



**Guide for
Establishing and
Managing Night
Time Economy Uses**

December 2018

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Foreword



NSW has a lot to offer when it comes to the provision of arts, music and cultural activities after dark. To ensure that NSW maintains and improves its attractiveness as a desirable place to live into the future, we need to expand the number, diversity and accessibility of arts and entertainment options for people of all ages.

As part of its ongoing support, the Government has been investigating ways we can assist entrepreneurs and business owners to better navigate the planning and other regulatory systems and quickly obtain the necessary approvals to establish or expand an existing business within the night time economy space.

I am pleased to present you with the Guide for Establishing and Managing Night Time Economy Uses – a guidance tool for entrepreneurs seeking to operate or owners wishing to expand existing day time businesses into the evening and night time economy. The Guide has an emphasis on promoting arts, music and culture given its positive effect on life in NSW.

This Guide aims to first provide insight into the night time economy sector and the applicable NSW legislation. It then guides you through the steps of developing your business idea, obtaining the necessary approvals and best managing the ongoing operations of your business.

Vibrant places after dark are fundamental to the success of our social and cultural sectors, along with the economic prosperity of our state. Accordingly, the Government is committed to further supporting NSW's night time economic and social activity by providing the assistance you need to establish and operate a thriving business within the night time economy sector.

The Hon. Anthony Roberts
NSW Minister for Planning

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1.0 PREFACE

Introduction

Nightlife can be one of the most important aspects when defining a place's culture. There are many things that contribute to the success of a local area's Night Time Economy (NTE) including:

- Services
- Infrastructure
- Safety
- Planning and regulations, along with development and partnership opportunities.

There is an ongoing emphasis regarding arts, music and culture in the NTE space and how this can be encouraged as an economic stimulus outcome, as well as a way to build community involvement.

Purpose of this Guide

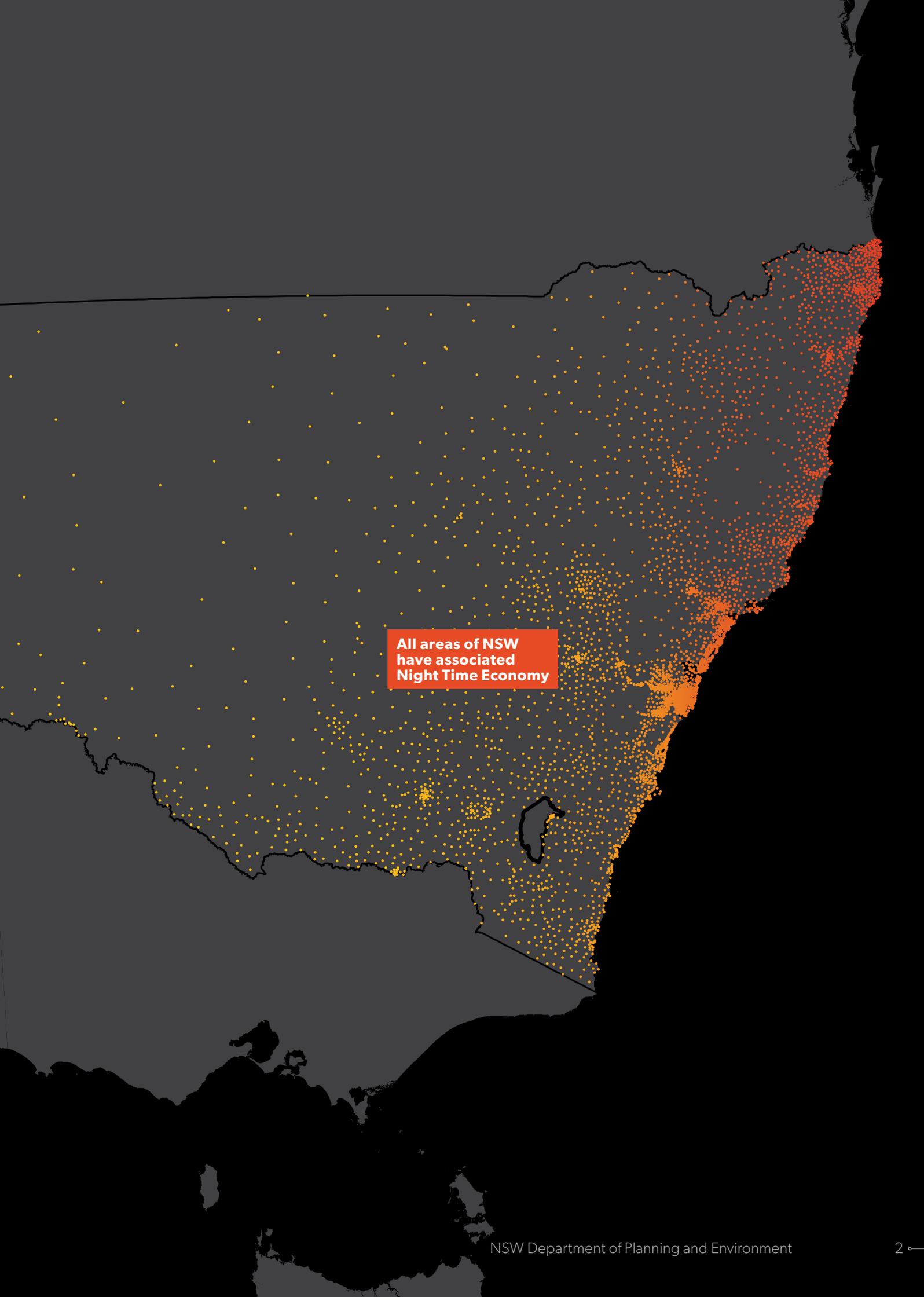
This document is a quick and easy reference guide (Guide) for anyone considering establishing or expanding a business within the NTE sector in New South Wales (NSW).

This Guide sets out the approvals process for new businesses and development within the NTE sector by helping you think about the process before getting started - from choosing a property to seeking the necessary approvals.

Information includes:

- What the NTE is and how development within this sector requires additional considerations during the development application (DA) process;
- Relevant NSW legislation;
- Core NTE uses and corresponding land use definitions to help guide you through the DA process;
- A step by step guide to the approvals process, including the DA and liquor licence process; and
- Examples of council policy and processes from across NSW to highlight that every council has subtle differences that need to be acknowledged when navigating the approvals process.

NTE has been a particular focus in some council areas who are implementing or beginning to develop policy and processes to stimulate their NTE. All areas of NSW have NTE associated with their local area, not just major centres.



All areas of NSW
have associated
Night Time Economy

Who is this guide for?

Budding entrepreneurs that operate (or want to) within the NTE

Anyone who wants to expand their current daytime businesses into the NTE space

Local councils as a reference document

Anyone interested in the NTE



How to use this Guide

This Guide is intended to be a quick and easy reference tool only. Specialised advice should always be sought from professionals, State agencies and councils regarding each individual application.

This Guide will focus on music, arts and cultural uses. These uses include, but are not limited to:



Small or medium scale cultural areas such as art galleries, theatres, studios and auditoriums



Pop-up or temporary uses such as events or markets



Retail venues such as bookstores, boutique clothing stores and music stores who would like to host forms of entertainment



Small bars



Food trucks or mobile vendors or venues



Cafes and restaurants



Venues that have the ability to host live music



Any business seeking to extend or diversify their trading hours beyond traditional 9am–5pm

2.0 THE NIGHT TIME ECONOMY

What is the Night Time Economy?

The Night Time Economy (NTE) can be defined as social or business activities that take place between 6pm & 6am¹. This includes a myriad of business activities, events and services. Overall, it is generally accepted that the NTE is driven by three core areas:



Entertainment

Activities

- Performing arts, music and culture
- Sports
- Amusement parks and centres
- Casinos and other gambling activities



Food

Activities

- Cafes and restaurants
- Takeaway food services



Drink

Activities

- Liquor retailing
- Pubs, taverns, clubs and bars
- Hotels

The NTE is highly diverse and is not confined to the activities above. Non-core activities, such as transport, accommodation, education and retail services also contribute to a vibrant and lively NTE.

¹ NSW Government 2016, NSW Government Responses to the Sydney NTE Roundtable



When does the NTE operate?

The NTE can be identified by distinct time periods²:

Early
Evening
6-9pm

Evening
9-11pm

Night
11pm-2am

Late-night
2am-6am

The NTE may be referred to as one of the above terms by different councils and organisations, and is also referred to as the '24 hour economy' in some literature. Typically, these terms may be used to refer to lower impact activities (early/evening) and higher impact activities (night/late night). It is useful to be aware of the different terminology relating to the NTE to help you understand various council policies and the resulting relationship with your venue.

² City of Sydney 2011, Open Sydney: Future Direction for Sydney at Night

3.0 YOUR IDEA

Get thinking

The Night Time Economy (NTE) offers an exciting and creative space which is available to everyone and includes a variety of business opportunities and undertakings.



Shaping your proposal

Shaping your ideas into a formed business proposal is an important first step to start the approvals process. It is essential to determine early-on in the process:

- What your NTE business proposal entails;
- How it will operate; and
- Where it will be located.

It can be difficult to understand what these considerations mean when you are trying to seek approval for your NTE business proposal. This Guide is tailored to reduce confusion and help you understand the approval process for your NTE business proposal.

Matters that should be considered in shaping a proposal are outlined in the Development Application (DA) Submission Requirements of this Guide (Section 8) and include:



Services



Site analysis



Patron capacity



Days and hours of operation



Sound management



Plan of Management



Communication

To get started

Find and investigate your potential site. This involves doing your research and requesting legal documentation, including relevant:

- DA plans and consents;
- Construction certificate plans and consents;
- Occupation certificates*;
- Planning certificates*;
- Obtain these documents from your local council, the vendor, a planning organisation or via the real estate agent.

A property report containing zoning and development standards and land use constraint controls can also be obtained from the NSW Planning Portal. The report is useful in identifying opportunities and constraints.

To access the NSW Planning Portal, please visit: www.planningportal.nsw.gov.au.

Review the legal documentation and check any relevant development consent(s) for specific conditions that could impact your proposal.*

When undertaking your research be sure to:

- Adhere to the NSW Planning System requirements (Section 4);
- Check the zoning and permissibility (Section 5);
- Understand the different approval pathways (Section 6);
- Review the DA process (if a DA is required) (Section 7);
- Undertake an analysis of the site and know what is required for a DA (Section 8);
- Consider if you need to renovate or upgrade the site to comply with the Building Code of Australia (BCA) and Disability Access Standards (Section 9); and
- Consider if liquor will be served (Section 10) and understand any licensing requirements required.

*Note: costs and time involved

Where to go for information

There are various resources that can offer insight into your idea and help you obtain the necessary approvals for your NTE business proposal. For more information about requirements, please contact:

- Your local council to understand your DA requirements and foster a good ongoing working relationship. Often your local council website contains NTE use approvals information.
- The Department of Industry: Liquor and Gaming NSW to understand your liquor and gaming licence requirements. The Department's website includes online factsheets, FAQs and application forms. For more information, please visit: www.liquorandgaming.nsw.gov.au or call 1300 024 720.
- The Department of Finance, Service and Innovation offers a free 'Easy to do Business' service to help you understand the government licences and permits you need to open your business faster. Take advantage of the business concierge service that can provide you with support and step-by-step guides tailored for your business. The service also provides online how-to guides to help you understand government licensing, approvals and regulations, as well as 'my business navigator', an online tool that guides you through what you need to do. For more information, please visit: www.service.nsw.gov.au/easy-do-business or call 13 77 88.
- The Environmental Protection Authority to understand EPA's environment protection licensing requirements. The Authority's website includes 'The EPA Guide to Licensing' which details environment protection licensing requirements, provides information to help you determine if you are required to hold an environment protection licence, and outlines the steps to obtain a licence. For more information, please visit: www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/guide-to-licensing.



Your local council



Department of Industry

Liquor and Gaming



Finance & Services





Local council policies and practices

Across NSW, some councils have developed local NTE policies and great NTE initiatives. Take a look at NTE opportunities that are underway in councils across NSW (Appendix A). Consult your local council about their policies and initiatives.

4.0 THE NSW PLANNING SYSTEM

NSW Legislation and Regulations

State and local planning legislation and policies set the rules that control what development can and can't occur on the land or premises you are developing. The NSW planning system is regulated by:



1

Environmental Planning and Assessment Act 1979 (EP&A Act)

The EP&A Act sets the framework for the NSW planning system. It is the principal legislation regulating land use in NSW and allows plans to be made to guide the process of development and regulate competing land uses.



2

Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)

The EP&A Regulation contains specific provisions and processes that must be followed by a council when assessing DAs. It also details matters such as the fees that councils can charge to receive and assess a DA.

The EP&A Regulation links the NSW planning system with the building system and contains specific provisions which relate to fire safety and building upgrades.



3

State Environmental Planning Policies (SEPPs)

SEPPs deal with state or regional planning issues and may apply to the development due to site location or a key issue about the site. It is best to check with your local council or refer to a planning certificate issued for the property to see if any SEPPs apply to your property or development proposal.

For the purposes of this Guide, applicants will most likely refer to the:

- State Environmental Planning Policy (Exempt and Complying Development Code) 2008
- State Environmental Planning Policy No 64 – Advertising and Signage

Local Environment Plans (LEPs)

LEPs are the principal Environmental Planning Instrument prepared by local government to regulate land use and the intensity of development. There are LEPs for each Local Government Area (LGA) and all include land use tables, development standards, land constraint provisions, and a series of corresponding maps. To assist with understanding the land use relevant to your site or land, applicants can go to the NSW Planning Portal, enter their address and identify the following:

- Land zoning and development permitted with consent;
- The maximum allowable Floor Space Ratio (FSR);
- The maximum allowable building height;
- If there are any local or state heritage items on or around the site; and
- Any other local provisions.

Follow the link for access to the NSW Planning Portal: www.planningportal.nsw.gov.au. Applicants will need to check which LEP applies to their development based on their location.



4

Development Control Plans (DCPs)

DCPs support the implementation of the LEP and are adopted by councils. They can be highly detailed and generally set out how to design a development and manage its operations. The DCP contains provisions and various sections that may apply to specific sites, precincts and/or development types. The format and structure of a DCP generally varies from council to council so it is important that you check for your local area. DCPs can control issues such as:

- Composition of a business;
- Setbacks and building envelopes;
- Signage;
- Parking, layout and access;
- Site coverage and landscaping; and
- Environmental management and sustainability such as flooding and waste management.

Some councils include specific controls related to particular NTE land uses or refer to Late Night Trading and crime risks. It is important that proponents of NTE development review the relevant DCP controls for the area of their business and/or development.

5.0 LAND USES AND PERMISSIBILITY

Is my business a permissible NTE use?

One of the first things you should do if you have an idea related to establishing a NTE use or are seeking to diversify your business into the NTE, is to check if the use is a permissible land use.

The best way to do this is to:

- Refer to the land use matrix (next section) to identify the highest order Standard LEP group, sub-group or land use term which typically matches your proposal; and
- Check the zoning of the property (potential site) and determine if the Standard LEP group, sub-group or land use term is a permissible land use in the zone.



Zoning

Each property is located within a land use zone. To find out what your property is zoned, you can:

- Call your local council and ask the duty planner;
- Look up your address on the NSW Planning Portal: www.planningportal.nsw.gov.au; or
- Obtain a planning certificate – ask your real-estate agent if they have a copy or you can order one directly from council (costs involved).

The land use matrix (next section) identifies zones where the highest order group, sub-group or land use terms, that typically match the NTE uses listed, are mandated as being permissible with consent in all LEPs. However, the Standard LEP group, sub-group and land use terms zones listed within the matrix is not exhaustive. Councils may permit the various land use terms in other zones. Always check with your local council to confirm the permissibility of your proposal.



Dual or Mixed Use

In some cases, there may be potential for your business to diversify or you may have a proposal that involves two or more unrelated land uses. These might operate:

- independently but be on the same site; and
- at the same time (or different times) on the same site.

For example, you may operate (or wish to operate) as a shop during the day but as a wine bar at night time.

In this example, it is important to identify the relevant Standard LEP Land Use Terms and confirm whether both are permissible with consent in the zone. This is to ensure that approval can be sought for all proposed operations at the premises.



Ancillary Development

In some cases, you may seek to diversify from your primary services. This might involve adding different (but similar) land uses, which are related to the primary use. This is referred to as ancillary use.

Ancillary use is a type of land use that is secondary or subsidiary to a development's primary use.

To determine whether your business or future business is either mixed use or ancillary you should consider the following:

- Is the additional use(s) going to be subservient to the principal use of the development, or is it independent?
- How much area will be used by the additional use compared to the current use (if it's small, it's more likely to be ancillary)?
- Is the additional use temporary?
- Does the additional use have similar components to the primary use?

Contact your local council to clarify if your proposed activity is considered ancillary.

If an ancillary use becomes no longer subsidiary to the primary use, a DA may be required for a dual or mixed-use approval.

Since 2009, venues have not been required to have a Place of Public Entertainment (POPE) licence to provide live entertainment. Accordingly, no extra approval is needed — so long as the live music provided forms part of the venue's main business and does not fundamentally change the principal use of the venue.

Entertainment is defined as part of normal activities at pubs, restaurants, clubs and cafés. This means that:

- Venues can have live entertainment as part of their main business without the need for separate approval;
- Entertainment is defined as part of normal activities at pubs, restaurants, clubs and cafes during the week and on weekends. Examples include a jazz trio playing in a small restaurant, a Celtic folk band playing in an Irish pub or a rock band playing in a club;
- For new venues, live entertainment matters will be considered as part of the development application; and
- There are a range of measures to protect neighbourhood amenity administered by the police, councils and the NSW Office of Liquor, Gaming and Racing.

A guide was prepared to support the POPE licence changes in 2009 and still includes useful information on planning for entertainment. This guide and other relevant information to can be found at: www.planning.nsw.gov.au/Policy-and-Legislation/Environment-and-Heritage/Entertainment



Temporary Use

Some local council LEPs include provisions that allow the temporary use of land, allowing development otherwise not permitted, subject to development consent, where it does not compromise future development of the land or have detrimental impacts. The temporary use of land is limited to a specified number of days over a period of one year, which could be consecutive or non-consecutive. Each council specifies the maximum number of days in their LEP.

The type of development anticipated to be considered under these provisions are circuses, special market days or other short term or intermittent community activities but could also include development such as the use of vacant office premises for an art gallery. Some councils have pre-approved uses over council owned land and buildings where they can offer a short-term lease to the community. It is necessary to consult your local council regarding opportunities to benefit from the temporary use provisions in its LEP.



Heritage Conservation Incentives

The State Government and local councils can list a property or groups of properties as a heritage item. Heritage listings appear in schedules within council LEPs.

All local council LEPs include heritage conservation incentives, allowing development otherwise not permitted, provided it meets conservation criteria and is undertaken in accordance with a heritage conservation management plan. The responsibility for deciding whether a development meets such criteria rests with the consent authority, which are generally councils. It is necessary to consult your local council regarding opportunities to benefit from the heritage conservation incentive provisions in its LEP.



LAND USE MATRIX

NTE Land Uses and their Permissibility

NTE Use (Common Language)	Standard LEP GROUP, Sub Group and Land Use Terms	Zones where Permissible with Consent
Pub Restaurant Café Take-away food shop Wine and tapas bar	COMMERCIAL PREMISES	Business Zones (B2, B3, B4 and B8)
	Retail premises • Food and drink premises – Pubs – Restaurants or cafés – Take-away food and drink premises – Small bars	
	• Food and drink premises – Pubs – Restaurants or cafés – Take-away food and drink premises – Small bars	Special Purpose Zone (SP3)
Manufacturer of boutique artisan or craft food or drinks, such as: Micro-brewery Micro-distillery Cheesemaker (including retail sales; restaurant or café; and/or facilities for tastings, tours or workshops)	Light industries	Business Zones (B6 and B7)
	– Artisan food and drink industries	Industrial Zones (IN1, IN2 and IN4)
Theatre Cinema Music hall Concert hall Dance hall	– Entertainment facilities	Business Zones (B2, B3, B4 and B8)
Conference centre Convention centre Exhibition centre Reception centre	– Function centres	Business Zones (B2, B3, B4 and B8)
Art gallery Museum Library Visitor information centre	– Information and Education Facilities	Business Zones (B2, B3, B4 and B8)

NTE Use (Common Language)	Standard LEP GROUP, Sub Group and Land Use Terms	Zones where Permissible with Consent
Kiosk (for sale of convenience goods)	COMMERCIAL PREMISES	Business Zones (B2, B3, B4 and B8)
	Retail premises – Kiosks	
	– Kiosks	Recreation Zones (RE1 and RE2) Waterways Zone (W2)
Market (for sale of goods by independent stall holders)	COMMERCIAL PREMISES	Business Zones (B2, B3, B4 and B8)
	Retail premises – Markets	
Shop (for sale of goods)	COMMERCIAL PREMISES	Business Zones (B2, B3, B4 and B8)
	Retail premises • Shops	

Notes: The NTE Uses (in the left hand column of the table) are based on descriptions of development commonly used by the public rather than their legal definition. The translation from the “common language NTE Uses” to “Standard LEP Terms” is based on typical use. The “common language NTE Uses” may be defined by one or more of the **GROUP TERMS, sub group terms** and land use terms (in the centre column of the table). These Standard LEP Terms are permitted in council LEPs in the corresponding land use zones specified (in the right hand column of the table). The specific terms mandated to be used by the Standard LEP in the respective Zone Land Use Tables of council LEPs to identify that the use is permitted are identified by the darker shade of the colour.

Councils also have the discretion to permit these Standard LEP Terms in other zones and may use the **GROUP TERMS, sub group terms** and land use terms differently in Zone Land Use Tables to identify what development is permitted in their local area. Accordingly, you should contact your local council to confirm whether your proposed NTE use is permitted on any chosen property.

6.0 PLANNING APPROVAL PATHWAYS

Alternative Planning Approval Pathways

There are various planning approval pathways available for NTE proposals, including exempt development, complying development and development requiring consent (i.e. a DA). The nature and intensity of your proposal will determine which approval pathway is relevant.

Exempt Development

Exempt development is any development that is declared to be exempt development because of its minor impact. It does not require consent or approval if it meets the standards within the SEPP (Exempt and Complying Development Codes) or the council's LEP. Some examples of exempt development include:



Change of use of premises



Demolition



Minor internal and external building alterations



Footpaths-outdoor dining



Mobile food and drink outlets



Advertising and signage



Temporary use and structures

It is essential that all works are structurally sound, installed in accordance with specifications and comply with the Building Code of Australia (BCA).

Complying Development

Complying development is a fast-track approval process for straightforward, routine types of development. If the application meets specific criteria, it can be determined by a council or an accredited certifier. The certifier will issue a Complying Development Certificate (CDC).

Some examples of complying development include:

- Constructing tents, marquees or booths for community events;
- Constructing a stage or platform for community events;
- First use or change of use of premises;
- Demolition of a building;
- Internal building alterations (Fit-out);
- Mechanical ventilation systems;
- Shop fronts and awnings;
- Advertising and signage; and
- Alterations and additions to an existing building.

There are specific factors that should be considered when undertaking complying development, such as identifying if the land is not:

- heritage listed;
- reserved for public purpose;
- containing acid sulfate soils;
- significantly contaminated;
- within an environmentally sensitive area; and
- affected by any coastal hazards.

These are just some of the criteria that should be investigated when determining if your proposal can be undertaken as Complying Development.

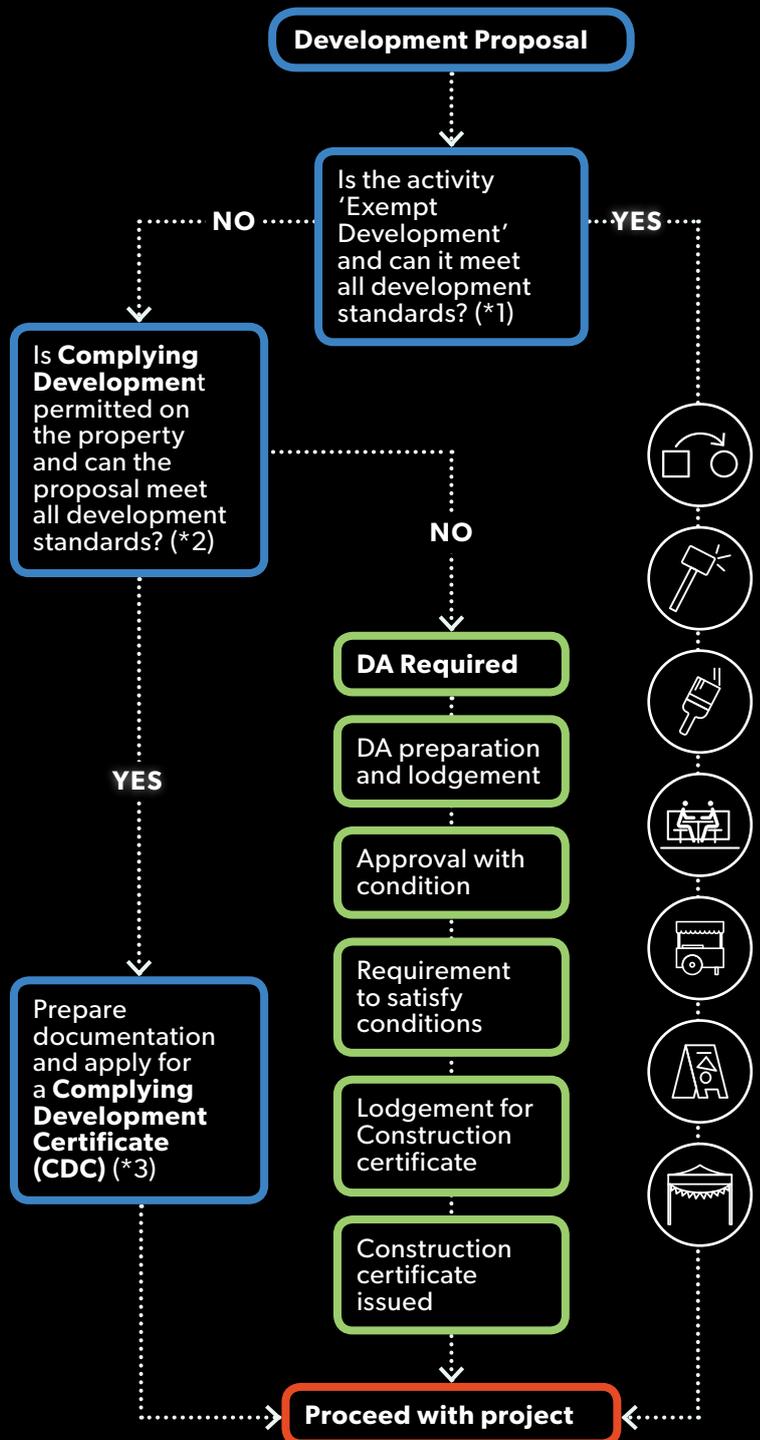
If your proposal is small in scale or nature, it may be worth investigating whether it can be pursued via exempt or complying development. Contact your council, a consulting planner or a private certifier to discuss whether either of these pathways are available to you. This may involve obtaining a planning certificate from your council advising whether the land benefits from the complying codes.

As previously highlighted, some types of changes of use, building works, and signage relevant to NTE proposals can be undertaken as exempt or complying development. The Guideline 'Arts Revitalisation Projects and the Planning System' (January 2010) includes further discussion on and examples of changes of use, building works, and signage relevant to cultural and arts activities. The Guideline can be found at: www.create.nsw.gov.au/news-and-publications/publications/arts_revitalisation_projects_and_the_planning_system

You may also wish to view the NSW Government's planning portal www.planningportal.nsw.gov.au/building_or_renovating/do_i_qualify_fast_track_approval which contains an Exempt and Complying Development eModule. The eModule provides useful information on where no approval is required or where development benefits from a fast track approval.

Development Consent

When a proposal does not meet the land requirements and/or development standards to qualify as exempt or complying development, a DA is required.



Notes

(1) re BCA, heritage, bushfire prone, etc

(2) Critical habitat, environmentally sensitive area, heritage area, heritage item, aircraft noise, housing code

(3) Development Standards set out for different development types in Codes SEPP

7.0 DEVELOPMENT APPLICATIONS

When is a Development Application (DA) required?

A DA is required for most development. The EP&A Act 1979 defines development as:

- Using land or changing the land use;
- Subdividing land;
- Erecting a building;
- Carrying out work to a building (internal or external);
- Pruning or removing trees;
- Demolition; and/or
- Any other matter in an Environmental Planning Instrument (EPI).

What makes up a DA package?

It can vary depending on the council and type of development. It is best to check with council by calling or checking their website for any checklists, forms or DA guides.

DA packages are broadly comprised of:

- Completed DA form;
- Owners consent;
- Estimated cost of works;
- Payment of DA fee (additional payments for referral to other government agencies may be required);
- Statement of Environmental Effects (SEE);
- Set of plans (survey plan and architectural plans); and
- Specialist supporting information (varies depending on proposal).

Stage

1

Pre-lodgement



3 4 weeks prior to lodgement

Stage

2

Lodgement, notification, referrals and allocation



Varies

Note: the average processing time for DA's is subject to each council. It is best to contact your council or discuss during the pre-lodgement phase about the anticipated timing for your DA and the relevant lodgement costs that apply.

Where to go for help

Most councils have a duty planner available who can assist in navigating the DA process, and to help you understand what is required. Council officers are available to assist with your questions and contact is always encouraged to ensure understanding of what is required of your application.

The Department of Finance, Service and Innovation (DFSI) also offer a free 'Easy to do Business' service to help you understand the government licences and permits needed to open your business faster. 'Easy to do Business' currently provides support to cafe and restaurant business owners through their free business concierge service. For more information, please call 13 77 88 or visit: www.service.nsw.gov.au/easy-do-business

Stage

3

Assessment



14-28 days

Stage

4

Determination



21 days

Stage

5

Post Determination



5 6 months

Subject to resourcing capacity, current workloads and issues with the project.

8.0 DA SUBMISSION REQUIREMENTS

Pre-lodgement

Pre-lodgement is the first stage of the process. It involves understanding your site, talking with council and ensuring your Development Application (DA) is ready to be lodged.

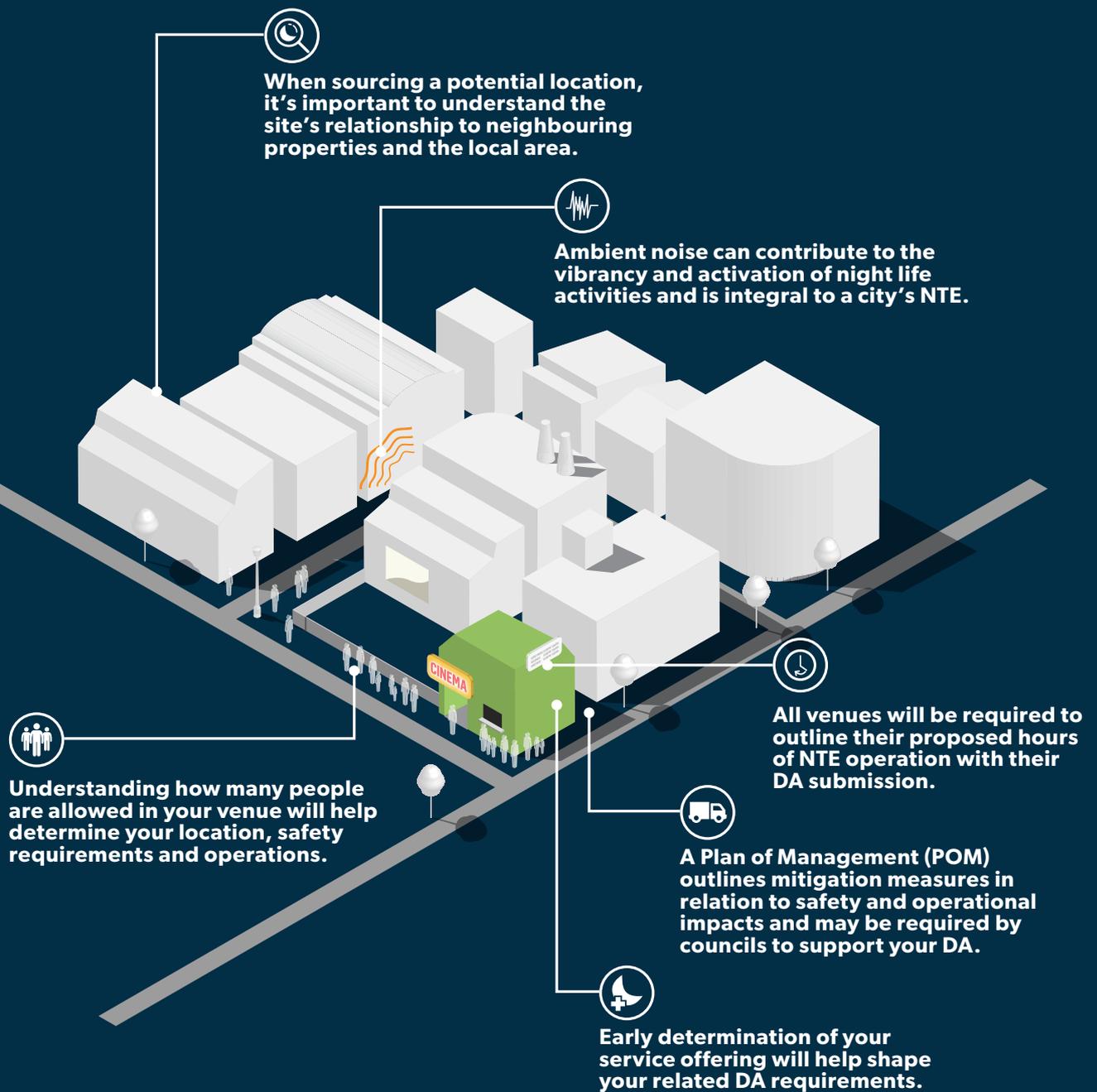
Preparing a 'DA ready' submission to council is the most economic use of your time and money. **The majority of time spent on your DA should be invested in the pre-lodgement stage.**

Get informed– what do you need to know

Being a part of NSW NTE is always an exciting venture. However, understanding what is required for your DA can sometimes be a confusing process.

The following section provides prompts of what you may need to consider for your DA. You should confirm DA submission requirements with your local council. Following these steps will not guarantee approval, but it will ensure you are better equipped to begin preparing your application.

Things to consider before lodging a Development Application



When preparing your DA, it is recommended that you talk with your neighbours and local council to keep them informed of your NTE business intentions. This will help build good relations and reduce unwanted surprises when you lodge your DA.

Services



Having a clear idea of your services at the beginning of the process will help determine what is needed for your business needs and your DA.

Think about your services: food, liquor, live music, cultural performances, alternative business activities or a combination of these.

Site analysis



When sourcing a potential location, it is important to analyse the site to understand its relationship to neighbouring properties and the surrounding area.

A site analysis will inform your understanding of a site's capability to accommodate a NTE activity. A site analysis should consider:

- The type of adjoining land uses (such as residential, retail and commercial);
- Proximity to neighbours and potential amenity impacts (such as noise impacts);
- The character of the existing streetscape and the ability to accommodate new built forms;
- Whether there are surrounding heritage buildings or items and the ability to conserve their identified values;
- Potential community impacts, including local crime rates and trends; and
- Ownership (i.e. public or private) and responsibility for management of outdoor areas associated with the venue.

Council will assess how your venue and proposed NTE operation fit with the existing character of the area as part of your DA. The results of the site analysis will begin to highlight items you may need to consider and address as you prepare your DA submission.

Sound



Sound or ambient noise can contribute to the vibrancy and activation of night life activities and is integral to a city's NTE.

However, loud noise including music or disruptive behaviour such as yelling, can impact on your neighbours and the local area, and undermine the goodwill towards your venue. Council will often require an acoustic report to assess the likely noise impact from your venue as part of a DA and may impose certain noise management procedures for the operation of your venue.

When preparing your DA, you should consider:

- Your local area and the typical activities that occur during your venue's hours of operation. Think about any potential noise impacts on these activities which may arise from your proposal;
- Talking with your neighbours to understand any potential noise concerns generated by your proposal to address them proactively and maintain good relations;
- Checking your local council noise policies to ensure your venue complies. Not all councils will have an endorsed local policy;
- Engaging an acoustic engineer to assess existing and likely noise levels at your venue and to recommend appropriate noise mitigation measures; and
- Preparing noise management procedures.

Be sure to contact your local council to understand the local requirements and context to ensure your venue complies with noise conditions.

Patron capacity



Understanding how many patrons (people) you can serve in your venue will help determine your venue type, safety requirements and operations.

A venue that caters for a large number of patrons will generally be considered high-impact and may be subject to further safety conditions and regulations. To assist with the planning of crowd management procedures, start thinking about the dominant behaviours of an audience at your venue. These procedures can be included in a Plan of Management (POM) with your DA submission.

Local councils assess and regulate patron limits within a venue as part of a DA. Some liquor licences may also regulate patron limits, particularly a small bar licence which enforces a maximum limit of 100 patrons. Consult with both your local council and Department of Liquor and Gaming regarding the relevant liquor licence (if applicable) to ensure your venue adheres to regulations.

Plan of Management



A Plan of Management (POM) is a summary document that outlines how the operations at your venue will be managed. A POM outlines mitigation measures in relation to safety and operational impacts, and may be required by councils to support your DA.

A POM may cover several operational factors including:

- Venue access;
- Security management;
- Operating days and hours;
- Staffing and training;
- Deliveries and loading docks;
- Alcohol management;
- Signage;
- Patron capacity and crowd management; and
- Lighting.

Preparing a POM is recommended to help assist you and the council understand the operation of your venue and to mitigate potential safety concerns.

For more information, talk with your local council to understand the POM requirements for your venue.

Hours of operation



All venues will be required to outline their proposed days and hours of operation in their DA. In relation to hours as a NTE venue, this will likely be somewhere within the 6pm – 6am period.

Council will determine whether the proposed days and hours of operation are suitable as part of the DA assessment. To be prepared, check your local council's Development Control Plan (DCP) to understand if there are any trading restrictions applicable to the type of venue and/or your location.

For more information, speak with your local council to understand the hours of operation requirements for your venue.

Communication



When preparing your DA, it is recommended that you talk with your neighbours and local council to keep them informed of your NTE business intentions. This will help build good relations and reduce unwanted surprises when you lodge your DA.

All councils have a duty planner available who can help you navigate through the DA process and help you understand what is required. Contact your local council at any time during the 'pre lodgement' stage to get informed, resolve any issues and ensure you are DA ready.



DA Checklist

When a DA is required, there are various requirements that typically need to be addressed. As a general guide, the following may be required with your DA:

- Statement of Environmental Effects (outlining the proposal and addressing any environmental impacts);
- Architectural Plans (including a site analysis, survey site plan, floor plans, and building elevations and sections);
- Schedule of Materials;
- Fire Safety Schedule;
- Accessibility Report;
- Acoustic Report;
- Crime Prevention Through Environmental Design (CPTED) Assessment;
- Social Impact Assessment;
- Heritage Impact Assessment;
- Traffic and Parking Assessment;
- Land Contamination Assessment;
- Plan of Management; and
- Waste Management Plan.



It is recommended that you consult with your local council at pre-lodgement stage to understand what is exactly required for your proposal.

9.0 OTHER APPROVALS LEGISLATION

Introduction

Other legislation that may be relevant to establishing a NTE land use is outlined below.

Building Code of Australia (BCA)

The BCA sets the minimum requirements for a building in relation to its structure, fire safety, access and egress, health and amenity, and energy efficiency. It is referenced and given effect in NSW through the Environmental Planning and Assessment Act 1979. All new buildings and building work must comply with the BCA.

The BCA is a performance based code. Compliance with the BCA is achieved by meeting the relevant Performance Requirements.

Relevant Classes of Buildings for NTE

Focused on the core NTE areas of drink, entertainment and food, the following BCA classes of building are of relevance.

Class 6: a shop or other building for the sale of goods by retail or the supply of services direct to the public, including:

- An eating room, cafe, restaurant, milk or soft-drink bar; or
- A dining room, bar area that is not an assembly building, shop or kiosk part of a hotel or motel; or
- A hairdresser's or barber's shop, public laundry, or undertaker's establishment; or
- Market or saleroom, showroom, or service station.

Class 9: a building of a public nature –

- Class 9a - a health-care building, including those parts of the building set aside as a laboratory; or
- Class 9b - an assembly building, including a trade workshop, laboratory or the like in a primary or secondary school, but excluding any other parts of the building that are of another Class; or
- Class 9c - an aged care building.

Disability (Access to Premises – Buildings) Standards 2010

These Standards must be implemented for applications that require approval for building upgrades or the construction of a new building. The purpose of the Standards is to ensure that equitable access is provided to any person with a disability. For more information, refer to the link below: www.humanrights.gov.au/guidelines-application-premises-standards

Food Act 2003

This legislation applies to food and drink premises. It ensures that any food that is sold is safe and suitable for consumption. It also gives legal effect to the Food Standards Code. Business owners should refer to the Act to understand the permits that may be required and offences relating to non-compliance. Of note, a food truck permit for mobile food vendors may be required under the Act.

For more information, refer to the link below: www.foodauthority.nsw.gov.au/ip/legislation

Liquor Act 2007 (Liquor Act)

The Liquor Act is legislation that regulates the sale and supply of alcohol. It also regulates the use of certain types of premises that sell or supply alcohol. The Liquor Act provides regulatory powers to the Independent Liquor and Gaming Authority (ILGA) and Secretary of the Department of Industry.

The Liquor Act provides for the use of liquor licences, and establishes licensing procedures and the regulation of licenced premises.

For more information, refer to the link below: www.liquorandgaming.nsw.gov.au/Pages/liquor/factsheets-checklists-guidelines.aspx

Many traditional NTE uses rely upon having a liquor licence to be able to sustain other business operations such as live entertainment. Given its importance, the process of obtaining a liquor licence is detailed in Section 10 of this Guide.

Protection of the Environment Operations Act 1997 (POEO Act)

The POEO Act is administered by the NSW Environment Protection Authority (EPA). The purpose of the POEO Act is to regulate activities which may have the potential to pollute or harm the environment, or cause a risk to human health. Offences (or types of pollution) that the POEO Act covers include:

- Water pollution;
- Air pollution;
- Noise pollution; and
- Land pollution and waste.

The POEO Act also provides for environment protection licences which authorise specific types of activities that may impact the environment.

Noise pollution from NTE land uses is an environmental impact that is often regulated by regulatory authorities under the POEO Act. Accordingly, it is important that NTE business operators establish processes to proactively manage community noise complaints.

For more information, refer to the EPA Guide to Licensing: www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/guide-to-licensing

Roads Act 1993

The Roads Act regulates the use and activities on land declared a public road. Relevant to the NTE, the Act includes provisions relating to the regulation of food and drink premises that propose outdoor dining on the adjacent footpath. Specifically, Division 1 Footway Restaurants of the Act includes provisions relating to the use of footways for restaurant purposes.

10.0 LIQUOR LICENCES

Liquor licences

A liquor licence is generally required to sell, serve and supply alcohol in NSW. You can apply for a liquor licence through Liquor and Gaming NSW (L&GNSW). It will be assessed and issued by the NSW Independent Liquor and Gaming Authority (ILGA).

Liquor licences require a separate application than your Development Application (DA) and can only be issued when a development consent is in place for a premise. To obtain a liquor licence, you must adhere to the regulations enforced by the ILGA.

What liquor licence do I need?

There are seven liquor licences in NSW which correspond to different business types, trading premises, events and patron capacity. These include:

- Club licences;
- Hotel licences;
- Small bar licences;
- Limited licences;
- On premises licences;
- Packaged licences; and
- Producer/wholesaler licences.

Having a clear understanding of the primary product or services of your venture will help determine the liquor licence required. Visit the L&GNSW online licence selector tool to determine the correct liquor licence for your venue.

Follow the link for access to the licence selector tool:
<https://www.liquorandgaming.nsw.gov.au/Pages/liquor/liquor-licences.aspx>

Before you apply

Before you apply for a liquor licence, you may be required to consult the community and prepare a Community Impact Statement (CIS).

A CIS is a written summary which is assessed by the ILGA to help understand the impact a licence may have on your community. A CIS should describe the potential harm the liquor licence may have on the neighbourhood and summarise the results of consultation with the community.

There are two types of CIS (category A and category B) which are determined by the licence type and expected level of impact. Depending on the type of liquor licence and CIS, you may be required to consult with:

- Council;
- Local police; and
- Neighbours.



If required, a CIS must be completed **30 days prior to lodging a liquor licence application**. All CIS are submitted through L&GNSW and are assessed by the ILGA.

More information about CIS requirements is available at: www.liquorandgaming.nsw.gov.au

Standard trading hours

Most liquor licenses are governed by standard trading periods of:

- 5am–midnight, Monday to Saturday; and
- 10am–10pm on Sunday.

Standard trading hours for most liquor licences are affected by a daily 6-hour closure period, generally occurring from 4am – 10am. The daily 6-hour closure period is a continuous block of time during which the licence must not sell or supply liquor.

Trading hours are different across each liquor licence type. Applicants can apply for extended trading hour authorisation through L&GNSW. The ILGA will assess this application and, if successful, the approved hours will be specified on the licence.

Visit the L&GNSW webpage 'Liquor trading hours':
<https://www.liquorandgaming.nsw.gov.au/Pages/liquor/liquor-licences/liquor-trading-hours.aspx> or talk with L&GNSW to learn more.

Applying for a liquor licence

All liquor licence applications are submitted through L&GNSW and are assessed and issued by the ILGA. Liquor licence applications can be delivered by post, email or in-person to L&GNSW. Some licence applications can be submitted online.

Several documents may be required to support your liquor licence application, including:

-  The correct application form and fee (accessible on L&G NSW website).
-  CIS (if required).
-  A National Police Certificate.
-  Responsible Service of Alcohol Qualifications.
-  DA consents and approvals from council.
-  Floor plan with an outline in red showing the area you want to licence.

Visit the L&GNSW webpage 'Apply for a liquor licence':
<https://www.liquorandgaming.nsw.gov.au/Pages/liquor/liquor-licences/apply-for-a-licence.aspx> to determine the process and documents required for the liquor licence application relevant to your proposal.

1. Determine the liquor licence type relevant to your proposal by consulting L&GNSW.
2. Prepare a CIS (if required) 30 days prior lodging a liquor licence application.
3. Check L&GNSW website to find the supporting documentation required for your liquor licence application.
4. Lodge your liquor licence application with L&GNSW for assessment by ILGA.
5. Liquor licence application exhibited on the Liquor Application Noticeboard for 30 days and public comments reviewed.

ILGA will generally determine your application within four months of the 30-day public submission end date.

Interim restaurant authorisations

If you are seeking to serve liquor in a restaurant or café under standard trading hours and conditions, you may be eligible to apply for an interim restaurant authorisation.

An interim restaurant authorisation allows applicants seeking an on-premises liquor licence to serve liquor as soon as the liquor licence application has been lodged online.

To qualify, applicants must meet certain requirements, including:

- Seeking standard trading hours, with liquor only being sold with meals;
- Having DA approval to use the premise as a café or restaurant;
- Ensuring council and the community were informed of the intention to serve alcohol as part of the DA public exhibition process;
- Ensuring no authorisations (e.g. extended trading hours) have been applied for;
- Ensuring liquor serving and sales staff have obtained RSA certification; and
- Ensuring mandatory liquor law signs are on display.

When an interim restaurant authorisation is issued, L&GNSW will continue to assess the liquor licence application.

For more information and to assess your eligibility, please visit:
www.liquorandgaming.nsw.gov.au

11.0 APPENDIX A: LOCAL COUNCIL POLICIES AND PRACTICES

Local council policies and practices



Wollongong City Council

Wollongong City Council has eight pre-approved sites within the city centre for applicants to host events. This streamlined process enables applicants to be a step ahead in the planning process and reduces some of the time to obtain approvals. These sites can be used for evening markets, movie screenings, music festivals, art shows and more. For more information, visit: www.wollongong.nsw.gov.au/city/events/toolkit

Wollongong City Council has also implemented a range of initiatives to support its NTE development including:

- **Planning certificates:** Planning certificates issued for 'residential evening economy zones' clearly identify the area's capacity for evening trading to alert recipients of the certificates to potential noise, traffic and longer trading hours impacts which are part of living near a commercial centre.
- **Small Business Planning Team:** The team is available to meet (free of charge) at any stage of your small business planning to discuss your business proposal and the related approval process. The team has also developed a range of factsheets to assist applicants through the approval process.
- **Noise complaints:** A coordinated and decentralised approach to managing noise complaints has been implemented through the development of the Community Safety Reference Group.

*Note: All council information is correct at time of publication



Newcastle City Council

Newcastle City Council is finalising "Newcastle After Dark 2018-2022", a strategy for guiding the development of the city's NTE. Council has identified precinct areas throughout the city and formulated an action plan to deliver and guide the city's NTE. The strategy outlines what people do at night, the times they go out and what they would like to see. All these consultation outcomes can assist venue owners in the development of future NTE businesses in the city centre.

Newcastle City Council also provides a free, in-person advisory service to help the public with basic development and planning control enquiries.

For more information and to stay up to date with Newcastle City Council's NTE action plans, please visit: www.newcastle.nsw.gov.au

City of Sydney

City of Sydney has adopted OPEN Sydney, the council's strategy and action plan for the long-term development of Sydney's NTE to 2030. The strategy was developed after extensive consultation with communities. It is a useful strategy to provide you with ideas as to what can be achieved in the city and the future NTE directions for the area. To view the strategy and learn more about NTE in the City of Sydney please visit: www.cityofsydney.nsw.gov.au

City of Sydney also encourages a varied mix of venues within the city to build a diverse, electric and unique night time culture.

To assist with this, the City of Sydney has developed online application guides and factsheets for different premises to provide greater ease during the planning process. For more information, please visit: www.cityofsydney.nsw.gov.au/development/application-guide

12.0 APPENDIX B: GLOSSARY

BCA

Building Code of Australia

CDC

Complying Development Certificate

CIS

Community Impact Statement

CMP

Construction Management Plan

CPTED

Crime Prevention Through Environmental Design

DA

Development Application

DCP

Development Control Plan

DP&E

Department of Planning and Environment

EPA

NSW Environment Protection Authority

EP&A Act

Environmental Planning and Assessment Act 1979

EPI

Environmental Planning Instruments

FSR

Floor Space Ratio

GFA

Gross Floor Area

HFS

Heritage Floor Space

HIS

Heritage Impact Statement

ILGA

Independent Liquor and Gaming Authority

LEP

Local Environment Plan

L&GNSW

Liquor and Gaming NSW

NTE

Night Time Economy

OEH

Office of Environment and Heritage

POEO Act

Protection of the Environment Operations Act 1997

POM

Plan of Management

RMS

Roads and Maritime Services

RSA

Responsible Service of Alcohol

SEE

Statement of Environmental Effects

SIA

Social Impact Assessment

SILEP

Standard Instrument LEP

TfNSW

Transport for NSW

Commercial premises

means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

Retail premises

means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Note. Retail premises are a type of commercial premises

Kiosk

means premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like.

Market

means an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.

Neighbourhood shop

means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises.

Note. See clause 5.4 for controls relating to the retail floor area of neighbourhood shops. Neighbourhood shops are a type of shop.

Neighbourhood supermarket

means premises the principal purpose of which is the sale of groceries and foodstuffs to provide for the needs of people who live or work in the local area.

Note. See clause 5.4 for controls relating to the gross floor area of neighbourhood supermarkets. Neighbourhood supermarkets are a type of shop.

Shop

means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises.

Food and drink premises

means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Note: Food and drink premises are a type of retail premises

Pub

means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

Note: Pubs are a type of food and drink premises

Restaurant or cafe

means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

Small bar

means a small bar within the meaning of the Liquor Act 2007.

Note: Small bars are a type of food and drink premises

Take away food and drink premises

means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

Entertainment facility

means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club

Function centre

means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

Information and education facility

means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

Light industry

means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- (a) high technology industry,
- (b) home industry,
- (c) artisan food and drink industry.

Artisan food and drink industry

means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following:

- (a) a retail area for the sale of the products,
- (b) a restaurant or cafe,
- (c) facilities for holding tastings, tours or workshops.

Note: See clause 5.4 for controls in industrial or rural zones relating to the retail floor area of an artisan food and drink industry.

Note: all definitions are correct at the time of publication.

13.0 APPENDIX C: ACKNOWLEDGEMENTS

Acknowledgement of participating organisations, agencies and councils

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- Department of Industry: Liquor and Gaming NSW
- City of Sydney Council
- City of Parramatta Council
- Live Music Office
- Newcastle City Council
- Sydney Fringe Festival
- Tamworth Regional Council
- Urbis - www.urbis.com.au
- Wollongong City Council



For more information about the Night Time Economy,
visit planning.nsw.gov.au