

Submission
No 246

INQUIRY INTO THE MUSIC AND ARTS ECONOMY IN NEW SOUTH WALES

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Submission to Committee No. 6 Planning and Environment: The Music and Arts Economy in NSW

City of Sydney Submission

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Introduction

The City of Sydney welcomes the interest of the Committee in New South Wales' music and arts sector. The City is a significant supporter of this sector through its grants program, the provision of affordable space in City owned buildings. It also has an important role as a planning consent authority and regulator.

The City's work has been informed by significant research and policy development, including the *Creative City Cultural Policy and Action Plan*, the *Live Music and Performance Action Plan* and the *OPEN Sydney Strategy and Action Plan*. Further City research is available online at:

<http://www.cityofsydney.nsw.gov.au/vision/towards-2030/communities-and-culture/culture-and-creativity/cultural-research-studies/ nocache>

Across these initiatives, a series of issues have arisen as central to the sustainability of Sydney's cultural sector. These include:

- Difficulty obtaining regulatory approvals associated with building, planning, environmental health and liquor licensing law
- The decline of suitable and affordable building stock
- The prohibitive impact of property prices on both creative enterprise and creative workers
- The lack of cohesive policy across regional, state and federal jurisdictions

To address the first of these points, the City of Sydney has proposed and is consulting on a suite of planning and regulatory reforms in its *Open and Creative City Discussion Paper*, which focused on three separate reforms to strengthen Sydney's cultural life and night time economy.

This submission focuses on the matters discussed in the discussion paper. A number of issues which cannot be addressed at the local government level are raised, with potential options suggested for the NSW Government.

The remaining three points are harder to address at the local government level. This submission provides some suggestions on potential policies to support a diverse and vibrant music and arts culture, with an eye to connecting state and local cultural policy.

Central to these suggestions is the recognition that the cultural sector consists heavily of small to medium enterprises. Indeed, more than 80% of creative enterprises have less than 20 staff. Various studies undertaken by the City have found the cultural sector tends to operate using mixed purpose business models, relies almost exclusively on pre-existing, small scale buildings and frequently operates on a not-for-profit or social enterprise basis. As property costs have risen in the Greater Sydney area, many of these enterprises have grown increasingly reliant on volunteer labour, with rental rates consuming income previously directed to wages. As such, the cultural sector has been disproportionately impacted by the pace of urban development, increased property prices and the cost of negotiating planning, building and liquor licensing approvals. This has not only decreased the number of spaces, but impacted on paid employment for creative workers.

Traditional arts policies focused on grants and audience development programs are important, but will not overcome these issues. In this submission, the City wishes to draw attention to issues specific to the built environment's impact on the music, arts and wider cultural sector.

Recommendations

This submission contains eight key recommendations, responding to the terms of reference:

1. Establish a dedicated team in State Government that could develop and oversee implementation of a NSW night time economy master plan and a program that supports local government to develop and manage vibrant, safe and sustainable local night time economies across NSW.
2. Develop a state cultural policy to facilitate evidenced based decision making, set priorities for funding and investment, guide planning and development frameworks, and integrate activity across and within state and local government.
3. Note the issues and opportunities described in the City of Sydney's *An Open and Creative City Discussion Paper*, support any reforms arising from the Paper and its consultation, and consider any such reforms as a model for local governments seeking to minimise red tape for both existing and new cultural spaces, including those operating in the night time economy.
4. Provide greater flexibility and clarity for local government to approve temporary and interim activity, noting the limitations within existing NSW law and international best practice.
5. Provide greater clarity with respect to the adaptive re-use of existing buildings for new creative purposes with respect to compliance with the Building Code of Australia.
6. Address Regulatory Overlap Associated with the Management of Noise.
7. Streamline the Development and Liquor Licence Approvals Process.
8. As a matter of priority, consider policy responses to address the lack of affordable studio, rehearsal and creative industries workspace.

A. Progress on the Implementation of the Government response to the New South Wales Night-Time Economy Roundtable Action Plan

Recommendation 1: Establish a dedicated team in State Government that could develop a NSW night time economy master plan and a program that supports local government to develop and manage vibrant, safe and sustainable local night time economies across NSW.

In 2016, the NSW Government established a roundtable to examine challenges and opportunities for growing a safe and vibrant-night time economy, focusing specifically within the Sydney city centre and Kings Cross precincts.

Subsequently, it was determined that the Executive Director of Create NSW would be responsible for leading a night-time economy taskforce, overseeing the delivery of an Action Plan.

The City was a member of the Roundtable and contributed to development of the Action Plan. The City is also a member of the associated Taskforce and has implemented many programs and projects that contribute to the delivery of the Action Plan.

Attachment B contains an outline of the activities carried out by the City against each of the items in the Action Plan and comments in relation to some aspects of the plan.

A core lesson from the City's work in this area is that the effective functioning of the night time economy in the Sydney CBD and surrounding areas is dependent on a range of factors that go beyond local government boundaries. A master plan that supports development and management of local night-time economies across the Sydney Metropolitan Area is essential. It could provide the strategic framework necessary to support local community aspirations, create greater diversity of leisure and entertainment options, support development of cultural tourism and reduce pressure on the influx of people coming into the Sydney CBD.

In response to this need, the Night Time Economy Councils Committee was established in March 2017 comprising representatives from City of Sydney, Parramatta, Waverley, Wollongong and Newcastle Councils, and is supported by Local Government NSW. The Committee's objectives are to:

- a. Share information on best practice approaches and contemporary issues to build knowledge and Council capabilities to shape vibrant, safe and sustainable NTE's
- b. Establish a consistent approach to the development and management of NTEs to achieve positive outcomes for business and the community
- c. Advocate to State and Federal Governments on matters of common interest
- d. Establish a network of night time economy policy practitioners across NSW councils
- e. Improve Councillor awareness of the value and benefit of taking a proactive approach to the development and management of the NTE and the work being done in this area

- f. Promote the benefits of becoming a member of the National Local Government Drug and Alcohol Committee (NLGDAAC)
- g. Facilitate capacity building and development of collaborative partnerships on NTE initiatives

The desire for a strategic night time economy framework and plan that is broader than just the Sydney CBD is reinforced by the outcomes from a workshop held as part of the NSW Councils Night Time Economy forum held in October 2017. Attended by 130 staff from 30 councils across metropolitan Sydney (68%) and regional NSW (32%), the group agreed that local government needed a common vision, strategic direction and policy framework for the night time economy that could be translated into local contexts.

The workshop was used to identify key issues and what help is required to increase the capacity of local government to proactively develop vibrant, safe and sustainable local night time economies. Key issues included:

1. Inflexible planning regulations that limit opportunities for economic development and place activation
2. Identifying policy and other options that support sustainable development and night-time activation of under-utilised areas
3. Creating partnerships – knowing who to go to and how to engage
4. Defining the night time economy - Councils role and community expectations
5. Managing alcohol and related risks
6. Engaging and empowering business owners to take ownership and create community in their local areas
7. Creating local centres that cater for work, living and play
8. Lack of shared vision with external decision-makers (State Government agencies)
9. Understanding the value of the night time economy to the community and business
10. Resourcing events and place activations
11. The lack of integrated transport to service local night time economies

The types of support identified as being most needed included:

1. Establishment of a common vision, strategic direction and policy framework for the night time economy for NSW Councils that could be translated into local contexts.
2. Establishment of a NSW Government night time economy grants fund that could support local economies.
3. Access to best practice guidelines across a range of functional activities.
4. Harmonisation of approaches to nightlife development and regulation across NSW Government agencies.
5. Guidance on how to foster community and business-led local collaboration.
6. Guidance on how to harness local opportunities to develop cultural tourism.
7. How to measure and report on the economic and social impacts of the night time economy.

A post event survey revealed that only a small proportion of Councils have a night time economy strategy or policy. However, 89% of respondents were optimistic about implementing the information they had gained from the forum.

There would be great value in establishing a dedicated team in State Government that could develop a NSW night time economy master plan and a program that supports local government to develop and manage vibrant, safe and sustainable local night time economies across NSW.

B. Policies that could Support a Diverse and Vibrant Music and Arts Culture across New South Wales

Recommendation: Develop a state cultural policy to facilitate evidenced based decision making, set priorities for funding and investment, guide planning and development frameworks, and integrate activity across and within state and local government.

Whilst the City welcomed the *Create in NSW Arts and Cultural Policy Framework*, and supports the work of Create NSW, the Cultural Infrastructure Program Management Office, and the development of a draft Creative Industries Development Strategy, these tend to focus on specific sectors and are often heavily weighted to arts funding and infrastructure development. Other issues, such as land use planning, cohesive evaluation and monitoring, industry and workforce development, and social and civil outcomes are often absent.

Beyond its social benefit, the cultural sector has a substantial economic impact. The City of Sydney local government area hosts more than 11% of national, and 43% of the greater metropolitan area's employment in Creative and Performing Arts. In 2016, Sydney attracted 4.14 million overnight visitors, 2.5 million of whom were motivated by cultural and heritage interests, with a total spend of \$7 billion.

Music and arts activity cannot be readily separated from the wider cultural sector, nor can they be addressed in geographical isolation. Currently there are no state or federal cultural policies providing cohesive, integrated responses to the challenges facing the creative industries, arts and wider cultural sector.

A good interstate example or an integrated response is the Music Works program undertaken by Creative Victoria. This has provided a four year, \$22 million investment driving targeted industry support, professional development, grants for music venues undertaking sound attenuation, infrastructure and events.

There is a need for a state cultural policy that supports strategic decision making, allowing local and state government to respond cohesively to the arts, creative industries and broader cultural sector.

Three particular fields in which a state cultural policy could be useful include evaluation methodologies to inform regional policy implementation, a focus on the role of strategic land use planning in delivering sustainable cultural infrastructure, and allocating authority to a central resource or office to provide coordination across government.

Systems already exist for the implementation of cultural evaluation frameworks. The City's own framework builds upon the *2009 UNESCO Framework for Cultural Statistics*, the Cultural Development Network's Capital Cities Core Data Trial, survey methodologies developed by Culture Counts, and research

undertaken by Western Sydney University, the University of Tasmania and University of Technology Sydney.

The need to connect cultural and land use policies has become a core topic amongst cities internationally, responding to the changes cities face due to increased density and rapid urban development.

The City is currently considering these issues through its membership of the World Cities Cultural Forum, alongside a number of other global cities including London, New York, Seoul, Toronto and Melbourne. The World Cities Cultural Forum has made the relationship between cultural and urban planning policies a priority, releasing their *Making Space for Culture* report (<http://www.worldcitiescultureforum.com/publications/making-space-for-culture>) in 2017. Accordingly, the City will begin developing a cultural infrastructure strategy in 2018, and welcomes interest from the NSW Government in this area.

A core concern in evaluating and connecting cultural and planning policies is the lack of a suitable resource or office within state government to oversee integrated policy development and implementation. The City notes the presence of the Economic and Social Policy Groups and Premier's Implementation Group within the Department of Premier and Cabinet. The inclusion of a cultural policy unit at this level may better facilitate cross-governmental support for the music, arts and cultural sector, alongside the state's creative industries.

In this way, a state cultural policy could facilitate evidenced based approaches, set priorities for funding and investment, guide planning and development frameworks, and facilitate activity across and within state and local government.

C. Policies that could support the Establishment and Sustainability of Permanent and Temporary Venue Spaces for Music and the Arts

Recommendation: Note the issues and opportunities described in the City of Sydney's *An Open and Creative City Discussion Paper*, support any reforms arising from the Paper and its consultation, and consider any such reforms as a model for local governments seeking to minimise red tape for both existing and new cultural spaces, including those operating in the night time economy.

In October 2017, the City released its *Open and Creative City Discussion Paper*. This included a section dedicated specifically to small scale cultural venues, and proposed reforms addressing the management of entertainment noise associated with music venues. The paper considered both temporary and permanent venues, and identified changes required at both the local and state level.

It is important to note that temporary or 'pop-up' venues do not suit the majority of creative activities. Whilst they have been historically useful for short term performance and start-up retail ventures, they are less useful for work, studio and rehearsal space, or for theatre, music and arts venues requiring longer and more stable access to build audiences and program effectively. 'Pop-Up' tenancies should not be considered a

panacea for the issues facing the cultural sector.

In developing the *Open and Creative City Discussion Paper*, the City undertook a substantial body of research related to the types of buildings, types of activity, and regulatory barriers impacting upon creative venues, including both temporary and permanent activity.

This research has identified three basic needs for space, including temporary or 'pop-up' uses lasting generally less than three months, interim uses through which to incubate and develop new enterprises lasting for one to five years, and stable, permanent tenure for ongoing studio, work, performance and exhibition space.

Findings are briefly outlined below.

Temporary Venues

With respect to temporary venues, the NSW planning system does not have a pathway for temporary uses that matches the needs of the cultural sector.

The NSW Standard Instrument Local Environmental Plan's clause 2.8, Temporary Use of Land, allows for a use to be approved for a maximum number of days per year despite it being prohibited in the land use zone. For example, a 'light industrial' use involving the production of art or craft could be approved in the B2 local centre zone, which prohibits 'industries'.

However, an application under this provision still requires full assessment under s79C of the Environmental Planning and Assessment Act 1979. This will usually require consideration of how the proposed activity aligns with relevant planning instruments, and whether building upgrades are needed to meet the National Construction Code, as per clauses 93 & 94 of the Environmental Planning and Assessment Regulation 2000.

In simple terms, this means an application for a 'pop-up' or temporary cultural venue is typically assessed as though it is a permanent use. The same is true of building compliance. There is no clear framework in the planning system for considering the temporary nature of a use and its impacts.

In the absence of such a framework, temporary venues will usually require input from specialist consultants related to planning, environmental, building, disability access, and fire safety. This produces costs which are insurmountable for the vast majority of creative enterprises.

The options open to local government in addressing these issues are limited. Further options for reform at the NSW Government level related to temporary and interim use are outlined in Item 4.

Permanent Venues

With respect to permanent use of space, the costs noted above are also above the resources of most creative enterprises. Additionally, rising property prices, and a decrease in suitable building stock, has pressured many creative enterprises to adopt mixed business models which can be extremely difficult to reconcile with existing building and planning frameworks. For example, an artist studio wishing to host workshops or monthly exhibits may be required to reconcile planning classifications associated with light industrial, entertainment and education uses, each with separate building classifications.

Whilst this is achievable, the complexity inherent to the system produces high costs for applicants associated with building, planning and environmental health consultancies. The lack of clear criteria with which to assess applications from small to medium cultural enterprise creates delays in assessment as local consent authorities must analyse and identify suitable responses to unconventional and innovative business models with limited guidance.

To address these issues, the City of Sydney is aiming to provide clarity for both temporary and permanent uses. Specifically, the City's *Open and Creative City Discussion Paper* has proposed the following possible responses:

The City's Proposed Reforms

Allow Minimal Impact Small-Scale Cultural Uses without Development Consent

The Discussion Paper has proposed and sought feedback on expanded Exempt Development provisions to allow low impact cultural activity. This follows feedback from a number of small enterprises noting confusion as to existing provisions, such as ancillary use, and a lack of clear development pathways.

People regularly produce art, rehearse or gather to discuss books, art or movies, and generally do not need approvals. However, whether or not approval is required isn't always clear, particularly if the event is ticketed, open to the public, or carried out on a regular basis.

By classifying these sorts of 'minimal impact' activities as Exempt Development greater clarity can be provided as to when approvals are required. Based on community feedback, the City intends to develop criteria that will ensure the small-scale cultural activities that are exempt meet community expectations of 'minimal environmental impact'. Future exempt development criteria may be adopted by other local governments, based on feedback from other stakeholders, such as residents and businesses.

Establish New Planning Controls Specifically for Cultural Uses that may have some Impacts and Need Development Consent, to provide better Planning Guidance and Certainty

The Discussion Paper has sought feedback on the City's proposal to develop new planning and building controls within its Development Control Plan to provide simple solutions to common issues encountered across the cultural sector.

Currently, substantial confusion exists about what needs to be done to obtain a planning consent and building approval, and how the planning and building systems interact for permanent cultural spaces and temporary events with higher environmental impacts. Key issues relate to classifying creative activity according to existing planning definitions and the classifications within the Building Code of Australia, identifying suitable requirements for fire and safety upgrades, and the limited guidance available to increase the certainty of decision making.

While the planning and building systems are flexible enough to enable cultural uses to occur, the challenge is for applicants to find a cost effective path given the broad nature of cultural activities. This is exacerbated by the frequently mixed use nature of creative spaces, the regularity with which building and planning professionals deal with such uses, and the guidance available for applicants, planners and certifiers.

For example, under the guidelines provided by the NSW Government's *Arts Revitalisation Projects and the Planning System*, a gallery selling art work would require planning and building consents associated with retail activity. Should the gallery exhibit work without intending to sell it, it would require consents for an 'Information and Education Facility.' This change in planning definition would trigger the need for a change in building classification, from a Class 6 Retail building to a Class 9B Place of Assembly. Further, any alterations may trigger a requirement for the building to be upgraded to meet the BCA, which may be reasonable but the cost efficiency at which it can be achieved will depend on the experience and approach of the certifier.

In this case, largely identical activities are classified differently. However, the City's research indicates a number of commonalities across cultural use of space which can inform a more nuanced regulatory approach.

To this end, the City is working on draft development controls for small and medium sized cultural activities. These may include standards related to capacity, opening hours and plans of management. Additionally, the City is working to develop guidance on solutions for fire safety and building compliance for cultural activity taking place in existing building spaces of 499m² or less. Noting that certifiers, not planning authorities, are responsible for deciding on building compliance, these guidance solutions are intended to inform both applicants and building professionals, thereby reducing the costs and confusion of identifying suitable standards for creative uses of existing buildings.

These may serve as a model for other councils across NSW.

Fair Management of Noise Impacts by Applying the 'Agent of Change' Principle

The City's Live Music and Performance Action Plan has noted the difficulty in managing the need for new residential development with protection and support for existing live music venues. Key to this issue is the onus on management of amenity conditions. Currently, New South Wales operates on a 'polluter pays' principle, whereby a music venue is responsible for managing amenity impacts on residents, regardless of whether the venue or the resident was in the neighbourhood first.

By contrast, the 'agent of change' principle is a planning approach that requires new development (the 'agent of change') to consider existing land uses. It asks new development to manage noise impacts through the design and construction of the building or the operations in the building. This could be applied to new live music venues and new noise-sensitive uses such as residential accommodation and hospitals.

Under this approach, a new residential development within 100 metres of an entertainment venue would be required to assess the noise from the venue and design and build to manage the noise. Similarly, a new live music venue or an existing venue intensifying its use would be required to protect existing noise-sensitive development from the noise it will make.

Applying the 'agent of change' principle is similar to the 'order of occupancy' approach used in liquor licensing. It aims to allocate responsibility for managing noise impacts in a fair manner. It creates more certainty for venues and residents when new development happens.

The City has proposed and sought feedback on implementing the 'agent of change'

principle in the *Open and Creative City Discussion Paper*. Considering this change at the state level in NSW could help protect existing venues, and maintain consistency across local government areas.

Planning Controls for New Venues and for New Noise-Sensitive Development

The Discussion Paper also describes potential planning controls for managing noise associated with entertainment venues consistent with the agent of change principle. When a new venue is proposed it has to manage its noise impacts on neighbours. Traditionally maximum noise levels have been set as relative to the background noise in an area and relative to the closest residential building. If either of these change, so does the amount of sound a venue can make, which creates uncertainty for venue operators.

The Discussion paper raises the option of converting this relative criteria to a fixed criteria, which will remain the same despite future changes to background noise and neighbouring development. A new venue will be built and operated to achieve an acceptable noise level that protects amenity of existing residents. Before the venue opens, noise testing will be used to set a fixed 'compliance level' immediately outside the venue. A 'monitoring level' inside the venue will also be set so the venue can easily check whether it's likely to breach the compliance level. The venue design criteria is proposed to be set at the threshold of hearing above background noise.

Standardising this approach across other local governments would provide greater certainty to the music sector, providing consistent processes and reducing the reliance on perception based and subjective assessments. Particularly, the adoption of a standard process amongst other regulatory agencies, such as OLGA and the NSW Police, would give greater clarity.

New Noise Compliance Guidelines to Provide Greater Certainty and Consistency

The overlap of planning, liquor and environmental legislation creates uncertainty and confusion for venues and the community. A venue may have a noise condition on its development consent, a different condition on its liquor license, and still have an offensive noise complaint (with subjective criteria) under the Protection of the Environment Operations Act 1997 (POEO Act).

The POEO Act has a subjective test for offensive noise, and defines it as any noise that, because of its nature, level, character, quality or time could be considered as harmful or likely to be harmful to a person outside the premises, or interferes unreasonably with or is likely to interfere unreasonably with, the comfort or repose of a person who is outside the premises. Offensive noise can be assessed without a scientific noise measurement and without considering the noise level set by a development consent, which has undergone a thorough assessment.

To provide more certainty, the City intends to prepare a noise compliance guideline that will aim to reduce inconsistencies between our compliance processes for offensive noise and development consents.

D. Policy and Legislation in Other Jurisdictions, and Options in New South Wales including Red Tape Reduction and Funding options

Recommendation: Provide greater flexibility and clarity for local government to approve temporary and interim activity, noting the limitations within existing NSW law and international best practice.

Recommendation: Provide greater clarity with respect to the adaptive re-use of existing buildings for new creative purposes with respect to compliance with the Building Code of Australia.

Recommendation: Address Regulatory Overlap Associated with the Management of Noise.

Recommendation: Streamline the Development and Liquor Licence Approvals Process.

In preparing the *Open and Creative City Discussion Paper* the City considered a number of interstate and international examples of best practice regulation. These included approaches to streamlined and more appropriate regulation, as well as mechanisms to ensure the long-term viability of the cultural sector in the face of large scale urban development.

There are four core areas which cannot be addressed at the local government level alone. These are:

Approvals Processes for Temporary and Interim Creative Spaces

As noted above, approving a short-term use is frequently cost prohibitive in New South Wales due to the absence of appropriate regulatory pathways within State planning law. Provisions at the level of Local Environment Plans or within the Exempt and Complying SEPP do not negate the 'Change of Use' triggers associated with building upgrades, even if they are of a temporary or low impact nature.

Whilst the City's proposed reforms aim to reduce barriers, far greater impacts could be achieved through reform at the State level by allowing local consent authorities greater flexibility in assessing temporary cultural activity.

There are two examples which may serve as models for changes to State planning policy.

With respect to temporary uses, Object 68 of the South Australian Development Act allows councils to approve a temporary occupation without a certificate of occupancy, subject to any conditions they see fit to impose. This allows a more nuanced approach through which consent authorities can manage amenity and liability issues, reducing the time and costs associated with seeking building and planning consultancies without reducing the management of safety and environmental impacts.

Through this clause, it becomes possible for otherwise vacant retail and office spaces to be used in the short term for events such as the Adelaide Fringe.

Internationally, alternate approval pathways exist for the approval of ongoing uses in sites awaiting re-development. These include the 'Zwischennutzung', or 'interim use' approvals credited with the regeneration of Berlin. Such systems allow ongoing use of otherwise vacant buildings and spaces by providing an alternative approvals pathway for activities which do not involve new construction or large scale development.

It is possible that the ability of local government to support temporary activity could be greatly enhanced by considering how these examples may be adapted to suit existing processes in New South Wales, such as State Environmental Planning Policies related to Exempt and Complying Development, and provisions within the Local Government Act.

Clarification of Building Compliance for Creative Spaces

The City's research identifies building regulation as one of the most significant factors impacting on creative spaces. The root cause of this is the overwhelming reliance on the adaptive re-use of existing buildings amongst the cultural sector. It is important to acknowledge that few, if any, small or medium creative enterprises possess the resources to construct purpose-built buildings. As such, they routinely rely on renting or leasing an existing building and adapting it to suit their needs.

This raises a substantial complication which can only partly be managed at the local government level. Subject to the Environmental Planning and Assessment Regulation 2000, consent authorities must consider whether a building should be wholly or partly brought into line with the Building Code of Australia, and Building certifiers are responsible for deciding whether a proposal complies with the Code.

Accordingly, those seeking to adapt existing buildings for new, creative purposes will usually be required to seek expert consultants to provide advice and issue certifications associated with from building, fire and disability access.

Neither local government, building certifiers, nor applicants have any criteria specific to assessing the adaptive re-use of existing buildings. This issue is of importance beyond the creative sector. The recent *Independent Review of the Building Professionals Act* undertaken by Michael Lambert notes that there is 'insufficient information' to adequately assess the adaptive re-use of existing buildings, and suggests the development of a Building Manual for existing buildings.

In March 2016, the City released its *New Ideas for Old Buildings: Creative Spaces and the Built Environment* discussion paper, which can be downloaded at:

http://www.cityofsydney.nsw.gov.au/_data/assets/pdf_file/0006/281454/Creative_Spaces_and_the_Built_Environment_Discussion_Paper.pdf

This has informed the subsequent *Open and Creative City Discussion Paper*. This noted the need for greater clarity as to the required building upgrades to allow existing buildings to take on new, creative purposes. It pointed to international examples, such as the 're-use' and 'building recycling guidelines' adopted in the US in the late Nineties, and the 'Guidelines for Dispensations' developed by the City of Melbourne in 1991 to "permit the City building surveyor to grant dispensations from various regulations of the Victoria Regulations and the Clauses of the Building Code of Australia."

The City also notes a number of other Australian states have recently introduced variations to the National Construction Code (Building Code of Australia) to clarify compliance for bars and clubs hosting live performance. This follows a variation to the

Code in 2009 by NSW.

The State Government of Victoria introduced the Buildings Amendment (Live Music) Regulations 2014 and the subsequent Practice Note 2014-68 allowing cultural activity to occur in a Class 6 (Retail) building of no more than two stories of 500m² or less. Following this example, the State Government of South Australia obtained a variation to the National Construction Code in 2015, providing construction standards for a 'A Small Arts Venue', defined as a retail building of under 300m².

It is unclear what impact these changes have had. Note that the National Construction Code: Building Code of Australia sets criteria for the construction of new buildings. Its application to existing buildings is subject to clauses 93 & 94 of the Environmental Planning and Assessment Regulation 2000. There is no evidence of small or medium creative enterprises undertaking construction of new buildings. Michael Lambert's suggestion of a building manual for existing buildings would improve certainty for both consent and certifying authorities, and reduce the costs and time delays associated with building compliance.

The City is currently working with the University of Technology Sydney and Arup to design guidelines for cultural enterprises adapting existing buildings for new creative purposes, and welcomes opportunities to consider how these might be included in State policy.

Address Regulatory Overlap Associated with the Management of Noise

It is important note that local government is not the only regulatory agency operating in this area. The current NSW regulatory framework for the management of music and arts venues is based on three pieces of legislation - the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Protection of the Environment Operations Act 1997* (POEO Act), and *Liquor Act 2007*, all of which can deal with the management of noise and amenity concerns.

This overlap of regulation means that any or all of the City of Sydney, Liquor and Gaming NSW or the NSW Licensing Police may exercise their individual powers under the different legislation. From the operator's perspective this means that they may be subject to regulation by three separate agencies separately or concurrently. In addition, relevant conditions of the development consent could either overlap with, or be inconsistent with, the conditions on the liquor license, or in some instances, the noise control provisions of the POEO Act could override the conditions where a noise nuisance exists.

An opportunity exists to review, and streamline the current legislative framework around the management of noise and amenity concerns relating to music venues.

The City welcomes further engagement with the State Government on developing this guideline, and removing inconsistencies within the current approvals system.

Streamline the Development and Liquor Licence Approvals Process

Many creative spaces require the sale of alcohol to supplement rent and operating costs. However, smaller music and theatre venues often raise concerns regarding disconnects between local and state regulatory frameworks associated with liquor licensing.

Liquor licence applications cannot be granted unless development consent under the (NSW) Environmental Planning and Assessment Act 1979, where required, has been obtained and is in force.

However, the issuing of liquor licenses themselves occurs at the state level, and connection to local government approvals can often be inconsistent and confusing for applicants.

Key issues with the current liquor licensing approvals process include:

- Often the dual systems are confusing for applicants to navigate and for the community to participate
- Development applications and liquor licence applications are typically undertaken consecutively, not in parallel or in an integrated fashion, resulting in significant timeframes for the establishment of a business. This can negatively impact residents and local business operators alike due to uncertainty created by the lack of transparency and consultation in the liquor licence assessment process
- There is double handing, with government staff required to review and comment on two applications (development and liquor licence)
- Conditions can sometimes be contradictory or not well aligned
- Approved liquor licence hours are often contradictory to the development consent
- Lack of clarity on how decisions are being made
- Lack of public awareness of the approval process

An integrated process for approval of development and liquor license applications should be explored which eliminates the requirement to complete two applications, undertake two separate public consultations and then operate with two separate plans of management and two sets of operating conditions.


E. Other Related Matters

Recommendation: As a matter of priority, consider policy responses to address the lack of affordable studio, rehearsal and creative industries workspace.

The Provision of Affordable Workspace

The City of Sydney's research consistently points to a decline in the volume of suitable and affordable space for both creative enterprise and creative workers. The rising population and demand for housing has placed pressure on existing cultural assets, creative workspace and housing affordable to those within the arts and creative industries. This has been especially pressing amongst small to medium enterprises, with a substantial decline in studio, rehearsal and workspace.

There is a pressing need to prioritise support for cultural workspace. Greater Sydney's cultural life is not the product of its major institutions alone, and nor can it be delivered solely through arts funding. Other areas, such as the decline in light manufacturing buildings, have had a substantial negative impact on the supply of creative workspace, whilst rising residential property prices are far above those affordable to many creative workers.



The City of Sydney provides 54 creative work spaces, roughly half of all government subsidised creative spaces in Sydney. The City of Sydney established a Creative Spaces database in 2015 to track demand for creative space in the city. It now has close to 2000 subscribers who are actively seeking space. The highest demand is for studio and work space followed by exhibition space.

The City is currently undertaking further research into this area, including its most recent Floor Space Employment Survey, analysis of its Wellbeing Survey, and work commissioned through Western Sydney University's Institute for Culture and Society.

In 2018, the City will incorporate this research into its cultural infrastructure plan, and welcomes engagement by the NSW Government in this area.

Attachments

- A. An Open and Creative City Discussion Paper**
- B. New South Wales Night-Time Economy Roundtable Action Plan: Progress on City of Sydney Actions**
- C. OPEN Sydney Strategy and Action Plan**
- D. Creative City Cultural Policy and Action Plan**
- E. Live Music and Performance Action Plan**