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## Plan finalisation report – PP-2020-458

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Open and Creative Planning Reforms

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Name of draft LEP

Sydney Local Environmental Plan Amendment (Night Time Economy) 2022

### 1.1.2 Site description

**Table 1 Site description**

Site Description	<b>The planning proposal (Attachment A) applies to business and industrial zones within the standard instrument for the entire Sydney Local Government Area (LGA), varying for each proposed change.</b>
Type	Area
Council / LGA	City of Sydney

### 1.1.3 Purpose of plan

The aim of the planning proposal (**Attachment A**) is to amend the standard and pre-standard planning instruments identified in **Table 2** in order to strengthen the city's culture and night life to create a more diverse evening economy.

**Table 2 Local Environmental Plans this planning proposal seeks to amend**

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

The planning proposal seeks amendments to 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 until 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.

The planning proposal applies to business and industrial zones within the standard instruments for the Sydney LGA, varying for each proposed change. **Table 3** 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 3 Zoning to which the proposed changes apply**

Proposed changes	Zoning to which the proposed changes apply to
Late opening shops and businesses ( <b>Figure 1</b> )	B1 Neighbourhood Centre B2 Local Centre B3 Commercial Centre B4 Mixed Use B8 Metropolitan Centre
More small scale cultural activities ( <b>Figure 2</b> ) (amplified sound as exempt development only applies to the zones marked as '+')	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	B2 Local Centre

### A more diverse evening economy

The proposed LEP provision seeks to allow shops, kiosks or business premises with approved standard business hours to operate until 10pm without the requirement for further development consent. The extended hours without development consent will not apply to the operation of outdoor spaces.

The provision includes criteria which limits this activity to shops and businesses in areas of the city zoned B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Centre, B4 Mixed Use Zone and B8 Metropolitan Centre. It will apply to Central Sydney and local centres as shown in **Figure 1** below.

Other criteria will exclude licensed premises. It will not allow the contravention of an existing condition of an active development consent that applies to the premises relating to noise, car parking, loading or waste management.

### More small scale cultural activities

The proposed LEP provision seeks to allow temporary small scale cultural activities, to occur in office, retail, business and community facility premises as exempt development in specific locations across the LGA (Refer to **Figure 2** and **Table 3**), subject to certain criteria.

Small scale cultural activities will be permitted as exempt development 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 Industrial Zone, but not permitted in residential locations.

## Creative work spaces

The proposed LEP amendment seeks to allow creative and maker tenants to operate in local centres and reduce barriers for future uses. It amends the uses permitted with consent in the B2 zone to include light industrial uses so that existing and future creative and maker spaces are authorised to locate in village high streets.

## Erskineville Town Hall

The proposed LEP amendment seeks to allow Erskineville Town Hall to extend its range of community and cultural uses, including entertainment uses such as theatre, cinema, music and dance. It will allow entertainment uses as an additional use permitted with consent.

## Draft Sydney Development Control Plan 2012 Amendments

Council has prepared a Development Control Plan (DCP) to amend the various applicable DCP's that apply to the City of Sydney LGA. The purpose of the DCP is to:

- a. define small scale cultural and performance activities.
- b. outline thresholds of activity for small scale cultural and performance activities which are considered to be low impact.
- c. outline the matters to be addressed in Plans of Management for cultural activities.
- d. provide guidance on alternative solutions for small scale cultural activities to meet the *National Construction Code*.
- e. Outline sound management requirements for new entertainment sound-generating development
- f. Outlines sound management requirements for new development that may be affected by entertainment sound
- g. Outlines 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
- h. Includes new maps identifying land that may be affected by entertainment sound and the criteria for acceptable sound levels that must be met by development.

The draft DCP proposes new provisions for cultural activities which do not satisfy the exempt criteria and require a development application (DA). Council has stated the provisions aim to guide and provide certainty for the community and cultural producers about how to obtain the necessary planning and building approval and choose and design spaces suitable for events.

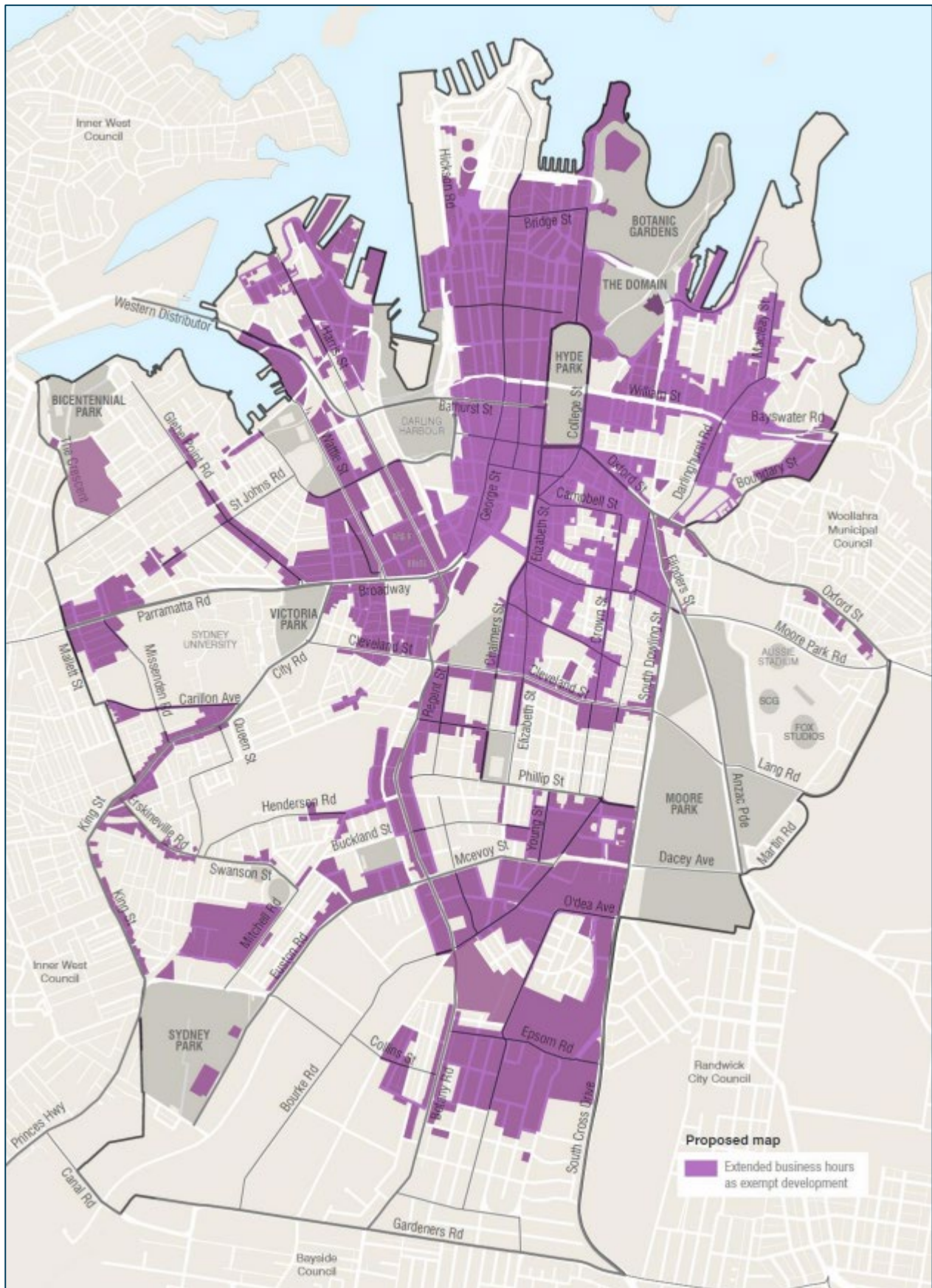
The exhibited DCP included controls which required all new development that generates entertainment sound, such as a live music and performance venue to be designed, constructed, and operated to protect existing residents from unacceptable sound impacts from its operations.

The proposed fair management of entertainment sound reforms place the responsibility for managing entertainment sound impacts on new development that changes the conditions in the area.

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

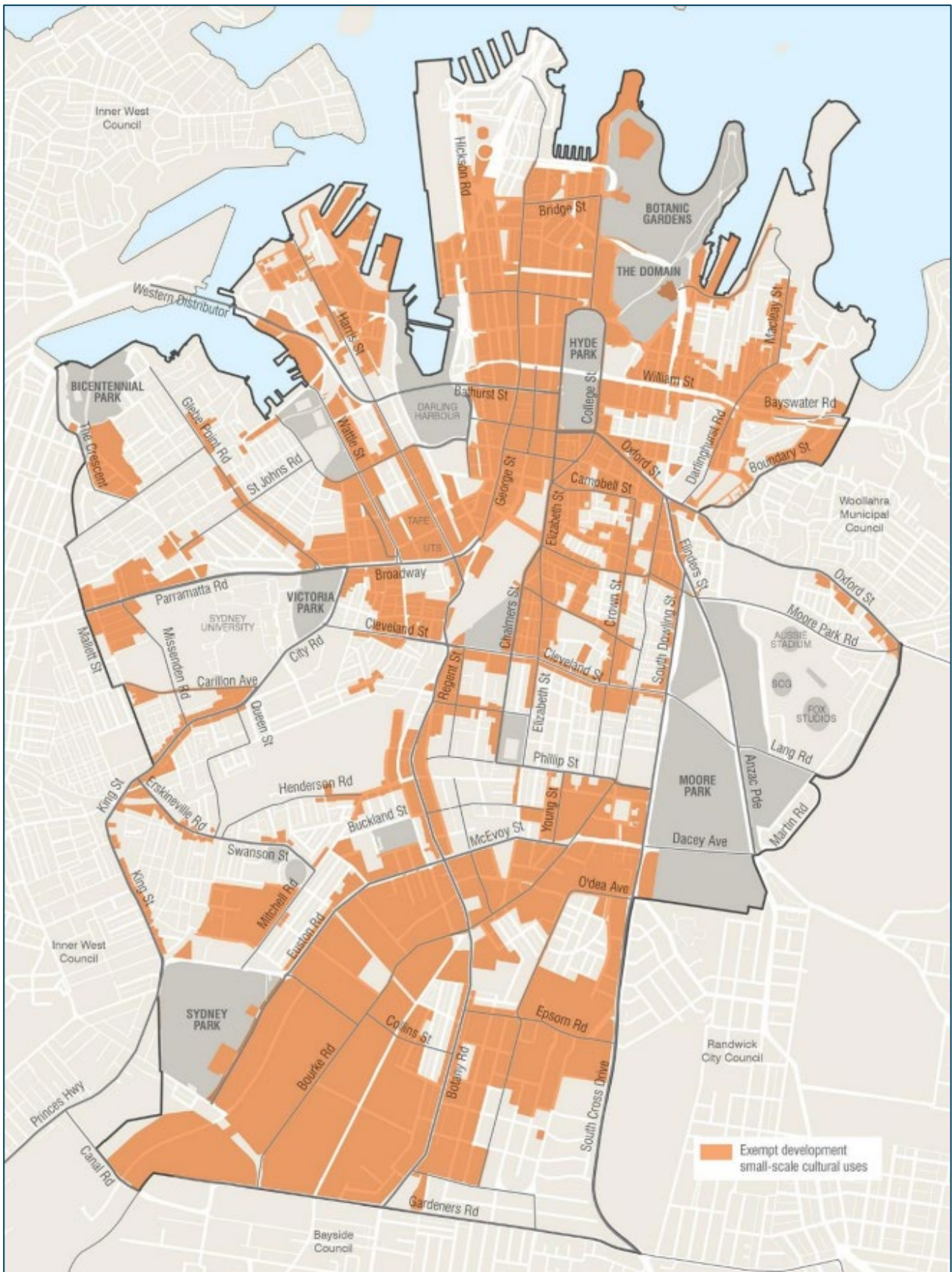
Council has prepared draft technical guidelines for small scale cultural activities which occur in spaces less than 500m<sup>2</sup>. The guidelines provide advice for cultural producers about the type of buildings or spaces that may be used and adapted for small scale cultural activities. The guidelines consist of a checklist to assist operators in choosing the right types of buildings and ensure that minimal works are required.





**Figure 1 Areas where shops and businesses could open until 10pm without development consent**  
 (Source: Council's Planning Proposal, February 2021)





**Figure 2 Areas where small scale cultural activities could occur without approval (Source: Council's Planning Proposal, February 2021)**



The proposed LEP amendments will be supported by new provisions under the Sydney Development Control Plan (DCP) and other relevant DCPs.

The planning proposal seeks to amend standard and pre-standard planning instruments, as identified in **Table 4**.

**Table 4 LEPs the planning proposal seeks to amend**

Standard instrument LEPs	Pre-standard instrument LEPs
Late opening shops and businesses	
<ol style="list-style-type: none"> <li>1. Amend Schedule 2 relating to Clause 3.1 and introduce a new provision that specifies 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 of meeting criteria.</li> <li>2. Include exempt development criteria, that the shop or business use must: <ul style="list-style-type: none"> <li>• Be located on land zoned B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Centre, B4 Mixed Use or B8 Metropolitan Centre</li> <li>• Not be a licensed premises in accordance with the definition under the Liquor Act 2007</li> <li>• 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.</li> </ul> </li> <li>3. The new provisions are to be inserted under Schedule 2 of the following instruments: <ul style="list-style-type: none"> <li>• Sydney Local Environmental Plan (Sydney LEP) 2012</li> <li>• SLEP (Green Square Town Centre) 2013</li> <li>• SLEP (Green Square Town Centre Stage 2) 2013</li> <li>• SLEP (Harold Park) 2011</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Insert new clause to apply to Clause 3.1 and Schedule 2 to read: <ul style="list-style-type: none"> <li>• “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.”</li> </ul> </li> <li>2. The new subclause is to be inserted under: <ul style="list-style-type: none"> <li>• Part 3, Clause 16 of the SLEP 2005</li> <li>• Schedule 3 of the South SLEP 1998</li> <li>• Part 3, Clause 30 of the South SLEP No. 114 (Southern Industrial and Roseberry/Zetland Planning Districts)</li> </ul> </li> </ol>
Small scale cultural activities	
<ol style="list-style-type: none"> <li>1. Amend Schedule 2 relating to Clause 3.1 and introduce a new provision that specifies 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.</li> <li>2. For the purposes of this clause a temporary small scale cultural activity means: <ul style="list-style-type: none"> <li>• 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</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Insert new subclause to apply to Clause 3.1 and Schedule 2 as described below: <ul style="list-style-type: none"> <li>• “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 operate as a retail, office, industrial premises or community facility, which is a small scale cultural activity, as development exempt from consent</li> </ul> </li> </ol>

- 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)
3. Include criteria which requires that temporary small scale cultural activities:
- 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
  - Can 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. The pack down of an event is not permitted after 10pm and must occur the following day between 7am and 10pm.
  - 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

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”.

2. The new subclause is to be inserted under:

- 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)

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:
  - 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 time, and glass is not to be emptied or transferred anywhere in a public place. Waste collection must only take place between 7am to 7pm daily.
- 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:
  - 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

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.

4. The new provisions are to be inserted under Schedule 2 of the following instruments:
- Sydney LEP 2012
  - Sydney LEP (Green Square Town Centre) 2013
  - Sydney LEP (Green Square Town Centre Stage 2) 2013
  - Sydney LEP (Harold Park) 2011

#### Creative work spaces

- |   |  |
|---|--|
| <p>1. Amend the Zone B2 Local Centre land use table to insert 'Light Industry' in 3 Permitted with consent.</p> | <p>1. Amend the Residential-Business zone to include 'Light Industry' as permitted with consent.</p> <p>2. Include the amendment under clause 87 of the Sydney LEP 2005.</p> |
|---|--|

#### Erskineville Town Hall

1. Insert 'Entertainment facilities' as an additional permitted use with consent under Schedule 1 applying to Erskineville Town Hall (104 Erskineville Road, Erskineville being Lot 1 DP 664780 and Lot 14 DP 663317)

### 1.1.4 State electorate and local member

The site falls within the Sydney state electorate. Alex Greenwich MP is the State Member.

The site falls within the Sydney federal electorate. Hon. Tanya Plibersek MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 2 Gateway determination and alterations

The Gateway determination issued on 17/09/2020 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The Gateway determination required that, prior to finalisation, the planning proposal was 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. This is addressed in Section 3.3 below.

Council has met all the Gateway determination conditions.



In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 23/12/2022.

### 3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 19/10/2020 to 18/11/2020, as required by section 29 of the *Local Government Act 1993*.

A total of 190 community submissions were received from residents, individuals, resident associations, government agencies, music and performance venue operators, business owners, business associations and developers. Of the 190 submissions received, 128 support and 36 object to planning proposal. Another 26 submissions were neutral. **(Attachment D)**.

Of the 190 submissions, 13 (eight objections, and five in support) related to Council's proposed fair management of entertainment sound proposal. Specific issues include the definition of entertainment sound, changes in internal and external noise criteria measurements and acoustic testing requirements.

No public meeting was held following public exhibition.

#### 3.1 Submissions during exhibition

##### 3.1.1 Submissions supporting the proposal

Of the 190 submissions received, 128 were in support of the proposal. These submissions are summarised in **Table 5** below.

**Table 5 Summary of comments from submissions supporting the proposal**

Comments raised	Council response
Support for controls that will facilitate increased vibrancy and a 24-hour economy post COVID-19 pandemic.	<p>Submissions provided support regarding the night time economy and measures to encourage shops to open later and provide more cultural activities.</p> <p>Council noted the significant concern about Sydney's night time economy and support for the proposed changes to improve Sydney's night time economy in the recovery from the pandemic. Council stated it is committed to improving the city at night to ensure night-time experiences are balanced with daytime activities and are safe and inclusive of the broader population. Council stated OPEN Sydney aims to double Council's night-time turnover to \$30 billion and increase night-time employment by 25 per cent to 100,000 jobs by 2030. Council stated the proposed planning control changes are one of a range of measures it undertakes to support the night time economy.</p> <p>Council outlined the proposed amendments for later opening shops and small scale cultural activities aim to activate and provide a more diverse nightlife in Green Square and Waterloo where over 70,000 people will live by 2030, and complement Council's late night trading DCP controls published in June 2019, which support a late night cultural and arts precinct in North Alexandria and other late night trading areas in Green Square town centre and Danks Street.</p>
Helping businesses and the creative sector	<p>Submissions provided support for reducing red tape for later opening shops and small scale cultural uses. Submissions noted the planning proposal will help the creative sector to find accommodation, reuse space and create</p>

	<p>opportunities for artists to be able to use existing spaces and non formal venues for performances.</p> <p>Council noted the support for reducing regulatory processes and the significant impacts of the pandemic on cultural and creative businesses. Council noted the Australian Bureau of Statistics Business Indicators report in February 2021 shows that 70% of arts and recreation businesses are reporting 'COVID-19 restrictions' as a factor significantly impacting businesses, as are 80% of accommodation and food services, the highest of any industry group.</p>
Support for later opening shops without consent and including restaurants.	<p>Submissions provided support for later opening shops which will activate and provide vibrancy to areas of the city.</p> <p>Council noted the support for a more diversified night-time economy and flexibility for business. The proposals for later opening shops do not apply to food and drink premises as they can become licensed and generate different impacts and require assessment through a DA. Council noted the impacts of outdoor dining or trading on residents may differ and should be assessed on a case by case basis through a DA.</p>
Support for a diverse night time economy and increased performance space.	<p>Submissions provided support for enabling the use of Erskineville Town Hall for cultural uses and live performance, and could provide an affordable opportunity for emerging musicians to rehearse.</p> <p>Council noted the support for diversity and increased theatre space and recognises the use of publicly owned spaces for cultural and performance activities is important following the pandemic. Council outlined if the proposals are approved via a DA, the Erskineville Town Hall will be available for hire by musicians and performers to rehearse.</p>
Support for the diversity of high streets.	<p>Submissions provided support for more diverse high streets and the provision of make spaces within the B2 zone to provide much needed maker space for the creative industries which are struggling to secure appropriate and affordable accommodation.</p> <p>Council noted the support for additional opportunities for creatives and makers and the minimal impact on amenity.</p>

### 3.1.2 Submissions objecting to and/or raising issues about the proposal

A total of 36 submissions were in objection to the proposal. These are summarised in **Table 6** below.

**Table 6 Summary of Key Issues**

Issue raised	Council response and Department assessment of adequacy of response
Absence of a DA assessment and impact on amenity.	<p>Submissions outlined concerns regarding the later opening shops and small scale cultural activities occurring as exempt development and not requiring development consent.</p> <p>Council outlined the planning proposal has been developed to complement and support late night trading in the city. Council noted the</p>

	<p>proposal seeks to allow later opening shops and small scale cultural uses exempt from development consent to occur before 10pm. Submitters refer to consultation that Council undertook with Chippendale residents in respect of the Late Night Trading DCP in 2019, which limited activities occurring after 10pm to Abercrombie Street, Regent Street and Broadway.</p> <p>All proposals for late night trading, including shops, pubs, bars and clubs that operate after 10pm are subject to a DA. The later opening shops and small scale cultural activities which are exempt from development consent occur before 10pm. Council outlined the cultural activities or shops that trade after 10pm will be subject to a DA and will be notified so that the community has the opportunity to comment.</p> <p>The Department considers the response by Council to be adequate. All later opening shops will have existing development consent, in which impacts have been previously considered. The proposed small scale cultural activities contain criteria to minimise amenity impacts.</p>
Small scale cultural activities may not have enough oversight.	<p>Submissions raised concerns regarding the lack of oversight by Council of the small scale cultural activities which can occur as exempt development. Issues were raised regarding avenues to manage non-compliance and impacts on amenity.</p> <p>The criteria for the small scale cultural activities requires signage displaying information describing the activity before and during the event and contact details for the person operating the event. Council outlined any breach of the exempt provision results in the risk of being asked to cease by Council's compliance staff.</p> <p>Council have made a post-exhibition change to the LEP exempt provision to include additional criteria. It will require that operators wishing to host an event or activity exempt from development consent, notify Council of the intention to hold an event, via an online web form five days prior to the commencement of the event.</p> <p>The notification will require the same details as required for signage notification of the event. This includes the event name, a description of the nature of the event, commencement, duration, and completion date and the name and telephone number for contacting the person responsible for the event at all hours during which the premises is operating. This information will be made available to Council's compliance team and will also be used by Council to monitor the take-up of the provision and track any impacts on local amenity. Council states this information will be used to inform a review of the provisions two years after their commencement to confirm whether they are achieving their goals and whether any amendments are required.</p> <p>The Department does not consider Council's response to be adequate and holds concerns relating to the oversight of the proposed small scale cultural activities. This is addressed in Section 4.</p>
Small scale cultural activities may impact on amenity.	<p>Submissions raised concerns the proposed small scale cultural activities may result in an increase in late-night venues which encourage antisocial behaviour, which will impact neighbourhoods and exacerbate existing issues associated with pubs and bars.</p> <p>Submissions also raised concerns regarding noise after 10pm</p>

associated with pack up of the events. Other issues raised included cumulative impacts of several events and the need to restrict events with amplified sound to 10pm on any night and to 6pm on Sundays.

Council noted the proposed small scale cultural activities have been developed and subject to community consultation since 2017 and will involve changes to the Sydney LEP 2012.

Council have made a post-exhibition change to the exempt provision to require online notification of exempt small scale cultural activities, which will give Council the ability to monitor where, when and how often it is being taken up.

Council contends the activities will not exacerbate impacts associated with existing pubs and bars, considering:

- the events do not include outdoor trading/performance or allow amplified music in residential business zones.
- the relevant provisions of the *Protection of the Environment (Operations) Act 1997* will still apply and persons undertaking exempt activities will need to ensure 'offensive noise' is not created.
- the exempt provision does not apply to activities which require building works (with the exception of minor approved exempt works), so no noise from construction activities will occur.
- other larger cultural activities will be subject to DAs and conditions of consent will minimise impact on neighbours and the public domain.

Council considers the 4 hour duration of events which can occur between 7am-10pm, should not be reduced to include set up and pack down as:

- it is the minimum time that has been confirmed as viable by Council's Nightlife and Creative Sector Panel for small scale cultural activities which can include seminars, talks and exhibitions as well as performance.
- the small-scale nature of these cultural activities means that set up and pack down will be limited and not create significant impacts.
- operators will be required to manage the impact of smoking and patron egress on local amenity and ensure the orderly entry and egress of patrons which does not affect the amenity of the neighbourhood.
- any proposals later than 10pm will be assessed through a DA.

Council has made post-exhibition changes to address concerns of residents about the impacts of packing down an event on local amenity after 10pm. These include:

- no pack down occur after 10pm, and instead be undertaken between 7am and 10pm the following day.
- waste collection must only occur between 7am to 7pm daily (if there condition of consent applying to the premises relating to waste management)



	<p>Regarding cumulative impacts, Council outlined if the small-scale cultural activities occur in mixed-use zones, concurrently or on separate days until 10pm, they must meet all criteria so that any impacts will be minimal. Consistent trading hours through the week will provide flexibility for operators and encourage vibrancy and minimise cumulative impacts of activity in the weekend. If more activities with minimal impact are spread throughout the week, there may be less activities in a single location in the weekend. A restriction on Sunday night is not proposed because it will limit performance, such as small theatre runs which may take place on Sunday nights until 10pm with minimal impacts.</p> <p>The Department notes the additional criteria introduced as a post-exhibition change by Council and considers the response to be adequate. From an amenity perspective, the Department considers the criteria as proposed within the planning proposal to be acceptable. The proposed small scale cultural activities occur within certain zones which encourage a high amount of activity and limit exposure to residential uses. Notwithstanding the impacts, the small scale cultural activities will not proceed, as outlined in Section 4.</p>
Small scale cultural activities may impact parking and public transport.	<p>Submissions raised concerns that the small scale cultural activities will increase traffic in busy streets or small laneways where parking is limited, and the public transport service is unsafe and inadequate to service current late night trading areas.</p> <p>Council outlined the small scale cultural activities are limited to 10pm when public transport still operates at a high frequency. The criteria for small scale cultural activities does not allow operators to contravene conditions of consent of the building which relate to traffic generation, vehicle movement, loading or parking. This is to minimise the impacts on residents and enable them access to their properties.</p> <p>Council agreed the night time economy should be supported by a range of public transport options, and the small scale cultural activities are applied to areas of the city that are well served by public transport such bus, ferry light and heavy rail transport. The Sydney Metro will introduce a new high frequency, 21 hour service in the City with stations at Pyrmont, Barangaroo, Martin Place, Pitt Street, Central and Waterloo. These stations will serve Pyrmont, Barangaroo, city centre, Surry Hills, Redfern, Chippendale and North Alexandria, increasing accessibility to these areas later at night. Council contends it continues to engage with the relevant State Government agencies to increase the provision of services and infrastructure to match population growth.</p> <p>The Department considers Council's response to be adequate, as the small scale cultural activities are proposed to occur in areas which are well serviced by transport infrastructure. Notwithstanding this, the small scale cultural activities will not proceed, as outlined in Section 4.</p>
<p>Impact of small scale cultural activities on specific areas:</p> <ul style="list-style-type: none"> <li>Pyrmont</li> </ul>	<p><u>Pyrmont</u></p> <p>Submissions raised concerns about the alignment of small scale cultural activities with the Pyrmont Peninsula Place Strategy (PPPS) and the sub-precinct master plans. Other issues raised included the impact of retail premises at the Star Casino and Doltone House holding</p>

- Chippendale

small scale cultural activities with indoor/outdoor amplified music on neighbouring properties, and the presence of existing residential in the B3 Commercial Core zone where amplified music is proposed to be permitted in Pyrmont.

At the time of writing, Council noted the Department were in the process of preparing sub-precinct master plans for Pyrmont and Ultimo that may inform LEP amendments in the future. Council outlined that any amendments will require public consultation and consideration of zoning and associated impacts, including how any rezoning aligns with the Council's planning proposal.

In addition, Council noted:

- the small scale cultural activities do not apply to function centres such as Doltone House, which are not classified as commercial uses under the Standard Instrument LEP definitions
- existing conditions on function centre approvals will continue to apply.
- the small scale cultural activities may apply to retail and commercial tenancies located in the Star Casino, which will be allowed amplified music until 10pm.
- the criteria does not permit outdoor performance or outdoor trading without development consent.
- other cultural activities which do not meet exempt criteria will be subject to a DA.

Council stated the planning proposal considered to permit business activities in a way that will have minimal impact on our residential communities. The impacts expected to be commensurate with those impacts experienced in any global city and they are consistent with the B3 Commercial Core which seeks to provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

The Department considers Council's response to be adequate and notes the Pyrmont Peninsula Place Strategy sub-precinct master plans have now been finalised.

#### Chippendale

Submissions raised concerns regarding noise impacts of small scale cultural activities on low rise residential properties within Chippendale. Other issues include impacts on local amenity from small scale cultural activities being permitted in Darlington, south of Cleveland Street and Rose and Shepherd Lane where residential development may be impacted by commercial uses.

Council noted the proposed criteria relating to capacity, frequency and duration include thresholds to ensure impacts will be minimal and noise impacts experienced in Chippendale will be minimal, given that there will be no outdoor activity, the events will be until 10pm and no amplification is allowed. The character and built form of the conservation area is similar to conservation areas in other mixed-use zones such as Surry Hills where the activities apply.

	<p>An area of Darlington, south of Cleveland Street, is included in the area where small scale cultural activities can occur because it is part of the mixed use zone. Council noted this area features creative spaces and shops, which could be activated for events through the day and evening until 10pm. It is also included in Council's existing DCP as a late night trading area.</p> <p>Council also noted land in Rose Street and Shephard Street is zoned B4 mixed use, where a wide range of uses are permissible, including residential and commercial uses. If more commercial or retail uses locate in this mixed use area, temporary small scale cultural activities may be able to occur until 10pm. Microphones are permitted until 10pm, however amplified music is not permitted anywhere in Chippendale.</p> <p>Council contends the activities are considered to permit business activities in a way that will have minimal impact on our residential communities. The impacts expected are considered to be commensurate with those impacts experienced in any global city and they are consistent with the objectives of the B4 Mixed Use zone which seeks to provide for a mixture of compatible land uses.</p> <p>The Department considers Council's response to be adequate.</p>
Concerns that later opening shops may impact on amenity.	<p>Submissions raised concerns regarding the cumulative impact of longer trading hours of shops on local areas, and impact of patron entry and egress to shops on residents' right to peace and the enjoyment of their homes.</p> <p>Council noted the provisions facilitate later opening shops until 10pm in areas with an established retail character, such as the city centre or village high streets. These streets are daily destinations for community, retail and commercial activity where later opening times after 6pm can be accommodated without creating significant impacts on neighbours. In these areas, the impacts of standard business hours for shop or businesses have been already assessed in individual development approvals.</p> <p>Council noted that eligible shops will be unlicensed and include, for example, those selling clothing, books, stationery and homewares, or businesses such as drycleaners, banks and hairdressers, which do not create noise or encourage anti-social behaviour. As these are unlicensed and non-food and drink premises the cumulative impacts on local amenity from patron entry and egress will be minor.</p> <p>The Department considers Council's response to be adequate. All later opening shops will have existing development consent, in which impacts have been previously considered.</p>
Concerns that light industrial uses in local centres may impact on amenity.	<p>Submissions raised concerns that there may be impacts caused by light industrial uses located on streets and lanes behind high street premises.</p> <p>Council noted the Sydney LEP 2012 classifies creative and maker spaces as light industrial uses and these uses are currently not permitted in B2 Local centre zones. Light industrial uses are currently</p>

	<p>permitted with consent in the B4 mixed use zones such as Pyrmont, Surry Hills and Chippendale.</p> <p>Council contends any industrial activity that interferes with the amenity of the neighbourhood cannot be permitted in the B2 Local centre zone. The definition of Light Industry in the Sydney LEP 2012 requires that the 'industrial activity that does not interfere with the amenity of the neighbourhood' due to a range of impacts including noise, vibration, smell, fumes, smoke, vapour, steam or dust. If a proposal is likely to interfere with the amenity of the neighbourhood then it does not meet the definition of light industry. It would then be classified as general or heavy and industry and not be permitted in the zone. Council notes all impacts will be assessed during DA stage.</p> <p>The Department considers Council's response to be adequate noting impacts will be assessed via a DA.</p>
Concerns that the extended use of Erskineville Town Hall will impact on amenity.	<p>Submissions raised the need to ensure the use of Erskineville Town Hall for performance does not result in noise impacts on residents living in nearby properties who are already impacted by nearby hotels. Submissions raised the need for Council to undertake acoustic testing and implement mitigation measures.</p> <p>Council noted a DA will be required for the extended use of the facility, which will include a Plan of Management to address operational issues. Any potential impacts, including noise, on neighbours will be assessed, and conditions to mitigate the impacts of noise imposed upon the development consent.</p> <p>The Department considers Council's response to be adequate noting impacts will be assessed via a DA.</p>
Fair management of entertainment sound.	<p>Submission raised concerns regarding the fair management of entertainment sound provisions within the DCP, specifically the definition of entertainment sound, changes in internal and external noise criteria measurements and acoustic testing requirements.</p> <p>Council noted these issues require further technical analysis and engagement with submitters to ensure the provisions meet the intent to have a fair approach to entertainment sound that protects existing venues and provides appropriate amenity.</p> <p>These amendments have been deferred for consideration. On 22 November 2022, Council advised the issues are continuing to be resolved.</p> <p>The Department acknowledges the deferment of the DCP provisions for fair management of entertainment sound.</p>

There were also concerns raised in regard to recent changes implemented through the NSW Government's *Liquor Amendment (Night-time Economy) Act 2020* from December 2020 and the potential for further amenity impacts. This is addressed in Section 3.3 below.

## 3.2 Advice from agencies

In accordance with the Gateway determination, Council consulted with the following agencies:

- Department of Customer Service.



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

Two agency submissions were received, from the EPA and the NSW Small Business Commission. Comments provided and Council's response are shown in the table below.

**Table 7 Advice from public authorities**

Agency	Advice raised	Council response
NSW Environmental Protection Agency (EPA)	<p>The submission received from EPA focused on the draft DCP and noted the noise provisions in the draft DCP are ambiguous and will likely make them difficult to implement and enforce. EPA outlined the provisions and definitions could improved for clarity on how they will contribute to meeting the overall objectives of the planning proposal.</p> <p>In addition, EPA provided commentary on the draft technical provisions, highlighting challenges and concerns relating to primary and secondary design criteria, and characterising background noise within an entertainment precinct.</p>	<p>EPA's submission provides comments for the proposed fair management of entertainment sound provisions within the DCP and was therefore not reported to Council.</p> <p>The consideration of the fair management of entertainment sound within the DCP has been deferred from this amendment. On 22 November 2022, Council advised it is still continuing working through these issues.</p> <p>The Department considers Council's response to be adequate and notes the submission does not alter the proposed LEP provisions.</p>
NSW Small Business Commission	<p>The NSW Small Business Commission supports the planning proposal, and noted the reforms should benefit small businesses involved in creative and cultural activities, live entertainment and the night time economy.</p>	<p>Council noted the support outlined in the submissions. Council noted the definitions of small scale cultural activity and the criteria that businesses must satisfy will be included in the published provision in the Sydney LEP and on the City's website.</p> <p>The Department acknowledges the submission from the Small Business Commission and notes the support.</p>

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

## 3.3 Post-exhibition changes

### 3.3.1 Council resolved changes

Following public exhibition, Council have amended the proposed criteria for small scale cultural activities within the planning proposal. These changes require:

- waste collection only occurs between 7am to 7pm daily.
- the pack down of an event is not permitted after 10pm and must occur the following day between 7am and 10pm to minimise impacts on residents.
- the operator to notify council of the event, including the same information as included on signage which may be submitted five days prior to an event through an online form on Council's website.

Council states it proposes to review the take-up of the small scale cultural activity exempt provisions two years after they are published.

A change has been made to the DCP, which involves the provisions for fair management of entertainment sound being deferred for consideration.

### 3.3.2 The Department's recommended changes

Following the receipt of the revised planning proposal from Council, the Department has made further changes to the proposal as follows:

- Removal of the new provision that specifies development with lawful consent to operate as a shop, kiosk or business premises which trades indoors until 10pm as exempt development.
- Removal of small-scale cultural activities from the proposed instrument.

### 3.3.3 Justification for post-exhibition changes

The Department notes that these post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes have wider implications for State Policy, specifically the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). Further information can be found in Section 4.1.

## 4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment C**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant Section 9.1 Directions.
- Remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

**Table 8 Summary of strategic assessment**

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

**Table 9 Summary of site-specific assessment**

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

## 4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

### 4.1.1 Small Scale Cultural Activities

The planning proposal seeks to introduce a provision within the Sydney LEP 2012 to allow temporary small scale cultural activities to occur in office, retail, business and community facility premises as exempt development across certain locations in the LGA, subject to certain criteria. As identified in the proposed criteria, activities can only be permitted if they take place on the ground floor of office, retail, industrial and community premises with a current Annual Fire Safety Statement (AFSS) and must not include the use of pyrotechnics, theatrical smoke or dangerous goods. In addition, the criteria states the AFSS must enable current occupation of the space in the building for its current approved use.

Following Council's request for finalisation of the planning proposal, the Department consulted in detail with the Department of Customer Service (DCS) on fire safety and Building Code of Australia (BCA) compliance. The Department sought to ensure the small scale cultural activities can operate safely, and risks can be mitigated. In October 2021, the Department sought advice specifically related to:

- whether a current AFSS would be sufficient to mitigate any major risks.
- whether the small scale cultural activities created issues concerning change in building classification from a Building Code of Australia (BCA) perspective, and

- other measures that the Department should implement to ensure the small scale cultural activities can operate safely.

DCS reviewed the planning proposal and associated documents, including the Fire Safety Strategy prepared by ARUP dated July 2017, which informed the proposed criteria.

DCS identified concerns relating to fire safety and BCA for the small scale cultural activities occurring as exempt development. Specifically, DCS outlined the following key concerns:

- the suitability of providing for such development as exempt is questioned, as it does not provide for any level third party oversight or independent assessment,
- relying on an existing AFSS for a change of use is not considered suitable for exempt development as a sole means for mitigating risk associated with the small scale cultural activities,
- the small scale cultural activities are beyond the scope and prescribed purpose and focus of the AFSS,
- the use of a building or part of for small scale cultural activities would constitute a change of building classification under the BCA, and
- a fire safety assessment would need to be undertaken by an appropriately qualified independent person in all cases.

The Department cannot support the implementation of small scale cultural activities within the relevant LEPs as exempt development, as the fire safety risks cannot be resolved and are far too severe to disregard.

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

On 1 February 2022, changes commenced for the Codes SEPP including:

- a wider range of land uses so businesses can quickly adapt their offerings to new market demands such as entertainment facilities, indoor recreation facilities and creative industries.
- new and larger building allowances (including building height and building footprint) to attract more investment.
- flexibility to carry out site and parking upgrades to accommodate new modes of delivery.
- Stay open for longer in certain areas to support night-time economies

These changes contributed to the aim of the NSW Government to building a faster, simpler planning system to support the State's economic recovery.

Throughout 2022, changes have been made progressively to the Codes SEPP which captured the intent of the small scale cultural activities and allow a pathway for the activities to occur. The Department acknowledges Council's concerns of the gaps between the provisions within the Codes SEPP and the planning proposal. The Department considers the provisions within the Codes SEPP provide a suitable planning pathway for the activities to occur. At the time of writing, the following provisions apply:

- Part 2 Exempt Development Codes, Subdivision 10A, Clause 10A and 10B 'Change of use of premises' which allows the change of use from a current use specified in the clause to occur as exempt development.
- Part 5A, Division 1A 'Development standards for both industrial and business zones' provides a complying development pathway for particular specified purposes including artisan food and drink industry.



## Liquor Amendment (Night-time Economy) Act 2020

In December 2020, the *Liquor Amendment (Night-time Economy) Act 2020* was made. The Amendment seeks to encourage a vibrant and diverse nightlife where live music and entertainment thrives. The key changes include:

- Amendment of the Codes SEPP to introduce new exempt development provisions (Part 2, Division 1, Subdivision 15AB) for low impact performance of live music of arts within non-residential zones.
- Amendment of the *Local Government Act 1993* to allow councils to establish a special entertainment precinct within their LGA by amending its LEP to identify the special entertainment precinct.
- Amendment to the *Environmental Planning and Assessment Act 1979* (EP&A Act) to change the definition of the BCA to facilitate small live music or arts venue.
- Amendment to the EP&A Act to give consent authorities to remove or modify conditions of consent relating to playing or performing music on licenced premises.

Council notes the amendment relating to allow councils to create special entertainment precincts, and contends the amendment has merit as a potential avenue for progressing the fair management of entertainment sound provisions. The Department notes the avenues Council can consider in relation to the special entertainment precincts moving forward.

Subdivision 15AB of the Codes SEPP allows the low impact performance of live music or arts to occur as exempt development if it is not carried out in a residential zone. The clause states the development must not be carried on in connection with a proposed change of use of premises. Council notes the provisions apply to ancillary development, which differs from the intent of the small scale cultural activities and therefore can be applied independently.

The Department considers the amendments do not preclude the planning proposal from being made.

## Late Opening Shops and Businesses

The planning proposal aims to allow shops and businesses to operate until 10pm with certain zones as exempt development.

An amendment to the Codes SEPP (Part 2 Division 1 Subdivision 23B Clause 2.46C and 2.46D) allows the operation of premises in Zones B1 to B8 and IN1 to IN4 which hold an existing development consent or complying development certificate to occur outside the hours permitted. The zones applicable to this planning proposal allow trading on or from premises to occur from 6am to 10pm, with the exception of B4 Mixed Use zone which is 6am to 7pm.

These provisions capture the intent of the planning proposal to allow premises within certain zones to operate until 10pm as exempt development. The Department has recommended the LEP amend the Codes SEPP to extend premises operating hours to 10pm for the B4 Mixed Use zone.

## 5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

**Table 10 Consultation following the Department's assessment**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (<b>Attachment F</b>).</p> <p>Council confirmed on 25/11/2022 that it approved the draft and that the plan should be made (<b>Attachment G</b>).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	<p>On 30/11/2022 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at <b>Attachment PC</b>.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

## 6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with City Plan 2036 plan.
- It is consistent with the Eastern City District Plan.
- It is consistent with the Gateway Determination.
- It will enable shops and businesses with an existing consent within the B4 Mixed Use zone to operate until 10pm.
- Allow creative and maker tenants to locate in B2 Local Centres.

Maintain and extend the community uses available for Erskineville Town Hall.



5/12/22

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6/12/22

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## Attachments

Attachment	Document
A	Planning Proposal
B	Gateway Determination
C	Gateway Determination Report
D	Summary of Submissions
E	Council's Post Exhibition Report
F	Section 3.36(1) consultation with Council
G	Council comments on draft LEP
Council	Letter to Council
LEP	Draft LEP
PC	Parliamentary Counsel Opinion