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CCL 23/02/2021 – Liquor Amendment Bill 2020 Update

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CCL 23/02/2021 – Liquor Amendment Bill 2020 Update

ITEM-12 **Attachment A:** Report on the Liquor Amendment Bill 2020

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Attachment A

Report on the Liquor Amendment Act 2020

1. Introduction

On 27 November 2020, the Liquor Amendment (24-hour Economy) Bill 2020 was assented, becoming the Liquor Amendment (Night-time Economy) Act 2020 (Act) enacting legislative changes including amendments to:

- The Liquor Act 2007;
- The Gaming and Liquor Administration Act 2007;
- The Environmental Planning and Assessment Act 1979;
- The Standard Instrument (local environmental plans) Order 2006; and
- The Roads Act 1933.

The focus of the Act is increased flexibility in liquor licensing with reference to small bars and precincts, and support for the live music industry which has been particularly impacted by COVID-19. Specific stated aims of the Liquor Amendment (Night-time Economy) Act 2020 (Act) were outlined in the CCL 23/02/21 - LIQUOR AMENDMENT ACT 2020 UPDATE, to which this report provides appendix A.

This report outlines the amendments and the opportunities for the implementation of City of Newcastle's (CN) Newcastle After Dark Strategy 2018-2022, and Live Music Strategy 2019-2021.

In total, 63 amendments have been made across the listed Acts. Collectively, these represent considerable change to the legislative framework governing night-time economies. The amendments come into force in a staggered process commencing on 11 December 2020 and extending until June 2022.

The amendments substantially alter existing processes for managing issues related to night-time economies and, in some cases, amendments are either not yet in effect, or full detail on the replacement mechanisms have not been made available by the Government. This report is therefore not able to provide definitive indications of CN's responses to the Act.

Future reports to Council will articulate new or revised policy approaches enabled through the Act, once analysis and consultation with stakeholders has been undertaken.

2. Analysis

The Act implements changes across several key areas of the night-time economy representing current areas of CN interest:

- Small bars
- Cumulative impacts
- Live music/entertainment provisions
- Integrated sanctions scheme
- Same day alcohol delivery
- Special COVID provisions
- Sound management and noise complaints

This report addresses each primary area of impact in turn by:

- a) identifying the relevant changes enabled through the Act;
- b) outlining CN's current strategic position and any relevant initiatives identified in either endorsed strategies or other endorsed documents; and
- c) any implications and opportunities that can presently be identified.

2.1. Small Bars

The Amendments relating to small bars provide for the following changes:

- 2am trading permitted regardless of location
- Community Impact Statement for post 2am trading required
- Interim authorisation (as per restaurants)
- Minors can enter 10am-10pm with supervision where venue regularly serves meals
- Authorisation is possible for entry of minors without supervision depending on the venue
- Trading allowed on Xmas Day and Good Friday
- Take away cocktails enabled

CN's endorsed strategic position regarding small bars is that they represent lower impact venues that offer the opportunity for increasing venue diversity in a manner that does not compromise community amenity in the same way as larger capacity late trading venues. Small bars trading later into the night is a key strategic component of CN's After Dark Strategy, which states:

"...A 140% increase in liquor licenses associated with low impact venues (for example licensed restaurants and small bars), has led to a better mix of premises in a more diverse NTE. Importantly, this growth has occurred without a concomitant rise in alcohol-related violence".

And,

"City of Newcastle will be seeking to encourage suitably well managed low impact venues (for example small bars) to trade until 2am to facilitate continued progress in venue diversity. The primary focus of Newcastle After Dark is on the Evening and Night-time Economy periods"

Specific Actions which relate:

Venue Diversity - 2.1 Develop a low impact venue framework for development assessment and evaluation

Venue Diversity - 2.2 Enable later closing time for low impact venues to 2am through a trials and comply method with appropriate controls

Live Music and Performance - 4.4 Encourage licensed premises to adopt live music as a mitigation method through Low Impact Venues Framework

A trial of relaxed liquor licensing rules for low impact venues is currently underway in the Newcastle city centre. The trial has provided relaxed provisions relating to hours of trade and the ability to serve cocktails. 21 venues (15 restaurants and 6 small bars) are participating in the trial, which commenced on 1 October and is overseen by a Committee with representatives from the NSW

Government, CN, Newcastle Police, community and industry representatives. The trial has enabled small bars to trade until 2am in keeping with the strategic initiative outlined above.

Preliminary data from the trial indicates zero instances of alcohol-related violence in participating venues, and very low rates of amenity impact on neighbouring residents (as evidenced by formal noise complaints). Further, community and patron surveys conducted as part of the trial identify high levels of community support for low impact venues trading after midnight. A resident survey has been endorsed by the Committee and will be issued in March 2021 to gauge local resident experiences with participating venues.

The small bar-related amendments in the Act represent further evidence of the low impact nature of these venues. The State Government's decision to enable minors into small bars, and to provide interim authorisation, brings them into alignment with restaurants and cafes.

The amendments also encourage the flexible use of venues that recognises a growing business model of multiple offerings, for example bookstores, record stores and galleries, that provide a complementary amenity or service. This business model is not yet prevalent in Newcastle, though is gaining popularity in Sydney, and well established in Melbourne. It represents an opportunity for increasing the diversity of low impact venues by encouraging existing business to consider a night-time offering enabled by an appropriate liquor licence.

Similarly, the 2am trading permitted as standard operating hours regardless of where small bars are located, confirms that this category of venue has negligible impact of amenity.

2.2. Cumulative Impacts

The amendments relating to cumulative impact provide for the following changes:

- Independent Liquor and Gaming Authority (ILGA) can identify areas of concern which require a cumulative impact assessment potentially resulting in the designation of a specific location as a 'Cumulative Impact Area' (CIA).
- In these areas there is a presumption against granting certain approvals, such as new nightclubs or late trading venues.
- ILGA must consider available data and undertake consultation in determining a CIA.
- Low risk business types are exempt from being subject to the restrictions with the CIA (e.g. cafes and restaurants, small bars + live music venues)

The Cumulative Impact Areas amendments are intended to replace the freeze on new higher impact liquor licences, such as hotels, nightclubs and packaged liquor in Sydney precincts and hotspots such as Kings Cross.

A designation of a precinct as a Cumulative Impact Area is intended to provide an improved toolkit for managing precincts with higher concentrations of licensed premises, where cumulative impacts and risks of alcohol-related harm are greater, while permitting lower impact venues.

The Newcastle After Dark: Night -time Economy Strategy outlines the situation clearly:

The position and proximity of licensed premises relative to one another is an important factor. An extensive study into liquor license density and cumulative impact conducted for NSW Office of Liquor Gaming and Racing in 2012 found that clustering of liquor licenses had both positive and negative economic and social impacts.

Clusters of venues can generate adverse cumulative impacts if unmanaged, the alternative – to have a widely dispersed and dislocated nightlife – extends both the effective geography of the governance task and the degree of residential impact. The challenge is to foster nightlife clusters of diverse venues and appropriate public spaces and facilities, and to effectively manage their growth to leverage shared infrastructure benefits and network effects, while also mitigating social harms and amenity impacts.

The After Dark strategy is based on a precincts model. CN is committed to working with partner agencies and researchers to develop and utilise new tools for understanding both the location and density of night-time activities, and also clear and effective criteria for cumulative impact and licensed venue saturation. Precincts will form the basis for developing unique nightlife destinations through marketing and promotion, as well as understanding important considerations such as cumulative impact.

Specific Actions which relate:

Precincts and Clusters - 1.2 Develop cumulative impact and licensed venue saturation criteria

CN currently has data collection and mapping work underway across the seven city centre nightlife precincts, and nightlife enclaves beyond the city centre such as Wallsend, Kotara, Mayfield and Lambton. This project will provide detailed data on the business mix and geographical distribution of commercial and public nightlife and include live music infrastructure. The nightlife mapping project, alongside data collection across multiple indicators developed for the low impact venues trial, will provide the most detailed view of the city's night-time offerings to date. The data will form an important input into organisational decisions related to cumulative impact as a precinct management tool.

The development of State-wide criteria and thresholds for cumulative impact through legislative changes enabled by the Act is timely for Newcastle.

Currently, only Sydney CBD precincts subject to the liquor licence freeze are scheduled for designation as a Cumulative Impact Area. Consultation with Sydney-based stakeholders is refining the model.

However, nightlife precincts beyond the Sydney CBD, such as Newcastle city centre, may represent suitable locations for a cumulative impact approach. CN should monitor these developments and results from the implementation in Sydney before determining whether it represents a suitable planning approach for managing density, diversity and risk associated with licensed premises.

2.3. Live music and entertainment provisions

The Amendments relating to live music and entertainment provisions include the following changes:

- All relevant LEPs have a new objective in clause 1.2 to raise the protection and promotion of the use and development of land for arts and cultural activity, including music and other performance arts.
- Low impact entertainment is now considered exempt development provisions in the Codes SEPP (Part 2, Division 1, Subdivision 15AB).
- Councils may establish a special entertainment precinct within their local government areas (LGA), by amending the local environmental plan (LEP) to identify the special entertainment precinct.

- Amendments to the Environment Planning and Assessment Act 1979 (EP&A Act) to change definitions within the Building Code of Australia to reference small live music and arts venues as a development type.
- Amendments to the EP&A Act to give councils the ability to remove or modify conditions of consent about playing and performing of music on licenced premises provided the opportunity for public submissions is maintained
- A non-discretionary development standard relating to live music means a consent authority cannot refuse development consent for licensed premises in respect of the following matters: the playing or performance of music; whether dancing occurs; the presence or use of a dance floor or another area ordinarily used for dancing; the direction in which a stage for players or performers faces; the decorations to be used including for example, mirror balls or lighting used by players or performers.

CN has a strong and extensive connection to live music. Our Live Music Strategy sets out the strategic vision and key actions for live music in our city. The collective impact of these amendments provides continued momentum for change in the city's nightlife cultures towards a greater focus on live music and performance.

Specific actions in the Live Music Strategy 2019-2021 which relate to these amendments are:

Initiative 4 - Provide improved noise assessment regulation and guidelines

Initiative 5 - Advocate for a Night-Time Economy unit within relevant State government agencies e.g. NSW Planning and Environment, Create NSW and NSW Industry

Initiative 9 - Research and evaluate design solutions for urban noise

The Newcastle After Dark 2018-2022 also contains relevant actions:

Live Music and Performance - 4.3 Evaluate existing sound management policies relevant to national best practice

Live Music and Performance - 4.4 Encourage licensed premises to adopt live music as a mitigation method through Low Impact Venues Framework

Residential Amenity - 5.1 Develop an evaluation and recommendations on Agent of Change provisions as a method for protecting residential amenity

Residential Amenity - 5.2 Continue to monitor and enforce noise thresholds around licensed premises

Residential Amenity - 5.5 Strengthen noise attenuation criteria in city precincts in DCP

Residential Amenity - 5.6 Provide downloadable sound files of city noise levels at different night-time thresholds

CN has several projects underway which provide important cornerstone initiatives. These include recent determination to place notification on s149 certificates that acknowledge the city's night-time precincts, and Council's support for the night-time economy, live music and performance industries.

The nightlife precinct mapping project is compiling an audit of live music infrastructure across the city including, performance, recording and rehearsal spaces.

Support for the creative industries generally, and live music and performance, through the flagship arts and cultural festival New Annual, and the associated Locally Made and Played grants, highlights Council's commitment to supporting live music. The latter is intended to feature in association with multiple 'city scale' festivals and events across the annual calendar, ensuring that the Newcastle

community and visitors to the city build strong associations between festivals, events and live performance.

The Act provides a range of new opportunities for furthering this support for live music. Foremost among these are the opportunity for Council to:

- Modify consents and remove entertainment conditions for live music at licenced premises by publishing a notice of the intended change on council's website. Publication of proposals to modify consents must be accompanied by a detailed explanation of impacts and the opportunity for public submissions that must be considered by council in its decision.
- Establish a special entertainment precinct(s) within the local government areas (LGA), by amending the local environmental plan (LEP) to identify special entertainment precinct(s).

A special entertainment precinct is a defined area where:

- amplified music that is played in the area is regulated by, or under a law, other than the Liquor Act 2007; and
- requirements about noise attenuation apply to certain types of development in the area;
- dedicated live music and performance venues are authorised to trade for an additional 30 minutes under s 12A of the Liquor Act 2007; and
- May be a single building, a streetscape, a precinct or otherwise defined locality

There are a number of requirements for councils if they decide to create a special entertainment precinct including:

- preparing a plan for regulating noise from amplified music from premises in the special entertainment precinct and publish it on the council's website; and
- notifying residents and people moving into the area about the special entertainment precinct including, for example, by a notice published on its website or a notation on planning certificates for land in the precinct.

While this legislation is aimed at streamlining processes in support of live music, it should be noted that it squarely places the burden of regulation and the management of conflicting land uses upon Council. The requirement for Council to prepare a plan for regulating amplified sound from venues within a special entertainment precinct must be undertaken in consultation with stakeholders, including community and residents, to ensure the balance between amenity and entertainment.

2.4. Integrated sanctions scheme

Amendments related to the integrated sanctions scheme refer to the consolidation of multiple areas of liquor license regulation related to mechanisms for sanctioning licensees that violate the Liquor Act. The new incentives and demerits points system replaces multiple existing sanction schemes: The Violent Venues, Three Strikes and Minors Sanctions Schemes. The integrated sanctions scheme aims to incentivise well-run venues, minimise violence and reduce serious liquor law breaches, whilst offering ongoing annual liquor licence fee discounts for licensed venues that maintain a clear record (after three and five years).

In the 2017 CN submission to the Horton Review of the Newcastle Liquor Conditions, a unanimously-endorsed decision of Council supported a revised approach to liquor licensing that proposed a more case by case determination of liquor licences based on the performance of venues and licensees in question. The submission endorsed implementation of a system that rewards licenced venues that

have consistently demonstrated sound and effective alcohol related management policies and practices.

While the changes within the Act to enable the Integrated Sanction Scheme represent instruments and processes of liquor licensing, of which Council is only peripherally involved, the scheme represents a model in general alignment with endorsed CN position.

2.5. Same day alcohol delivery

Amendments related to same day alcohol delivery seek primarily to introduce enhanced regulatory framework for same day alcohol deliveries to support the responsible operation of this emerging business model in NSW. The introduction of regulation into a rapidly growing area of liquor offering emerging from COVID-19 seeks to ensure appropriate operation of businesses, responsible service of alcohol, mandatory training for delivery staff, and collection of data and records on sales.

There are no clear implications for CN arising from these amendments.

2.6. Special COVID-19 provisions

A range of special COVID-19 provisions have been enacted and lapse in November 2021. These temporary powers enable the use of outdoor public space eg use of footpaths or parking spaces, temporary closure of local Council-controlled roads, temporary variation of development consents. Council is considering options for supporting the hospitality businesses hard hit by COVID-19 through implementation of some of these temporary measures for outdoor trading.

2.7. Sound management and noise complaints

The Act provides options for managing noise complaints from inside licensed premises, including entertainment sound. The Act allows Councils to voluntarily adopt local plans for managing complaints by formally notifying Liquor & Gaming NSW, after which, Liquor & Gaming NSW would no longer provide a separate avenue for these complaints. If this option was enacted, there would be significant implications for Council which may have negative effects on delivery of other CN services.

Historically, Council has dealt primarily with noise from fixed plant and equipment associated with businesses/industry or noise arising from activities which breach development consent conditions. Regulating patron or music noise from domestic properties, public places or licenced venues has been deemed the responsibility of Police (and Liquor & Gaming NSW in relation to licenced premises). Regulating noise which often occurs late at night is problematic for Council to regulate as effectively as Police for a number of reasons including being able to promptly have officers attend venues late at night and manage staff safety. Similarly, Liquor and Gaming NSW have far more effective powers through the Liquor License process to regulate and control noise from Licensed Premises. Notwithstanding this would likely involve substantial initial and ongoing Council resources in terms of additional qualified staff, training and equipment.

The amount of initial set up and ongoing resources involved would vary greatly depending on the specifics of the approach taken and may take years to complete. It should be noted that should Council choose to take on this responsibility the likelihood of being able to relinquish the responsibility in the future would be limited. These changes come into effect from April 30, 2021.

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CCL 23/02/2021 – Liquor Amendment Bill 2020 Update

ITEM-12 Attachment B: CN submission to the Liquor Amendment Bill

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Corporate and Community Planning.AAbbott.LDavis



26 June 2020

Attention: Liquor & Gaming NSW
Policy and Legislation

Submitted via: liquorpolicy@liquorandgaming.nsw.gov.au

Dear Sir/Madam

Draft Liquor Amendment (24 Hour Economy) Bill 2020

Please find enclosed City of Newcastle's (CN) submission on the Draft Liquor Amendment (24 Hour Economy) Bill 2020, Liquor and Gaming NSW.

CN provides its comments based on its experience as an acknowledged leader in collaborative alcohol management reforms and strategy within local government. This submission includes recommendations to improve the proposed amendments, together with options to enhance the objective of supporting a safe and vibrant night-time economy. The submission is evidence based and consistent with CN's strategic objectives set out in the *Newcastle Safe City Plan 2017-2020*, *Newcastle After Dark: Night-time Economy Strategy 2018-2022* and *Newcastle Live Music Strategy 2019-2023*.

The current liquor licence measures in place across Newcastle's night-life areas have significantly influenced the City's night-time economy for the last decade. Since being introduced, there has been a marked decline in alcohol-related violence across our nightlife areas. Also notable has been the growth of a more diverse range of venues led by smaller boutique establishments and licensed restaurants.

Over the same period, Newcastle has seen significant revitalisation including increased population in its CBD area which comprises its primary night-life precinct. It is CN's considered view that a well-managed night-time economy has a valuable role to play in Newcastle's urban and economic renewal. Fundamental to this is the continuation of measures that research indicates provide safer venues. Moreover, the maturation of the City's night-time economy provides an opportunity to move forward from a position of strength to consider how social values such as diversity, inclusivity, vibrancy and creativity can equally shape the future of Newcastle at night.

CN's submission reflects the present challenge of balancing the inherent various priorities and perspectives to inform a future-focused approach to the effective management of what is one of Australia's major night-time economies.

Should you require any further information or clarification, please contact Ashlee Abbott, Manager Corporate and Community Planning on 0249 741 310.

Yours Sincerely

A handwritten signature in black ink, appearing to be "Brett Smith".

Brett Smith
DIRECTOR STRATEGY & ENGAGEMENT

Submission on NSW Government Draft Liquor Amendment (24 Hour Economy) Bill 2020

BACKGROUND

On 4 May 2020, the NSW Department of Liquor and Gaming released for public consultation the draft Liquor Amendment (24-hour Economy) Bill 2020¹, ref Liquor Act 2007² (the Act). The draft amendments seek to facilitate the growth of a safe 24-hour economy in NSW. Proposed to be rolled out State-wide, the draft amendments include changes to the incentive and demerit points system for venues; permitting of minors in small bars until midnight not in the company of a responsible adult, and removal of certain restrictions on the type of music, instruments and the number of musicians or live acts that can perform at venues.

The draft amendments are the second part of the NSW Government's (the Government) 24 hour economy liquor law reforms that deliver on the Government's response³ to the 2019 NSW Parliamentary Inquiry into Sydney's Night-time Economy⁴. The first stage of the reforms centred on Sydney CBD venues and included the removal of venue lockouts and restriction on serving custom cocktails, shots and neat spirits, as well as extension of last drinks times.

As a leader in collaborative alcohol management reforms and strategy at the local government level, City of Newcastle (CN) provides this submission which includes recommendations to guide the proposed amendments (24-hour economy bill), together with several options to enhance the legislation aimed at supporting a safe and vibrant night-time economy in Newcastle.

The submission is evidence based and consistent with CN's strategic objectives set out in the Newcastle Safe City Plan 2017-2020⁵, Newcastle After Dark: Night-time Economy Strategy 2018-2022⁶ and Newcastle Live Music Strategy 2019-2023⁷.

POLICY CONTEXT

Newcastle is the second largest non-capital urban centre in Australia. The Newcastle Local Government Area (LGA) is home to over 165,500 people (ABS ERP 2019) and is expected to grow by an additional 41,000 people by 2041 (25.56% growth). Newcastle is at the centre of the Hunter region (600,000 people) serving as the primary provider of health, higher education, business and professional services.

The City has undergone a major transformation over the last two decades, with strong growth in services, activity and employment. There has been growth in knowledge industries, with the expansion of health, higher education, research centres, defence industries and professional and technical services. These industries, along with traditional energy and engineering sectors, are

¹https://www.customerservice.nsw.gov.au/_data/assets/pdf_file/0011/823349/Draft-Liquor-Amendment-24-hour-Economy-Bill-2020.pdf

²<https://www.legislation.nsw.gov.au/#/view/act/2007/90>

³<https://www.nsw.gov.au/sites/default/files/2020-05/NSW%20Government%20response%20-%20Sydney%27s%20Night%20Time%20Economy.pdf>

⁴<https://www.parliament.nsw.gov.au/ladocs/inquiries/2519/Report%20-%20Sydney%20night%20time%20economy.pdf>

⁵<http://www.newcastle.nsw.gov.au/Newcastle/media/Documents/Strategies,%20Plans%20and%20Policies/Plans/Newcastle-Safe-City-Plan-2017-2020.pdf>

⁶ <https://www.newcastle.nsw.gov.au/getattachment/Community/Health-Safety/Newcastle-After-Dark/Newcastle-After-Dark-Strategy-November-30-FINAL-WEB.pdf.aspx?lang=en-AU>

⁷ <https://www.newcastle.nsw.gov.au/getmedia/4c3c78c1-14e7-4f75-9b39-ff0c582d4edc/Live-Music-Strategy-2019-2023.aspx>

providing the foundation for the growth of Newcastle and the broader Hunter region.

A vibrant and safe night-time economy is a significant contributor to our city's revitalisation. In 2018, Newcastle's night-time economy directly employed over thirteen thousand people and accounted for 5.7% of the total Newcastle economy (\$1.588 billion)⁸, representing an above average proportion of the total economy compared to New South Wales (4.7%) and Australia (4.7%).

Ten years ago, Newcastle's night-time economy was considered locally to have a problematic nightlife compared to the remainder of the State. Of concern was alcohol-related violence and anti-social behaviour in and around the City's licensed premises. As part of a targeted response, liquor licence conditions were imposed on businesses in the Newcastle Central Business District (CBD) and Hamilton area; greatly influencing the current Newcastle night-time economy. Since the introduction of the measures, there has been a marked decline in incidents of non-domestic alcohol-related violence in the Newcastle night life areas.

Newcastle is not the city it was ten years ago and there is now an opportunity for re-visioning a safe and vibrant nightlife for the City aligned with its emerging significance as a Gateway City. Since implementation of the liquor licence measures, Newcastle's night-time economy has undergone significant change led by the growth of a more diverse range of establishments comprising smaller, 'low impact'⁹ night-time venues and a burgeoning creative and dining scene. Newcastle's reputation as a live music and performance hub is undergoing reinvigoration with a resurgence of ground swell support and cultivation by the sector, though the impacts of COVID-19 have been severe. Coinciding with this has been an increasing pace of urban renewal projects coming through the pipeline into fruition. City centre residential density is increasing as city living rises in popularity. With this comes the challenge of balancing the needs of those calling the city centre home, and those who visit solely for entertainment. As our City's revitalisation gathers momentum, the relationship of alcohol and noise in the night-time economy remain important considerations for both nightlife participants and city residents. Fundamental is the continuation of measures that provide safer venues and are underpinned by research and evidence.

The City's maturation provides an opportunity to move forward from a position of strength to consider how diversity, inclusivity, vibrancy and creativity can shape the future of Newcastle after dark. When planning for concentration and diversity of nightlife, it is important to consider that nightlife is more than licensed venues. It takes place in a wide variety of public and commercial spaces. Night-time active leisure, late opening museums and art galleries, all ages venues, late trading retail and educational seminars, all form part of an active and vibrant night-time economy appealing to a wider range of demographics. CN supports the growth of diverse options as it will provide greater accessibility to the City at night and increase the overall level of participation.

It is CN's principal view that the management of the City's night-time economy with these elements in mind will play a valuable role in Newcastle's urban and economic renewal. CN's submission is a future-focused approach for the effective management of what is one of Australia's major night-time economies.

⁸ https://www.lordmayors.org/wp-content/uploads/2019/09/Measuring-the-Australian-NTE_2018_FINAL_OnlineVersion_2019-09-02.pdf

⁹ In this context, CN defines low impact establishments as those with a strong, consistent focus on noise management and responsible service of alcohol, and a proven track record of minimal alcohol-related and liquor licensing incidents.

DETAILED SUBMISSION

1. Density And Cumulative Impact

- 1.1. As outlined in CN's endorsed strategy, *Newcastle After Dark: Night-Time Economy 2018-2022*, CN is supportive of measures to improve management of the concentration and diversity of licensed premises. Venue density and diversity in city nightlife precincts is considered both a challenge and an opportunity. A diversity of venues is understood to be a key contributor to a sense of vibrancy. The clustering of homogenous venues can facilitate a dominant culture that is limited and exclusive. A diverse mix of venue styles and types however will attract a diverse demography of participation, also acknowledged to contribute to improved perceptions of safety. Venue diversity is also important for the development of cultural spaces and broader social diversity which are key preconditions for a society inclusive of gender, ethnic and subcultural difference.
- 1.2. The challenge is to foster nightlife clusters of diverse establishments and appropriate public spaces and facilities, and to effectively manage their growth to leverage shared infrastructure benefits and network effects, while mitigating social harms and amenity impacts. A balanced approach such as this can integrate the night-time economy with wider City initiatives of urban renewal, visitor economy and broader cultural participation in the city's nightlife precincts. CN recommends an approach that represents a balance between controlling undesirable elements of culture through compliance and enforcement activities, and interventions that seek to stimulate the kind of city nightlife that community consultation suggests would attract greater participation and investment from the residents, visitors and businesses of Newcastle and the wider Hunter region.
- 1.3. The relative position and proximity of licensed premises is an important factor in the diversity and vibrancy of a night-time precinct. Determinations by Liquor and Gaming NSW (ILGA) as to the number of licensed premises permissible within a cluster or area is a critical policy and planning lever.

Recommendation 1: The factors, criteria and frameworks for determining cumulative impacts must be published. This will allow:

1. Transparency and confidence for both local authorities and venue operators;
2. Local consent authorities to shape subsequent policy frameworks and strategies for nightlife precincts to support desired and safe densities and diversities of venues, and;
3. Collection of data relevant to the assessment and management of precincts for density and diversity, cumulative impact and its mitigation.

Recommendation 2: The Act should specify:

1. the process through which a draft cumulative impact statement is developed; and
2. identify what constitutes a relevant stakeholder for the purposes of consultation on a draft cumulative impact assessment.

Recommendation 3: The Act provides for variation of assessments [72(G)] and needs to specify what constitutes a trigger for a consideration of a variation to an

assessment, and whether the process of variation occurs in relationship with a review requiring additional consultation with stakeholders.

Recommendation 4: A cumulative impact assessment determined by ILGA can apply to a precinct (area), a specific venue or a class of venues, and is renewable every two years. Consultation with relevant stakeholders will be critical to ensure all relevant factors are considered in these determinations.

- 1.4. The amendment bill proposes that a range of on-premises venue types (including dedicated live music venues and small bars) are exempt from cumulative impact assessment is supported. CN supports proposals to be exempt from consideration of cumulative impact for venues that are demonstrably low impact, i.e. venues with a strong, consistent focus on noise management and responsible service of alcohol, and a proven track record of minimal alcohol-related and liquor licensing incidents.
- 1.5. The overarching objective of CN's night-time economy strategy is to grow and expand the types of nightlife activity and amenity associated with the evening economy later into the night. These characteristics include high diversity of establishments, a wide variety of entertainment options, diverse and multi-generational participants, easy and regular transport access, and safe public spaces. Supporting the growth and creativity of the night-time economy sector through increased diversity of small venues is a key part of this strategy.
- 1.6. The proposed changes to the Act [72(3)c] to identify exempt licence categories confirms the primary criteria of patron capacity and trading hours. These characteristics of low impact licensed venues are objectively measurable and highly relevant, but other factors are also relevant including licence type and business model. In order to provide assurance that the range of on-premises venue types identified as exempt from cumulative impact assessments remain low impact, they must be subject to the incentives and demerits points system.

Recommendation 5: The factors, criteria and frameworks for ILGA's impact classification for venues and licence type need to be articulated in the Act or ancillary instruments (low, medium and high impact venues) to support decision making.

Recommendation 6: In order to provide assurance that the range of on-premises venue types identified as exempt from cumulative impact assessments remain low impact, they must be subject to the incentives and demerits points system.

2. Incentives and Demerit Points System

- 2.1. CN recommends and supports implementation of a system that rewards licensed venues that consistently demonstrate sound and effective alcohol related management policies and practices. The demerit point system is supported on the basis that it provides for more venue-specific sanctions that do not unduly impact business that are well operated and managed. The proposed demerit point system proposed assumes compliance and good business (in good faith and does not predetermine negative business operation) and methodically addresses failures to comply with the Act with progressively imposed sanctions.
- 2.2. The demerit system can attach demerit points to both licensees and licenses. This is

supported as a mechanism for distinguishing between what is a systemic fault of a venue operating model, or a bad operator. The former can be more easily addressed through education and strategy.

- 2.3. The demerit system is anchored in the legal system for 'offences', but also includes provision for the community to raise concerns via the prescribed complaints process which is supported by CN. The Act should however be clear and transparent regarding the process through which prescribed complaints are received, assessed and determined.
- 2.4. Determinations should be based on data. ILGA should have the requirement and right to collect the necessary data to verify independently of the complainant, the nature, veracity and seriousness of the complaint.

Recommendation 7: The Act should make clear and transparent the process through which prescribed complaints are received, assessed and determined.

Recommendation 8: Liquor and Gaming NSW (ILGA) should have the requirement and right to collect the necessary data to verify independently of the complainant, the nature, veracity and seriousness of the complaint.

Recommendation 9: 144Z provides that the ILGA must consider local authority input in determining whether to take remedial action. It is recommended that the local authority should have the capacity to both influence the decision to take remedial action and offer suggestions on the kinds of remedial action deemed appropriate. This would allow for the incentive and disincentive mechanisms of the merit system to be consistent with locally developed management principles and approaches.

Recommendation 10: 144Z1b(i) identifies size and patron capacity of a venue among factors considered relevant and to be considered when assessing suitability of enforcing a merit offence. The acknowledgment within the Act that venue size and patron capacity are a consideration is an improvement but is still not a comprehensive expert-defined set of characteristics that impact likelihood of harm. This is required. Obvious other factors include license type and business model.

Recommendation 11: Restrictions on trading hours and the threat of having a licence suspended or revoked remain as the main disincentives in the Act. These sanctions are appropriately targeted at financial impacts and will be meaningful. These are done through the Trading Hours risk loading, which is lifted. The second stick is the compliance history risk loading which is a financial penalty also. The Act should make plain the relationships between various risk loadings, and the remedial measures available to be imposed on venues by ILGA.

Recommendation 12: Generally, CN recommends that the suite of remedial actions should be systematic and accessible. They should form a suite of relevant interventions that can address the likelihood of serious offence of a verified complaint. This would ensure that they are applied consistently, and that proactive licensees and managers can consider these remedial actions as good practice guides. The remedial actions and their typology of application (thresholds/size and capacity relationships) should be published as an attachment to the Act.

3. NOISE AND LAND USE CONFLICTS

- 3.1. As the regional centre of culture for the Hunter Region, Newcastle has served as the primary entertainment focus. It has been a key stop on the national live act touring circuit and has traditionally boasted strong live music and performance scenes. This rich cultural aspect of the City is intimately interwoven into the identity of Newcastle and its nightlife. Coinciding with this has been the growing pace of urban renewal projects transforming the City, resulting in a rapidly increasing centre residential population. Residents taking up city living are helping to transform the City and provide a valuable local base for participation in nightlife activity. Newcastle's night-time economy is also increasing as a place of work and productivity, given growth in service and leisure industries in the region as well as global trends of day and shift work being replaced with multiple work rhythms.
- 3.2. With this, the City's night-time areas are progressively emerging as simultaneous spaces of work, home, leisure and creativity. This is resulting in denser social, residential and business interactions, beyond that of comparative time periods of suburban neighbourhoods, with corresponding noise and activity. For the effective management of this diversity, CN's After Dark and Live Music Strategies, recently endorsed by Council (2018 and 2019 respectively), support a more coordinated noise and land use management regime by various responsible agencies.
- 3.3. An overarching state-wide planning response is needed to address the land use conflicts inherent to the City's growing and changing urban areas. As absent presently, local councils have had to consider other options to resolve this highly technical problem. Councils such as City of Sydney, Wollongong, Lake Macquarie and Inner West have worked to address the lack of overarching State direction by developing and implementing regulatory and compliance measures. The preparation of these policies has been time consuming and costly with varied outcomes.
- 3.4. CN is not supportive of the piecemeal unsystematic adjustments proposed by the amendments to address this complex matter. For instance, partially addressing noise conflicts by relying on development application (DA) conditions to replace the conditions on Liquor Licences has the following shortfalls:
- 3.5. DA conditions are placed on a venue at the time a DA is approved by the local consent authority. Many entertainment venues do not have conditions regarding noise, or the conditions are outdated or irrelevant.
- 3.6. Under the EP&A Act, venues do not need to receive development consent to be entertainment venues, so opportunity is often not provided for relevant conditions to be placed on DAs for these venues.
- 3.7. Due to an absence of appropriate state level legislation and guidelines, conditions placed on entertainment venues are not standard. Conditions are typically at the discretion of the development assessment officer, informed by the recommendations made through an Acoustic Report submitted with a DA application. At minimum, the assessment will compare against the standard LA10 L&G NSW noise condition.
- 3.8. As is the case with violence in venues or breaches of liquor law, management of noise is the responsibility of the licensee. Good management will reduce complaints from neighbours and should be rewarded through the systems already in place, managed by ILGA.

3.9. In relation to clauses 70 and 71, CN acknowledges the likelihood that some venues may have entertainment noise licence conditions applied which have not been reviewed in recent times and/or may be no longer appropriate; however the blanket removal of certain types of conditions and assumption that all such conditions on liquor licences are referenced arbitrarily as “outdated”, is of concern to CN for the following reasons:

- 3.9.1.1. When a venue proposes to undertake a development and includes entertainment as part of that proposal, a proponent will normally describe the entertainment in terms which include the genre of music, the type of instruments or delivery of the music and in some cases, the number of musicians proposed. These factors are considered important enough for most consulting planners and acoustic consultants to include in their description of the proposal. Acoustic consultants would for example have discussed the type of music with the proponent and used that description to provide an expected level of noise to be assessed as part of the application.
- 3.9.1.2. For example, it is not uncommon for an acoustic consultant to state that the applicant wishes to have a live band perform (including drums) or a duo (guitar and singer) and on that basis, propose for assessment purposes a typical sound power level that such a music performance (in their experience) is likely to generate. The acoustic consultant will then assess the impact of that typical music performance on the surrounding sensitive receivers.
- 3.9.1.3. If the assessment results indicate the need for limitations on the music performance to prevent unreasonable impacts on receivers, the consultant will make recommendations which can include limiting the type of music performance to that which was assessed, i.e. “a duo – guitar and singer”.
- 3.9.1.4. These types of descriptions are effective to provide the applicant, and also future owners of that establishment, with a lay person’s understanding of the type of music performance which can be expected without impact on neighbouring receivers.
- 3.9.1.5. In this regard, although such conditions may not appear useful from a direct noise measurement perspective, they provide informative relevant to a lay person and can be an effective way of managing music without having to resort to noise monitoring, noise logging / noise limiters or other more onerous forms of noise control. These forms of noise controls are often resisted by the operators of establishment as they are often viewed negatively by the music industry and raise concerns amongst musicians that the quality of music will be affected. In some instances, these type of controls are recommended and are warranted, however in other circumstances, license conditions such as those referenced as “outdated” have been sufficient in CN’s opinion to address the intent of the consent granted and to guide the type of music provided and limit associated noise impacts.

3.9.2. There are several potential ramifications if licence conditions of this nature are removed from a liquor licence:

- 3.9.2.1. The venue may choose to change the genre of music, from say a duo to a rock band, creating significantly more noise and associated impact on

the surrounding receivers, and resulting in complaints to be assessed and managed by those agencies which are considered responsible for managing the issue going forward.

- 3.9.2.2. If similar conditions are also placed on a local authority development assessment consent condition, it is likely that they will follow up with Councils to seek the removal of these conditions. It is likely applicants would apply pressure on Councils that such conditions should be removed from the consent without going through a proper assessment process given that they have been arbitrarily described by a state agency as “outdated”. Such conditions would however generally only be applied by Council in the first instance if identified by the applicant’s acoustic consultant as being required to help ensure the venue can operate without creating offensive noise. If Councils removed noise conditions without proper assessment the effect would be similar as described in the above point.
- 3.9.3. In relation to the regulation of disturbance noise from within a venue [clause 130A], the NSW Environmental Protection Act (EPA) Noise Guide for Local Government 2013 states “Loud music, patron noise etc from hotels and licenced premises” is primarily the responsibility of ILGA. Licenced premises may generate substantial noise complaints and for decades Councils have generally referred these matters to ILGA as per State Government guidelines. From CN’s perspective, this has been a generally effective and appropriate arrangement primarily as licence conditions can be amended as required to address specific noise impacts and the threat of licence revocation or amendment appears to be an effective incentive for compliance.
- 3.9.4. There is a concern that with ILGA removing itself from the regulation of disturbance noise from within a venue, including live music, compliance enforcement will be shifted to Police and Council. It is not known what capacity the Police have to absorb additional regulatory functions however it appears possible, or likely, that substantial increased regulatory demands could be placed upon Councils for which they may not be adequately resourced to respond and therefore unable to enforce compliance.
- 3.9.5. CN applies significant resources in assessing potential noise impacts associated with development applications to help ensure that licenced premises will not generate unreasonable or offensive noise. CN, however, has limited resources to monitor and enforce the many licenced premises operating in the LGA, particularly outside of normal business hours when noise impacts often occur. Without the regulatory tool of licence conditions, Police and Council’s will have to rely upon Noise Abatement Directions which will only apply for 28 days or a Prevention Notice where required which can require significant administrative resources to produce and enforce and cannot be issued by Police.
- 3.9.6. Existing licenced premises will often have development consents with conditions applied by Council based on the assumption that licence conditions support the regulation of potential noise impacts and as such enforcement of consent conditions would not necessarily be possible to address noise impacts for existing premises. Importantly, Councils cannot amend existing conditions unless an application is made by the person with the benefit of the consent.

3.9.7. CN considers that the proposed changes may have a significant impact on Council's regulatory resources and the effective regulation of noise from licenced premises. The existing regime of application of licence conditions, compliance monitoring and enforcement by ILGA has been and should continue to be the primary mechanism for control of noise from licensed premises.

3.9.8. If the current amendment proposal was to proceed, Council would not be able to assume this role without additional resources. Further detailed consultation and consideration of the impacts of such a significant change should be undertaken before consideration is given to such a significant shift in regulatory responsibility.

Recommendation 13: The proposed entertainment license condition amendments to be put on hold while the preparation of state-wide legislation and guidelines for the management of noise and land use conflict relating to licenced premises, including live music is undertaken. A state-wide review of roles and responsibilities and detailed consultation and consideration of the impacts should be undertaken to inform its development.

Recommendation 14: If the proposed entertainment license condition amendments are approved, CN does not have the resources for compliance monitoring and enforcement. Further detailed consultation and consideration of the impacts of such a significant change should be undertaken before consideration is given to such a significant shift in regulatory responsibility

4. Small Bars – Minors and Community Impact Statements

4.1. As part of the amendments, CN recommends that the current definition of "minor" be changed to "child or young person" to be consistent with the existing NSW legislative framework. The NSW Liquor Act 2007 currently references a "minor" as a person who is under the age of 18 years. In the NSW legal framework, the word "child" is referenced when referring to those under the age of 18 years¹⁰. The Children (Criminal Proceedings) Act 1987 (NSW) (s 3), the Bail Act 2013 (NSW) (s 4), the Young Offenders Act 1997 (NSW) (s 4), [3] the Children (Community Service Orders) Act 1987 (s 3) and the Children (Detention Centres) Act 1987 (s 3) all define those under the age of 18 years as a "child". The Children and Young Persons (Care and Protection) Act 1998 (NSW) (s 3) breaks down the distinction further, with a "child" defined as a person under 16 and a "young person" defined as a person who is aged 16 or 17. For the purposes of the Crimes (Domestic and Personal Violence) Act 2007 (NSW), a "child" is defined in s 3 as under the age of 16 years.

Recommendation 15: The definition of "minor" be amended to "child and/or young person" to be consistent with the existing NSW legislative framework.

4.2. The proposed amendment to insert s122A in its current form is not supported. In particular, 122A(1), 122A(2a) and 122A(2b) would enable minors to enter and remain in a small bar while NOT in the company of a responsible adult. It is not consistent with the NSW legislative framework established to govern the safety, welfare, wellbeing and harm minimisation of children and young people in NSW.

¹⁰ <https://www.judcom.nsw.gov.au/publications/benchbks/equality/section06.html>

- 4.3. The underpinning principle of harm minimisation (encompassing demand, supply and harm reduction) includes safer drinking settings. The potential corrupting influence on a minor in a licensed venue including small bars unaccompanied by a responsible adult may breach the intent of the current NSW legislative framework in relation to the safety and wellbeing of children and young people. The option for children to remain unaccompanied within a small bar premises until midnight increases the risk to children across an array of risk and protective factors¹¹.
- 4.4. In 2016, more than 1 in 5 Australians aged 14 and over had been a victim of an alcohol-related incident¹². There is a significant body of research that shows a clear link between the amount of alcohol consumed and the level of risk/harm, both for the individual and the broader community. It should be noted that heavy alcohol use amongst parents is a significant cause of child neglect, lack of responsive care and under-stimulation. This is a risk factor and one of the major causes of unhealthy early childhood development for many children¹³. The extension of hours whereby children can be in licensed premises increases the length of time that a parent or responsible adult can drink and increases the potential risks for the child.
- 4.5. The current restriction of minors or children being only permitted within a small bar premises up to 10pm should remain in place, in conjunction with the requirement to be in the company of a responsible adult. This was implied in the NSW Government's response¹⁴ to the 2019 Parliamentary Inquiry into Sydney's Night-time Economy¹⁵ (p.3), that noted "...*certain circumstances for family-oriented functions or small business services could be accessed by minors in the daytime or early evening (e.g. restaurants, bookshops)*". This response implies that children and young people would be able to accompany family to suitable social functions, not in venues on their own, and up to the early evening period from 5pm to 10pm.

Recommendation 16: The proposed amendment to insert s122A in its current form is not supported, in particular 122A(1), 122A(2a) and 122A(2b) as it is inconsistent with the NSW legislative framework established to govern the safety, welfare and wellbeing of children and young people in NSW.

Recommendation 17: The current restriction permitting minors or children within small bar premises until 10pm should remain in place including the need to be in the company of a responsible adult.

- 4.6. The process of developing a Community Impact Statement enables community to be adequately consulted and provides a basis for an informed assessment of a small bar proposal by the relevant agencies such as Police, Department of Health and the local consent authority. Public consultation should be undertaken to obtain public feedback on licensed premise proposals as it is an opportunity to acknowledge public concerns. Consultation and community engagement seek to address the implicit power imbalance between industry and the communities impacted by licensed premise proposals,

¹¹ <https://www.health.gov.au/resources/publications/national-alcohol-strategy-2019-2028>

¹² <https://www.aihw.gov.au/reports/illicit-use-of-drugs/2016-ndshs-detailed/contents/table-of-contents>

¹³ https://www.health.gov.au/sites/default/files/national-drug-strategy-2017-2026_1.pdf p.32

¹⁴ <https://www.nsw.gov.au/sites/default/files/2020-05/NSW%20Government%20response%20-%20Sydney%27s%20Night%20Time%20Economy.pdf>

¹⁵ <https://www.parliament.nsw.gov.au/ladocs/inquiries/2519/Report%20-%20Sydney%20night%20time%20economy.pdf>

regardless of the level of perceived risk.

- 4.7. Further, alcohol is acknowledged to be a drug of addiction^{16,17,18}. The short- and long-term health impacts of alcohol consumption and addiction are well documented and have significant ongoing financial impacts on the operational budgets of multiple NSW State agencies, including Police, the judicial system and the health system, as well as the operational budget of local governments.
- 4.8. There is a clear link between the amount of alcohol consumed and the level of harm, both for the individual and community. As such, the justification for any licensed premises, regardless of size or risk level, should be maintained by the continuation of Community Impact Statements to ensure ongoing monitoring and evaluation of the sale of alcohol. The amendment that removes the requirement for smalls bars to undertake a Community Impact Statement is not supported.

Recommendation 18: The requirement for licensed venues, including small bars and other low risk level venues to undertake Community Impact Statements should remain in place.

5. Same Day Delivery

5.1. Amendment 107Cii indicates that packaged liquor of more than two litres does not constitute same day delivery (SDD). This is important; volume alone should not be the only metric for the type of exclusion. The exclusion should also factor in alcoholic content of different classes of drinks and associated risks of intoxication. E.g. a six pack of beer (6 x 350 avg mls) = 2.1L, it is out. Whereas 2 x 1L bottles of high alcoholic content spirits = 2L, it is in. Additional considerations include:

1. Does 114H effectively limit same day delivery as supplied from a bottle shop? So, this is about new businesses, or an online arm of an existing business?
2. Clause 114P appears to acknowledge that SDD will increase risks to individuals who may have issues with alcohol by increasing ease of access.
3. How does the SDD provider, employee or agent verify that someone is intoxicated? This would at minimum require responsible service of alcohol (RSA) training for anyone involved in the delivery and handover. Further, anyone involved must be managed and held accountable to the same standards of RSA compliance as licenced premises.

5.2. With regard to amendment 114Q in relation to training, it is proposed that the SDD RSA training acknowledge the different situational conditions that a deliverer may find themselves and provide information on appropriate management responses. The SDD RSA training should be developed by ILGA with expert advice and made widely accessible (possible subsidised or free of charge).

Recommendation 19: Address inconsistency in alcohol by volume in determining the appropriate maximum volumes of Same Day Delivery to acknowledge disparity in

¹⁶ <https://clinmedjournals.org/International-Archives-of-Addiction-Research-and-Medicine.php>

¹⁷ <https://www.betterhealth.vic.gov.au/health/servicesandsupport/alcohol-and-drugs--dependence-and-addiction>

¹⁸ <https://www.healthdirect.gov.au/substance-abuse>

alcoholic content of different classes of drinks and associated risks of intoxication.

Recommendation 20: Address increase in ease of access risk profile issue for individuals who may have issues with alcohol for Same Day Delivery.

Recommendation 21: For Same Day delivery and handover, make messaging about alcohol support hotlines like the diversionary measures utilised for problem gambling mandatory.

Recommendation 22: Completion of Same Day Delivery responsible service of alcohol training should be required of anyone involved in the actual delivery and handover of alcohol. The training should be developed by ILGA with expert input and rolled out consistently across NSW. Further, anyone involved must be managed and held accountable to the same standards of responsible service of alcohol compliance as licenced premises.

ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

CCL 23/02/2021 – Liquor Amendment Bill 2020 Update

ITEM-12 Attachment C: Newcastle After Dark Community Survey Report

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Newcastle After Dark Community survey – 2020

City of Newcastle carried out a survey to gather insights into participation in and perceptions of the night-time economy ahead of a State Government trial to extend trading hours for some smaller licenced venues in Newcastle. The survey also provided insight into how the night-time economy has changed since the last survey in 2015.



940
survey responses



90%
had visited Newcastle after dark in the past 12 months

Main reasons for not visiting

- 1 Parking difficulties
- 2 Safety concerns
- 3 Not interested

What people think of Newcastle after dark

INCLUSIVE: all kinds of people are welcome here & able to participate ★★★★ -

SAFE: I feel confident I will not experience harm or threat ★★★★ -

DIVERSE: a wide range of options & offerings are available ★★★★ -

VIBRANT: a lively & energetic atmosphere or ambience ★★★★ ↓

CREATIVE: a source of innovation & cultural production enhancing city life ★★★★

Top night time activities

59%
Dining at a restaurant

33%
Went to a pub

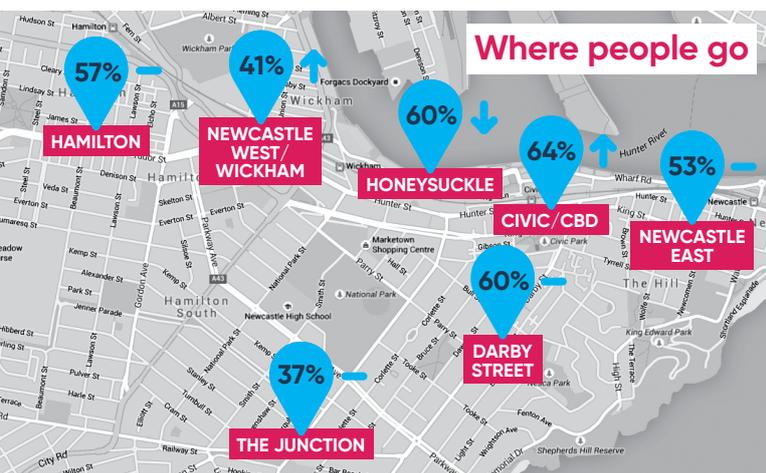
28%
Visiting or meeting friends

What people would like to see more of

63%
Place activation events

56%
More live music performances in venues

52%
Public spaces designed for night-time use



72%
support more small and diverse venues in Newcastle's night-time economy



64%
support smaller night-time venues being open after midnight

- Unchanged from 2015 survey
- ↑ Higher than 2015 survey
- ↓ Lower than 2015 survey