

LATE NIGHT TRADING

DCP 2015 CHAPTER 37



Contents

1.	Application	1
2.	Location of Late Night Trading Activity Areas	2
3.	Hours of Operation.....	3
4.	Local Amenity	7
5.	Noise Management.....	8
6.	Safety and Security.....	9
7.	Management Plans.....	10
8.	Assessment Principles.....	11



A late night premises is any commercial premises or community facility which may impact on the amenity and safety of a neighbourhood resulting from its operation at night. The regulation of late night trading also applies to licensed premises under the *Liquor Act 2007*.

While council seeks to encourage and expand the night time economy in Sutherland Shire, late night trading is a privilege. Late night trading hours will only be approved in circumstances where an ongoing commitment to good management is evident and the amenity of the surrounding neighbourhood is considered.

1. Application

1. This chapter applies to all development, including community facilities that:
 - a. seek approval for operating hours that fall between 10pm and 6am the following day; or
 - b. currently operate at times which fall between 10pm and 6am the following day, and seek approval for modifications and/or change of use that will result in an intensification of the existing use (see note below); or
 - c. seek an extension or renewal of operating hours beyond 10pm (or seek an extension or renewal of trading hours as prescribed in this DCP); or
 - d. seek approval for outdoor activities beyond 10pm on public or private land.
2. These requirements are not retrospective, nor do they derogate from existing consents.

Note:

For the temporary extension of trading hours see *the State Environmental Planning Policy (Exempt and Complying development Codes) 2008*, see:

- Part 2, Division 3, Subdivision 12 - Trading hours – Temporary extension for Christmas; and
 - Part 2, Division 3, Subdivision 13 Trading hours – temporary extension for licensed premises.
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2. Location of Late Night Trading Activity Areas

For purposes of addressing public safety and community amenity, Sutherland Shire Council - in consultation with the NSW Police Force, Miranda and Sutherland Local Area Command and the NSW Office of Liquor, Gaming and Racing (OLGR) - has identified and mapped high, intermediate and low late night trading activity areas. The mapped trading activity areas set resident and business owner expectations as to what hours of trade are likely to occur in that precinct.

2.1 Objectives

1. Encourage suitable intensity of late night trading in appropriate locations.

2.2 Controls

The following table sets out the framework for where and at what level of intensity, late night trading may occur. It forms the basis for late night trading hours of operation.

Activity Area	Description	Location
High	These areas are located in the centres and are dominated by existing commercial activities that are suitably removed from surrounding residential land uses. Such locations allow for later hours of operation and for more intense late night activities such as live music, theatre and 'DJ' culture. Residents of new residential flat buildings in these areas must anticipate late night trading. High activity areas are also generally characterised by accessible and frequent public transport services at night.	In key locations within Sutherland, Miranda, Caringbah, Cronulla, Engadine and Kirrawee centres.
Intermediate	Intermediate activity areas are characterised as mixed residential and commercial use areas with the potential to accommodate a range of lower impact late night trading premises. They are intended to function as a transition zone by providing a lesser intensity of use. This is generally achieved by applying more stringent operating hours.	In smaller centres (Gymea, Heathcote, Menai and Sylvania), and on the periphery of larger centres, i.e., Sutherland, Miranda, Caringbah, Cronulla, Engadine and Kirrawee centres. It is also applied to the SP3 Tourist zone in Cronulla.
Low	These are areas predominately characterised by low density residential land uses. Premises most suitable in the low activity areas are those that meet local needs.	All areas not included in high and intermediate activity areas.

3. Hours of Operation

Operating hours refer to the maximum periods of time a premise may trade and/or allow persons, either patrons or staff, to access and operate within the premises or related outdoor areas, including waste, storage, and loading areas.

For the purposes of this section of the DCP, operating hours for late night trading premises are divided into two categories:

- **Base hours**
These are standard operating hours that late night trading premises may reasonably expect if a development application is approved.
- **Extended hours**
These are operating hours beyond base hours, but only where Council has determined that the premises have been (or will be) well managed, including compliance with the Management Plan. Extended hours will be considered by Council as maximum operating hours.

3.1 Objectives

1. Establish appropriate hours of operation for late night trading premises.
2. Establish appropriate extended hours of operation for licensed premises.

3.2 Controls

1. The following table sets out hours of operation that apply to late night trading premises:

	Use type and day	Base Hours			Extended Hours		
		Activity Area (mapped)			Activity Area (mapped)		
		High	Intermediate	Low	High	Intermediate	Low
UNLICENSED	Unlicensed premises: Community facilities; Entertainment facilities; Function centres; Restaurant or café; Recreation facilities (indoor); Restricted premises	6am-midnight	6am-11pm	6am-10pm	6am-3am	6am-midnight	6am-midnight
	Medical Centres	6am-1am	6am-midnight	6am-10pm	24 hours	6am-3am	6am-midnight
	Take away food and drink premises	6am-3am	6am-1am	6am-10pm	6am-3am	6am-1am	6am-midnight
	Neighbourhood shops; Service Stations, Shops and all other unlicensed premises trading after 10pm	6am-1am	6am-midnight	6am-10pm	24 hours	24 hours	24 hours
	Sex services premises (licensed/unlicensed/Any day)	NA	NA	6am-10pm	NA	NA	NA
LICENSED	Monday-Saturday	Indoor 6am-midnight	Indoor 6am-11pm	Indoor 6am-10pm	Indoor 6am-3am	Indoor 6am-midnight	Indoor 6am-midnight
	Licensed premises: Hotel (including general bar licence); Pubs and small bar; Registered clubs; Restaurant or café (on premises	Outdoor 6am-10pm	Outdoor 6am-10pm	Outdoor 10am-10pm	Outdoor 6am-midnight	Outdoor 6am-11pm	Outdoor 6am-10pm

	licence); and Functions (non-profit organisations)						
	Sunday	Indoor 10am - 10pm	Indoor 10am-10pm	Indoor 10am-9pm	Indoor 6am-3am	Indoor 6am-midnight	Indoor 6am-midnight
	Licensed premises : Hotel (including small bar licence); Pubs and small bar; Registered clubs; Restaurant or café (on premises licence); and Functions (non-profit organisations)	Outdoor 10am-9pm	Outdoor 10am-9pm	Outdoor 10am-9pm	Outdoor 6am- midnight	Outdoor 6am-11pm	Outdoor 6am-10pm
	Bottle shops/ packaged liquor outlets and drive in liquor stores	All bottle shops/ packaged liquor outlets /drive in liquor stores must cease trade at 10pm					

Notes:

1. Outdoor areas are areas that are not considered an “enclosed place” within the meaning described in the *Smoke-free Environment Regulation 2007*.

Outdoor operating hours refer only to those being proposed upon private property. Proposals for outdoor activities relating to restaurant purposes on Council land will be subject to approval under *Section 125 of the Roads Act*.

2. As set out in the Liquor Act 2007, despite the above, the base (standard) trading period for licensed small bars is midday (noon) and midnight any day of the week. Council may, however, specify general hours of operation as a condition of development consent that is more or less restrictive.
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2. Despite the above all bottle shops/packageged liquor outlets and drive in liquor stores must cease trade at 10pm.
3. Notwithstanding clause 3.2.1 above, it may be considered reasonable that outdoor areas may operate beyond those hours identified as ‘extended hours,’ but only where it can be demonstrated that this will not result in any adverse impacts upon the amenity of surrounding residents and neighbourhoods.
4. Notwithstanding clause 3.2.1 above, ‘base’ and ‘extended’ opening hours for *restaurants and cafes* in all E1 Local Centre, E2 Commercial Centre and MU1 Mixed Use zones is 5:30am, regardless of whether the subject premises is located within a high intermediate or low trading activity area. In these premises, only indoor and takeaway trade is authorised before 6am, after which outdoor use is permissible.
5. Notwithstanding clause 3.2.1 above, ‘base’ opening hours for licensed and unlicensed premises (except take away food and drink premises) in Oak Road Kirrawee (Zone E1), and Kirrawee South Village is 12 midnight.

4. Local Amenity

4.1 Objectives

1. Protect neighbourhood amenity in the vicinity of late night trading premises, particularly residential land uses.

4.2 Controls

1. Any licensed late night premises in the SP3 Tourist zone must contribute to the desired future character of the area and be sensitively managed to ensure that they do not detract from the qualities that attract people to live, work and recreate in the area.
2. Where a premise is located either in whole or as a component at ground level, active uses must be provided at ground level for day trade. Suitable justification must be provided where this cannot be achieved.
3. Council may use reviewable conditions where it is uncertain about the impacts of the proposed development on adjoining land uses.
4. Any entertainment facility, function centre, food and drink premises (i.e., restaurant or café, take away for and drink premises, pub or small bar) or registered club, will be subject to a 1 year trial period by way of reviewable condition for extended operating hours to assess the ongoing management performance of a premises and its impact on neighbourhood amenity.

5. Noise Management

5.1 Objectives

1. Reduce disturbance to nearby residents.

5.2 Controls

1. The movement of garbage and refuse (including empty bottles and cans) from inside the premises to outside storage bins or areas should not occur: after 10pm; and before 8:00am Monday to Saturday or before 9.00am on Sunday and Public Holidays. Movement of waste (other than cans/bottles or other waste movement with a risk of undue noise) from inside to outside the premises can occur outside these hours provided noise is minimised.
2. Owners and operators shall at all times have displayed at all staff exits and in the garbage storage area clearly visible and legible signs in the form of, or like "Bottle and cans are not to be moved from inside the premises to outside, and garbage is not to be collected by waste operators (other than by Council or its operators), after 10pm or before 8am (9am Sunday/Public Holiday). Movement of other waste from inside to outside the premises, after 10pm should occur quietly" (wording negotiable).
3. No loading/unloading of any goods shall occur after:
 - a. after 7pm; and
 - b. before 8:00am Monday to Saturday or before 9.00am on Sunday and Public Holidays.
4. The proprietor(s) and/or manager(s) shall take all steps necessary to ensure that no noise nuisance occurs from persons entering or leaving the premises.

6. Safety and Security

6.1 Objectives

1. Ensure the safety of patrons and staff through the responsible management of late night trading premises and their surrounding environment.

6.2 Controls

1. Owners and operators of late night trading premises are to demonstrate how they will responsibly manage the surrounding environment adjoining the premises (within a minimum 50 metre radius), to maintain local amenity, safety, security and prevent potential impacts on surrounding residents.
2. Owners, operators or their approved crowd controllers shall appropriately manage queuing of patrons parallel to the building, in order to ensure adequate and safe clearance for pedestrians. Any arrangements for queuing of patrons should not disrupt the operation, entry/exit points and any outdoor dining area and approved permits of neighbouring premises.
3. Signs must be permanently erected and placed in clearly visible positions within the premises, including immediately adjacent the entry / exit doors, requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area. Details of the proposed signage, including its content and location/s shall accompany the application and be detailed in a Management Plan.
4. In addition to the above, the following safety and security controls also apply to Shops (including Neighbourhood shops):
 - a. In order to maintain visibility to the shop interior, the shop front windows must not be obscured by:
 - i. blinds, curtains or the like;
 - ii. advertising posters, painted signs, decals or displays that are fixed internally or externally to the shopfront;
 - iii. shelving; or
 - iv. shop fittings, refrigeration equipment and the like which exceed 1200mm above finished floor level or which projects above the sill of the shopfront.
 - b. Any proposed shelving along glass shopfronts must be of an open-framed, see through construction and the combined height of shelving and any goods displayed must not exceed 1200mm above in finished floor level.
5. All licensed premises and late night trading venues must be equipped with a functioning CCTV system which complies with Australian Standard 4806.1—2006 - Closed circuit television (CCTV).

7. Management Plans

7.1 Objectives

1. Manage the adverse impacts of late night trading premises in order to protect neighbourhood amenity and property, particularly residential land uses.

7.2 Controls

1. The following late night trading premises are required to provide a Management Plan:
 - All premises trading within extended operating hours
 - All Licensed Premises
 - Function centres
 - Food and drink premises
 - Registered clubs
 - Sex services premises.
2. There may be instances where development types not listed above may warrant some form of late night trading assessment due to the local circumstances, or where a greater level of assessment is necessary to adequately examine the issue for a particular development.
3. The following requirements should be regarded as the minimum mandatory requirements for late night trading evaluation:

A Management Plan may include but is not limited to the following details:

- Site and locality details
 - Organisational overview
 - Hours of operation
 - Noise control
 - Safety and security measures both on-site and off-site
 - a CCTV Plan
 - General amenity
 - Waste management, including garbage collection and placement of recyclable materials
 - Staffing
 - Liquor licensing information
 - Licensing accord membership
 - Signage
 - Crowd control measures and procedures
 - Transport accessibility (private and public)
 - Complaints handling procedures, recording and follow up actions.
4. For additional information on Management Plans refer to Sutherland Shire Environmental Specification 2020 Late Night Trading

It is at Council's discretion to request further information regarding the management of a premise if it is considered that the proposal may impact adversely on the amenity of the area.

Note:

Applications for late night trading premises will be notified in accordance with Council's notification policy as detailed in Chapter 42: Administrative Provisions of SSCDCP2015, and referred to the NSW Police Force where deemed necessary by Council. Applicants are advised to consult the NSW Police Force prior to the lodgement for applications for licensed premises and any recommendations should be included in a required Management Plan.

8. Assessment Principles

8.1 Assessment Principles for all Late Night Trading Premises

1. Hours of operation
 - a. Appropriate hours are dependent on the nature and location of the proposal, the proximity of residential land uses and the potential safety, social or other impacts on the locality.
 - b. Late night premises are encouraged within late night trading precincts; however as a general rule, premises should look to locate where proposed uses are compatible with the surrounding development and amenity impacts will be minimised.
 - c. Premises which operate during the day and not exclusively at night are preferred.
2. Management Plans
 - a. The submission of a Management Plan (if required) will ensure that proponents of late night trading premises have considered and addressed any potential impacts that may arise from their operation during late night hours, as well as enabling Council to effectively assess the impacts of a proposal.
 - b. Management Plans must identify strategies to manage potential social, safety and other impacts of late night premises and include verifiable data and actions.
3. Miscellaneous
 - a. In assessing the likely impacts of an application for late night trading premises, concerns raised by objectors are relevant only to the extent that there is a reasonable probability that those impacts will occur as a result of the proposal.
 - b. For premises that are currently operational, Council must consider the following assessment criteria:
 - i. what are the adverse impacts of the current operation of the premises;
 - ii. what measures are in place to address those impacts;
 - iii. how are those measures documented;
 - iv. have those measures been successful; and
 - v. what additional measures are proposed by the applicant or might otherwise be required.
 - c. Council must consider the impact of the existing premises on surrounding residential amenity. If this impact is currently unacceptable then the proposal is refused.
 - d. Extension or intensification should not be granted, unless there are measures proposed to mitigate the existing impact.

8.2 *Assessment principles for extended hours of operation for unlicensed premises*

1. An approval for extended hours of trading is dependent on context and impact. In cases where impacts on residential properties cannot be effectively managed, late night trading will be limited to base hours only.
2. An extended trading authorisation is required by a licensee who proposes to trade outside the standard trading period. For liquor licenses that are granted on or after 30 October 2008, or have extended trading authorisation granted on or after that date, a daily 6 hour minimum continuous closure requirement also applies.
3. Early morning trading (openings prior to 6am) may be acceptable within high activity areas where proponents can verify over time that noise, safety and amenity impacts can be managed to a level to an acceptable community standard.

8.3 *Assessment principles for extending hours of operation for licensed premises under the Liquor Act 2007*

1. The hours available under an extended trading authorisation may vary depending on the type of license and the location of the premises. When considering the extending hours of operation of licensed late night premises, council should consider the following:
 - a. the size, location and nature of the premises;
 - b. where the proposal will involve extended trading hours (beyond the standard trading periods) or an overall increase in the maximum capacity of the premises;
 - c. whether the proposal will involve extended trading hours (beyond the standard trading periods) or an overall increase in the maximum capacity of the premises;
 - d. whether planning approval is required to operate the licensed premises – particularly where entertainment is to be provided;
 - e. the existing use of the premises, e.g., an existing licensed restaurant wanting to serve liquor without meals under a primary service authorisation.

8.4 *Assessment principles for reviewable conditions (entertainment facilities, function centres, food and drink premises and registered clubs)*

1. Council may use reviewable conditions where it is uncertain about the impacts of the proposed development on adjoining land uses.
2. Reviewable conditions will only be used in exceptional circumstances (extended operating hours).
3. Council may reduce the hours or capacity granted to lower the level following a review. Conversely, applicants may apply to increase hours or occupancy if available to them and it is demonstrated that the impacts to the community are acceptable.
4. Council may approve occupancy rates, subject to a reviewable condition, based on the building class, proposed use and an assessment of potential impacts to the surrounding environment to allow Council to assess the ongoing management performance of a premises and its impact on neighbourhood amenity.

5. Permanent consent or renewal of extended operating hours and/or maximum occupancy may only be permitted if Council is satisfied that a late night trading premises has demonstrated good management performance and compliance with a Management Plan following the completion of a satisfactory trial period.
6. A development consent that is granted subject to a reviewable condition must specify:
 - a. that the consent is subject to a reviewable condition;
 - b. the purpose of the condition;
 - c. when, or at what intervals, the reviews are to be carried out; and
 - d. the information that will be required to support an application to continue beyond the reviewable period (including a new Management Plan with a statement of revisions to the previous Management Plan to demonstrate performance over the trial period).
7. In assessing reviewable conditions, either in relation to trading hours and/or maximum occupancy, Council will undertake its own review of the level of compliance with the Management Plan and whether the trial period has been successful. This review will include (but not limited to):
 - a. consideration of complaints to Council and OLGR;
 - b. an assessment of inspections by council officers; and
 - c. comments from the NSW Police Force.
8. When using a reviewable condition to set specific duration periods for occupancy numbers, the applicable condition will state a base number of occupants the premises will be allowed to accommodate and then an additional number of occupants, provided as a separate figure, and a total for the premises. For example, a venue may have approval for occupancy of 200 persons but with an additional permissible occupancy of 150, totalling 350 persons provided on a trial period for 3 years.
9. Permissible maximum occupancy will be assessed against the permissible number of persons allowed to occupy the premises based on the proposed use and the nominated building class under the Building Code of Australia.
10. Should Council find that the premises is not operating in accordance with its conditions of consent and the premises does not meet the requirements of the Building Code of Australia enforcement action will be undertaken.

8.5 *Assessment principles for the intensification of use*

1. Applications may be considered an intensification of use where, for example, patron capacity would increase, hours of operation would increase, the floor area of a premise would increase or there is a substantial change in the nature of the business, such as a change of use from a business whose primary purpose is the sale of food to one where the primary purpose is the sale of liquor. Outdoor seating is included in patron capacity calculations.
2. Council may approve occupancy rates, subject to a reviewable condition, based on the building class, proposed use and an assessment of potential impacts to the surrounding environment to allow Council to assess the ongoing management performance of a premises and its impact on neighbourhood amenity.
3. Permanent consent or renewal of extended operating hours and/or maximum occupancy may only be permitted if Council is satisfied that a late night trading premises has demonstrated good management performance and compliance with a Management Plan following the completion of a satisfactory trial period.
4. Hours of operation and/or maximum occupancy, subject to reviewable conditions, will be approved for a three (3) year trial period.
5. If Council determines that the trial period as required by clause 8.5.4 (above) has been unsatisfactory, then occupancy numbers will revert back to those identified in the applicable condition of consent or as consented to prior to the commencement of this section of the DCP.

9. Maps





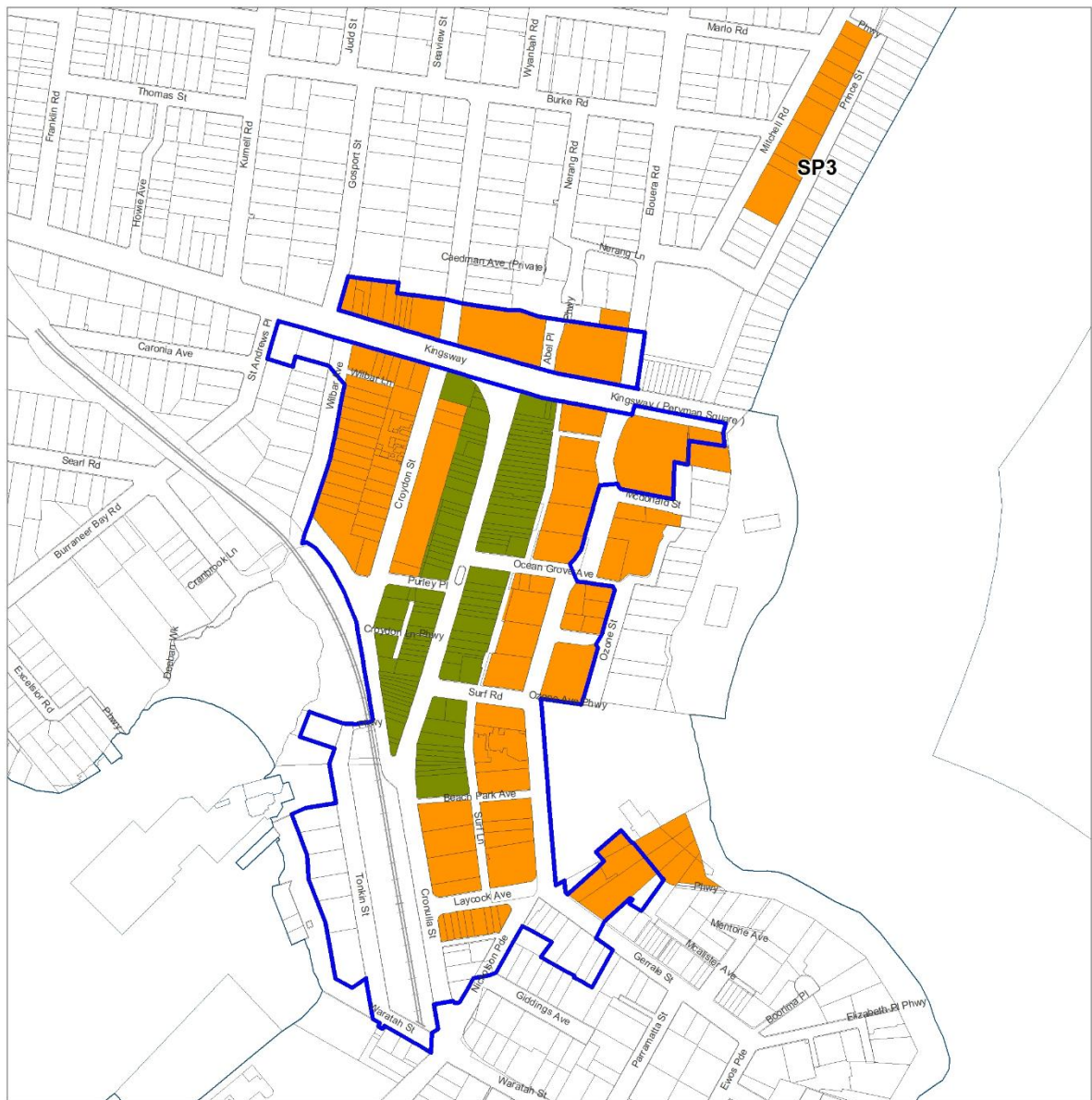
- Low Activity Area
- Commercial Centre Zone E2 Boundary
- High Activity Area
- Intermediate Activity Area



1:4,000

0 12.5 25 50 75 100 Meters

Late Night Trading Policies - Caringbah



Low Activity Area
 Commercial Centre Zone E2 Boundary



Late Night Trading Policies - Cronulla

High Activity Area

Intermediate Activity Area



Low Activity Area
 Commercial Centre Zone E2 Boundary

1:5,000
 0 15 30 45 60 75 90 105 120 135 150 Meters

Late Night Trading Policies - Engadine

High Activity Area

Intermediate Activity Area



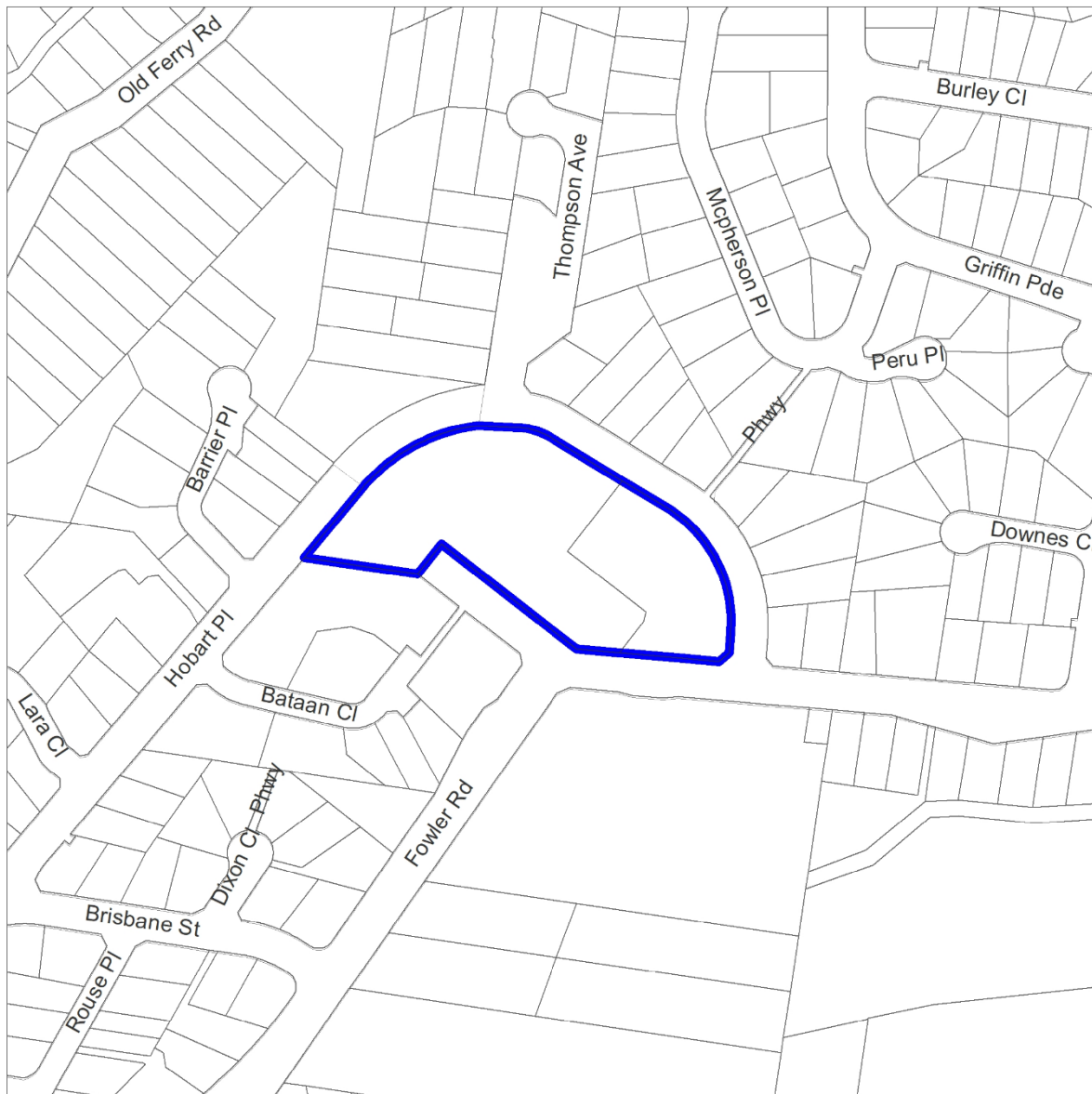
- Low Activity Area
- Local Centre Zone E1 Boundary
- Intermediate Activity Area



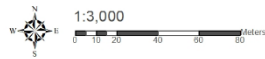
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0 10 20 40 60 80 Meters

Late Night Trading Policies - Heathcote



Low Activity Area
 Local Centre Zone E1 Boundary



Late Night Trading Policies - Illawong

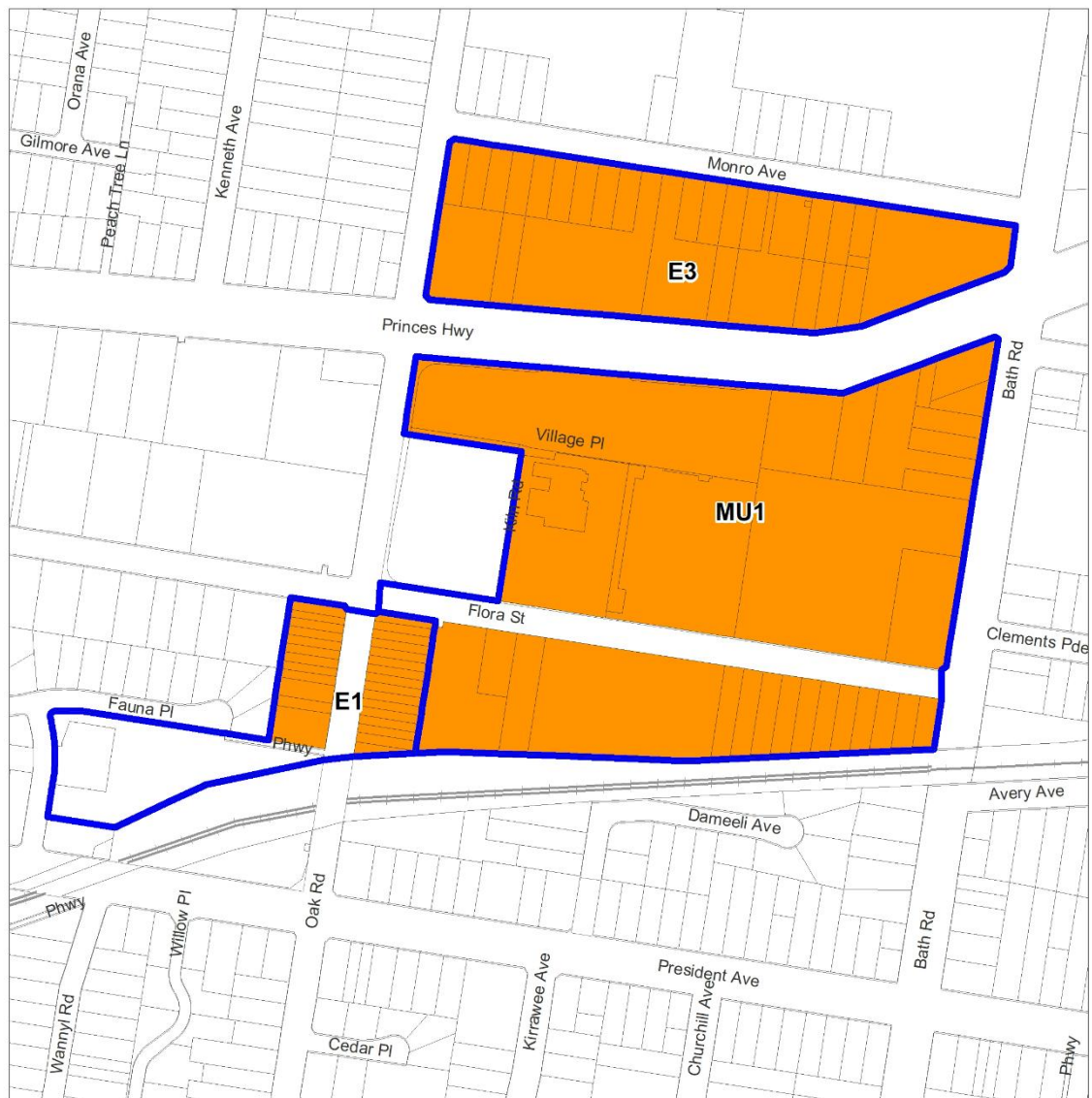




Low Activity Area
 Local Centre Zone E1 Boundary

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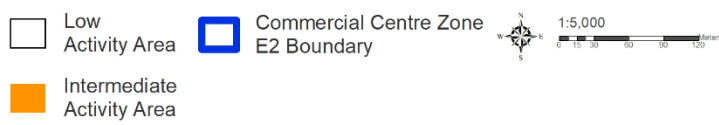
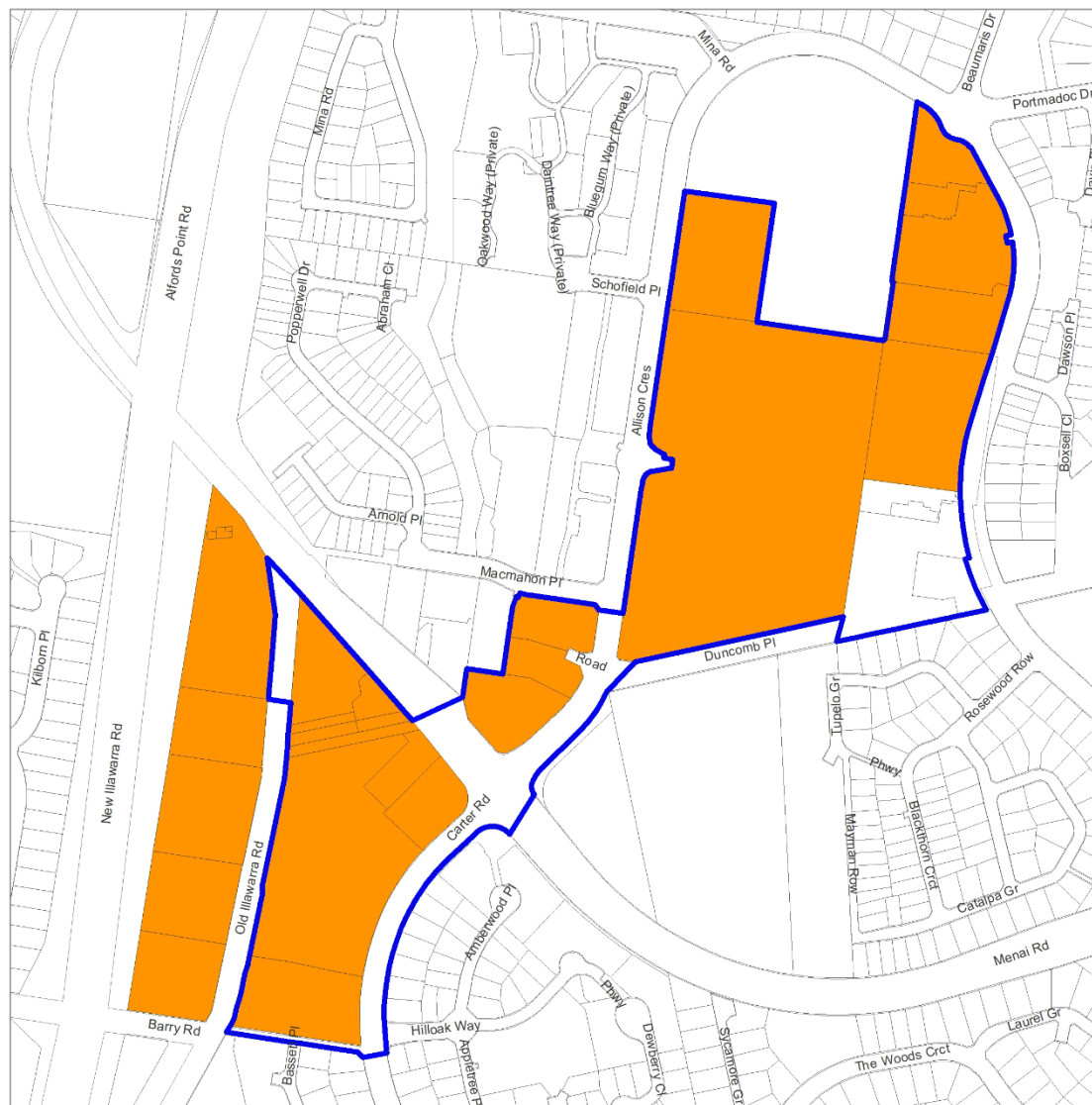
Late Night Trading Policies - Kareela



- Low Activity Area
- Zone E1, E3 and MU1 Boundary
- Intermediate Activity Area



Late Night Trading Policies - Kirrawee



Late Night Trading Policies - Menai



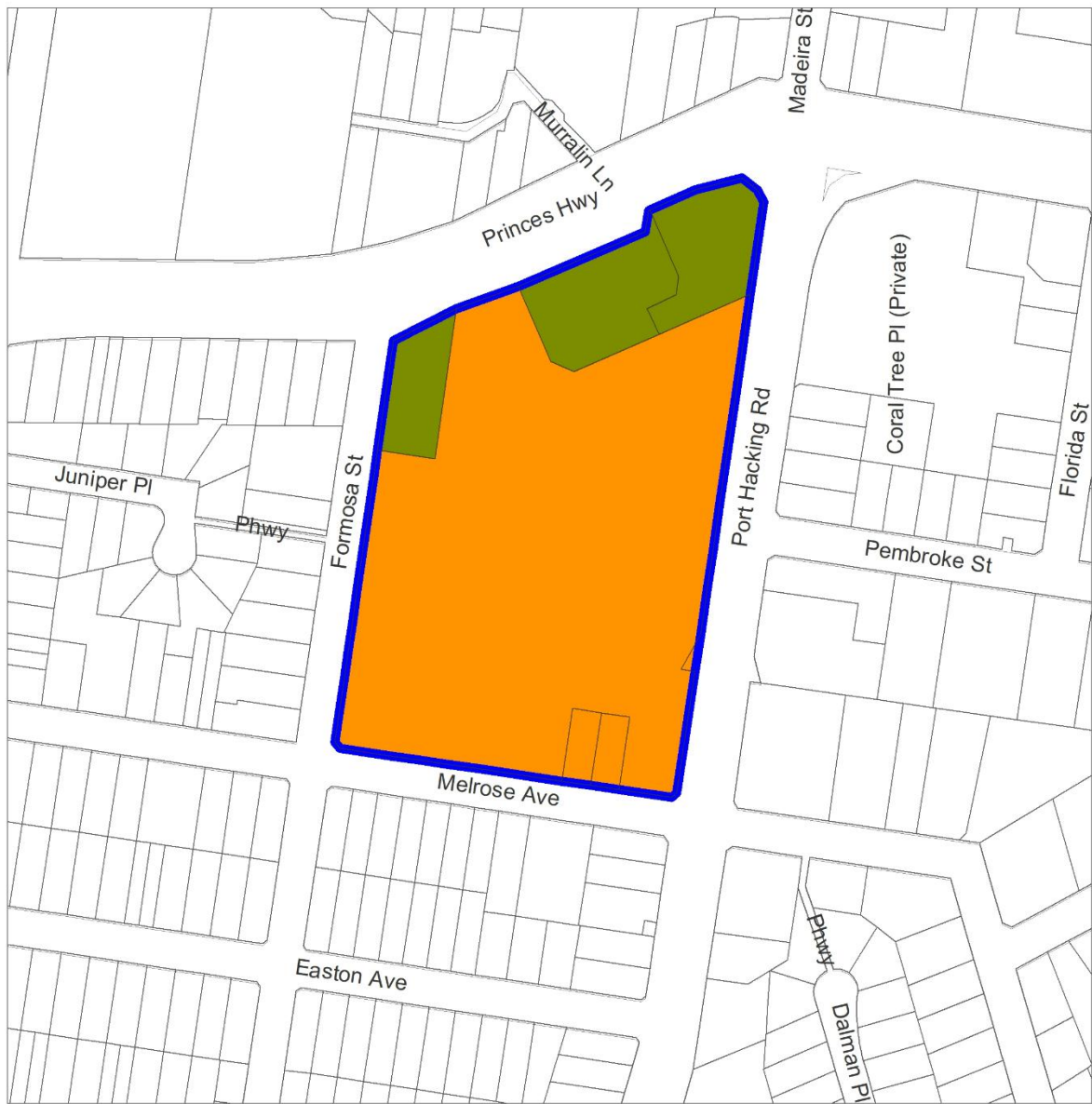
- Low Activity Area
- Commercial Centre Zone E2 Boundary
- High Activity Area
- Intermediate Activity Area



1:5,000

0 10 20 30 40 50 meters

Late Night Trading Policies - Miranda



Low Activity Area

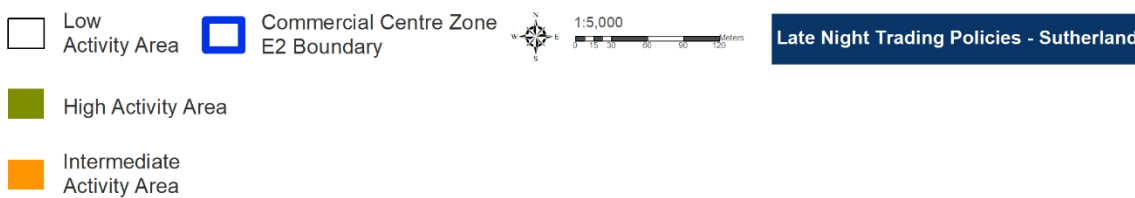
Commercial Centre Zone
E2 Boundary

1:3,000
0 10 20 40 60 80 meters

Late Night Trading Policies - Southgate

High Activity Area

Intermediate Activity Area





- Low Activity Area
- Local Centre Zone E1 Boundary



Late Night Trading Policies - Woollooware