



PLANNING PROPOSAL REPORT
From Strategic Planning and Policy team

Planning Proposal No.	PPAC/2020/0005 – Open and Creative Inner West
Address	N/A
Proposal	Planning proposal to amend the draft Inner West Local Environmental Plan 2020 to insert new exempt and complying development provisions, allowing shops, business premises and kiosks to open for extended hours and simplifying approval processes for small-scale cultural uses.
Main issues	<p>Currently, there are significant regulatory barriers for local businesses to participate in the night-time economy and to hold temporary cultural activities.</p> <p>This planning proposal aims to simplify the regulatory regime in the Inner West to encourage a diverse vibrant and safe night-time economy while striking a balance to protect residential amenity.</p> <p>The proposal has strategic merit to proceed to the Department of Planning, Industry and Environment for a Gateway determination.</p>

RECOMMENDATION:

That the Inner West Local Planning Panel advise Council to:

- 1. Endorse the Open and Creative Inner West planning proposal for submission to the Department of Planning, Industry and Environment with a request for a Gateway determination.**

1 BACKGROUND

On 24 October 2017, a notice of motion was carried by Council instructing staff to work collaboratively with the City of Sydney to reduce inconsistencies between planning controls on either side of King Street, Newtown. It also requested that work begin on new planning controls to encourage late night trading and small-scale arts, live performances and cultural activities without needing to obtain development consent from Council.

This notice of motion was in part triggered by a project the City of Sydney released for discussion around the same time. The Open and Creative City discussion paper released by the City in December 2017 sought public feedback on a suite of changes to local planning provisions to, among other things;

- Allow shops and businesses to trade between 7am and 10pm without approval, and
- Allow small scale cultural uses with minimal environmental impact to take place within existing buildings without approval.

In May 2018, Inner West Council considered a report explaining the possibilities and implications of utilising exempt and/or complying development within the LEP for new approval pathways for extended commercial trading and small-scale cultural uses.

Between then and now, the City of Sydney and Inner West Council have met multiple times and separately worked to refine provisions for their respective Local Government Areas (LGAs).

In June 2020, the City of Sydney Council endorsed their Open and Creative City suite of reforms for submission to the Department of Planning, Industry and Environment for a Gateway determination. This included, among other things, amendments to the Sydney LEP 2012 to include;

- Exempt development for the extended trading of shops, businesses premises and kiosks between 7am and 10pm within certain zones and to certain criteria, and
- Exempt development for temporary small-scale cultural activities between 7am and 10pm for a maximum of 26 days per year.

For the extended trading of shops, business premises and kiosks, Inner West proposes a similar set of a provisions. To activate spaces for cultural activities, a different approach has been taken. To achieve greater business participation in the night-time economy, exempt provisions for extended trading hours are proposed that are largely similar to the City of Sydney. This is considered the best approach to facilitate a vibrant and balanced night-time economy in local centres and achieves greater consistency along the King Street, Newtown which is the border of the LGAs.

The approach proposed for the Inner West to support the growth and establishment of small-scale cultural activities differs from that of the City of Sydney, seeking to facilitate a complying development approval pathway for temporary small-scale cultural activities. This is due to the limitations of exempt development and the desire for more intense activities with longer trading hours and greater number of days, alcohol service and larger capacities.

External consultation of the proposal has been undertaken in the form of a roundtable discussion late in 2019. This included local creative and cultural industry figures, State Government agencies, local professionals in the compliance, building and planning industry and Inner West Council staff.

Internal consultation has also been undertaken, with discussions had between Strategic Planning staff and; Legal, Building Services, Environmental Health, Compliance, Development Assessment, Social and Cultural Planning and Living Arts.

2 PLANNING PROPOSAL

The objectives of the planning proposal (**ATTACHMENT A**) are listed below:

- Encourage a diverse, vibrant and safe day and night-time economy on Inner West main streets and local centres, as well as in cultural and creative sector hot spots,
- Strike a balance between a strong night-time economy and residential amenity,
- Reduce regulatory barriers to the establishment of new cultural production, exhibition and teaching spaces,
- Create opportunities for residents, workers, visitors and tourists of the Inner West to experience the work of local cultural and creative sectors,
- Align with similar initiatives undertaken by the City of Sydney Council, especially along the western Council boundary with King Street.

To achieve this, the planning proposal seeks two amendments to the draft Inner West LEP 2020. Each of these amendments are described below:

- 1. Insert a new exempt development clause permitting the extended trading of shops, business premises and kiosks between 7am and 10pm, seven days per week in local centres.**

This proposed amendment will remove the need for shops, business premises and kiosks within the B2 – Local Centre zone to obtain development consent in order to trade between 7am and 10pm, seven days a week.

Several criteria must be satisfied in order to qualify as exempt development. Firstly, the site must be located within the B2 – Local Centre Zone under draft Inner West LEP 2020. This zone was selected as it covers Council’s local centres and main street commercial areas. The B2 land use zone areas have a distinctly commercial character and are populated with a range of commercial uses that are active both during the day and night. They are typically located on relatively loud main roads. A map of the applicable areas is included as Figure 1 below.

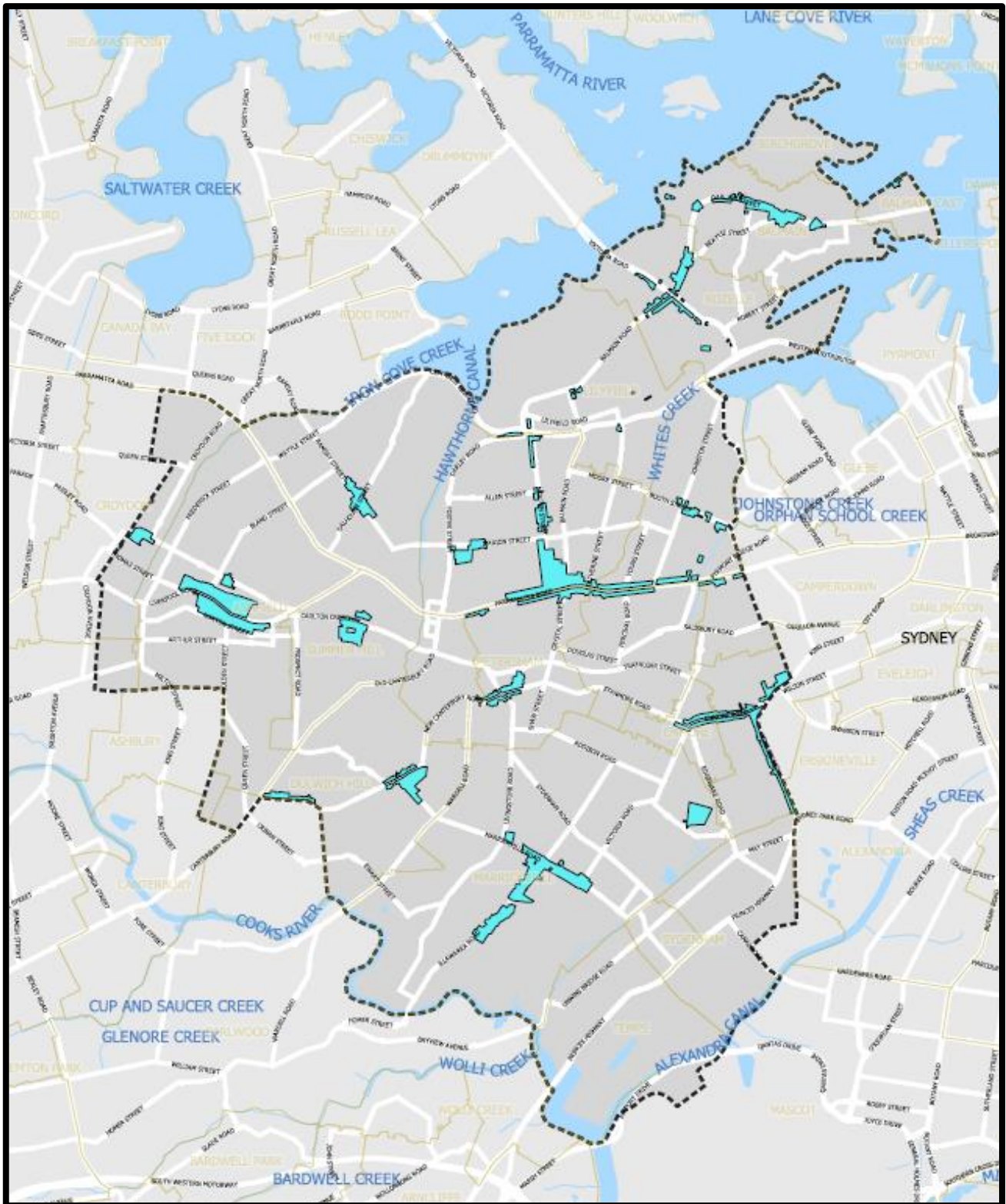


Figure 1: map of the Inner West Council area with B2 local centre zoned land identified in blue

The hours of between 7am to 10pm were selected as these are the typical hours of trade expected and experienced in local centres and eligible uses are unlikely to generate amenity issues between these hours. Licensed premises have been excluded.

This lowers the risk generated by the sale and/or consumption of alcohol on site. Outdoor areas are also excluded from being used via the proposed exempt development provisions to further reduce potential noise impacts. The hours are also consistent with those proposed by the City of Sydney. This will make exempt trading hours for these uses consistent along King Street.

Provisions are recommended to ensure that existing conditions applying to the site from an active consent are adhered to if they relate to noise, car parking, loading and unloading, vehicular movements, traffic generation, waste management and/or landscaping. If a condition for waste collection times is not present, standard exempt provision will require that waste collection only be carried out between 7am and 7pm, seven days per week. Applying existing conditions from a valid consent ensures that nuanced development assessment matters already conditioned by Council will continue to apply to a site, reducing the potential for amenity issues and conflicts to arise from the extended trading hours.

2. Insert a new complying development approval pathway for the establishment of ‘temporary small-scale cultural activities’ in certain zones and consistent with certain criteria.

This proposed amendment will make a new complying development approval pathway for small-scale cultural activities to take place throughout multiple zones in the Inner West on a temporary basis. Complying development is a simpler process to gaining approval than the development application route.

‘Small scale cultural activities’ are defined as one or more of the following:

- Live entertainment, including the presentation and/or rehearsal of music, film, theatre, spoken word, comedy, dance and/or the like, and/or
- Exhibition and/or production of artwork, craft, design, media, film, music, image, immersive technology and/or the like, and/or
- Teaching and/or discussion related to any of the above and/or skills, and public and social affairs.

The definition is intended to be broad enough to capture all facets of cultural production, exhibition, performance and teaching. It is also intended to allow for ancillary activities to take place alongside the primary use, such as the retail of goods that are related to a class being held on site.

The complying development provisions will be applicable to certain zones only;

- B2 – Local Centre,
- B5 – Business Development,
- B6 – Enterprise Corridor,
- IN1 – General Industrial and
- IN2 – Light Industrial.

These zones were selected as they have prevailing commercial and industrial land uses and likely to have the least potential for amenity conflicts. These zones are also typically well serviced by public transport, with services aligning with the proposed hours of operation for activities, with the exception of some industrial areas which instead tend to have sufficient car parking, particularly during non-office hours.

Figure 2 below is a map of the Inner West identifying the land applicable to the proposed complying provisions.

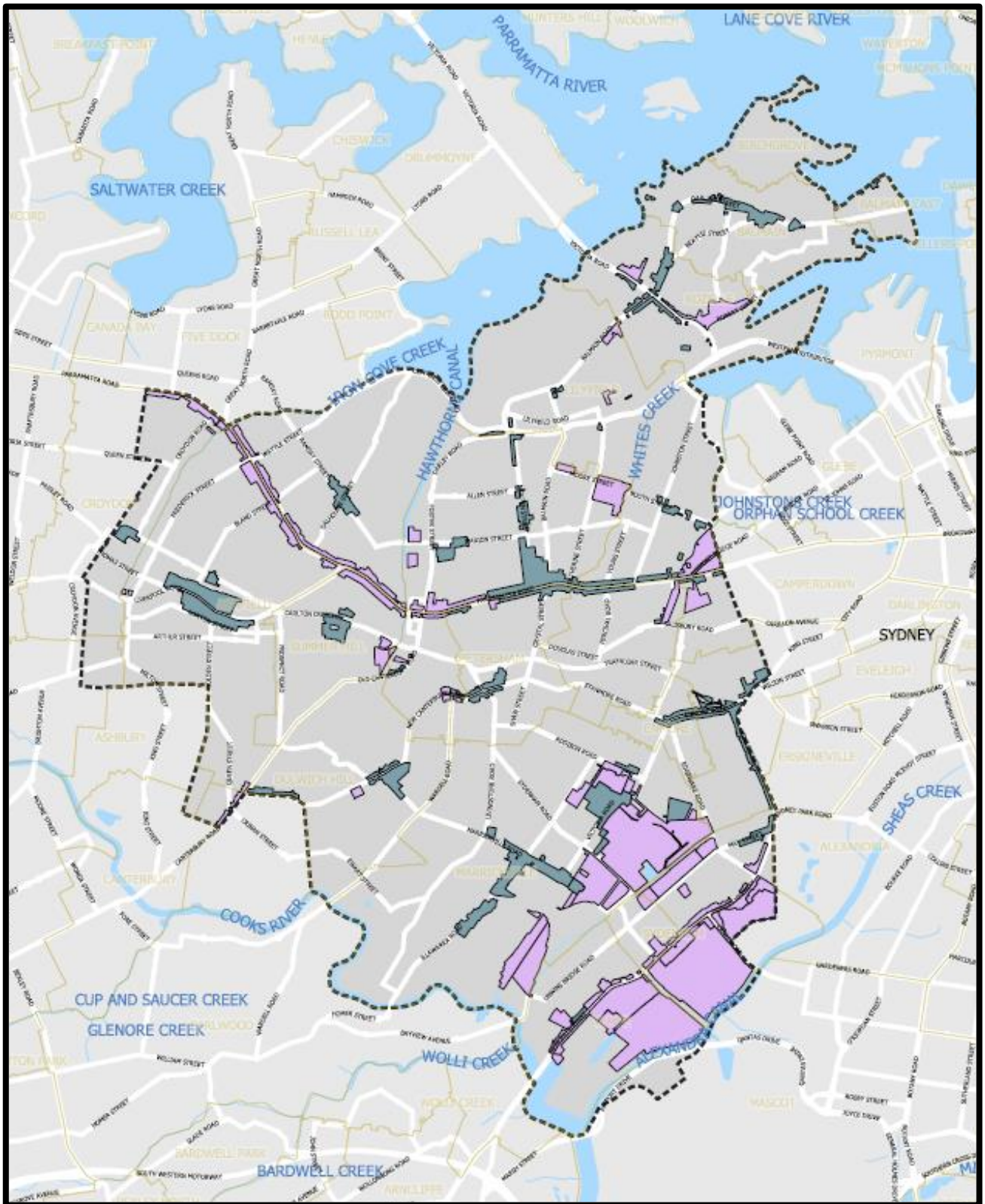


Figure 2: map of the Inner West Council area identifying land eligible for small scale cultural activities through the proposed provisions. Dark blue indicates a maximum capacity of 80 persons and purple a maximum of 150 persons

The provisions will permit these cultural activities on a temporary basis. 52 days within a 12 month period and no more than 4 consecutive days.

Hours of operation for these activities are proposed to be limited to between:

- 8am and 10pm, Sunday to Thursday, and
- 8am and 12midnight, Friday, Saturday and days immediately before a public holiday.

These operating hours generally align with community expectations for commercial trading in these zones. Cultural activities and other night-time activities do not typically operate beyond midnight on Fridays and Saturdays and 10pm on weekdays. This aligns with noise provisions under the *Protection of Environment Operations Act 1979* (POEO Act) which prohibits amplified noise in residential areas after these times.

Consultation with local industry figures during a Council run workshop in late 2019 informed Council that later hours are crucial to supporting a wide range of activities and their feasibility.

Capacity limits on the number of patrons and staff (including any performers, artists, hosts, etc.) are proposed in order to limit the intensity of activities. Two capacity limit tiers are proposed, dependent on the applicable land use zone. Within B2 Local Centre and B5 Business Development zones, the limit is 80 persons. Within IN1 General Industrial, IN2 Light Industrial and B6 Enterprise Corridor zones the limit is 150 persons. A lower limit of 80 persons is proposed for B2 and B5 as these land use zones permit residential uses (multiple B5 zoned sites permit residential as an additional permitted use). An overarching capacity limit is also proposed, limiting patronage to a maximum of 1 person per square metre of floor space accessible by all patrons in accordance with the National Construction Code (NCC).

Consumption of alcohol during activities is proposed to be permissible. The provisions will allow operators to; use an existing licence applying to the site, obtain a new liquor licence for the activity or hire a caterer with their own licence. Whilst alcohol consumption does raise the potential for anti-social behaviour, consultation with local industry figures informed Council that for many cultural activities, especially those incorporating live performance, the sale of alcohol is crucial to feasibility.

Other criteria and requirements also apply to the operation of cultural activities. Please refer to Section 2 of the planning proposal in Attachment A.

3 JUSTIFICATION

This planning proposal seeks to respond to Inner West Council resolutions and supports the approach of the neighbouring City of Sydney Council to encourage the night time economy in Sydney. It also supports numerous actions in Council's strategies.

The Local Strategic Planning Statement contains Planning Priority 9 – “a thriving local economy”. A single action is identified under this; Action 9.1 implement the Employment and Retail Lands Strategy (ERLS). The ERLS contains several actions that are directly or partially achieved by this proposal. These actions are listed below.

- Action 1.8.3: Investigate exempt development approval pathways for night time trading by certain commercial uses.
- Action 1.8.4: Investigate exempt and/or complying development approval pathways for small scale, low impact cultural use and production venues.
- Action 1.8.6: Work with the City of Sydney to develop a joint strategy for land use planning and night time economy on King Street, Newtown.

Action 2.2.1 of the ERLS also requires that Council “retain all industrial land for industrial purposes”. Although the proposal includes the use of the IN1 – General Industrial and IN2 - Light Industrial zones, the primary purpose of these zones for industrial uses is not being eroded. This is due to the temporary limitations included in the provisions, in part to ensure this. It would not be feasible to utilise a site for only 52 days per year for activities with a 150 person capacity limit. These provisions are instead designed to work alongside primary industrial uses in these zones or make use of sites that are transitioning between leases or breaks in industrial uses due to the redevelopment of a site.

External factors are also at play in justifying this proposal. The most pertinent is the loss of vibrancy and diversity in Sydney's night life during recent years. Whilst the lock out laws that were enacted in 2014 did not directly affect the Inner West, the narrative of Sydney as a night-time city took a severe hit. Since then a number of smaller and larger venues have closed. The proposed changes will help to reverse this reputational damage and make spaces for artists, performers and other cultural producers to interact with residents, workers, visitors and tourists.

This impact has been amplified by the COVID-19 pandemic in 2020. The cultural and creative sectors have been greatly affected during this time, with many individuals and businesses not able to work throughout the pandemic. Ongoing risks and changes to the operation of premises continue to keep this industry in a state of uncertainty. Amendments to planning controls to support these sectors will be crucial to the post COVID-19 economic recovery of the Inner West and Sydney.

Industry has been calling for changes to the planning system for some time to streamline and simplify approval processes for temporary, small-medium scale activities. Sydney Fringe Festivals report “An Anthology of Space 2015-2018” used several events as case studies to demonstrate this. It identified the costs and constraints with establishing small temporary venues. A key constraint identified were the lengths and costs involved in going through the DA process. It recommends alternative, streamlined approval processes be established for these uses.

Finally, the work being undertaken by the City of Sydney has been another driver. This planning proposal will create a more consistent approach to planning for the night-time economy and will allow greater economic and social vibrancy along King Street.

4 CONCLUSION

This planning proposal seeks to make it easier for new and existing businesses to participate in the night-time economy. It encourages new temporary cultural activities in main streets, industrial areas and under-utilised buildings.

The provisions have been formulated to be only allow activities with a cultural or creative focus, however be broad enough to allow all aspects of these sectors, so as not to stymie creativity. They have also been balanced to preserve the amenity of neighbouring residents and other sensitive land uses.

The proposal has strategic merit to proceed to DPIE for a Gateway determination.

5 ATTACHMENTS

- Attachment 1 – Planning Proposal, Open and Creative Inner West