

The drinks are on us: the capture of the planning industry and how we know about it

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Preamble

I acknowledge that we are meeting on the unceded lands of the Gadigal people, to whom I pay my respects.

I teach social impact assessment at Macquarie University, however the following paper contains my views and does not represent any opinion of the university.

I wish to clarify that the lock out laws which prevent new customers entering a premises after 1.30 am are not the same as trading hour restrictions – these venues can continue to sell alcohol till 3.0 am. The lock out laws are a patron management strategy not a trading hour strategy.

I should also acknowledge that we live in interesting times in which it can be proposed that hurricanes are nuked or where a tiny majority can lead to three years of chaos (in the UK anyway). In this vein I acknowledge that it was naïve of me to imagine that 792 submissions to the current review of Sydney's Night Time Economy would mean that no decisions would be taken, or even suggested, about the lock out laws until the Joint Select Committee had reported.

The lock out laws are not the primary focus of this talk, however, I hope you will look kindly on my hasty efforts to catch up.

The drinks are on us

I begin with the NSW Department of Planning's night time economy guide¹

¹ NSW Government 2018, Guide for Establishing and Managing Night Time Economy Uses, December: <https://www.planning.nsw.gov.au/-/media/Files/DPE/Manuals-and-guides/guide-for-establishing-and-managing-night-time-economy-uses-2019-01-24.pdf>

This is quite a good guide if what you want is a simple explanation of how the statutory planning system works. But not a good guide if you want to understand the role of planning in supporting public health.

Let's begin by noting that public health is a fundamental plank of good public administration and was always a stated reason, if not an actual reason, why planning is espoused as good policy. Either way public health is integral to land use planning – for example it's one of the grounds for separation of land uses.

But this document

- manages to include the idea of separation of uses without the accompaniment of a public health lens. The entertainment precinct – now signalled as an 'after-dark precinct' or a 'residential evening economy zone' - is presented as a natural good – and we are supposed somehow to know intuitively why this is so.

In fact, this document does not deal with the night time economy as a public health issue at all. It does not mention public health. And while it mentions harm twice, each time it is as a responsibility of another agency, the Environmental Protection Authority or the Liquor and Gaming Department.

This document

- Discusses amenity and noise as relevant, and let it be said, traditional land use issues but not public health and safety and the ways they are affected by the dependence of the night time economy on alcohol – in fact this document suggests (p5) that alcohol is involved in only three of an identified 9 night time activities, when it is clear that most of these 9 activities (food, entertainment, gambling) also include alcohol consumption.

Similarly, this document

- aims to achieve a vibrant city but does not define vibrant though the then Minister does say, by way of a foreword that

Vibrant places after dark are fundamental to the success of our social and cultural sectors, along with the economic prosperity of our state.

This is just an assertion which is not explored, explained or justified anywhere in the document. Is the Minister really saying that our social and cultural sectors (it's not actually clear what he means by our social sectors) can't get along without the retail of alcohol? And since it's unclear, we could also ask if he is saying that these sectors are alcohol dependent. And is he avoiding mentioning there is also a problem with alcohol dependence?

For the record, vibrant means full of life, energetic and spirited. Small amounts of alcohol are relaxing and encourage sociability. But recent research points out that a significant proportion of people drink at harmful levels and some people drink in order to become drunk². These people are not lively. They might contribute to the night time economy by continuing to purchase drinks, but they are not contributing to vibrancy and it would be fallacious to suggest that they are.

This document

- Does not mention that there is no safe level of alcohol consumption³ – which is not to say that everyone should stop drinking altogether, now, right away, but is to say that in many alcohol consuming nations, there are alarming rates of alcohol-related morbidities and mortality.⁴

This document

- Does not say that we know that ceasing sale of alcohol earlier in the night is effective in reducing alcohol related harm⁵ reducing admission rates to, and alcohol-related deaths in, emergency rooms in the early hours of the morning,^{6, 7} The most recent data also shows that the lock out laws (the patron management laws) resulted in a 53% decline in assaults in Kings Cross. Even in the alcohol saturated Sydney CBD there were 329 fewer assaults⁸ while assault rates increased in several ‘displacement’ suburbs which don’t have these controls.⁹ It

² Foundation for Alcohol Research and Education, 2019, Annual alcohol poll confirms ‘decade of deception’ as Australia’s ‘get drunk’ club climbs to six million, May 8: <http://fare.org.au/2019-annual-alcohol-poll-confirms-decade-of-deception-as-australias-get-drunk-club-climbs-to-six-million/>

³ <https://www.medscape.com/viewarticle/824237>

⁴ Roberts E, R Morse, S Epstein, M Hotopf, D Leon, C Drummond 2019, The prevalence of wholly attributable alcohol conditions in the United Kingdom hospital system: a systematic review, meta-analysis and meta-regression, *Addiction*, 3 July: <https://onlinelibrary.wiley.com/doi/10.1111/add.14642>

⁵ Nepal S, Kypri K, Pursey K, et al. (2018). Effectiveness of lockouts in reducing alcohol-related harm: Systematic review. *Drug and Alcohol Review* 37(4): 527-536.

⁶ Australian Medical Association, Submission to the Review of Sydney’s Night Time Economy, Submission 239, 26 June 2019: [https://www.parliament.nsw.gov.au/ladocs/submissions/62875/Submission%20239%20-%20Australian%20Medical%20Association%20\(NSW\)%20Ltd.pdf](https://www.parliament.nsw.gov.au/ladocs/submissions/62875/Submission%20239%20-%20Australian%20Medical%20Association%20(NSW)%20Ltd.pdf)

⁷ Paige Cockburn, Sydney’s lock out laws scrapped across CBD but Kings Cross still under curfew, ABC News, 8 Sept 2019: <https://www.abc.net.au/news/2019-09-08/sydney-lockout-laws-rolled-back/11489806?pfmredir=sm>

⁸ Due in part to the granting of exemptions for live music venues https://www.liquorandgaming.nsw.gov.au/_data/assets/pdf_file/0017/202913/FS3042-Half-hour-exemption-for-live-entertainment-venues-fact-sheet.pdf ‘By 30 June 2018, Liquor & Gaming NSW had granted 30 approvals for extended trading for live entertainment music venues in the Sydney CBD and Kings Cross precincts. NSW Department of Industry Annual Report 2017-18: <https://www.opengov.nsw.gov.au/publications/17634> And since the number of venues in Kings Cross has declined, we must assume that most of these exemptions were granted for the Sydney CBD.

⁹ NSW Bureau of Crime Statistics and Research, The effect of Lockout laws on assault: latest data, Media release, 9 August 2019: https://www.bocsar.nsw.gov.au/Pages/bocsar_news/Effect-of-lockout-law-on-assault.aspx

is unclear why this basic information does not elicit a planning response. Why are noise and amenity worthy of controls but assault rates are not?

And this document

- Does not mention the role of the emergency room in the night time economy – a significant omission since the Emergency Room is, and always has been, part of the NTE.

In addition to avoiding the topic of alcohol-related assaults, this document

- Does not discuss the role of planning in licenced premises density nor the known relationship between outlet density and alcohol related harm.¹⁰

Density in this context refers to spatial distribution, that is to say clusters. Spatial distribution of land uses is the bread and butter of land use planning.

As well, this document

- Does not discuss the role planning plays in the price of alcohol – particularly important because of the role of price in alcohol related harm.¹¹ It does not mention this despite the fact that this relationship is well researched, well documented and there is a direct role for planning.

So, just to think this through – there is no planning policy to address the pricing consequences of increasing numbers of budget and low price packaged liquor outlets in an area. Their presence can facilitate pre-fuelling for the NTE. And just to pre-empt the next objection, competition policy does not over-ride public health or the public interest, as the Harper review recently pointed out.¹²

This document

- Does not mention the fact that people who work night shifts have a shorter life expectancy.¹³ Life expectancy is one of the traditional indicators of social wellbeing, and if life expectancy is falling among identifiable population groups, then – because we are all in this together – our social wellbeing is undermined.

¹⁰ Livingston M. Alcohol outlet density and harm: Comparing the impacts on violence and chronic harms. *Drug and Alcohol Review*. 2011; 30(5):515-523; Hobday M, Chikritzhs T, Liang W, Meuleners L. The effect of alcohol outlets, sales and trading hours on alcohol-related injuries presenting at emergency departments in Perth, Australia, from 2002 to 2010. *Addiction*. 2015; 110(12):1901-1909.

Morrison C, Smith K, Gruenewald P, et al. Relating off-premises alcohol outlet density to intentional and unintentional injuries. *Addiction*. 2016; 111(1):56-64.

¹¹ The Foundation for Alcohol Research and Education (2017). The Price is Right: Setting a Minimum Unit Price on Alcohol in the Northern Territory. FARE: Canberra, <http://fare.org.au/wp-content/uploads/The-Price-is-Right-NT-FINAL.pdf>

¹² Ian Harper, Peter Anderson, Sue McCluskey and Michael O'Bryan QC, 2015 Competition Policy Review at p 150: http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report_online.pdf

¹³ Sarah Marsh, 2019, [Government to issue 'sleep hygiene' guidance](#), Leaked draft says less than seven hours' sleep can damage mental and physical health, Guardian 13 July

And this document

- Provides guidance for businesses across NSW but seems to focus on the socialising activities of a particular demographic. Even in the City of Sydney the age group 20-34 is not the majority of residents.¹⁴ In addition to which there are questions of minority rights and preferences and, again, public health.

Finally, this document

- is one in a series of similar planning documents put out over the years – not always by the state department of planning. These planning documents take the benefits of night time retail of alcohol as a given without also taking up and applying the riders which should accompany this – namely the research findings relating to alcohol related crime, and the public health harms arising from density and pricing. Just as with this most recent guide, mostly these issues are not even mentioned.

Issue	Mentioned in the Department's Night time economy guide
Definition of vibrant	No
Safe level of alcohol consumption	No
Relationship between trading after midnight/late trading and rates of reported assaults	No
Impact on emergency rooms	No
Public health	No
Harm	Yes as responsibility of ILGA and EPA
Density of alcohol outlets	No
Role of planning in price of alcohol	No
Night work and life expectancy	No
Impacts on non-night time economy participants	Noise & amenity
Impacts on family members	No

To see how shocking this is, consider how you would respond to a planning guide on how to increase liveliness on the streets of Sydney by removing traffic lights and relying on drivers to be responsible.

This one sided document was initially published in 2015 but re-issued shortly before the NSW government announced a review of the Sydney night time economy. In light of the various omissions I have outlined, its re-emergence seems ominous.

The night time economy keeps Emergency Departments busy on Friday and Saturday nights and has resulted in the City placing temporary urinals in the

¹⁴ Seetu Bajracharya, Dorina Pojani and Neil Sipe, [Youth in, families out: 6 charts on the inner cities of Brisbane, Sydney and Melbourne](#), The Conversation, 3 July 2019

streets and hosing them down in the early hours. Hardly indicative of an inviting nightlife.

Alcohol contributes to 90% of police work on the weekends.¹⁵ This costs public money, unlike alcohol industry profits which are private money. The costs to the public sector are substantial,¹⁶ raising the further question why this aspect of the NTE is omitted in this document.

The seriousness of these consequences is in marked contrast to the justifications used by the industry to support applications for new licensed premises or extended trading hours. Typically these justifications include:

- a lock out trading hours are like ‘East Berlin under Stasi control’¹⁷ (simply a gross exaggeration)
- b risky drinking is a matter for individual responsibility (the alcohol industry’s version of “there is no such thing as society”)
- c later trading allows for staggered departure times of patrons (perhaps the key word here is ‘staggered’)
- d you should allow us to do this (trade later / expand patron capacity) because other premises are, (an excuse perfected by 5 year olds), and
- e don’t worry, we have a plan of management – leave it to us (it is unenforceable but we won’t mention that)

and so on.¹⁸

In the context of these justifications, a little reminder here about what this discussion is about.

I am not talking here about whether people, that is to say individuals, should be able to drink, or how much they should drink, or whether individuals should stay up late, or go to bed early, or go to night clubs, or have fun. I am in fact not

¹⁵ Australian National Council on Drugs, 2013, Alcohol Action Issues Paper, <http://www.ancd.org.au/images/PDF/Generalreports/AlcoholActionPlan.pdf> p 4 ; Ben Eltham, Alcohol and Culture: a volatile combination, *Artshub* May 30 2013: <http://au.artshub.com/au/news-article/news/performing-arts/alcohol-and-culture-a-volatile-combination-195472>

¹⁶ NSW Auditor General’s Report to Parliament, Cost of alcohol abuse to the NSW Government, Key Findings https://www.audit.nsw.gov.au/ArticleDocuments/281/07_Cost_of_alcohol_abuse_NSW_Government_Key_Findings.pdf.aspx?Embed=Y

¹⁷ Paige Cockburn, Sydney’s lock out laws scrapped across CBD but Kings Cross still under curfew, ABC News, 8 Sept 2019: <https://www.abc.net.au/news/2019-09-08/sydney-lockout-laws-rolled-back/11489806?pfmredir=sm>

¹⁸ For other examples see IOGT Big alcohol myths: <https://iogt.org/the-issues/advocacy/exposing-big-alcohol/big-alcohol-myths/>; Kypros Kypri, Jim McCambridge, Narelle Robertson, Florentine Martino, Mike Daube Hon, Peter Adams, Peter Miller, 2019, ‘If someone donates \$1000, they support you. If they donate \$100 000, they have bought you’. Mixed methods study of tobacco, alcohol and gambling industry donations to Australian political parties, *Drug and Alcohol Review*, 38,3,226-233 DOI: 10.1111/dar.12878; Ingeborg Rossow and Jim McCambridge, 2019, The handling of evidence in national and local policy making: a case study of alcohol industry actor strategies regarding data on on-premise trading hours and violence in Norway, *BMC Public Health*, 19:44, <https://doi.org/10.1186/s12889-018-6348-y>

talking about individuals at all – it's important to keep this in mind. I am not a GP. I am not prescribing individual behaviour.

But there is a tendency when Lock out Laws are discussed, for people to go immediately to questions of individual choice, individual freedoms and individuals' rights to intoxicate themselves if they want to.

And this can quickly lead to accusations about 'the nanny state'. And here I remind you that even opponents of the nanny state believe in traffic lights. The nanny state accusation-of-last-resort is always selective.

However, individuals do not exist in a public health vacuum, and today, I am raising the role of spatial land use rules and policies in minimising adverse public health impacts of licensed premises.

So to continue

The discourse of the Department of Planning's document also makes an appearance in the Premier's 29th May media release announcing the lockout law review, in which (using an apt metaphor) she says:

We have always sought to strike a balance between limiting alcohol-related violence and maintaining a vibrant night time economy,..¹⁹

So some hitting is OK, and this is interesting because some hitting of children is not OK, and from my point of view anyway there is no OK level of men hitting women – or even women hitting men - for any reason drunk or not.

But the Premier seems to be saying that we should tolerate some men hitting each other in the interest of having this thing called vibrancy which is undefined. But nonetheless vibrancy is important so we should put up with a bit of hitting every weekend. So the official media release is at best unclear, which leaves each of us with a responsibility to interpret this statement so as to understand the message from the Premier.

For example, perhaps what is meant is that in the interest of alcohol industry profits, it's OK to have a certain amount of hitting – so long as it's men hitting men, which avoids the gender issue, except of course that men who hit men might be the ones who also hit women – which is of course not OK.

So shall we re-present this statement as follows

We have always sought to strike a balance between limiting alcohol-related violence between men – but only when they don't do it too

¹⁹ <https://www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/cross-party-parliamentary-committee-to-review-sydneys-night-time-economy/>

often, no one dies, and not when it affects women and children - and maintaining a lively and well behaved night time economy the substantial costs of which we are willing to pay for with public money.²⁰

I wonder, is that what she meant? The very fact that what is meant is not said invites people to make their own interpretation – and this one, in the absence of an official version with any clarity - is mine.

All things considered, it is reasonable to assume the Premier has been properly briefed about these issues, which makes her statement about hitting all the more perplexing. So to deal with this, I wonder how the Premier would feel about meeting with people who have been hit late at night outside vibrant venues to explain the Government's policy to them, and the importance of commerce and its profits.

And perhaps she could also explain how some venues have a room in which people who have been hit get a clean-up, free taxi ride home and vouchers for free drinks next visit. It has been put to me that this practice exists and operates as an inducement not to report an assault to the police.

And to catch up – on Sunday, the Premier was reported as saying 'there was a need to reinvigorate the night-time economy for the sake of jobs'.²¹

As she can't possibly mean more bar jobs in an area which already has 167 hotels and 1,103 licensed premises many of which already trade past midnight²² is she referring to police and street cleaners and ambulance officers? Or if the Premier is talking about live music, is it time to remember that live music lost many of its venues to gaming rooms, not to patron management strategies, as well as online streaming and the costs of acoustic treatments and insurance.

Again, I am concerned at the lack of clarity.

A good guide from the public sector should deal, unequivocally and unstintingly, with the public interest. So allowing a lack of clarity to stand, matters. It has

²⁰ For an account of public costs see NSW Auditor General's Report to Parliament, 2013, Cost of alcohol abuse to the NSW Government, Key Findings: <https://www.audit.nsw.gov.au/our-work/reports/cost-of-alcohol-abuse-to-the-nsw-government>
https://www.audit.nsw.gov.au/ArticleDocuments/281/07_Cost_of_alcohol_abuse_NSW_Government_Key_Findings.pdf.aspx?Embed=Y

²¹ Paige Cockburn, Sydney's lock out laws scrapped across CBD but Kings Cross still under curfew, ABC News, 8 Sept 2019: <https://www.abc.net.au/news/2019-09-08/sydney-lockout-laws-rolled-back/11489806?pfmredir=sm>

²² Liquor & Gaming NSW Response to Questions on Notice from Joint Select Committee: <https://www.parliament.nsw.gov.au/ladocs/other/12326/Liquor%20and%20Gaming%20NSW.PDF>

flow-on consequences, one of which is a lack of practice among planners in dealing effectively with proposals relating to licensed premises.

One arena in which this can be observed is liquor licence matters before the NSW Land and Environment Court.

In the twenty years to February 2014, when the lock out laws were introduced in Sydney, the LEC published 8,915 decisions.

Of these 94 were allocated the catchword 'hotel' of which 32 dealt with hotels in the City of Sydney – including South Sydney Council which was incorporated into the City of Sydney on 6 February 2004.

Of the 32 decisions with the catchword 'hotel', 29 (or 91%) were concerned at least in part with a licensing matter (as distinct from a construction, design or heritage matter) in a public house (as distinct from an accommodation provider) in the City of Sydney – the Council within whose boundaries the Sydney lock out laws were introduced.

The history of these 29 LEC decisions²³ reveals that together they effectively facilitated an intensification of use of late trading²⁴ licenced premises in the City by upholding appeals from the alcohol industry and imposing conditions that favoured this outcome.

For example, commissioners several times took the view that the very presence of a cluster of late trading licensed premises was itself grounds for considering that more intensive use was acceptable. Here is one example.

35 The Burdekin Hotel is located in an entertainment precinct and clearly residents who purchase or rent in close proximity of the area should expect that the very nature of the precinct means that the character of the area is vibrant and diverse. The density of residential development and mix of uses, including late night entertainment, contributes to this vibrancy and vitality.²⁵

This interpretation links density with vitality but overlooks the considerable research linking density to alcohol related harm.²⁶

²³ The selection method used – as described – does not mean that there were no other LEC decisions relating to social issues in hotels in the City of Sydney in this 20 year period, but which for some reason were not given the catchword 'hotel'

²⁴ Late or extended trading premises are those which stay open after standard trading hours – in practice this means after midnight or open before 7.0 a.m..

²⁵ [Hotville Pty Ltd v City of Sydney Council \[2008\] NSWLEC 1282](#) Burdekin Hotel, 2-4 Oxford St, Surry Hills

²⁶ Sarah Foster, Paula Hooper, Matthew Knuiman, Leanne Lester, Georgina Trapp, 2018, Associations between proposed local government liquor store size classifications and alcohol consumption in young adults, *Health & Place* 52, July, 170-173: <https://www.sciencedirect.com/science/article/abs/pii/S135382921731122X>; Donnelly, N, Poynton, S, Weatherburn, D, Bamford, E, & Nottage, J 2006. Liquor outlet concentrations and

The Court often dealt with late trading hours in terms of noise, anti-social behaviour and amenity, but mostly treated these as separate impacts rather than in terms of their cumulative effects on public health.²⁷

Commissioners tended to rely on people other than public health professionals for matters with a clear public health impact. For example on two occasions when an alcohol-related assault rate was of concern, the commissioner allowed the fact that all assaults could not be definitely attributed to the applicant venue in order to justify disregarding the assault rate in the area, and as a consequence this public health impact. For example

41 ... while there were some instances of disturbances and some poor management practices, a large percentage of those matters relied on by Leading Senior Constable Norris could not be directly associated with the management and practices of the hotel even though the person in question may have visited the hotel some time prior to the incident been reported.²⁸

Similarly when the concern was outdoor smoking areas and smoke drift – a clear public health issue – several decisions relied on the opinion of people not expert in this public health matter, or the fact that a public health expert had not been called.

36. ... given that smoking is not an unlawful activity in non- enclosed spaces within licenced premises it is not for me to deny this applicant the opportunity of providing such spaces. I could however refuse this application if I were persuaded that secondary cigarette smoke emitted from the premises was to be sufficient to adversely affect the health of neighbours or the amenity nearby residential properties. There was no expert evidence to this effect...²⁹

alcohol-related neighbourhood problems. *Alcohol Studies Bulletin* no.8, Sydney: Lawlink
WHO Regional Office for Europe, Evidence for the effectiveness and cost effectiveness of interventions to reduce alcohol-related harm, 2009 www.euro.who.int/_data/assets/pdf_file/0020/43319/E92823.pdf pp 65-67; Jennie L Connor, Kypros Kypri, Melanie L Bell and Kimberly Cousins, 2011, Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study, *J Epidemiol Community Health* 65:10 841-846 doi:10.1136/jech.2009.104935

Livingston Michael, 2008, Alcohol outlet density and assault: a spatial analysis, *Addiction*, 103, 619-628; Huckle Taisia, John Huakau, Paul Sweetsur, Otto Huisman and Sally Casswell, 2008, Density of alcohol outlets and teenage drinking: living in an alcogenic environment is associated with higher consumption in a metropolitan setting, *Addiction*, 103, 1614-1621; Livingston Michael, 2011, A longitudinal analysis of alcohol outlet density and domestic violence, *Addiction*, 106 919-925; Morrison, C., Ponicki, W. R. and Smith, K. (2015), Social disadvantage and exposure to lower priced alcohol in off-premise outlets. *Drug and Alcohol Review*, 34: 375-378. doi: 10.1111/dar.12256

²⁷ For example, [O'Hara v Sydney City Council \[2006\] NSWLEC 222](#) Nags Head Hotel, 162 St John's Road, Glebe

²⁸ [Wonarla Pty Ltd v Council of the City of Sydney \[2009\] NSWLEC 1350](#) Imperial Hotel 35-37 Erskinville Rd, Erskinville

²⁹ [O'Hara v Sydney CC](#), 2007 LEC 782, 162-164 St John's Road, Glebe

And on the one occasion when a medical assessment was available in a submission, the commissioner dealt with the issue as an individual circumstance rather than the broader public health issue it demonstrated. In regard to a hotel the commissioner wrote

35 ... The father of young Hugo Andreas explained how his son's health condition makes him vulnerable to cigarette smoke. His doctor wrote a letter explaining that such smoke poses a very real problem and a significant risk and that all means need to be employed to prevent such exposure. The Andreas home is located close by...

The Commissioner continued

Whilst I can understand the possibility that cigarette smoke could, in certain climatic circumstances, reach the Andreas home, importantly there is no evidentiary foundation that this would occur in a relevantly significant manner.³⁰

A number of decisions also fail to take account of obvious conflicts of interest by relying on licensees

- to police their own compliance with acoustic standards, or
- to determine when the public interest was being damaged, or
- to be solely responsible for deciding whether the plan of management is adequate or has been adequately complied with.

Indeed the Court sometimes appeared to make a plan of management a condition of consent as if the mere requirement to have one amounts to the same thing as the plan being effective.

54 ...I agree that limitations should be imposed on this [rear outdoor courtyard] area as it is the principle source of noise for the adjoining residential properties however it is best achieved through the Plan of Management rather than as a condition of this consent.³¹

While plans of management are used to deal with a variety of management issues, (i.e. not just questions of public health) there is a doubt in my mind, that these conflicts of interest would be overlooked if the issues concerned financial transactions rather than public health.

³⁰ [Solotel Pty Ltd v City of Sydney Council \[2007\] NSWLEC 230](#) re. The Clock Hotel, 470-474 Crown Street, Surry Hills

³¹ [Icon Hospitality Group Pty Ltd v Council of the City of Sydney \[2010\] NSWLEC 1186](#) Dolphin Hotel, 412-416 Crown St, Surry Hills

Similarly several decision makers seem unaware that the 'rules of evidence' are not the same as the rules sociological method. For example, an absence of complaints does not mean that there is nothing to complain about, nor that many social factors (such as inducements or fear of retaliation) might account for a low number of complaints, particularly complaints to the applicant. As an example

16 There were no police objections to the extension of hours, even though there had been incidents of two holdups, the discharge of a firearm inside the premises and two break and enters during the trial period.³²

Or that people who live in the city have chosen to put up with anti-social behaviour and associated noise.

32 The hotel is one such use that directly relates to lifestyle, relaxation and social interaction within walking distance of hotel patrons' houses. The amenity of the area therefore should not be expected to be the same as quiet suburbia.³³

The idea that people live in the City because they have chosen (or at the least accepted) a noisy life style is interesting but untested. The idea appears more than once. It is not based on any reliable social research.

Consider the outcry that accompanies proposals to intensify the frequency of plane departures and arrivals. Does anyone suggest that these can be increased because people living beneath the flight path are already experiencing that noise and they chose or are used to it? By contrast, intensification of alcohol outlets seems to occupy a planning public health blind spot.

Among these 29 decisions there were 22 (or 76%) which resulted in intensification of use, by increasing trading hours, or patron capacity or both. And as one commissioner explained

13 As for suggestions that the extended trading hours would not be in the public interest I have not been persuaded that there is any public interest question to be answered here.³⁴

³² Copatress Pty Limited v South Sydney City Council [2004] NSWLEC 65 Buckland Hotel, cnr Buckland and Mitchell St Alexandria, para 16

³³ Ibid para 32

³⁴ Ibid para 13

It is often said that going to court is a lottery – though apparently not for the liquor industry. But there is more to it than simple variations in commissioner points of view.

On this issue and in this 20 year timeframe, it seems that the Court was behaving like the recently re-published Guideline – handing the management of these aspects of public health to industry actors with an obvious and strong financial conflict of interest³⁵.

Of course the City of Sydney was part architect of this outcome having published in 2007, a Late Night Trading Premises Development Control Plan³⁶ with similar omissions to the recent government guideline. As a result the City frequently failed to achieve in court even the protections it did want.

Perhaps you wonder if things have improved since 2014.

Well, the City of Sydney has recently issued a revised section of its DCP, titled Late Trading Management,³⁷ in which controls on late trading premises are strengthened. And in July, in submission to the current review of the night time economy, the City proposed using benchmarks to limit the number and types of licensed premises and their trading hours in an area. These areas would be mapped. The City's most recent amendments to its DCP include a map.³⁸

The City is also encouraging unlicensed premises to stay open later – in an effort to diversify the late night economy. At the same time, the City is calling for a single integrated planning and liquor licence application process. The City proposes that current lock out or patron management restrictions become a fall back penalty system for bad behaviour.

It is encouraging to see an attempt to use the planning system to address alcohol-related issues of public health and I would like to be able to say that what is proposed will be effective as a public health strategy.

But unfortunately there are significant gaps and problems with what the City has proposed.

First, the City prefaces these proposals by saying it 'supports measures that reduce alcohol-related harms' but these measures 'should not undermine the

³⁵ See also Wright A, 2019, Local Alcohol Policy Implementation in Scotland: Understanding the Role of Accountability within Licensing, *International J of Experimental Research and Public Health*, 16 doi:10.3390/ijerph16111880

³⁶ City of Sydney, Late night trading DCP 2007 [2016] NSWLEC 1177

³⁷ City of Sydney, DCP 2012, General Provisions, Section 3.15:

https://www.cityofsydney.nsw.gov.au/data/assets/pdf_file/0005/314429/Section3_DCP2012_170619.pdf

³⁸ https://www.cityofsydney.nsw.gov.au/data/assets/pdf_file/0020/315551/Final-Late-Night-Trading-Areas-summary-map.pdf

night-time economy'.³⁹ This presents the public health equation the City seems reluctant to face. Notice that the statement is not the other way around. For example, they could have said

The City supports the night-time economy providing it operates in ways that reduce alcohol-related harm

Second, the City proposes a limit on licensed premises on an area basis – this is its density control mechanism - but

- a It doesn't say what the premises limit should be or how it should be measured,
and
- b It doesn't say how to achieve a reduction in current numbers other than when an outlet in what is described as a saturation zone, goes out of business.

The lock out/patron management laws reduced outlet density in Kings Cross⁴⁰ with other uses taking their place. But this density management mechanism is not supported by the City.

Third, the City's revised Late Trading DCP proposes that well managed high impact premises in some areas be able to trade 24/7 but it fails to point out that this is not the same as being licensed to sell alcohol for these hours. The omission is misleading given that all premises on the high impact list are licensed. Taken with the proposal for a one-stop approval process, 24/7 opening hours is likely to lead to continuing pressure to extend licencing hours.

History shows that trading hour limits come under repeated industry and political challenge.⁴¹ Liquor licensing has always been vulnerable to undue influence and regulatory capture.⁴²

Fourth, the City's submission mentions the word safety thirty times, but the only substantive proposal to improve safety in alcohol-affected areas is limiting

³⁹ City of Sydney, Submission to the Inquiry into Sydney's night-time economy, Submission 780, 9 July 2109, p3: <https://www.parliament.nsw.gov.au/ladocs/submissions/63563/Submission%20780%20-%20City%20of%20Sydney.pdf>

⁴⁰ Liquor & Gaming NSW Response to Questions on Notice from Joint Select Committee: <https://www.parliament.nsw.gov.au/ladocs/other/12326/Liquor%20and%20Gaming%20NSW.PDF> 47 licenses cancelled or surrendered since 2014 (from 125 to 84 = 33% reduction) While some cancellations may have been of dormant licences, it seems clear that there was also a lock out law effect. In City of Sydney the number of licences reduced from 1292 to 1103 (15% reduction) in the period 2014-2019.

⁴¹ Ziller, Alison and Tony Brown, 2019, Rational Social Impact Assessment of Alcohol Outlets: Slip Sliding Away, *J Law and Medicine*, 26, 786-799

⁴² Brown Tony, 2019, Legislative Capture: A Critical Consideration in the Commercial Determinants of Public Health, *J Law and Medicine*, 26, 764-785; Ziller, Alison and Tony Brown, 2019, Rational Social Impact Assessment of Alcohol Outlets: Slip Sliding Away, *J Law and Medicine*, 26, 786-799

trading hours. The City's submission however, recommends relaxing trading hours and using patron lock out controls as a disciplinary penalty.

But in liquor licencing there are too many conflicts of interest that can easily get in the way of the administration of penalties based on reported events and complaints. Further such a system relies on a succession of detriments before regulation kicks in – never a good public health strategy.

Fifth, the Independent Liquor and Gaming Authority and the Liquor and Gaming Department between them currently (or at least recently) approve some 90% of all liquor licence applications received.⁴³ An integrated planning and liquor licensing process in the current system would effectively, in my opinion, be likely to rubber stamp all but the most egregious applications. Most councils are inexperienced in dealing with alcohol-related issues and even the City of Sydney has just told us that measures to reduce alcohol-related harm should not be allowed to get in the way of the night time economy. Integrating the processes would not amount to a credible reform.

As well, a two stage process at least ensures there are two agencies needing to be captured rather than one.

Sixth, it is unclear to what extent unlicensed businesses in the City will respond to encouragement to stay open later. The City's night time economy strategy is still heavily weighted in favour of licensed premises. The more that this is the case, and the more alcohol affected behaviour there is on the street, the greater the discouragement for unlicensed premises to be open later in the evening.⁴⁴

The City has not faced the reality that the public domain's attractiveness and quality is diminished by vomit and lurching aggression.

And, finally is it not interesting that in a city with relatively good weather most of the year, most of the night time activities the City is concerned with are indoors often with security, for example, the City's proposals do not mention night time strolls in the park or along the waterfront. Many women wish that these were safe places to be in the dark, but the reality is that most of us think they are not.

⁴³ Ziller, Alison and Tony Brown, 2019, Rational Social Impact Assessment of Alcohol Outlets: Slip Sliding Away, *J Law and Medicine*, 26, 786-799

⁴⁴ Randerson, S., Casswell, S., Rychert, M. (2019). *Diminished inclusivity in public space: How alcohol reduces people's use and enjoyment of public places literature review*. Wellington: Health Promotion Agency <https://apo.org.au/sites/default/files/resource-files/2019/08/apo-nid255771-1382811.pdf>

So to conclude

- The Guide for Establishing and Managing Night Time Economy Uses is so inadequate it belongs in the bin.
- The City has an alcohol problem that it is unwilling to acknowledge. There is of course no way that the alcohol industry will acknowledge this for the City, or for the government.
- Permissions in planning tend to be embedded in bricks and mortar. They often create clusters of like uses, each with its own permission. The effects are therefore difficult to reverse which is why these individual planning decisions in effect led to the lock out laws – that is to a response that over-rode individual permissions in the interest of public health.
- The City of Sydney has tried to provide a planning policy for the evening and night time economy, but it is fundamentally flawed by its lack of a public health lens – as is the Department’s planning document which I have just consigned to the bin.
- Further the Department is responsible for planning policies for the state⁴⁵ and its policies should be fit for purpose. They need to address the situation in all CBDs, not just Sydney’s, and public health of all the state’s residents.
- The most effective and immediate planning policy to reduce non-domestic alcohol-related assaults would be to introduce uniform trading hour limits for licensed premises across the state. Trading hours are a planning issue as well as a liquor licencing issue.

As a planning policy this would moderate both densities and non-domestic assaults – two public health benefits from one strategy. It would introduce a public health planning policy known to have some benefits. It would also level the playing field for the people worried about competition and prevent displacement effects⁴⁶.

- The Department of Planning should also address other spatial precursors to alcohol-related harm and late night assault.

For example, it should reconsider

⁴⁵ AAP, Man critical following alleged Cobar assault, SMH 2 Sept 2019

<https://au.news.yahoo.com/man-punched-another-man-cobar-074055720--spt.html>

⁴⁶ Neil Donnelly and Suzanne Poynton [The effect of lockout and last drinks laws on non-domestic assaults in Sydney: An update to March 2019](#), Bureau of Crime Statistics and Research, August 2019

- The assumption that late night businesses should be clustered – this is an assumption that encourages over-tourism and venue hopping,

and it should reconsider

- Permitting land to be allocated for high density residential without adequate – or sometimes any – open space with the result that these residents’ only night time recreational options are likely to be alcohol related.
- I suggest the Department of Planning rejects the idea that responsible service of alcohol is effective in preventing either intoxication or hitting. Or that alcohol industry self-regulation is effective in preventing harms, or that 24 hour provision of public transport will also reduce alcohol-related harm. Research doesn’t support any of these ideas.^{47 48 49}
- More generally, I suggest the Department avoid excuses for not making policy changes in the interests of public health. I suggest they resist industry capture.
- Finally I suggest the Henry Halloran Trust hold another session on this subject in the Festival of Urbanism in five years’ time to see what has happened.

⁴⁷ Brick, J and Erickson CK, 2009, Intoxication is not always visible: an unrecognized prevention challenge, *Alcoholism: Clinical and Experimental Research*, 33:9 pp 1489-1507

⁴⁸ Ashlee Curtis & Peter Miller, 2019, All-night public transport hasn’t reduced alcohol-related harm in Melbourne, *The Conversation*, 22 July:

<https://theconversation.com/all-night-public-transport-hasnt-reduced-alcohol-related-harm-in-melbourne-118999>

⁴⁹ Kypri K, McCambridge J, Robertson N, Martino F, Daube M, Adams P, Miller P. 2019, ‘If someone donates \$1000, they support you. If they donate \$100 000, they have bought you’. Mixed methods study of tobacco, alcohol and gambling industry donations to Australian political parties. *Drug Alcohol Rev.*, 38,3, 226-233