

Response to questions taken on notice

City of Sydney



THE LORD MAYOR OF SYDNEY  
**CLOVER MOORE**

14 August 2019

The Hon. Natalie Ward MLC  
Chair  
Joint Select Committee on Sydney's Night Time Economy  
By email [NightTimeEconomy@parliament.nsw.gov.au](mailto:NightTimeEconomy@parliament.nsw.gov.au)

Dear Ms Ward

### **Sydney's Night Time Economy - Further information**

I would like to provide additional information following the City of Sydney's appearance before your Committee on Monday 5 August 2019.

#### **Governance**

The following information is provided in response to the Committee's request for more information on a proposed governance framework.

A sustained, coordinated and collaborative approach is needed which involves the NSW Government working with the community to co-design the solutions required to deliver a world-class city at night that is vibrant, inclusive and safe. This should be approached from the perspective of city building and shaping, rather than a quick fix to a problem.

Sydney's night-time economy will reach its full potential when key stakeholders are at the table with decision-makers to co-design policies that will shape the future of Sydney at night. Policy formation must be informed by evidence and take a bottom-up approach, with channels for two-way communication.

Good decision-making is only as good as its execution – a clear vision, objectives, measurable outcomes and key performance indicators at state level will support excellent leadership, provide guidance and support a customised approach for delivery at a local level.

I propose a governance framework that supports a top-down and bottom-up collaborative approach which comprises three inter-related areas:

1. Decision-making, leadership and co-ordination – with key NSW Government agencies and stakeholder representatives being involved
2. Design, advisory and capacity building – with key NSW Government agencies and stakeholders in the night-time economy being involved
3. Local delivery – Nightlife Alliances – to ensure delivery of quality outcomes.

Many of the elements of this governance framework already exist, while important new elements will need to be established.

A commitment to operating a Night-time Economy Commission Office within the Department of Premier and Cabinet is key to ensuring effective decision-making, leadership and coordination. This office must operate for at least five years, and be staffed by people with proven experience in successfully leading and coordinating development and delivery of night-time economy strategies, if it is to be effective.

It would coordinate the work of relevant government agencies which could include NSW Police, Liquor and Gaming NSW, Department of Planning, Treasury, Transport for NSW, Destination NSW, Department of Industry, Create NSW and NSW Health.

The Night-time Economy Commission Office would establish, coordinate and oversee working groups covering, for example, Planning and Regulation, Investment and Tourism, Place Management and Strategy and Research. These working groups would provide the focus required for the NTE office to deliver key reforms and programs. They would bring together staff from relevant agencies who would have the authority to drive reform within their agency.

Decision making would be the responsibility of a Night-Time Economy Office, with the support of an Advisory Board. The Advisory Board could include the Chairs of government Working Groups, Co-chairs of a new Sector Advisory Group and Co-chairs of the already existing NSW Councils Night-Time Economy Councils' Committee.

The Sector Advisory Group could comprise key industry leaders, influencers and peak bodies that represent the diverse range of stakeholders involved in delivering a successful NTE. This could include representation from Committee for Sydney and Night Time Industry Association, who play an important role engaging with industry leaders and maintain oversight across all sectors. Membership from peak industry bodies across food, drink, entertainment (venue operators and creative producers across genres), retail, tourism, transport, emergency services and business/industry associations. Other groups that could be considered include major property owners, property developers, academics/researchers and the community

The Sector Advisory Group and the Councils' Committee would have an advisory, communications and capacity-building program design and delivery role, taking a top-down and bottom-up approach. Advisory Group members and the Councils' Committee would be most effective supporting delivery and capacity building through their sector and organisational channels. This structure will ensure engagement and communication with key stakeholders throughout the process, taking a top-down and bottom-up approach.

Delivery through Nightlife Alliances will ensure the development and management of local areas by local communities based on existing models of collaboration. The Purple Flag Accreditation Scheme provides an effective framework with clear measures of success for local stakeholders to work on together to establish vibrant, diverse and safe nightlife.

I enclose a diagram which shows how the various elements of this government framework relate with each other.

### **Cumulative impact**

The City would like the State Government to introduce cumulative impact measures, in collaboration with the City and industry leaders, to prevent concentration of venues in particular areas and to create a safe and inviting night-time economy. They should also encourage venues across the city, ensure the negative effects of over-clustering of licensed premises are avoided and be reviewable to enable new entrants to an area.

While addressing adverse impacts, these measures should also support vibrant nightlife areas by enabling and encouraging new entrants and investment and increasing diversity with greater levels of creativity and performance.

These measures, together with the City's late night planning controls, will provide certainty and confidence for business investors and the community and will support more effective decision-making.

### **Integrated planning and licensing**

Key to implementation of cumulative impact through liquor licensing is an integrated approach to planning and licensing approvals. This approach will also remove the significant red tape associated with the current process, which currently requires two applications, two public consultations, two referrals to government agencies (police), two plans of management and two sets of often duplicated or inconsistent conditions.

### **Open and Creative planning reforms**

The City's Open and Creative planning proposals will go to Council later this year for endorsement to go out on public exhibition. The City needs approval from the Department of Planning, Industry and Environment for public exhibition. The proposed reforms are critical in supporting the revitalisation of the city at night and will:

1. Enable shops and business services to open until 10pm in business zones without the need to come back to Council for approval (exempt development);
2. Enable temporary small scale cultural activities to occur in business and industrial areas without the need for Council approval (exempt development); and
3. Introduce fairer, more consistent and clearer processes for managing the entertainment sound and patron noise of live performance venues.

These reforms will make a significant contribution to the revitalisation of Sydney's night-time economy. The City would welcome the Committee's support for these reforms. This support may assist with the Department expediting approval.

### **Marketing**

The City's current local economies marketing program and media partnerships have established engaging content on the hidden secrets of Sydney's nightlife. The State Government could amplify this style of content to engage with a national and international audience, changing negative perceptions of about Sydney's nightlife and supporting the fine-grain local businesses that make Sydney's nightlife unique, eclectic and world class.

### **Live music licence**

The City advised the Committee that it does not support the introduction of a new liquor licence for live music venues, as recommended from the parliamentary inquiry into the music and arts economy. Liquor licences should be used to regulate the supply of liquor. The planning system should be used to regulate and enable cultural activity. Creating additional licence categories for live music or cultural activity risks further complicating the process of producing and presenting occasional or regular live performance and may add an additional level of administration.

The City does support incentives being provided (such as additional service hours) to liquor licence holders who program live performance and cultural events through all liquor licence categories.

### **Submission by 2011 Residents Association Incorporated**

The submission by 2011 Residents Association Incorporated suggests that the City was responsible for the proliferation of licenced venues in Kings Cross during the years prior to the introduction of the liquor freeze in 2009. For example, on page 8, the submission states that the City's 2007 Late Night Trading Development Control Plan essentially loosened the regulation of premises serving alcohol.

On page 10 the submission states:

*“By marketing Kings Cross as an ‘Entertainment Precinct’ City of Sydney Council and NSW State governments actively and tacitly supported the proliferation of licensed premises. Bars, clubs, pubs and huge ‘beer barns’ competed with and overtook mainstream daytime and evening businesses.”*

Similar claims were made to the 2016 liquor law review conducted by Ian Callinan AC. In response to these claims, the City provided Mr Callinan with relevant planning documents, Council resolutions and references to Court decisions relating to these claims.

In his report, Mr Callinan noted that the City’s 2007 Late Night Trading DCP “was in part at least, a response to successful appeals by licensees to the Land and Environment Court against decisions of Council.”

*“Until then, there had not been any planning policy specifically applicable to the entire City of Sydney to regulate the trading hours and management of licensed venues whose operators wished to trade late.”*

The DCP “was intended to enable it to assess the performance of management of an hotel or other licensed establishment, and its impact on the neighbourhood amenity.” Mr Callinan also noted the City’s granting of extended trading hours on a trial basis with the aim of encouraging good management.

The City had also commissioned studies to quantify the cumulative impacts of late night trading premises on alcohol-related crime and to identify strategies to reduce them, Mr Callinan noted. These studies led to Council adopting an amended Late Night Trading DCP in early 2010, which was annulled days later by the then Planning Minister, Tony Kelly.

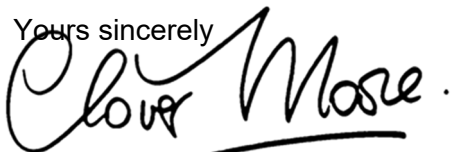
Mr Callinan concluded that “... Council was effectively thwarted in its attempts to preserve or improve the amenity of the areas of concern, and to reduce alcohol- related violence in them.”

I enclose the chapter of Mr Callinan’s report in which he discusses these matters in detail.

### **Licensed venues in Kings Cross**

Several submissions have expressed fears that alcohol-fuelled violence and anti-social behaviour will return to Kings Cross if the lockouts and other restrictions are removed. While these fears may be understandable, they are not well-founded. As several submissions have noted, Kings Cross has changed significantly over the five years since the lockouts were introduced. This includes significant changes in premises that previously housed licensed venues. I enclose a table which demonstrates these changes.

Yours sincerely

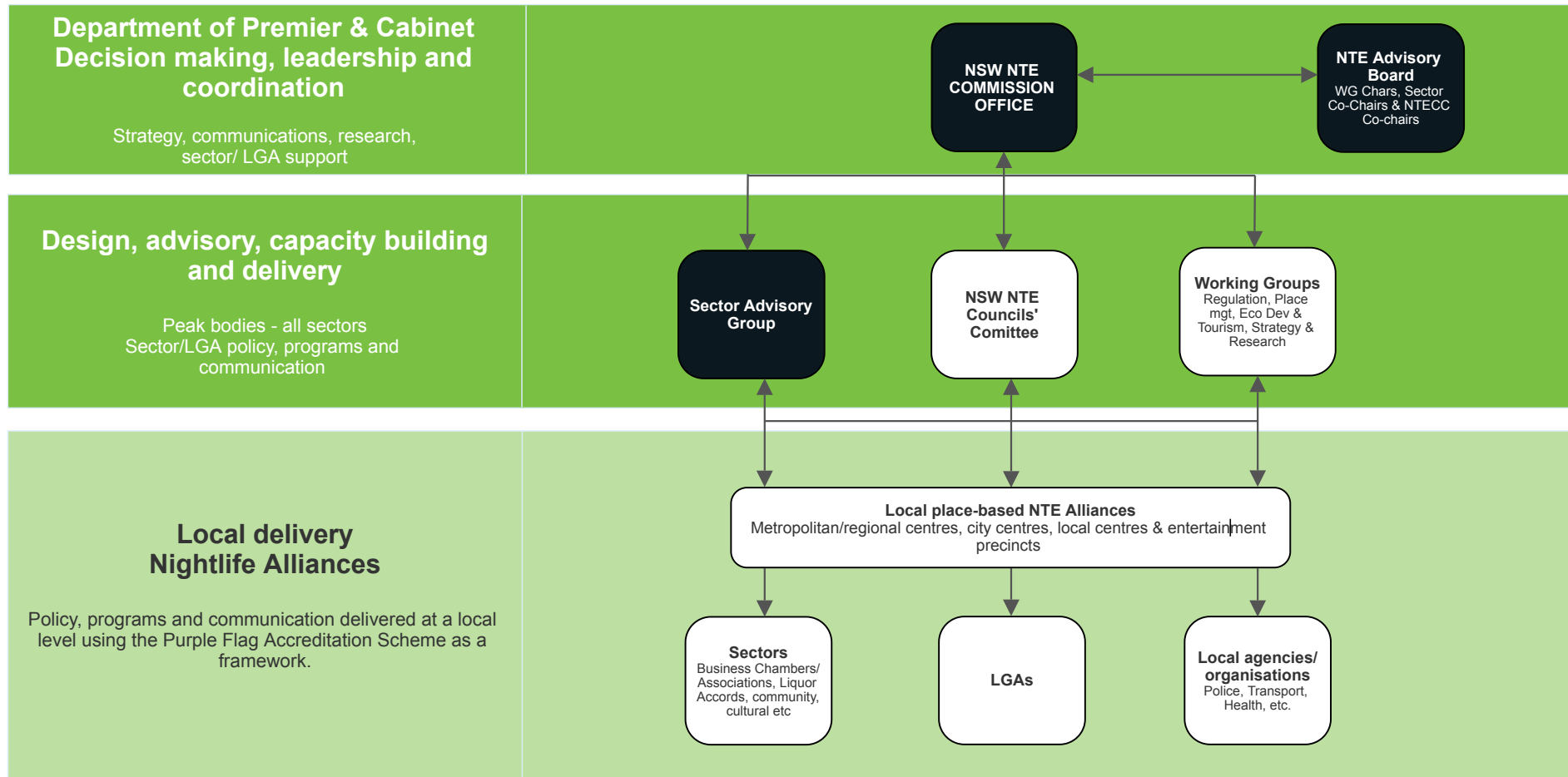


Clover Moore  
**Lord Mayor of Sydney**

Encl.

1. NSW Night Time Economy Governance Framework
2. Chapter from Liquor Law Review relating to Kings Cross
3. List showing current status of high-impact venues in Kings Cross

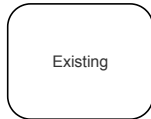
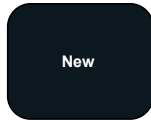
# NSW Night Time Economy Governance Framework



**Night-time Economy Commission Office** would establish, coordinate and oversee working groups covering, for example, Planning and Regulation, Investment and Tourism, Place Management and Strategy and Research. These working groups would provide the focus required for the NTE office to deliver key reforms and programs. They would bring together staff from relevant agencies which could include NSW Police, Liquor and Gaming NSW, Department of Planning, Treasury, Transport for NSW, Destination NSW, Department of Industry, Create NSW and NSW Health.

**Night-Time Economy Advisory Board** could comprise the Chairs of government Working Groups, Co-chairs of a new Sector Advisory Group and Co-chairs of the already existing NSW Councils Night-Time Economy Councils' Committee (NTECC).

The **Sector Advisory Group** should comprise key industry leaders, influencers and peak bodies that represent the diverse range of stakeholders involved in delivering a successful NTE. This could include representation from Committee for Sydney and Night Time Industry Association who play an important role engaging with industry leaders and maintain oversight across all sectors. Membership from peak industry bodies across food, drink, entertainment (creative producers across genres), retail, tourism, transport, emergency services and business/industry associations. Other groups that should be considered include major property owners, property developers, academics/researchers and the community should also be considered.



### Kings Cross Venues – Current Status

The venues listed below have been previously identified as high impact or high risk by the Office of Liquor and Gaming or have contributed to the area being a nightlife destination.  
The information has been compiled from site inspections, media reports and online checks.

Venue	Address in Kings Cross	Current Status
Backroom (formely Ladylux)	2A Roslyn Street	<b>Closed</b>
Bada Bing Night Spot	70A Darlinghurst Road	Status uncertain – has been closed following police action
Bank Hotel Sydney	42 Darlinghurst Road	<b>Closed</b> , renamed Leo's, however does not appear to be operating
Barrio Chino	30 Bayswater Road	<b>Closed</b> , premises reopened as burger café which subsequently closed
Bellini Lounge Pty Ltd	2 Kellett Street	<b>Closed</b>
Bourbon	24 Darlinghurst Road	Operating
Candy's Nightclub	22 Bayswater Road (Basement)	Reported to be operating on Fridays and Saturdays
Crane Bar Sydney Pty Ltd	32-34 Bayswater Road	Operating as restaurant
Crest Hotel (including Goldfish Nightclub)	111-139 Darlinghurst Road	<b>Closed</b> , building replaced by Omnia residential tower with Woolworths and vacant shopfronts on lower levels
Dancers Cabaret	36-38 Bayswater Road	<b>Closed</b> , relocated to inner-west
Dollhouse Nightspot	15 Kellett Street	Believed closed
Dreamgirls	77 Darlinghurst Road	<b>closed</b>
First Empire Hotel (formerly Palladium Hotel, Les Girls, Carousel Lounge)	32 Darlinghurst Road	Operating
Hugo's Lounge	Level1, 33 Bayswater Road	<b>Closed</b> , part of space now a fitness studio, remainder is vacant
Kings Cross Hotel	244-248 William Street	Operating, includes small theatre
Luna Nightclub	20 Bayswater Road	<b>Closed</b>
Mansions Hotel	18 Bayswater Road	<b>Closed</b> , replaced by Manar residential development, ground floor now Barry's, a fitness studio
Moulin Rouge	82-94 Darlinghurst Road	<b>Closed</b>
New Hampton Hotel	9 Bayswater Road	Restaurant and bar operating
O'Malley's Hotel	228 William Street	Operating
Piccadilly Hotel (including Soho Nightclub)	171 Victoria Street	<b>Closed</b> and vacant, sold for commercial redevelopment.
Porky's	77 Darlinghurst Road	<b>Closed</b>
Showgirls	39 Darlinghurst Road	Operating
Sugarmill Hotel	35 Darlinghurst Road	Operating as Potts Point Hotel with local focus
Trademark Hotel	1 Bayswater Road	<b>Closed</b> , replaced by Holey Moley's, a mini-golf course with bar
Tunnel Nightclub (also operated as Dragonfly)	1 Earl Place	<b>Closed</b> , replace by Orangetheory fitness studio
Vegas Hotel	54 Darlinghurst Road	Operating
World Bar	20-26 Bayswater Road	<b>Closed</b> , reopened briefly as Cali nightclub. Uupper floors soon to open as Sydney Fringe HQ.

## VI - The Precincts

- 1.62 The Amendments the subject of the Statutory and the Ministerial Reviews (being the lockout, the 3am cessation of alcohol sales and periodic licence fees) apply to the two precincts: the Kings Cross Precinct (defined by the *Liquor Amendment (Kings Cross Plan of Management) Act 2012*) and the Sydney CBD Entertainment Precinct (defined by the Amendment Act).
- 1.63 Kings Cross has for many decades been a popular destination in Sydney for customers of nightclubs, hotels, entertainment, strip shows and prostitution, the last before and after its legalisation by the *Prostitution Act of 1979*. A high point for some of these was the period of the Vietnam War when United States service personnel thronged the area. During the last two decades of the 20<sup>th</sup> Century Kings Cross had what a local historian described as a ‘dark manic energy’.<sup>14</sup> The area has had historically, a comparatively high level of drug-taking and crime, earning, in consequence, a reputation as ‘Sin City’.
- 1.64 In modern times, there has been an inevitable trend of gentrification of areas relatively close to the Harbour and the central business district. Kings Cross is one such area. Equally inevitable is the increasing tension between residents, especially recent ones, and those selling, and visitors coming to consume alcohol, and enjoy entertainment there. Kings Cross was in transition before the Amendments were enacted. The streetscape was evolving, and, it has been reported, a reduction in the number of brothels and like establishments had occurred. Richard Guillatt in an article in the *Australian Magazine*<sup>15</sup> colourfully described this evolution, and the increasing presence in the area of fine-dining establishments, ‘cashed-up hipsters’, and upmarket small bars.
- 1.65 The Wood Royal Commission in its report upon the NSW Police Force recommended the establishment of a medically supervised injection facility in Kings Cross. That occurred in May 2001. The Kings Cross Licensing Accord and some residents, say that its existence (it remains to this day) impedes a

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<sup>14</sup> Louis Nowra, *Kings Cross: a Biography* (2013).

<sup>15</sup> ‘Sunset Strip’, *Australian Magazine*, 5-6 March 2016 pp 12-16.



progression towards a better amenity and a cleaner and generally less crime-ridden area. Whether this facility is still useful or appropriately located is not a question within my Terms of Reference. I did notice on my daytime inspection of the Kings Cross Precinct a number of people, presumably users, waiting on the footpath near to its entrance.

- 1.66 The number of licensed venues in Kings Cross, Potts Point and Darlinghurst, their residents told me, increased markedly between 2007 and 2013: from about 15 or more main licensed premises in 2007 to some 380 in 2013 (excluding bottle shops). The reasons for that increase, and the greater density of outlets that resulted, the residents attributed to a planning regime that gave, either in its terms or in its implementation, no or insufficient weight to the effect of them on the locality. One problem, of loud noise, arose out of the unsuitability of old residential buildings for noise attenuation without expensive retro-fitting, something that could not practically effectively be done without offending heritage rules or economically.
- 1.67 I asked the representatives of the City of Sydney in my meeting with the Lord Mayor and her officials about the circumstances which led to the alleged proliferation of licensed venues in Kings Cross. In response, the officials provided relevant planning documents, Council resolutions and references to Court decisions in planning cases relevant to this question.
- 1.68 In the late 1990s, the *Liquor Act* 1982 (NSW) was amended to empower the Licensing Court of NSW to grant approval to applicants to extend the trading hours of those premises that had the benefit of a development approval, without further reference to the Council.
- 1.69 On 5 June 2006, the Council unanimously passed a resolution of concern about the cumulative impacts of ‘*the establishment of new, and intensification of [trading at] existing late night licensed premises in the Kings Cross precinct*’.
- 1.70 In December 2007 the Council adopted the Late Night Trading Premises Development Control Plan (DCP). Until then, there had not been any planning

policy specifically applicable to the entire City of Sydney to regulate the trading hours and management of licensed venues whose operators wished to trade late. The DCP was in part at least, a response to successful appeals by licensees to the Land and Environment Court against decisions of Council.<sup>16</sup> One such decision was to refuse a development application for a licensed premises whose operators wished to trade late. What was sought was approval of alterations and change of use of existing commercial premises on Darlinghurst Road, Kings Cross (from a Hungry Jack's restaurant to a licensed restaurant and cocktail lounge, with late night trading until 3 am). Evidence from a Police Officer at the hearing was that '*as far as licensed premises are concerned, [Kings Cross] has reached saturation point*' and, '*the area, at present, [is] the most densely populated as far as licensed premises per capita of its population in Australia*'.<sup>17</sup> The Land and Environment Court (Commissioner Hussey) nonetheless held that there was no substantive evidence enabling an objective assessment of the required kind.

1.71 The Commissioner expressed himself in this way (at [63], [64] and [69]):

... I have given careful consideration to the cumulative impact/saturation point policy in order to apply it on an objective basis. As the underlying rationale and evaluation criteria in terms of the competing objectives to encourage entertainment activities, whilst protecting residential amenity in this precinct is unclear, I have detailed the methodologies suggested by the town planners ... as a basis for such objective evaluation.

... the building alterations are likely to take some 18 months to complete, following which the 12 month trial starts. Therefore, there is a period of some 2½ years to undertake appropriate studies to establish objective evaluation criteria, which hopefully satisfies all stakeholders.

In the ultimate, no substantive, strategy details were presented to the Court, which indicated the overall public interest would not be well served by this development that reasonably satisfies the requirements for development within the Kings Cross Entertainment Precinct. If the saturation point has been reached, I expect some actual details as mentioned in the planners joint conference could have been provided to confirm this situation. ...

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<sup>16</sup> See, for example, *Jones-Evans v Council of the City of Sydney* [2006] NSWLEC 628 (Commissioner Moore); *C-INC Pty Ltd v Sydney City Council* [2006] NSWLEC 607 (Commissioner Hussey); *Cross Entertainment Pty Ltd v Sydney CC* [2006] NSWLEC 488 (Commissioner Hussey); *Rifon Pty Ltd v Sydney City Council* [2006] NSWLEC 778 (Commissioner Hussey).

<sup>17</sup> *Rifon Pty Ltd v Sydney City Council* [2006] NSWLEC 778 (Commissioner Hussey) at [42].

1.72 In an earlier appeal in 2005 the Land and Environment Court<sup>18</sup> (Commissioner Moore) had stated the tests for an application for an extension of trading hours for licensed premises, an increase of patron numbers or the addition of attractions such as music and other entertainment. The Court there took an avowedly precautionary approach.<sup>19</sup> The appeal was from a decision of Randwick Council to refuse an application for an extension of a licence. The Court dismissed the appeal because it was not satisfied that additional anti-social behaviour of departing patrons could be managed to protect the nearby residential areas.<sup>20</sup>

1.73 The DCP introduced by the City of Sydney in 2007 was intended to enable it to assess the performance of management of an hotel or other licensed establishment, and its impact on the neighbourhood amenity. Any extended hours (after 10pm or midnight for some premises and 1am or 2am for others) in the ‘late night management areas’ and ‘Local Centre Areas’ (part of Kings Cross being so designated) were to be subject to a trial period. If the conduct there proved to be unsatisfactory, then trading would revert to ‘base hours’. Trial periods would expire from time to time and require the lodgement of applications for renewals or extensions of approved for extended trading hours. Renewals or extensions were permissible only if Council were satisfied that the premises had demonstrated ‘*good management performance and compliance with a plan of management ... following completion of a satisfactory trial period*’ (s 3.1).

1.74 Following the decision referred to in paragraph 1.71, the Sydney City Council commissioned studies to quantify the cumulative impacts of late night trading premises on alcohol-related crime and to identify strategies to reduce them.<sup>21</sup> The studies influenced amendments to the 2007 DCP (adopted by Council in December 2010), among other things, to clarify that an application to renew

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<sup>18</sup> *Vinson v Randwick Council* (2005) LGERA 27 (Commissioner Moore).

<sup>19</sup> at [92].

<sup>20</sup> at [91].

<sup>21</sup> One example is Monograph No 63 of the National Drug and Alcohol Research Council by A Shakeshaft and S Love and E Wood ‘Alcohol Related Crime in City of Sydney Local Government Area An Analysis for the Council of the City of Sydney’ (2011).

extended trading hours would be required at the end of every trial period, to permit trial periods of five years only in cases where a premises had completed no fewer than 3 years of trial periods, to re-categorise some premises designated previously low impact as high impact, and to clarify that an intensification of operations as high impact premises would require a development application and not merely an application, to modify an existing consent.

1.75 Within a few days of their making by the Council, the amendments were annulled by the then Minister for Planning, the Hon Tony Kelly in exercise of his powers under s 22A of the Environmental Planning and Assessment Regulation 2000.<sup>22</sup> The reason given by the Minister for the direction was that:<sup>23</sup>

... the system of rolling development consent periods that have been in place since 1 January 2008 ... does not address the growing concerns about the effect of the uncertainty associated with this approach on the late night trading economy of our global city.

1.76 The events that had occurred, successful appeals to the Land and Environment Court against decisions of Councils, and the annulment by the Minister confirmed the substance of what the Mayor of Sydney told me in my meeting with her, meant that the Council was effectively thwarted in its attempts to preserve or improve the amenity of the areas of concern, and to reduce alcohol-related violence in them. It seems to me that the Mayor's response answered a claim by some of the residents that Council, by allowing or causing a proliferation of licensed premises, was a contributor to a deterioration in amenity and an increase in violence.

1.77 The Sydney City Council faced a difficult set of circumstances: Kings Cross was not within the municipality for the period in which longer hours of trading had been permitted in the lead-up to the Sydney Olympics. When that area did come within its control in 2004 it could only seek to regulate the grant of new planning approvals (and not restrict permissions already subsisting).

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<sup>22</sup> This followed a direction issued under s 74F of the *Environmental Planning and Assessment Act* 1979 (NSW).

<sup>23</sup> Letter dated 14 December 2010 from Hon Tony Kelly to Lord Mayor of Sydney.

1.78 Planning controls by way of highly conditioned approvals are unlikely to be a complete or entirely satisfactory means of regulating the sale and consumption of alcohol and its consequences. The events which I have just summarised show this to be so.