

**Submission
No 261**

**INQUIRY INTO THE MUSIC AND ARTS ECONOMY IN
NEW SOUTH WALES**

Organisation: The Sydney Fringe Festival

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Executive Summary

The Sydney Fringe Festival is now the largest independent arts festival in NSW. Each year we provide performance opportunities for over 2000 independent artists from all genres including performing arts, live music, visual arts, arts education, art making, multi-media and experimental arts. 86% of the participating artists reside in NSW, with the majority living and working in Sydney. During the 30-day festival, they perform in existing small-medium sized cultural spaces and businesses, and pop-up and temporary performance spaces activated by the Sydney Fringe.

We can provide annual, real time reporting on the current trends, requirements and issues facing the independent sector in Sydney. This puts the Sydney Fringe in a unique position to other arts organisations that may be focused on a single genre or representative of only artists or venues. We provide a holistic snapshot of the current climate, trends and overlapping issues and as such, work closely each year with government, private sector and stakeholder partners to investigate and pilot solutions for these issues.

Since 2015 we have directed three important pilot projects that investigate the regulatory restrictions placed on activating new permanent and temporary performance spaces:

2015 Temporary Theatre Pop-up Pilot Project in partnership with the City of Sydney (report available)

2016 Off Broadway Project in partnership with the Inner West Council (report available)

2017 HPG Festival Hub Project in partnership with HPG Australia and the City of Sydney. (report due for completion October 2018)

Additionally, Newtown Entertainment Precinct Association which governs the Sydney Fringe Festival, is the representative, peak body of the Inner West representing live venues and performance organisations of the precinct. Including:

- The Factory Theatre
- The Enmore Theatre
- New Theatre
- The Old 505 Theatre
- The Seymour Centre

And the following venues in greater Sydney:

- Venue 505
- The Metro Theatre
- The Concourse Performing Arts Centre

We prepare this evidence based submission as an outline of the current needs and challenges facing the independent arts sector, with a focus on artists practicing in the greater Sydney area and the small-medium sector.

The independent sector is not just the training ground for the next generation of artists and art makers, it is the sector where professional artists develop their audiences, expand their work and where experimentation takes place.

Most professional NSW based artists will never perform/present in the major performing arts centres, the Opera House or our major cultural institutions. They earn their annual income through the presentation of work in the small to medium sector. This sector of independent, commercial and unsubsidised venues operates in the harshest conditions of any city in Australia.

Rising cost of living, rising business costs, increased residential development, archaic regulatory conditions and masses of red tape are literally decimating the sector. The lack of affordable, appropriate cultural facilities is the single most pressing issue facing all art forms from our sector and as such this submission focusses on the need to create clear pathways to unlock cultural infrastructure for the independent sector.

Top three issues facing the small-medium sector:

- Lack of affordable appropriate small-medium sized cultural spaces for performance, rehearsal and multi-purpose use.
- Restrictions on building use and land use that prohibits low-impact cultural use or performances in many areas that would otherwise suit that type of activity.
- Lengthy and costly project timelines that prohibit temporary cultural activity or support sustainable grassroots business models.

We request:

a) Government investment in small-medium sized performance spaces that are open access and available for all artists to hire.

This would include a review of the distribution of current cultural infrastructure funding. Examination of best practice and international case studies congruent with adaptable business models and responsive to the current needs of the sector.

b) The inclusion of new cultural infrastructure in all major State infrastructure projects

Investigation into integrating the provision of low impact cultural infrastructure into major state infrastructure projects such as stadiums, arts centres, rail networks, public buildings etc.

c) A NSW Arts Venue variation to the National Construction Code (NCC)

In 2016 the South Australian Government introduced a small arts venue state variation to the National Construction Code – This red tape reduction measure supports the establishment of smaller dedicated performance spaces by assessing buildings to retail rather than theatre specifications for the purposes of building compliance. We seek a

NSW variation to ensure that NSW based cultural businesses have the same playing field as our SA counterparts

d) Exempt and Complying Development for low impact entertainment

Introduced in South Australia in 2017 and Victoria in 2018, designating low impact entertainment as exempt development would provide a level playing field for creative practice, ensuring that risks and impacts are the primary objectives of regulation – Why is it that when we put a large screen TV in a retail premises there's no DA approval even considered but put in a piano or a poet and it's a change of use?

e) Providing Clear Guidelines on Ancillary Entertainment Activity

In the absence of an associated Exempt Development definition under the planning scheme for low impact entertainment, providing clarity for the music and creative sector on what types of arts and cultural land use is [characterised as ancillary use](#) will encourage grass roots activity. This is of primary concern when activating temporary space with cultural activity.

f) Independent Analysis of Submissions to Licensing Applications

The anecdotal evidence from industry and local government is that as applications have been lodged that they have been consistently opposed by police regardless of the individual components or potential for jobs and cultural diversity. An independent analysis of policing approaches to licensing for live music venues and events would clarify this.

g) State Government legislation to unlock temporary and permanent cultural infrastructure in major private sector developments

Creation of clear pathways for private sector developments to activate their property temporarily for the creative sectors. Benefits to developers for the inclusion of permanent cultural space in their finished developments. Establishment of an office to broker partnerships between property owners and cultural organisations.

In 2015 as part of the *Temporary Theatre Pop-up Pilot Project* the Sydney Fringe Festival canvassed the current landscape of theatre/performance appropriate spaces in Sydney. At the time of the report there were nine operating independent theatres in Sydney that had a weekly venue hire ranging between \$880 - \$5900 per week. All had curatorial guidelines attached. This ranged from a preference for new work to full submission processes. Such a process tends to favour more established theatrical organisations with an existing audience.

This is devastating for the emerging artists and early career artists, who need access to open space to develop their craft, their reputation and their audiences. New and experimental performances require non-curated space. **At the time of the report there was not an established affordable space that artists could hire, no strings attached, to present their work in, build new audiences and trial new work on a regular basis in Sydney.**

“We spent two years applying for every theatre in Sydney, but were unsuccessful in securing a space in an established theatre.

It seemed that there was no alternative the only thing to do is find a space and put it on yourself.” SAMANTHA WARD 2015 Pop-up Artist

For this submission, the Sydney Fringe Festival has canvassed the sector again in 2018 to see what has changed over the past two years. We found:

- There are now eleven spaces available with a ranging weekly rental of \$1000-\$5900.
- Only one space offers a flat venue for hire arrangement with no curatorial guidelines attached.
- Costs have risen across the board in all spaces and there remains, not enough slots per year for the demand.
- Of the eleven available spaces, there are currently only between 80-100 seasons available annually to service the entire independent performing arts community.

In 2017 during the Sydney Fringe Festival we catered for 60 theatre spots alone, all of which were restricted to one week seasons to accommodate the productions in the venues available. While activity is amplified in a festival context it is by no means exclusive to our festival setting. This need is now year-round. 82.2% of the producers that participated in the festival identified as early career or emerging. They do not have the ability to present work at any other times of the year outside of Sydney Fringe due to the lack of affordable spaces and the curated guidelines imposed. This means that our next generation of artists are limited to a single, one week season, once a year if they are not able to secure a season in a curated program. This is not sufficient for our sector. In no way is it enough for artists to develop their careers, their audiences or to gain performance experience to build sustainable careers.

New alternative avenues must also be created to ensure that the sector can build sustainable career pathways, have ample facilities and meet the demand of the growing number of graduate artists that enter the sector annually.

We recommend:

Government investment in small-medium sized performance spaces that are open access and available for all artists to hire.

Investment is urgently required to create small, flexible performance spaces that are available for artists to hire outright without curatorial guidelines attached. These spaces should have ample facilities for rehearsal and performance and should be affordable.

We seek a review of current infrastructure funding to ensure that funds are distributed for the investment of small-medium infrastructure. As a sector, we consistently see funding being distributed to the major centres and the 'big end of town'. That part of the sector is unattainable and unavailable to the majority of Australian artists, yet continually it receives the majority of public funds. The 2016 Cultural Infrastructure Strategy outlines a commitment to the flagship cultural institutions with little concern to the small-medium sector. Walsh Bay Precinct, Sydney Opera House, Powerhouse Museum, Art Gallery of NSW these spaces are receiving hundreds of millions of dollars for additions, refurbishments and the like. With no new small to medium cultural infrastructure being invested in.

Considering that NSW contains nearly 40% of the countries creative industry jobs, and that the majority of those practicing artists and creatives do NOT work in the major institutions, how are the small-medium sectors being supported? If for example \$100 million dollars was invested in the small to medium sector it could secure appropriate building stock and seed fund more than twelve small – medium cultural organisations or creative groups for 15+ years.

Operating models should be investigated that provide alternatives to a traditional bricks and mortar model. Two case studies identified in our *Off Broadway Project Report* are worth noting:

Case Study #1

River Studios Melbourne

Cnr Dynon Rd and Sims St West Melbourne Victoria
www.creativespaces.net.au/case-studies/river-studios

A partnership between the building owner, City of Melbourne and Arts Victoria. The conception and initiation of River Studios provided a new model of development for the City of Melbourne, leasing the building from the private sector to provide affordable workspace for artists. A relationship was established between the three partners with each party contributing \$100,000 towards the building refurbishment after which Creative Spaces was contracted to manage the building and tenancies.

Case Study #2

City of Amsterdam Creative Incubator Policy

(See Appendix 8 of Off Broadway Report for full project outline)

The project started in 2000 with a commitment to secure space from the private sector for creative use. Between 2000-2015 170,000 m2 has been secured that now

houses thousands of studios, office, project and exhibition spaces, stores, studio dwellings, bars and restaurants.

Creative Incubators are multi-tenant buildings which form the basis for up-coming artistic talent looking for space to establish themselves in Amsterdam. From here they are able to kick-start their careers as genuine artists or creative entrepreneurs. Amsterdam Council believes that the new influx of talent is essential for the vitality of the creative city of Amsterdam but were looking for a solution to the following problem:

How do creatives, looking for suitable space with only modest funds, find an affordable space? Accommodation either to rent or buy is often priced above their budget and results in creatives leaving the city. The solution of the Creative Incubator works in two ways. Creatives with little money are introduced to a neighbourhood via the program and can rent an inexpensive space, this then provides the area with a program of creative events, exhibitions, quirky bars and restaurants, pop-up stores that then make the area attractive for existing local residents and new comers to the area.

The 170,000 m² secured in the past 15 years is spread over approximately 60 locations. Many of these creative incubators will operate for a period of between three to twenty years. It caters to approximately 1000-1500 graduating students annually who are looking for space to establish themselves and their creative enterprise. It also satisfies the need for dance, music and theatre rehearsal space. The management of tenancies is contracted out to an outside organisation.

Inclusion of new cultural infrastructure in major State infrastructure projects

All major state funded infrastructure projects should have provision for inclusion of low impact cultural space. Creative shopfronts, maker spaces and small low impact venues could easily be housed in small footprints of larger developments such as stadiums, transport hubs and public buildings.

In addition to Government owned infrastructure we seek a review of planning regulations, to cut red tape and enable the creative sectors to utilise building stock that is currently unavailable or unaffordable due to planning regulations.

NSW currently has the most archaic regulation of any state that actively prohibits cultural activity and culturally focussed businesses opening/operating in most available buildings. Performance or live art triggers a change of use and prohibitively

expensive regulatory conditions. This is still the greatest issue facing anyone who wants to open a full-time space or run regular activity beyond ancillary use.

Fundamental to Sydney's creative landscape is the need to provide affordable spaces for new, emerging and experimental activity. This type of activity acts as the 'R&D' for Sydney's cultural life. However, like most innovative activity, it does not produce high profit margins. The development of a sustainable enterprise is particularly susceptible to regulatory barriers. Issues in identifying suitable planning or building requirements, which may be easily dealt with by larger businesses, can present insurmountable barriers to smaller creative spaces. In many instances, managers of small and medium creative spaces, generally under 500m², have found focusing primarily on arts and cultural activity has drawn them into regulatory categories designed for much larger theatre and performance space. Whilst relatively defined regulatory pathways exist for small bars and retail spaces, regulation does not appear to scale effectively between small and large creative spaces.

Currently, creative spaces are often subject to definition within the planning system as 'Entertainment Venues' and, within the building system, as 'Assembly Buildings'. These categories have been designed for nightclubs, major halls and public buildings such as airports and schools. Whilst they can be adapted to apply to smaller creative spaces, this can only be done at a cost well beyond the limited resources of smaller creative enterprises, and with time-frames which make short term and temporary projects untenable.

Regulatory reform recommendations

As such we support and endorse the following recommendations that the Live Music Office is seeking in their submission:

1. A NSW Arts Venue variation to the National Construction Code (NCC)

In 2016 the South Australian Government introduced a small arts venue state variation to the National Construction Code – This red tape reduction measure supports the establishment of smaller dedicated performance spaces by assessing buildings to retail rather than theatre specifications for the purposes of building compliance.

2. Exempt and Complying Development for low impact entertainment

Introduced in South Australia in 2017 and Victoria in 2018, designating low impact entertainment as exempt development would provide a level playing field for creative practice, ensuring that risks and impacts are the primary objectives of regulation – why is it that when we put a large screen TV in a retail premises there's no DA approval even considered but put in a piano and it's a change of use?

3. Providing Clear Guidelines on Ancillary Entertainment Activity

In the absence of an associated Exempt Development definition under the planning scheme for low impact entertainment, providing clarity for the music and creative

sector on what types of arts and cultural land use is [characterised as ancillary use](#) will encourage grass roots activity.

The below case study from our *2015 Temporary Theatre Pop-up Pilot Project* clearly demonstrates the issues our sector faces when trying to place performance into alternative, but suitable spaces.

CASE STUDY: 469 KING STREET NEWTOWN – GLITTERBOX HAIR SALON

Local artists Rue De La Rocket received funding from a local council to develop a new project that would present a site-specific work. This involved developing a performance set in a hairdressing salon as part of the Sydney Fringe Festival. The work was to be performed inside an actual, operating hairdressing salon. The performance met a key goal of Fringe's temporary use project in uniting small local business and local artists and performers.

This particular production intended to use the salon in exactly the same nature as its permitted use, with the notable addition of selling tickets and declaring itself a performance. The production required no changes to the internal infrastructure, no additional technical requirements such as lighting or sound were needed. Audience numbers were to remain the same number as would usually be serviced in the salon at any one time during ordinary trade (in this instance between 10 and 12 patrons). The artist quickly found a local business to partner with. A strong advocate and supporter for the arts, the salon saw the benefit of supporting local artists, was keen to see her business vibrant outside normal trading hours, and was excited by the additional activity and promotion that would come with the project to generate new business for her salon, and create a unique offering for her current clients. This should in theory have been a simple project to produce. It involved a supportive tenant, project funding from local government, a supportive platform as part of the Sydney Fringe, and no production design or technical equipment needed.

Unfortunately, due to the current regulations in place the artist would need to submit a Change of Use as the sale of tickets inhibited the performance from being seen as ancillary to the existing consents as a hairdresser.

The artist was completely unaware that they would be noncompliant if they presented their project inside the hairdresser:

“We were unaware that the planning department of Marrickville Council required us to submit a DA for our performance. We were informed of the DA requirements by Sydney Fringe Organisers and worked with them to try and complete the required documentation through their pop-up pilot program, including a site inspection.

The documentation required the signature of the Landlord of the building. This was difficult as the Landlord was overseas and we were unable to contact him for many weeks. When he did return we were advised that it was probably too late for the DA to be processed in the time remaining even with his signature.

The requirement of obtaining the landlords signature placed stress on the business owner, she felt unsure that the landlord would share her enthusiasm in supporting the arts and thus approve of the project taking place in the building. Without a DA finalised and the performance drawing closer we were unable to proceed with the show. The uncertainty of receiving the correct permissions effected things like, advertising the venue on our marketing collateral and obtaining insurance.”- Rue de La Rocket

This building is on the ground floor, has two exits one directly on to King Street and one via rear lane entry, had sufficient toilet facilities for the anticipated audience numbers and a vacant tenancy upstairs. Patrons who were to attend the event would be taking part in a similar action as they would have had if they been attending the salon on any other day, and performers would have had been carrying out actions similar to those by usual employees in the business.

The only difference being that a ticket price would be charged upon entry as opposed to a fee being charged after a service, and the activity identified as ‘performance’ not retail. It would appear reasonable that no alteration in risk levels is posed by patrons sitting in a working salon waiting for their appointment as compared to patrons sitting in a salon watching a performance set in a salon. The Change of Use was thus triggered due to the different categorisations of performance and retail activity, as distinct from the relative risk in using the building.

If existing retail space was opened up to the performance sector, the city and its high streets could be peppered with 30-60 seat performance spaces, that encouraging a varied nightlife, re-invigorating struggling high streets and diversifying night-time economies, whilst simultaneously filling a gap in the local venue ecosystem. In this way, the performance sector and local businesses could be supported without the need for major investment in infrastructure or increased resources and subsidy.

END OF CASE STUDY

Growing trends for multi-purpose space

The next generation of creative entrepreneurs require a vastly different landscape and different facilities than ever before.

Of the 300 producers registered for our 2015 festival:

- 38% wanted to be part of the pop-up pilot and/or desired a temporary space
- 61% of artists required limited or no backstage space
- 70% identified their lighting requirements as simple
- 66% identified their sound requirements as simple
- 81% had no large set pieces or scenery

Artists no longer require the traditional performance space of the past with fixed seating, heavy drapery and high audience capacities. Unfortunately, our current regulatory framework is based upon dated requirements and a dated assumption of what constitutes a creative space and indeed what type of activity takes place in it.

In 2016 as a continuation of the work started with the Pop-up Pilot the Sydney Fringe Festival in partnership with the Inner West Council (then Leichhardt Council) managed a pilot project (*The Off Broadway Project*) investigating the placement of new creative tenants into retail spaces on Parramatta Rd and the adjoining light industrial area around Pymont Bridge Rd, Camperdown.

This project and its resulting report not only outlined again the great need for alternative spaces in Sydney, but highlighted the growing trends of creatives and their changing requirements. Of the 80 creative groups who were shown property, all required diverse uses to make their business model financially viable, and to fit with their current practice. Work space that could be utilised as performance space, gallery space that had hospitality offerings, production studios that also housed retail and rehearsal space etc.

- Approximately 75% were financially secure to proceed
- Over 75% required multi-purpose use for a sustainable business model
- Over 80% wanted some element of performances and/or public events in their space

Restrictions encountered in activating buildings for multi-purpose creative use

Restrictions encountered as part of the *Off Broadway Project* pilot:

- Creatives had limited budgets for regulatory costs and major upgrades
- Lengthy time frames not supportive to project time frames
- Complicated application processes, lack of communication between Local Government departments and applicants

- Lack of understanding by applicants of their responsibilities around compliance
- No firm guidelines to what equates as *ancillary* activity when discussing performance based activity
- Landlords unwilling to discuss property particulars
- Lack of appropriate fire safety measures
- Perceived risk by regulatory authorities associated with any performance activity
- LEP zoning in some areas excluded *entertainment*

Restrictions encountered as part of the *2015 Temporary Theatre Pop-up Project* pilot:

- Long timeframes not supportive with event timelines
- Performance activity triggered a change of use
- High fees around change of use application process making temporary activity prohibitive
- No firm guidelines to what equates as *ancillary* activity when discussing performance based activity
- Capital works required in some instances to comply with the new change of use, resulting in costly and unnecessary upgrades

Increasingly not only is performance melding the lines of genre, in 2017 the Sydney Fringe Festival removed genre sorting in our festival guide as all registered artists selected more than one genre tag for their work, but it is developing new ways of communication, incorporating technology and placing experience of audiences at the forefront.

Creative businesses need the freedom to be able to develop models that merge many different sectors into one with the ability to utilise their space for multiple purposes. Hybrid uses are a necessary part of the new landscape and vital for creative businesses to build sustainable business models. The small to medium sector need the ability to affordably open creative businesses and proactively create cultural infrastructure from available and otherwise suitable building stock.

The long-held assumption that performance activity is higher risk than other business activity needs to fundamentally shift in all areas of regulation. We would argue that there is no greater risk in low impact small scale arts activity than there is in other retail or hospitality activity. We need a flexible risk based approach to regulation that assesses activity on a sliding scale.

Private Sector Partnerships to Activate Space

In 2017 the Sydney Fringe managed a ground-breaking pilot project *The HPG Festival Hub*. This project had major private sector investment from HPG Australia and saw the Sydney Fringe take control of a 7000m² industrial site on Euston Rd in Alexandria that is waiting development. This partnership enabled the Sydney Fringe to activate the site as a multi-purpose low risk performing arts centre, to provide low cost rehearsal and performance space to the independent sector and generate alternative revenue streams for the organisation. A full report on this project is due for completion in October 2018.

Benefits to the Cultural organisation:

- Ability to provide greatly needed cultural space without huge investment in cultural infrastructure
- The ability to create diverse, independent income streams
- Enables cultural organisations to invest in infrastructure and assets to further their independence and sustainability
- Provides independent artists with affordable, appropriate space
- Provides the greater community with office space and rehearsal facilities
- Timeframes are generally longer than the traditional definition of temporary activity and therefore can accommodate cultural activity for many months and/or years

Benefits to the land owner:

- Provides legitimate community engagement in the site from early stages
- Directly reach to local residents in a positive way
- Provides building maintenance and care while space is otherwise unused
- Small investment for positive publicity and wide marketing reach
- Provides alternative talking points
- Embeds the site with cultural activity from the beginning
- Provides direct access to local artists, taste makers and audiences

Partnerships like this between cultural organisations and land owners with vacant sites are extremely beneficial to both parties and have the potential to transform the way we define cultural infrastructure and the cultural footprint of the city. There are many arts organisations and collectives like The Sydney Fringe Festival who are not tied to a geographical location, who could move from site to site as they were made available. A project such as this has the ability to provide large amounts of affordable space for medium to long term use with no major investment.

Since the project's inception over 50 independent companies have utilised the space. The space has also been provided to other organisations in need, it is currently housing the Mardi Gras workshop after they unexpectedly lost their workshop site. The space has also generated substantial additional income for the Sydney Fringe Festival. Enabling us to invest in infrastructure and build new diverse income streams. Yet there are still no clear regulatory pathways for organisations and landowners to pursue this type of partnership that are not costly, time consuming or generally prohibitive.

In most areas of the state projects like this receive immense amounts of push back from regulatory and licensing authorities. The most telling example of that in this particular project was the response from police to our Development Application that insisted on a "no dancing and no DJ" clauses on our DA. There is an inconsistency

of approach from police depending on the Local Area Command that you are operating in. We have certainly had some supportive Area Commanders in the past but they are the exception. More often than not, and certainly in this project, there is an assumption that the cultural activity proposed is dangerous (despite our best practice history as a leading festival producer) and therefore not supported by local police. We support the Live Music Offices recommendation for an:

Independent Analysis of Submissions to Licensing Applications

The anecdotal evidence from industry and local government is that as applications have been lodged that they have been consistently opposed by police regardless of the individual components or potential for jobs and cultural diversity, as well as a practice of applying widespread no live entertainment conditions on new licenses. An independent analysis of policing approaches to licensing for live music venues and events would clarify this.

We also seek:

State Government legislation to unlock temporary and permanent cultural infrastructure in major private sector developments

Creation of clear pathways for private sector developments to activate their property temporarily for the creative sectors. Including best practice case studies and a template for cultural organisations to navigate the regulatory framework.

Incentives and benefits provided to developers for the inclusion of permanent cultural space in their finished developments.

Establishment of an office to broker partnerships between property owners and cultural organisations.