

**Submission
No 483**

SYDNEY'S NIGHT TIME ECONOMY

Organisation: Darlinghurst Business Partnership

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Partially
Confidential

TERMS OF REFERENCE:

- (a) maintain and enhance community safety;
 - (b) maintain and enhance individual and community health outcomes;
 - (c) ensure existing regulatory arrangements in relation to individuals, businesses and other stakeholders, including Sydney's lockout laws, remain appropriately balanced;
 - (d) enhance Sydney's night time economy;
- and any other directly relevant matters.
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Table of Contents:

Wordcount

- **Page 1: Executive Summary** **441**
 - **Page 2: About the DBP** **347**
 - **Page 4: Lockout Laws Economic Impact Analysis** **275**
 - **Page 4: PERSONAL ASSESSMENT FROM THE DBP CHAIR**
 - **Page 4: Introduction & Survey Results** **434**
 - **Page 5: Other Factors Affecting Business** **310**
 - **Page 6: The Long Tail of Behaviour Change** **281**
 - **Page 7: Immediate Core Issues Affecting the NTE** **752**
 - **Page 8: Recommendations** **227**
 - **Page 9: The Setting of Policy** **313**
 - **Page 10: Appendix 1: Watering Down of Police Powers** **845**
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Executive Summary

My name is Stephan Gyory (pronounced Durie). I am a founding member and current president of the Darlinghurst Business Partnership [DBP] Chamber of Commerce.

I would like to thank the Committee for inviting the DBP to make a submission in relation to the effects that the 'lockout laws' have had on the Darlinghurst business environment, our members and other stakeholders.

These laws have been, directly and indirectly, the greatest source of negative impact to our business community in the past five years, through loss of trade, customers, employment, and business closures. This has been felt the most in our nighttime economy [NTE], but also had serious impacts on the daytime economy.

In 2015, eighteen months after the implementation of these laws, and on behalf of our members, we valued this impact as *\$34 million in economic value removed from the area*. Perhaps even more tragic is the erosion of the world-renowned creative culture and vibrant nightlife for which the area is famous.

Darlinghurst is a geographically, culturally, and demographically distinct precinct from both the CBD and Kings Cross; it should never have been included in the original 'lock out laws' scope, or at the very least, been recognised as the distinct area it is.

The DBP has always explicitly acknowledged the economic and cultural value of Darlinghurst's NTE to Sydney and NSW. We have worked with policy to advance this approach by advocating for "Agent of Change" principles to be legislated into 'Culture, Entertainment & Innovation' LEPs.

It is unfortunate that, in recent years, the State Government has so actively been working against our efforts instigating a very localised recession featuring high numbers of job losses, business closures, vacancies, and depressed commercial confidence across the 24-hour economy.

We continue to look to the State Government to change its current hard-line regulatory approach, and instead support [our 24-hour strategy](#) framework aligning Darlinghurst's strengths and identity to 'OPEN Sydney', the City of Sydney's vision for the long-term development of Sydney's NTE, and their broader Economic Development Strategy.

This approach recognises and enhances the retail experience by understanding that consumer choices about where they'll spend their time are influenced by a range of factors including: ease of travel to a destination, finding their way around, the right amenities and services, plenty of seats, the level of congestion on roads and footpaths, walkable precincts, convenience, cleanliness, a desirable mix of shops, an ever increasing range of night time offerings, flexible trading hours, entertainment, active and interesting shop fronts, and a sense of excitement.

Darlinghurst's unique cultural and creative contributions pre-lockouts, to Sydney's local and international reputation, were inimitable and we seek support in restoring them.

About the DBP

DBP is a not-for-profit group of ABN holders who work to foster Darlinghurst's *creative, individualist community*, with a core focus on art, culture, communication and advocacy.

The DBP currently has over 100 active members (over 10% of businesses in Darlinghurst), an additional regular news subscription following of 1,235, and has been active in the area since 2005.

Darlinghurst is an inner-city/eastern suburb of Sydney, located immediately east of the Sydney CBD and Hyde Park, within the local government area of the City of Sydney.

The urban renewal beginning in the 1980's saw the once slum, red-light character of the area evolve into a thriving and unique retail precinct infused with famous bars, clubs, and diners. This created a bustling day and night commercial environment underpinned by a core residential community.

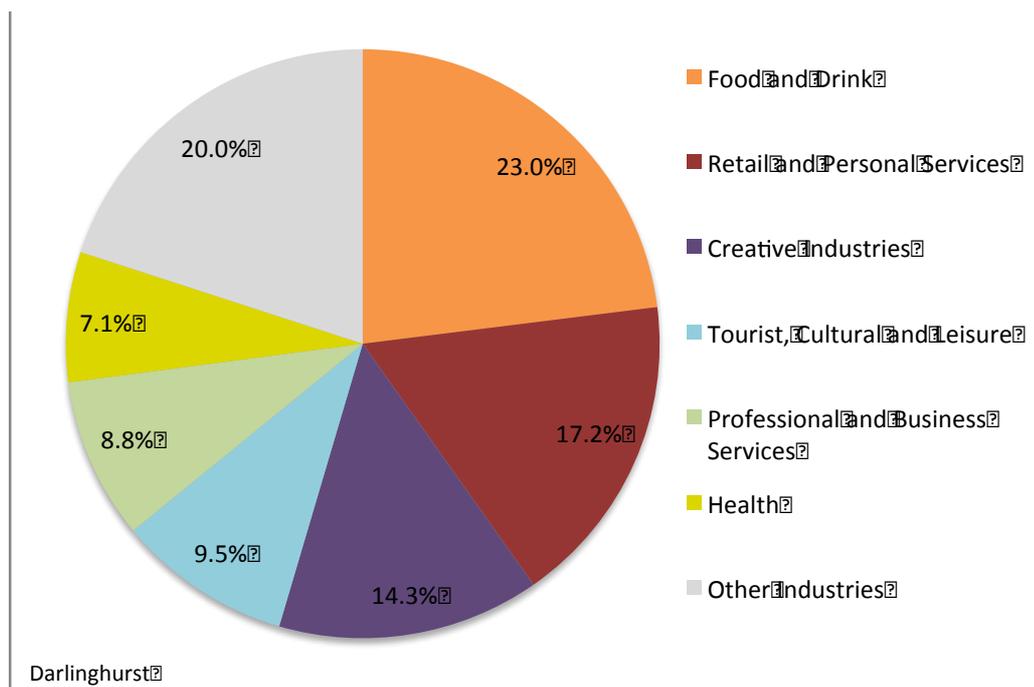
The evolving socio-economic climate, new entrants to the area, and development pressures have required a coordinated effort by community leaders to retain the proud character, and rich history, of the area.

By encouraging continual growth of the inherent independent thinking and creative culture, the DBP performs a key role in delivering leadership and support to the area's business owners.

Our key strategic aims are to:

- Integrate a 24-hour strategy framework aligning Darlinghurst's strengths and identity to OPEN Sydney, the City's vision for the long-term development of Sydney's night-time economy, and broader Economic Development Strategy
- Recognise and enhance the retail experience
 - As the Sydney Council Retail Action Plan notes: consumer choices about where they'll spend their time is influenced by a range of factors including ease of travel to a destination, finding their way around, the right amenities and services, plenty of seats, the level of congestion on roads and footpaths, walkable precincts, convenience, cleanliness, a desirable mix of shops, suitable trading hours, entertainment, active and interesting shop fronts, and a sense of excitement.
- Recognise and enhance the emerging creative and technology industries
 - A cultural and creative city is one of the ten strategic directions of Sustainable Sydney 2030, with Darlinghurst well placed to integrate and enhance emerging and growing businesses in these commercial sectors

Darlinghurst - Total Business Mix



Source: City of Sydney Floorplate Survey 2017

Lockout Laws Economic Impact Analysis

Pre 'lockout laws', Food & Drink, Tourist, Cultural & Leisure segment businesses comprised approximately 70% of our NTE business mix. These 201 businesses generated, on average, \$10,000 per week in revenue or \$104.5m revenue per annum.

This is an average net profit margin of 20% generating \$20.9m Next Profit After Tax [NPAT] in the area. Valuing small business using the 3x local multiplier effect, this is a \$62.7m contribution of economic value to Darlinghurst.

Post-lockout the nighttime foot-traffic is down >60%, trading hours have been reduced by over 40%, and turnover is down by 33%. These 201 businesses are now generating on average \$7,700 per week in revenue or \$80.5m revenue per annum. Average net profit margin has been reduced to 14% due to the high fixed costs in small business with rents and wages.

NPAT from the Darlinghurst nighttime economy is estimated to have contracted to \$11.3m within eighteen months of the implementation of the lockouts. At a 3x multiple this is a direct \$33.8m loss to the area per annum.

We have not seen any significant pick up in these metrics since 2015 and have witnessed the closure of a number of businesses operating in the NTE as the consequences of these marginal returns.

Disappointingly, landlords did not respond in kind with rent reductions, preferring to stay empty rather than take a decrease in yields given the uplift in capital gains from commercial property value increases they had seen over the preceding years.

This is a roadblock to properly tenanting the area, one that Kate Carnell, Australia's Small Business Ombudsman, recently identified the one of the most significant factors holding back High Street retail.

PERSONAL ASSESSMENT FROM THE DBP CHAIR

Introduction & Survey Results

I have been a resident of Potts Point for 20 years, owned a business in Darlinghurst for 15 years, and worked in the area since 1996.

My business (a record store) trades in the daytime, from 11am – 6pm, but after the introduction of the 2014 Sydney CBD Entertainment Precinct Plan of Management [SCEPPOM], colloquially and misleadingly known as the 'lockout laws', we noticed an increasingly negative change in the area both day and night. There seemed to be less people, and all our members were reporting that business was down, not just the bars.

In response, [we conducted a survey in mid 2015 on the economic effects of the 'lockout laws'](#). Wanting to ensure that the survey did not contain leading questions, we liaised multiple times with the NSW Treasury on the methodology until they were satisfied with it.

We had over 200 respondents and an independent analysis of the data by statisticians at the NSW Business Chamber revealed that nighttime turnover was reduced by 33% and daytime by 25%. A late 2018 follow-up survey showed the same, continued, effect.

Concurrently, a City of Sydney survey showed an 84% drop in foot traffic in Kings Cross. This resulted in the immediate closure of many venues there.

But according to the 2016 SCEPPOM evaluation published by Treasury: *between February 2014 and June 2015, alcohol-related injury declined by between 31.7 and 52.4%.*

This would seem to indicate a net increase in violence and that **(a) community safety and (b) individual and community health outcomes, have not been maintained or enhanced, but rather diminished by the introduction of the laws.**

The 2016 Treasury Evaluation Report indicated only an average 20% drop in foot traffic, but this was measured in the CBD, Haymarket, Cockle Bay Wharf and around Central Station. Darlinghurst and Kings Cross do not seem to have been measured at all.

The same report indicates a large displacement of violent incidents to surrounding areas, but not enough to offset the decline in the SCEPPOM area. However, this report does also not take into account that many people no longer come to Sydney, preferring to stay local and go out in places like Manly, Wollongong etc.

This is just one of many behaviour changes that have not been factored into the thinking around the 'lockout laws'. The lack of nuance in the SCEPPOM has been a continuing source of frustration for us.

That Darlinghurst, distinct *geographically, culturally, and demographically*, was lumped together with the CBD and not weighed and measured separately, is sloppy policy at best.

We hope that this fact is explicitly recognised in all future policy.

Other Factors Affecting Business

Darlinghurst businesses were not impacted as severely or quickly as Kings Cross because Darlinghurst had a more diversified business mix; one that was not just predicated on weekend revellers. In addition, Darlinghurst has a radically different culture and clientele.

However, a 25% – 33% drop in turnover, while not immediately debilitating, is ultimately unsustainable and after four years, with conditions remaining depressed in the area, more and more businesses are closing or moving.

But the lockouts are not the only downward pressure on the Darlinghurst economy. There are other factors

- As the Small Business Ombudsman recently pointed out, landlords are incentivised to keep their properties vacant at full rent because this is how banks value them.

- Commercial real estate agents are paid, upfront, around 12% of the yearly rent when they find new a tenant. They have no financial interest in the longevity of that tenant.
- Ecommerce is also a growing factor impacting High Streets. This leads to behaviour change. If people are not shopping in an area, then it's more than likely they will not be eating or drinking in it either.
- These points are exacerbated by the fact that natural manager of High Streets has no legal responsibility to do so. In 2018 the City of Sydney collected \$197 million dollars in business rates but spent only a tiny fraction of this investing in economic development. I believe this is because there is no stipulation in the City of Sydney ACT or the Local Government ACT on how business rates should be spent by councils. By comparison, each Westfield shopping centre spends around \$3 million a year managing and marketing itself.

In an improving business environment, these issues mostly disappear because business can sustain the costs. The lockouts are a continued downward pressure; a huge driver of behaviour change that the management and tenancy issues compound and exacerbate.

The Long Tail of Behaviour Change

By way of comparison, in 2005 Oxford Street underwent a poorly executed street 'upgrade'. This suffered long delays and was badly 'managed' (due primarily to South Sydney Council having just been merged with the City of Sydney).

The street was in disarray for eighteen months, with little to no access to some businesses for long periods of time. This had a deleterious effect on the local economy and instigated significant behaviour change in visitors.

It took ten years of small, incremental positive steps, such as the small bar legislation, the City's OPEN Sydney strategy and the natural business cycle for the area to begin to recover. These steps occurred in the absence of the downward pressure of the lockouts.

The SCEPPOM has instigated a similar behaviour change that will not reverse while these laws are in effect. This affects not just the NTE (to the tune of \$16 Billion dollars according to Deloitte), but also the daytime to an additional, unknown, cost.

Incredibly, the 'economic 'cost/benefit' evaluation of the 2016 Treasury evaluation mentioned above only compared the implementation cost of SCEPPOM to the costs avoided due to lower injury rates; absolutely nothing about the wider economic impacts. To put this in perspective, we are talking in the arena of a \$30 million benefit: half an order of magnitude smaller than the recently identified, and conservatively estimated, economic costs of \$16 billion.

This would seem to indicate that ***(c) the existing regulatory arrangements in relation to individuals, businesses and other stakeholders, including Sydney's lockout laws, are radically unbalanced; and (d) Sydney's night time economy has been severely negatively affected, not at all enhanced.***

The immediate NTE problems, as I see them, are manifold;

Immediate Core Issues Affecting the NTE

1. We do not manage night life, we police behaviour
2. We apply different laws to different areas
3. We have not defined Entertainment Precincts [EP]s
4. We presume that safety and nightlife are mutually exclusive
5. We apply punitive, lowest-common-denominator regulation and legislation, to deter a small minority of people at the expense of the vast majority of non-violent, law-abiding tax payers
6. We treat nightlife in a completely different manner to other kinds of culture

This is an anti-competitive and highly ineffectual way to manage part of the economy that could be worth \$44 billion dollars a year if Sydney performed at the same level that other international cities do (again, Deloitte).

I believe the answer lies in the fact that *Sydney has never had a conversation about what its nightlife should look like, how it should be managed, who should be in charge, where and what even constitutes an EP or, in fact, whether or not we even believe EPs are the best way to manage nightlife.*

I have been in attendance in meetings with police when, in the same breath, I have heard EPs decried as a cluster magnet for trouble but also easier and cheaper to police.

To the point regarding the lack of conversation around “Entertainment Precincts”, the only place I have been able to find the term even mentioned in legislation is the SCEPPOM. But this is not even a ‘*management plan*’, it’s a punitive, reactive, ‘*containment policy*’ enacted in reaction to the deaths of Thomas Kelly and Daniel Christie.

Their deaths were not a result of spiralling violence. This was hyperbole that glossed over the true nature of the problem. Assaults had been dropping since at least 2009 and in 2013 Destination NSW declared Sydney the safest and friendliest city in the world. Both the then Premier, Barry O’Farrell, and Tourism Minister, George Souris, are on Hansard talking this fact up.

These deaths were the result of 10,000 people being allowed to congregate in a single area with virtually no supervision. The responsibility for this environment was placed primarily on venues, who were ejecting or refusing entry to people who then found themselves on the street where they were joined by other revellers, attracted to the melee, having pre-loaded at home.

This was a perverse outcome of the 2012 King’s Cross Plan of Management, where no one seems to have considered what would happen when venues started denying entry to, or expelling, much larger numbers of people.

It was, as the City of Sydney put it in terms of sheer numbers, as if there was a festival happening on the street every Friday and Saturday night. However, festivals, sports events and other large gatherings are managed, not just policed.

Even with regards to policing, I understand that Thomas Kelly's killer, Kieran Loveridge, was cautioned and moved on twice by police before the fatal assault.

When digging into the reasons behind this I was able to attain a statement from an ex-police officer (Appendix 1 below), who states that the police, through unintended consequences of the Aboriginal Deaths in Custody Royal Commission in the late 1980s, are massively disincentivised to take violent, drunk or belligerent offenders off the street. Instead they issue them a Court Attendance Notice and leave them to run amok.

Not only are we not managing our NTE, we are not even really policing it.

We have placed a massive burden on one sector of the business community – licenced venues – and expect them to solve the society-wide problem of a small minority of – what can only be termed – idiots who are violent while either drunk or sober.

Where these idiots come from is a broader societal concern but it is worth noting that if we treated driving like drinking, we would ban teenagers from even touching a car until the age of 18, then send them out driving in large peer groups, unsupervised, with no preparation at all.

While I state that we have never had the conversation about whether or not we want EPs, I believe that the topography and layout of Sydney, coupled with the density of residential housing, preclude any other option. This would have been an excellent discussion to have in the 1980s when we were deregulating alcohol and planning to repopulate the city, but that window has closed.

As such, while I do not have, or claim to have all the answers, I believe that the following recommendations can point to *finding solutions that foster safety, culture and boost the economy*.

Recommendations

- Explicitly acknowledge the economic and cultural value of Sydney's NTE
- Clearly define and identify Sydney's Entertainment Precincts
- Move from a policing model, to a management model
- Have standardised legislation/regulation across all precincts
- Develop a proactive, whole-of government strategy
 - One that rewards good behaviour while punishing bad
 - One that targets the small minority of violent offenders without punishing the vast majority of responsible tax-payers wishing to enjoy a safe night out
- Review police powers (see Appendix 1)
- Change the way that properties are valued to incentive landlords to fill vacant premises
- Change the way that commercial real estate agents are remunerated by removing or reducing the up-front fees they can charge.
 - An increasing monthly percentage of the rent could be one way to incentive them to find businesses that are both suitable and sustainable in the area.

- Recognise High Streets as vital cultural infrastructure and ensure that a minimum percentage of business rates are invested back into economic development, specifically, the management of High Street areas.
- Recognise that the day and nighttime economies are intrinsically linked and craft policy that explicitly acknowledges and works to this.
- Allow families to socialise 16-18 year-olds into sensible drinking habits by lowering the drinking age, for low-alcohol drinks such as beer, wine and cider, to 16 in the immediate company of a parent or guardian, in the family home.

The Setting of Policy

In addition, I do not believe that we will achieve an open, thriving NTE in Sydney while we are making decisions based purely on what will deliver Police, Health and Liquor & Gaming better outcomes.

These are services and yet we seem to be looking to them set policy for the entire community, when it is the community that should be determining what level of safety versus risk we will tolerate and how this is managed.

Clearly everyone would like there to be no assaults, no violence, no deaths, but it seems, with relation to the NTE, that authorities are happy to achieve this at any cost when it is, ultimately, impossible to reduce all risk.

We could eliminate all driver fatalities by taking cars off the roads, but we realise the benefit of transport to society so we find a balance, punishing offenders while leaving the vast majority to drive where and when they please.

In the same way we must recognise not only the impressive economic benefit that a diversified, safe NTE can provide, but also its vital positive social and cultural purpose.

I stress that we must preface any legislation or regulation by *explicitly acknowledging the economic and cultural value of the Night Time Economy to Sydney*. This is imperative because it will flow through the bureaucracy, informing all the decisions and actions that follow.

I labour this point this because if you read the rationale behind the late-night trading areas in the Local Environment Plan (the only other place than the SCEPPOM that I have found the NTE mentioned in legislation), they are predicated solely on '*reducing the impact of business on residential amenity*' nothing about late night trading other than containing it. These words are then literally interpreted by all government employees and colour all their actions.

This cannot be how we manage our city, it's reactive, punitive and restrictive. For Sydney to be a truly successful international city it must cater to its residents, business and visitors in a well-thought out, wholistic and proactive way. It must move away from a fear-based, us vs them, lowest-common-denominator method of managing the NTE.

Appendix 1: POLICE POWERS

An account of watering down of police powers by an ex-police officer

The 1987 Royal Commission into Aboriginal Deaths in Custody recommended that if less people were taken into custody there would be less deaths in custody.

It also found that intoxicated persons presented a higher of risk of death in custody.

After the Royal Commission into Police Corruption the Powers of Arrest were changed away from the Crimes Act which provided that Police required reasonable grounds to arrest to the Law Enforcement Powers and Responsibilities Act (LEPRA) which directed Police to only arrest if it was the last resort and they must use the means of least resistance to the offender.

LEPRA directed Police to where possible use

- a Caution,
- a Move on Direction,
- An On the Spot Fine,
- A Future Court attendance Notice (CAN)

Specifically in relation to the Intoxicated Persons Act the changes were as follows,

Previously a Constable had to satisfy him/herself that a person was intoxicated in a public place and going to cause harm to someone or themselves. If that was the case the person would be taken directly to a Police Station and detained in a Cell overnight.

This was changed because it was not nice to treat people like this.

The use of the Intoxicated Persons Act was changed to the following

- If a person was detained they had to be taken to a Proclaimed Place not a Police Station like a Homeless hostel. (problem is that they are always full)
- If the Proclaimed Place is full the Police must contact a responsible adult to release the intoxicated person into their custody. (problem Mum and Dad don't want to come in to collect him or they have been drinking and can't drive. The other issue is the responsible adult can't control the intoxicated person.
- If the above fails the Police have to drive the Intoxicated Person home taking them out of their area for a long time which impacts on the service levels delivered by the Local Area Command.

- In addition if all else fails they can use the Police cell but a prisoner for Police ratio has been established that requires more Police to be taken off Patrol duties and deployed to supervise prisoners in the Cells. This also impacts on the Local Area Command to maintain service levels because if you have too many prisoners all you patrol cars are off the road and can't respond.
- In addition to this Station Sergeants who are in charge of accepting custody of Intoxicated Persons are very resistant to accepting responsibility for anyone who is intoxicated due to the risk of a death in custody incident on their watch.

The end result is that street Police use the Move On Directions or On the Spot Fines when it is clearly not the correct course of action to protect the public safety.

[REDACTED]

The other event that has fed into the problem Police have controlling the street was the Richmond Report into the Mental Health industry which paved the way for most of our Public Mental Hospitals to be closed and the Mentally Ill being left on the streets.

The Police use to use schedule 8 of the Mental Health Act to detain persons who appeared to be mentally ill and take them to a mental hospital to be assessed for 24 hours. This has also stopped and the Police have no way of dealing with the mentally ill as well.

This significantly changed the culture of the NSW Police from arrest and detention to move on and disperse.

In relation to the Summary Offences Act it was replaced with the Offences in Public Places Act which basically covered the same offences however the Judiciary have watered down the effectiveness of this legislation by setting a precedent that Police Officers are not reasonable people and therefore can not be offended by bad language so they can not be the witness who was offended.

In relation to the existing Sobering Up Rooms which are the old Central Police Cells. Police are only allowed to take people there during certain hours of certain days and from designated streets only. If an intoxicated person is showing signs of aggressive behaviour Police don't take them there because they have to be assessed by a nurse and they can't put the nurse at risk. So instead the really aggressive ones are given the Move On Direction.

As a result of these poor policies we have more high-risk persons on our streets and their behaviour is reinforced as acceptable because there has been NO CONSEQUENCE for their appalling behaviour.

I have personally witnessed people swearing at Police and threatening them and they are told to Move On.