulatory burden from operators of activities encourage more cultural activities in under-used buildings.

5.4 Infrastructure

The planning proposal does not seek to facilitate any physical works, rather amendments for exempt development, changes to land use zoning tables, and changing uses for Erskineville Town Hall.

Extending the opening hours of shops is unlikely to create any additional demands on existing infrastructure. Temporary small-scale cultural activities will only apply to existing buildings approved for office, retail, business or community use, which will utilise existing infrastructure and is unlikely to impact on service or infrastructure demands. In addition, Erskineville Town Hall can already cater for community uses and events.

6. CONSULTATION

6.1 Community

Council has proposed a public exhibition period of 28 days. The Department considers this to be appropriate.

Council, as the planning proposal authority, will be responsible for public consultation. Council has advised that the exhibition of the Open and Creative planning reforms will be:

- accessed on the City's Sydney your Say web page. The link to this page will be emailed to subscribers to Sydney Your Say and the City's relevant community, creative and business newsletters;
- notified through emails to key industry and community stakeholders, and those who made previous submissions to the 2017 an Open and Creative City Discussion Paper;
- publicised through a media release sent to all media outlets; and
- advertised in the local press.

The Department considers this notification and exhibition strategy to be adequate. Council should ensure all occupants and landowners are properly informed and given the opportunity to comment on the planning proposal during public exhibition.

6.2 Agencies

The Department notes Council have consulted or used information from various state and commonwealth public authorities in preparing this proposal. It recommended that these agencies be consulted during public exhibition. The Department recommends consultation with the following state agencies:

- Department of Customer Service;
- NSW Environmental Protection Authority (EPA);
- Create NSW;
- NSW Liquor and Gaming;
- NSW Police;
- Australian Prudential Regulation Authority (APRA);
- NSW Health Alcohol and other Drug Prevention and Harm Minimisation; and
- NSW Night Time Economy Taskforce.

7. TIME FRAME

Council has included a project timeline with a completion date in February 2021. The Department considers a time frame of 12 months to be appropriate. This does not preclude the planning proposal from being finalised sooner.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority for this planning proposal. The Department recommends that Council should not be the local plan-

making authority for this planning proposal due to the nature and complexity of the proposal, and the potential impact on state government policy.

9. CONCLUSION

The Department recommends that the planning proposal proceed subject to conditions for the following reasons:

- it is generally consistent with the Eastern City District Plan and the relevant section 9.1 Ministerial Directions and State Environmental Planning Policies;
- it is consistent with Council's Local Strategic Planning Statement and Sustainable Sydney 2030;
- it will assist businesses and cultural producers by supporting growth of the cultural industries;
- it will permit cultural and community uses at Erskineville Town Hall; and
- it will encourage an appropriate mix of land uses including retail, cultural, and entertainment activities.

10. RECOMMENDATION

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to finalisation, the planning proposal is to be updated to consider appropriate and effective mechanisms to manage and monitor potential social and amenity impacts and non-compliance associated with the proposed amendments.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - Department of Customer Service;
 - NSW Environmental Protection Authority (EPA);
 - Create NSW;
 - NSW Liquor and Gaming;
 - NSW Police;
 - Australian Prudential Regulation Authority (APRA);
 - NSW Health Alcohol and other Drug Prevention and Harm Minimisation; and
 - NSW Night Time Economy Taskforce.
4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



10/9/2020

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