

Liquor and Gaming NSW

City of Sydney
Town Hall House
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Proposed Draft Liquor Regulation 2018

City of Sydney Council Submission

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Background

The *Liquor Regulation 2008* is currently due to be automatically repealed on 1 September 2018. Liquor and Gaming NSW have reviewed the regulation and have placed a *Draft Liquor Regulation 2018* out on public exhibition from 29 June 2018 date to 24 July 2018 inclusive. A regulatory impact statement has also been prepared to inform public consultation on the draft Liquor Regulations.

The City of Sydney (hereby the City) appreciates the opportunity for stakeholders to comment on the *Draft Liquor Regulation 2018*, which will provide the legislative support and administrative detail for the effective operation of the *Liquor Act 2007*.

In 2013, the City adopted the OPEN Sydney Strategy which aims to make Sydney at night better connected, more diverse, more inviting and safe and more responsive to change. A vibrant and sustainable night time economy is essential for Sydney to remain competitive and maintain its global status. Key to establishing a prosperous and sustainable global city at night is taking coordinated, collaborative and holistic approach to its development, servicing and governance. This requires all levels and elements of government to work together.

The City of Sydney is committed to a safe and inclusive city at night for all residents, workers and visitors. We support measures to address alcohol related crime and violence on the streets late at night. This includes greater access to public transport so people can get home quickly and easily at the end of the night. Having a night life that is vibrant and safe doesn't need to be mutually exclusive. We recognise the crucial role that good legislation, governance, enforcement and a diverse night time economy plays in ensuring that the nightlife of this city is both lively and safe.

The comments and recommendations below are based on the proposed significant changes and their impacts, as well as the City's own strategy priorities.

Part 1 - Objectives of Proposed Regulation

The City considers the *Draft Liquor Regulation 2018* essential as an effective means to pro-actively and reactively enforce compliance of liquor laws. It gives specified references and certainty in application and interpretation of the *Liquor Act 2007* provisions for all stakeholders. The Regulation will also assist in facilitating the efficient approvals and regulatory management of liquor licensed premises.

The City supports the development of a new Liquor Regulation, however has provided a range of recommendations in this submission to ensure a robust and effective approach to enforce the *Liquor Act 2007*.

One of the objects of the *Liquor Act 2007* (s.3(1)) is “(c) to contribution to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries”. There are no new provisions in the proposed *Liquor Regulation 2018* that would advance this specific objective of the Act.

This is a critical opportunity as strong support for more diverse night time activities, including cultural venues, live music and performance spaces, restaurants and cafés, have a positive influence on the safety of the nightlife within the city.

Part 2 – Fees

The proposed regulation seeks to introduce pro-rata periodic licence fee requirement for new licensees based on three monthly periods following the annual assessment date. The City supports this as a fair approach for licensees to financially contribute to the regulatory costs of liquor trade.

The City would also like to see incentives proposed under the *Draft Liquor Regulation 2018* for dedicated creative and performance space and well managed venues to have reduced fees as an incentive that encourages diversity and compliance. Dedicated spaces could attract incentives additional to those granted to well managed venues, with all such venues required to have had no substantiated compliance issues with their development and liquor licence conditions of consent.

Recommendation 1: Liquor and Gaming NSW investigate incentives for well managed venues to have reduced fees.

Recommendation 2: Liquor and Gaming NSW investigate incentives for dedicated creative and performance spaces.

Part 3 – Applications

Proposed changes should aim to create a more integrated planning and liquor licensing assessment and decision making framework. There is an opportunity to improve the efficiency of the current process, where multiple consents and plans of management are required and can result in inconsistencies and duplication. This complex process also limits the ability to effectively assess the cumulative impact of additional liquor licences within a specific area. This issue has been raised through Government's Night Time Economic Taskforce as an action.

Community Consultation

While these are significant changes that will increase community participation and allow a more thorough approach to community consultation, the City's preferred option is to have an integrated process for approving development consents and Liquor Licences to ensure that decisions are more transparent, consistent and enforceable. More information can be found under *Section 9 Other Related Matters* "Opportunity to streamline the development and liquor licence approvals process".

The proposed liquor application notifications process to council is more direct than the general Community Impact Statement (CIS) notification currently received. It dispenses with councils being notified twice, as currently occurs and is a process efficiency measure.

Recommendation 3: The City supports the proposed changes to the CIS notification process in regards to the process efficiency impacts for councils.

Introduction of new "micro-brewery" drink on premises authorisation

The drink-on premises authorisation for micro-breweries with a producer/wholesaler licence has potential to create conflict with the council approved development consents. Planning zoning and urban amenity considerations necessitate that councils be consulted prior to any of these drink-on premises authorisations being approved.

Recommendation 4: Further consideration on the impacts and relationship with new and existing development approvals needs to be undertaken for drink-on premises authorisations at micro-breweries to ensure alignment with Council Planning approvals.

Large Scale event applications

The increased notification time is advantageous for all stakeholders to ensure the appropriate consideration and consents are obtained prior to the event date. Event operators and organisers often have little knowledge of the liquor licensing and Council approval processes.

Part 4 – Licences and Licensed premises

The amended regulation removes the requirement to give Council notifications of 'Authorisation to trade on premises other than licensed premises' for non-ticketed functions for up to 100 persons. This amendment would mean that events may be conducted on premises in a manner that is contrary to that premises' current development consent. The City submits that notification should still be given where such authorisations are issued to enable appropriate checks to be carried out prior to the events taking place and to enable the events to be conducted in a manner consistent with the Environmental Planning and Assessment Act 1979. .

Conversion of General Bar licenses to Small Bar Licenses may in some instances require modification to a venue's current development consent. Applicants need to be mindful to check the development consent prior to lodging an application for this conversion.

The City supports the conversion of General Bar licenses to Small Bar Licenses where development consents permit.

Recommendation 5: Councils should continue to be notified of all authorisation to trade on premises other than licensed premises to ensure events are not conducted contrary to a venue's current development consent.

Part 5 – Responsible Service of Alcohol (RSA) training

Tiered RSA training requirements relative to the type of liquor licence and nature of a business operations provides a more equitably sharing of social responsibility and potential or actual urban amenity impact of individual venues.

Premises that potentially pose a higher risk rating impact have RSA pro-active requirements and venues that later eventuate to be a high risk venue are mandated to address increased RSA training by the proposed Regulation change. The changes to RSA requirements above generic criteria assists pro-active licensing management.

Recommendation 6: The City supports the introduction of a tiered RSA training framework which will operationally assist in maintaining the urban environment which development consent for licensed premises have been assessed and approved.

Part 6 – Harm Minimisation

In line with national drug and alcohol strategies, we take a harm minimisation approach to reducing the social, economic and health problems that can be associated with the

consumption of alcohol and use of other drugs. This approach focuses on minimising the harm drug use causes to the community and to the user. This includes providing information to help link people to local drug and alcohol services, and supporting targeted harm minimisation initiatives.

Since December 2014, the City has provided funding and support for the Take Kare program, which operates in the CBD on Friday and Saturday nights. The program involves roving teams of trained ambassadors to provide on-the-spot assistance to vulnerable people in the city at night. A dedicated Safe Space provides vulnerable young people a place to rest, rehydrate, get first aid, or wait for friends or family. Over 12,800 people were supported by the Safe Space & TAKE Kare Ambassador program in 2017/2018.

The City has also established outdoor alcohol restrictions in our public domain. Alcohol restrictions in public places can help prevent alcohol-related antisocial behaviour, including offensive behaviour, littering and excessive noise, and help mitigate crimes such as malicious damage and acts of violence. They assist NSW Police existing powers to intervene early by confiscating alcohol within designated areas. The City considers applications for new restrictions every year by analysing applications, submissions and current crime statistics.

The City also sits on local community drug action teams and regularly participates in initiatives to reduce harms of alcohol and other drugs.

Part 7 – Prescribed Precincts

Kings Cross and Sydney CBD entertainment precinct

The City supports measures to reduce alcohol-related violence and has consistently advocated for a nuanced, evidence-based approach. The City has been and remains deeply concerned that unintended negative impacts have occurred as a result of legislative change for the Kings Cross and Sydney CBD entertainment precinct.

It is noted that recent changes like the exemption of Live Music and cultural venues from the Liquor Freeze in the Kings Cross and Sydney CBD entertainment precinct and the half an hour exemption of live music and cultural uses from the 1.30am lockouts have occurred.

Whilst it is noted that these changes are a step in the right direction, there is still significant work to be undertaken to determine an evidence based criteria for “good management” to allow full exemption to the precinct provisions.

In addition, additional work is required to develop an evidence based criteria to assess cumulative impact for these areas, eventually allowing for the Liquor Freeze to be removed completely and each new application to be assessed on its merits.

A nuanced approach that encourages creative, cultural and performance will support development of a diverse and safe night time economy.

Recommendation 7: Develop an evidence based criteria for “good management” and an assessment process to ensure robust decisions that are transparent, shared and consultative (an integrated approach to assessing Development applications and Liquor Licences should be established to ensure consistency in uses and trading hours)

Recommendation 8: Trial exemptions for (primary function) live entertainment Venues:

- Remove the 1.30am lockout;
- Automatic exemption for 12 months;
- Annual renewal based on good management; and
- Supported by a definition of a live music and performance venue.

Recommendation 9: Trial exemptions for other affected licenced premises based on good management:

- Remove the 1.30am lockout;
- Exemption on approval of application;
- Annual renewal based on continued good management; and
- Develop an evidence based criteria for “good management” (as per Recommendation 8).

Recommendation 10: Develop a process by which live music and performance venues can be identified as eligible for Precinct exemptions, and which takes into account the various liquor licensing categories used by live music and performance venues.

Recommendation 11: Develop an evidence based criteria to assess cumulative impact to allow the Liquor Freeze to be removed and each new application to be assessed on its merits.

Round the clock incident register requirements

The City supports the proposed changed to only require high risk venues to have a “round the clock” incident register and for this register to include drug related incidents.

Removal of Litter from outside premises

Requiring licensed premises to remove litter from outside their premises improves the environment amenity and social attitude of persons visiting or passing by venues. There is no significant cost to venues as they utilise existing staff. Councils do not have the power to impose this requirement on venues as the public areas are beyond the boundary of the venue to which development consent conditions can be imposed.

Recommendation 12: The City recommends retention of the requirement for licensed premises to remove litter from outside the premises

Removal of requirement for Licensees to collate data on sale of alcohol

The City support the removal of the requirement for licensees to collate data on the sale of alcohol in their venues to remove unnecessary burden on small business. However the City would recommend that Liquor and Gaming NSW collate wholesale alcohol data in order to understand location and consumption patterns at a state level.

Recommendation 13: The City recommends Liquor and Gaming NSW collate data of wholesale alcohol sales.

Part 10 - Miscellaneous

1.30am Lockout laws

As previously mentioned, while there have been a number of exemptions introduced by Liquor and Gaming NSW that note the importance of live music and cultural venues to our social and economic fabric, there is still more work to be undertaken. These recommendations are listed under *Part 7 – Prescribed Precincts* (page 4 of this submission).

Other Related Matters

Future opportunities to minimise red tape by streamlining the current regulatory and approvals framework

The current NSW regulatory and planning framework for the management of music and arts venues is based across 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 regulations 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, which from the operator's perspective 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.

Often the dual systems are confusing for applicants to navigate, as development applications and liquor licence applications are undertaken consecutively, not in parallel, 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, and double-handling of liquor licence applications by multiple government agencies. This process also results in two sets of consent conditions and two plans of management which unnecessarily adds to the administrative burden and may result in conflicting information.

Greater access to public transport so people can get home quickly and easily at the end of the night is of significant importance to a safe and successful nightlife. Extended train services and public transport should be investigated, such as the 24 hours service trial that has occurred in Victoria. We need a multi-disciplinary approach and flexible policy responses across the areas of transport, planning, licensing and police.

These matters are beyond the scope of this Liquor Regulation Review and have been raised by the City in previous submissions to Liquor & Gaming NSW. The City requests the relevant authorities explore solutions to the matters raised in consultation with relevant stakeholders.