



MANAGING COMPATIBILITY BETWEEN MUSIC VENUES & NOISE SENSITIVE LAND USE

MUSIC ACTION PLAN DUNEDIN

PREPARED FOR
Dunedin City Council

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1.0 Introduction

Dunedin City Council has engaged Styles Group to undertake a comprehensive review of policy and regulatory frameworks that facilitate vibrant and viable environments for music venues. This advice can be applied to minimise or avoid existing conflict and to create optimal environments to manage compatibility. This is especially relevant given that residential activity in these environments is expected to intensify in the future.

This advice draws on international best practice and provides recommendations on:

- i. The optimal zoning frameworks for music venues to establish and operate in, including the optimum maximum permitted noise levels required for music venues and events featuring live production
- ii. Whether these optimal zoning frameworks will be affected by the National Policy Statement on Urban Development 2020 (**NPS-UD**)
- iii. Examples of environments in which music venues and entertainment activities co-locate with noise sensitive activities, and the controls used to successfully manage ongoing compatibility
- iv. Examples of best practice mitigation measures used to manage the effects between noise generating and noise sensitive activities such that reverse sensitivity conflicts on the noise generators are managed
- v. Examples of the approaches adopted in other local authority after hours noise control policies to manage conflicts between music venues and noise sensitive receivers.

2.0 Background and context

Dunedin is renowned nationally and internationally for its live music culture and distinctive “Dunedin sound”.

A number of submissions on the Dunedin City Council’s 10 year plan 2021-31: *Tō Tātou Eke Whakamuri – The future of us* Public have raised concern relating to the ongoing viability and vibrancy of Dunedin’s live music scene. The local music community have asked for more support from Council for live music and for more information on how sound regulations can be managed to support live music. Dunedin City Council has responded by allocating funding for the development of a Music Action Plan (**MAP**) for Dunedin.

This advice is intended to inform the development of the MAP by providing a background policy review of policy and regulatory frameworks that facilitate vibrant and viable environments for music venues, including mixed use environments that can successfully facilitate the co-location of residential and entertainment activities.

3.0 The fundamental issue- managing compatibility

It is commonplace for District Plans to promote vibrant town centres with high levels of character, vitality, safety and amenity, by enabling and encouraging a diverse mix of residential, recreation, leisure, retail, entertainment and commercial activities. The overarching intent is to create a vibrant hub of activity and to enable people to live close to areas of employment and entertainment.

This advice considers the inherent tensions in facilitating vibrant mixed-use environments that provide for a diverse mix of noise generating and noise sensitive land use activities. This advice specifically focusses on the tensions arising from the co-location of music venues and residential activity.

The objectives and policies of the 2nd Generation District Plan (**2GP**) place a strong focus on supporting the vibrancy and vitality of the Central Business District (**CBD**) by promoting a hub with a high level of amenity, density of activity and opportunities for social interaction¹. The 2GP seeks to enable a wide range of noise sensitive and noise generating activities to co-locate in the CBD Zone, while relying on performance standards (rules) to manage compatibility between activities.

In general terms, residential activity is sensitive to noise². Residential activity requires a high level of acoustic amenity during the night-time period to enable occupants to enjoy good sleep. The World Health Organisation recognises that uninterrupted sleep is a prerequisite for good physiological and mental functioning³, and the consequences of sleep disturbance can result in adverse health effects. During the day-time period, residential activity also requires a good level of acoustic amenity in order for people to concentrate and communicate effectively.

Music venues are inherently noisy activities and operate during periods when residential amenity demands the highest level of acoustic amenity. Operators of music venues often seek to locate their venues in locations that are highly accessible to their patrons. This results in the co-location of music venues in urban areas, where people live.

¹ Objective 2.3.2 of the 2GP

² The 2GP defines noise sensitive activities as follows:

“Activities where people are more likely to be sensitive to a high level of Noise because they are sleeping, studying, seeking medical treatment, or engaged in religious activity. These consist of:

- *residential activities*
- *hospital*
- *campus*
- *schools*
- *early childhood education*
- *registered health practitioners*
- *visitor accommodation; and*
- *the following community and leisure activities: libraries, marae-related activities, activities that involve the provision of care for babies and pre-school children and places of worship.*

Each of these activities has different aural amenity requirements. This advice is specifically focussed on the aural amenity requirements of residential activity.

³ Guidelines for Community Noise, World Health Organisation. Available online at:

<https://www.who.int/docstore/peh/noise/Comnoise-1.pdf>

The successful and viable operation of music venues depends on their ability to generate noise levels that are optimum for the enjoyment of their patrons. This often includes the generation of significant low frequency (bass) energy that is a fundamental component of the enjoyment of live music. If a music venue is required to restrict noise levels to sub-optimum levels, crowd dissatisfaction can arise. If music noise levels are restricted to a level that are incompatible with the production of live music or crowd entertainment, the ongoing viability of the music venue will be compromised. This may result in the music venue being forced to close, or relocate.

Due to the inherent incompatibility between residential activities and music venues, the ultimate success and ongoing viability of enabling their co-location relies on the adequacy of measures to ensure that:

- The noise from music venues is controlled to a reasonable level
- Noise sensitive activities are insulated to ensure that a reasonable level of noise is achieved in the noise sensitive spaces, and that sleep disturbance effects are avoided.

If the planning controls allow for noise sensitive activities to be exposed to unreasonable levels of noise, conflict will arise. This can lead to:

- Complaints against the noise generating activities/ entertainment venues. This can threaten the ongoing ability and viability of the activity to operate, even if the activity is compliant with the District Plan.
- Adverse health effects on dwelling occupants, ranging from annoyance effects to serious health effects.
- If conflict arises, and music entertainment venues are not able to generate the maximum permitted noise levels they are entitled to by the District Plan, they may be pressured or forced to close or relocate. This conflict is referred to “reverse sensitivity”.

3.1 Reverse sensitivity

The term “reverse sensitivity” is a key theme of this advice. The 2GP defines “reverse sensitivity” as follows:

When lawful activities that create effects beyond site boundaries (such as noise, odour, traffic movements, risk or electromagnetic interference) are affected by uses establishing nearby that may have sensitivity to, and subsequently complain about these effects; and seek to limit the ability of the activities to continue.

The 2GP limits the locations in which music venues are permitted activities. The CBD Zone, (CBD), Warehouse Precinct Zone (WPZ) and Harbourside Edge Zone⁴ (HEZ)⁵ of the 2GP

⁴ Where the land is outside the mapped polytechnic and university campus areas.

permit “entertainment venues”, subject to compliance with maximum permitted noise levels of 60 dB L_{Aeq} during the day and 60 dB L_{Aeq} and 85 dB L_{AFMax} at night. These zones are collectively referred to as the “entertainment zones” throughout this advice.

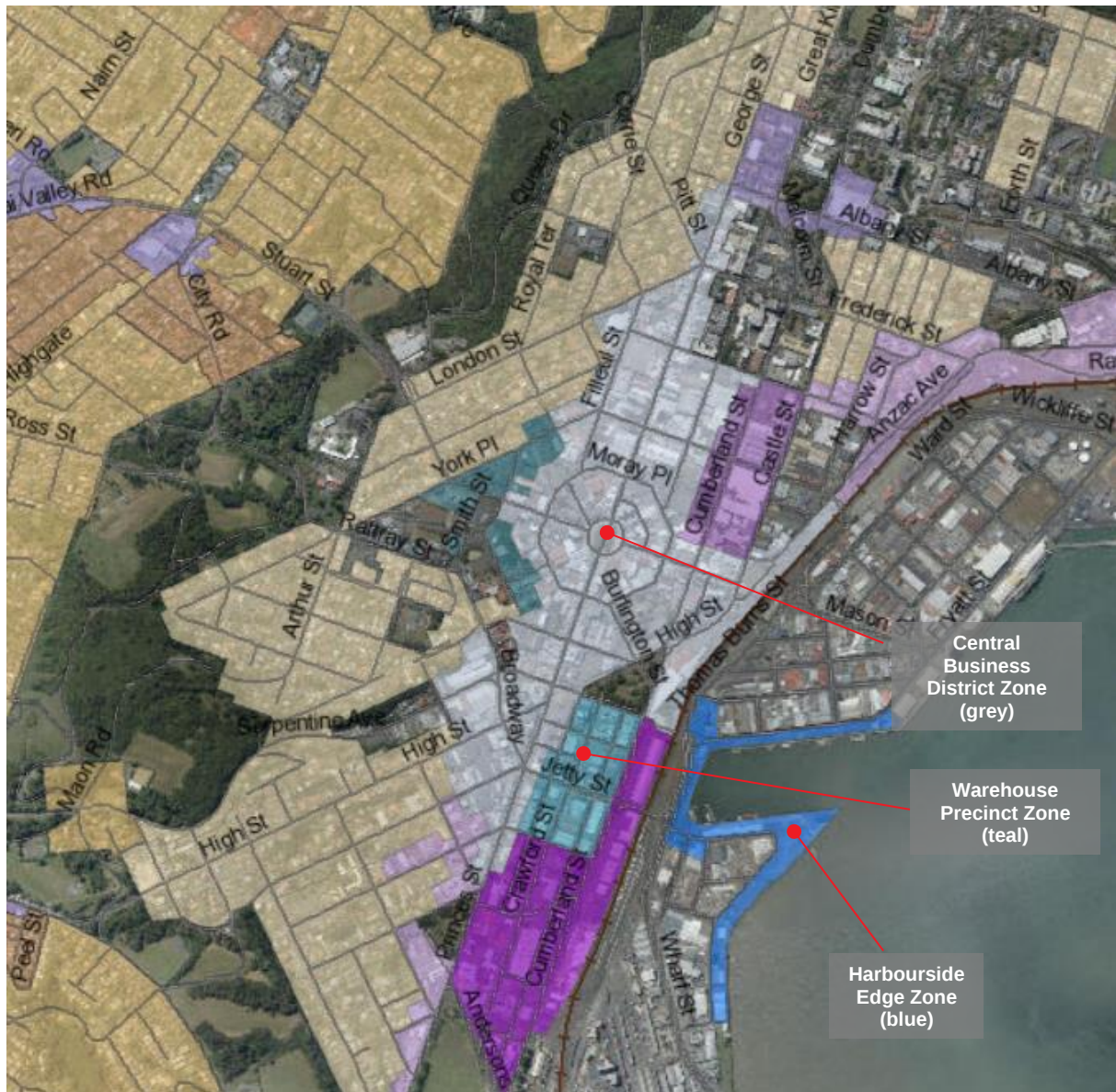


Figure 1 The 2GP zones which permit music venues (CBD Zone, Warehouse Precinct Zone and Harbourside Edge Zone)

In terms of noise effects from music venues, reverse sensitivity refers to the conflict that may arise when:

- a) A music venue establishes and operates as a permitted activity and operates in compliance with the permitted activity standards (including permitted noise standards) of the 2GP
- b) Noise sensitive activities complain about the permitted noise levels, and take action intended to constrain the ability of the music venue to operate. For example, by making ongoing complaints with the objective of requiring the

music venue to generate noise levels below those permitted by the 2GP, or otherwise seeking restrictions to the operation of activity (such as restricted hours of operation or noise curfews).

The 2GP prescribes a duty on noise sensitive receivers to manage their compatibility to the permitted noise levels in the entertainment zones by requiring noise sensitive spaces to be acoustically insulated⁶.

In our experience, complaints and conflict often arise from occupants of uninsulated dwellings, or from residential occupants in high noise zones that seek a level of noise amenity that is not anticipated or provided in that zone. This is a ‘sensitivity’ conflict as described below.

3.2 What reverse sensitivity is not

Reverse sensitivity is often confused with “sensitivity” conflicts.

Reverse sensitivity generally does not include circumstances where:

- a) Music venues seek to operate in “noise sensitive” zones and conflict arises.
- b) Music venues establish in entertainment zones that are in proximity to residential zones. In this scenario, the 2GP (and other District Plans) require the noise maker to meet the noise limits applying at the noise sensitive zone.
- c) Music venues generate noise levels that are unreasonable (refer to Section 16 below).

We have reviewed the zonings of some of Dunedin’s live music venues and note that several venues are subject to residential noise limits. For example, the recently closed live music venue “Starters Bar” at 157 Frederick Street was zoned Inner City Residential and Dive Bar and Inch Bar are located in the Centres Zones⁷.

If these venues are operating in excess of the noise limits in the 2GP, they may simply be subject to reasonable complaint and pressure to reduce the noise. This may arise from existing receivers or receivers that establish close to the bars in the future.

Our experience is that even a formally confirmed existing use right does not always prevent a noise-generator from having to comply with lower noise limits that have been introduced by

⁶ Rule 9.3.1 Acoustic Insulation specifies that noise sensitive activities in clause 4 of the rule must be acoustically insulated to achieve a minimum design standard of $DnT,w + Ctr > 30$. These spaces must also be provided with a supplementary source of ventilation, to enable occupants to close windows.

Appendix 9A of the 2GP enables compliance with the acoustic insulation performance standard to be achieved by a) an acoustic design certificate or b) designing and constructing the noise sensitive space in accordance with the construction schedule in Table 9A.1A

⁷ Subject to residential noise limits of 55 dB L_{Aeq} daytime, 50 dB L_{Aeq} evening, and 40 dB L_{Aeq} and 70 dB L_{AFMax} at night time.

zone rules coming into force well after the noise generator was established. In other words, we understand that the RMA is not a 'first in, first served' statute.

3.2.1 Section 16

Section 16 of the Resource Management Act (**RMA**) prescribes a duty on every person to avoid unreasonable noise. Section 16 requires:

Every occupier of land (including any premises and any coastal marine area), and every person carrying out an activity in, on, or under a water body or the coastal marine area, shall adopt the best practicable option to ensure that the emission of noise from that land or water does not exceed a reasonable level.

A reasonable level of noise is not defined by the RMA. What is reasonable is to be determined in each circumstance and context, taking into account factors such as the timing, duration and character of the noise source within the specific zoning context, the nature of the buildings and uses, the building construction and various other relevant factors.

Where noise sensitive activities are permitted to co-locate near music venues, reasonable internal noise levels must be achieved inside noise sensitive spaces. These include noise levels that provide adequate protection from sleep disturbance effects. Internal noise levels of 30dB to 35dB L_{Aeq} inside bedrooms at night will allow most people to get to and stay asleep during the night time period. This advice discusses the measures that can be implemented to ensure that the noise levels from entertainment activities will result in "reasonable" noise levels inside noise sensitive spaces. These include mitigation measures "at source" (inside the music venue) and at the "receiver" (the noise sensitive space).

The potential for unreasonable noise levels will be adequately avoided if noise levels inside the noise sensitive space will be compatible with noise sensitive land use, following the implementation of all required mitigation measures (at source and at the receiver).

4.0 National Policy Statement on Urban Development 2020

The NPS-UD is a National Policy Statement that directs local authorities across New Zealand to release urban development capacity to accommodate the business and housing requirements of a growing population.

The NPS-UD mandates the requirement for regional policy statements and district plans to enable more people to live in urban areas that are in or near a "centre zone"⁸, areas that are well-served by existing or planned public transport or where there is high demand for housing.

Objective 1 of the NPS-UD requires:

⁸ The NPS-UD defines centre zone as any of the following zones: city centre zone, metropolitan centre zone, town centre zone, local centre zone, neighbourhood centre zone.

“New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future”

Objective 1 requires that urban environments provide for the health and safety of people and communities. At the same time, the NPS-UD directs residential intensification within centre zones that may be exposed to potentially high levels of land transport noise and high noise levels from commercial activities⁹.

The NPS-UD does not provide any guidance to local authorities on how they should manage land use compatibility conflicts in the implementation of the NPS-UD, nor does it contain recommended measures to ensure that occupants will be adequately protected from centre zone noise levels that may adversely affect their health and amenity.

4.1 Dunedin City housing capacity assessment

Dunedin City is a Tier 2 local authority under the NPS-UD and must give effect to the objectives and policies that seek to enable greater intensification of areas of high access or demand.

The Housing Capacity Assessment for Dunedin City¹⁰ (the **Capacity Assessment**) has been recently prepared to meet the requirements under the NPS-UD and provides an assessment of demand and capacity for additional housing across the city.

Table 8 (Figure 2 below) of the Capacity Assessment identifies the additional development capacity required in the Inner City by 2050, noting there is strong demand for inner city living opportunities. The Capacity Assessment states *“growth in the inner city is expected to be the highest relative to the number of existing homes due to the low baseline. Planned improvements to CBD amenity, the ongoing revitalisation of the Warehouse Precinct, and cultural changes all have the potential to further increase demand for inner-city living”*¹¹.

Table 8: Projected capacity required by urban catchment

Catchment	Current dwellings (2021)	Additional capacity required (2020-50)
Inner city	745	962 (+129%)
Inner suburbs	22,866	4,351 (+19%)
Outer suburbs	16,245	2,681 (+17%)
Mosgiel	6,192	2,671 (+43%)
Outer urban area	3,837	669 (+17%)

Figure 2 Projected housing capacity required for the inner city by 2050

Source: Housing Capacity Assessment for Dunedin City

⁹ For example, the City Centre Zone, Metropolitan Zone and Town Centre Zone of the Auckland Unitary Plan authorise noise levels of up to 65 dB L_{Aeq} (daytime) and 60 dB L_{Aeq} (night-time). Noise sensitive activities must be acoustically insulated in these zones.

¹⁰ https://www.dunedin.govt.nz/data/assets/pdf_file/0009/831744/Housing-capacity-assessment-for-Dunedin-City-2021.pdf

¹¹ Page 24 Housing Capacity Assessment for Dunedin City.

4.2 Ramifications of the NPS-UD

The implementation of the NPS-UD, combined with demand for inner-city living, is likely to introduce more residential activity within the 2GP zones where music venues are currently anticipated and provided for.

The Capacity Assessment confirms that the 2GP provides for apartment-style living options in the CBD and town centres, and that future development capacity will be achieved through the construction of new buildings or conversion of existing buildings.

The Capacity Assessment notes that a significant proportion of properties in the CBD have multiple or complex ownership arrangements (i.e. cross leases and unit titles) that make substantial redevelopment unlikely. This means that a significant proportion of additional housing capacity will be achieved through the conversion of commercial space to residential apartments. We provide further comment on the need to manage potential conflicts arising from music venues and apartments potentially occupying the same buildings, and issues with retrofitting acoustic insulation to older building stock later in this advice.

Residential conversions require a “change of use” building consent application. This process provides Dunedin City Council with the opportunity to ensure residential development complies with the acoustic insulation standards of the 2GP. While we are not economic or housing experts, we note that growing investment in residential apartments in the inner city may be likely to:

- a) Trigger additional investment into CBD apartment living that may improve the quality of the existing housing stock.
- b) Potentially increase the number of acoustically insulated apartments in accordance with the 2GP

We understand the Housing Capacity project will explore supply constraints and options to encourage greater residential development in the CBD (planned for late 2021). We recommend that future projects could also consider:

- i. Identifying the percentage of residential apartments in the CBD that have been acoustically insulated in accordance with the 2GP standards.
- ii. Opportunities for acoustic insulation guidelines for residential conversions/change of use. These guidelines could be made available to developers on Council’s website and ensure owners are aware of the work involved in retrofitting existing buildings to comply with the 2GP acoustic insulation standards.
- iii. Preparing inner city living guidelines for incoming residents to the CBD. These guidelines would help to expectations for new residents in terms of the aural amenity of the CBD, maximum permitted noise levels and need for noise sensitive spaces to be acoustically insulated.
- iv. The need for any additional planning controls to manage the compatibility of noise sensitive activities in city centre zones . We provide potential options later in this advice.

5.0 Optimum environments for music venues

Ideally, music venues would be located in areas well-separated from any noise sensitive activity. However, this is generally not practicable or desirable. This advice has been prepared on the basis that physically separating music venues from noise sensitive activities by large distances is undesirable.

We understand that entertainment activities have a functional need to operate in urban areas, and the 2GP seeks to ensure that entertainment activities are provided in the CBD to encourage vibrancy and vitality. The challenge is then to determine how music venues and noise sensitive activities can exist in the same zone with no or minimal conflict.

Ideally, music venues would operate in zones that provide for the highest maximum permitted noise levels and where noise sensitive activities are generally precluded. However, in Dunedin these zones are also typically well separated from the city centre, are intended for industrial activities, and may not permit music venues.

The highest noise limits are typically found in Industrial Zones (typically up to 75 dB L_{Aeq} at any time). Business zones (e.g. mixed use, town centre, CBD and metropolitan centre zones) typically provide for noise levels of 65 dB L_{Aeq} and 55 dB L_{Aeq} during the day and night respectively.

The 2GP entertainment zones provide for noise levels of 60 dB L_{Aeq} during the day and 60 dB L_{Aeq} and 85 dB L_{AFMax} at night. Compliance with this noise limit is measured and assessed at the “property”¹² receiving the noise. The ability for music venues to operate in compliance with this noise limit will depend on various factors, including;

- i. The proximity of neighbouring properties and the nearest compliance points where noise levels must be measured and assessed;
- ii. The acoustic performance of the building containing the entertainment venue and its ability to successfully attenuate music noise (i.e. whether activity involves amplified music in any outdoor spaces, or results in noise break out through windows and doors).
- iii. The management of the entertainment venue, and operational measures to control the noise levels from musical instruments, microphones and audio equipment. For example, a house PA system with a noise limiter may be used to control noise levels rather than allowing live acts to plug in and control their own amplification systems.
- iv. Whether the nearest compliance points are occupied by noise sensitive activities that are occupied at the same time the music venue is operating. For example, if a music venue is surrounded by retail or commercial offices, these

¹² Noise levels must be complied with at the boundary of the receiving “property”. “Property” is defined in the 2GP as “Land held by one person, associated persons, company, or trust in one or more Certificates of Title, and managed as one entity”

spaces are likely to be vacant when the music venue is operating during the evening/ night-time, so there is no conflict. If these spaces are converted to apartments, conflict may arise very quickly.

The 2GP noise limits for the entertainment zones are relatively consistent with the maximum permitted noise levels that are provided for in other entertainment zones/ precincts in other parts of New Zealand, and are sufficiently high enough for music venues to operate¹³. We have not identified any issues with the maximum permitted noise levels provided for in the 2GP entertainment zones. Case studies of other examples are provided in Section 7.0 of this advice.

However, even though the noise limits set in the entertainment zones are high enough to allow for music venues to operate, conflict can and probably will still arise.

Based on our understanding of the 2GP and experience with other similar conflicts in other urban areas in New Zealand, we consider the primary source of conflicts between music venues in the entertainment zones and noise sensitive apartments in Dunedin is likely to arise from:

- Uninsulated residential apartments in the entertainment zones¹⁴
- The relatively modest degree of insulation ($DnT,w + Ctr > 30$) required by the 2GP
- The lack of controls to manage noise transmission between units/tenancies sharing common walls/ floors inside the same building
- The cost and difficulty involved in retrofitting older building stock to achieve compliance with the acoustic insulation standards
- Residential occupants seeking a level of acoustic amenity that is not provided for in the entertainment zones.

6.0 Mechanisms to manage compatibility between land uses

There are a variety of planning tools that can manage the compatibility of music venues and noise sensitive activities. These are set out below.

¹³ Subject to design, location, operational and management considerations

¹⁴ We are not aware of the percentage of dwellings that are acoustically insulated in accordance with the 2GP requirements

6.1 Separation

A simple means of managing compatibility between land use activities is through separation. Separating music venues from noise sensitive activities by large distances can ensure that no noise conflict can potentially arise between music venues and noise sensitive activities.

Full separation can be achieved by precluding noise sensitive activities or music venues from all of the entertainment zones. Partial or adequate separation could be achieved by defining areas within the entertainment zones and applying precinct overlays to the zone or specifying set back distances that can be used to manage the potential proximity of music venues to areas in which apartments are likely to consolidate, or vice versa.

Section 7 provides case studies where setback distances are used to maintain compatibility:

- 1) The San Francisco approach relies on a specified setback distance to control the distance between music venues and apartments, and ensures that music venues are provided with a designated part of the City to operate.
- 2) The Queenstown example relies on an entertainment precinct that prioritises the operation of entertainment activities in a specific part of the city centre.

6.2 Managing compatibility through acoustic insulation standards

Requiring noise sensitive spaces to be acoustically insulated is commonly a key part of managing incompatibility between land use activities. Acoustic insulation is required for noise sensitive land use where external noise levels are greater than 55 dB L_{Aeq} in the daytime, and above 45 dB L_{Aeq} at night.

The insulation controls need to deliver internal noise levels no greater than approximately 35-40dB L_{Aeq} during the day time and 30-35dB L_{Aeq} at night.

Habitable rooms that are acoustically insulated should also be provided with mechanical cooling (air conditioning) and a mechanical fresh air supply to ensure that the occupants can keep windows closed (and therefore keep the noise out) and remain cool and comfortable at the same time. If occupants have to open windows or doors to remain cool and comfortable, the acoustic insulation measures become redundant.

The 2GP requires “*all rooms to be used for noise sensitive activities*” in the entertainment zones to be acoustically insulated to achieve a minimum design standard of $DnT,w + Ctr > 30$. These spaces must also be provided with a supplementary source of ventilation to enable occupants to close windows.

Appendix 9A of the 2GP enables compliance with the acoustic insulation performance standard to be achieved by a) an acoustic design certificate or b) designing and constructing the noise sensitive space in accordance with the construction schedule in Table 9A.1A. A copy of the construction schedule is provided in Appendix B.

Noise sensitive spaces that are not designed and constructed in accordance with Rule 9.3.1 are a discretionary activity. This means that the occupation of non-insulated apartments is not a permitted activity, and requires a resource consent.

The level of acoustic insulation required by the 2GP is not particularly high. By way of example:

- 1) A typical modern dwelling will generally achieve $D_{nT,w} + C_{tr}$ of approximately 25-30 without any specific acoustic treatment;
- 2) A well-insulated dwelling or apartment could readily achieve $D_{nT,w} + C_{tr}$ of 30-35.
- 3) Dwellings and apartments can achieve up to $D_{nT,w} + C_{tr}$ 40 with careful design. The Queenstown Lakes District Plan requires noise sensitive activities in the City Centre Zone to achieve $D_{nT,w} + C_{tr}$ 40.

We are not aware of any data that confirms the percentage of central city apartment stock that is acoustically insulated in accordance with the 2GP requirements. Based on our experience and understanding, we expect that it would be few.

If noise complaints from uninsulated apartments are an issue, Dunedin City Council's compliance team could consider taking enforcement action against the apartment owners to require compliance with the 2GP insulation controls.

6.2.1 The level of internal noise amenity provided by the 2GP

The 2GP acoustic insulation standard adopts a principle of achieving a set level of noise reduction from outside to inside, as specified in the $D_{tr,2m,nTw} + C_{tr} > 30$ dB metric, (the D_{tr} metric). This is a relatively complex metric adopted from ISO717-1:1996 *Acoustics – Rating of sound insulation in buildings and of building elements – Part 1: Airborne sound insulation*.

The term $D_{tr,2m,nTw}$ is the standardized level difference based on a normalised level of acoustic absorption in the receiving room. The addition of the suffix $+C_{tr}$ means that a spectrum of noise representing road traffic is used for the design. This increases the level of low frequency sound insulation to cater for a variety of sources, including road traffic, railway traffic at low speeds, music and industrial noise.

The advantage of the D_{tr} metric is that although it appears complex, it approximates a level difference from outside to inside of 30dB (where 30dB is the requirement). Designing facades to comply with a D_{tr} based control is commonplace and relatively straightforward.

The disadvantages are:

1. It requires the involvement of an acoustics expert to design a facade that will comply, or requires strict adherence to the construction schedule in Table 9A.1A of the 2GP;
2. It applies the same sound level reduction to every bedroom, regardless of the level of noise outside. That means that if some facades are facing away from the noise sources in the zone they might be over-designed and the internal noise level lower than is necessary.

3. Conversely, if the facade is facing towards a noise source, it might be possible that the facade is under-specified and the internal noise levels are higher than normally desirable.

6.2.1 Retrofitting older building stock to achieve $D_{tr,2m,nTw} + C_{tr} > 30$ dB

Table 9A.1A of the 2GP (reproduced in Appendix B) provides a schedule of typical building construction to achieve the acoustic insulation required by Rule 9.3.1.1.

We understand that residential intensification in the CBD is likely to take place in existing buildings through conversion of commercial space. It is our experience that this exercise can be challenging where there are desires to maintain historical features of buildings that may degrade the acoustic performance.

In our experience, the following challenges are sometimes encountered when upgrading the acoustic performance of facades in existing buildings:

- 1) In some cases, the need to preserve heritage features of a building such as sash windows or timber window frames can seriously impede the ability to achieve compliance.
- 2) The windows required to achieve compliance will in most cases require improvement. In some cases, the frames will also need replacing. This can be challenging where the windows and frames of the unit being converted will look different (from the outside) to the windows and frames in the rest of the building. This is often unfavourable to body corporates (for example).
- 3) In some cases the building façade is not capable of being upgraded to meet the insulation requirements without significant cost. The costs can arise from the need to strip and replace all existing internal linings, strip and replace windows and frames and installing air conditioning.
- 4) In some cases it can be very challenging to install air conditioning in order to allow windows and doors to remain closed. This can arise from insufficient ceiling space for ducting, the inability to mount outdoor condensers on the façade due to body corporate rules or façade construction.

It is clear that allowing poorly insulated / mechanically ventilated residential into the entertainment zones can seriously compromise the ability to have a functional mixed-use environment. The greater the number of poorly insulated activities sensitive to noise, the greater the conflict will become.

We consider that granting consent to conversions that cannot meet the acoustic insulation and ventilation / cooling requirements should be done with great caution. Proposals that cannot meet the ventilation / cooling requirements are likely to be the most problematic, as the occupants are likely to be reliant on open windows for cooling and thermal comfort. These are likely to be the most noise-sensitive conversions.

We point out that there may be instances where it is simply not appropriate to grant consent at all to a conversion that does not meet the acoustic insulation and / or ventilation / cooling requirements.

There are a great many cases however where conversions can be undertaken successfully and where the acoustic insulation and ventilation / cooling requirements can be readily achieved. We consider that the Council should be ensuring the requirements are met as often as possible. This will maximise the likelihood of a mixed-use and vibrant city centre supporting residential activity being successful.

6.2.2 How to deal with existing uninsulated residential activity

We understand that there is residential activity established in the entertainment zones that have not been required to provide acoustic insulation and / or ventilation / cooling to reduce outdoor noise. Such instances have the potential to undermine the efforts to create compatibility and minimise conflict.

Rule 9.3.1 of the 2GP contains wording that simply requires

“...all rooms to be used for noise sensitive activities ... must have acoustic insulation that achieves a minimum design standard of $DnT,w+Ctr > 30$.”

This rule applies to all such rooms in the zone, whether they are new or existing.

It is possible that an occupant of an existing and uninsulated activity sensitive to noise in an entertainment zone could complain about the noise of an entertainment venue that is operating in compliance with the 2GP noise limits also inside an entertainment zone. The venue could be operating in compliance with the relevant noise limits, and the conflict has arisen because the occupants of the activity sensitive to noise require open windows for ventilation and / or cooling.

The Council could respond by requiring the activity sensitive to noise to comply with the acoustic insulation requirements of the 2GP.

We acknowledge that there may be complications arising from existing use rights arguments from the activity sensitive to noise, where they may establish that they established lawfully in the zone before acoustic insulation was required. We also understand that a confirmed existing use right may not mean that their duties under section 16 of the RMA are absolved. We expect that where minimising noise is a shared responsibility (between the noise maker and the noise receiver) the duties under sections 16 and 17 to mitigate the noise to a reasonable level may apply equally to the receiver of noise as it would the noise generator. This would require an effort to mitigate the noise through acoustic insulation of the activity sensitive to noise, even where an activity sensitive to noise can establish an existing use right.

The issue with accepting uninsulated activities sensitive to noise in the entertainment zones is that they have the potential to seriously compromise the compatibility that is desired.

We anticipate that legal advice may be necessary to explore these issues further and to establish a policy for the Council to follow when investigating complaints from activities

sensitive to noise in the entertainment zones that do not meet the requirements of Rule 9.3.1 of the 2GP.

6.2.3 Outdoor amenity

Acoustic insulation can only mitigate the noise levels received indoors. The amenity of outdoor living areas are highly compromised when noise levels are greater than 55 dB L_{Aeq} in the daytime and above 45 dB L_{Aeq} at night.

However, stand-alone residential dwellings with large areas of outdoor living space are unlikely to be found in the entertainment zones, with apartment-style living being most common. In our experience, outdoor living areas associated with apartments are likely to be small and used relatively infrequently. The adverse noise effects on such areas are likely to be minimal given their infrequent use (particularly at night when music venues are most-likely to be operating) and small size.

Objectives and policies can assist to set expectations in terms of the anticipated aural amenity/noise environment in entertainment zones. We consider that outdoor amenity in the entertainment zones is a minor issue that can (if necessary) be managed by setting the expectations of the residents.

6.3 Managing noise effects inside buildings on the same site

Many of Dunedin's city centre buildings are (or will be) subject to complex owner/ occupier arrangements, with various tenants, lease holders, unit or cross title arrangements. Entertainment venues may seek to establish inside ground floor units, with the potential for residential apartments to be established in units that share common building elements (walls and floors) with the entertainment venue.

The greatest potential for noise conflicts will arise from noise sensitive spaces that are in close proximity to the entertainment venues, particularly where they are inside the same building. In our experience, it is either impracticable or very expensive to have a live music venue and apartments in the same building. There are some exceptions where buildings are very large and there is horizontal displacement between the activities, and/or where the music venue and apartments are separated by a number of floors that contain activities that are not sensitive to noise. Such situations are relatively rare, and it is our experience that most instances involving music venues and noise sensitive activities in the same building lead to conflict.

If Dunedin City Council wish to allow for or promote the co-location of music venues and noise sensitive activities in the same buildings, the noise management framework must control the potential noise levels that may be transmitted inside buildings.

The New Zealand Building Code (the Code) does not control the potential intertenancy noise effects between land use activities. While Clause G6 of the Code requires that all intertenancy walls and floors between habitable spaces and other spaces in a building are designed and constructed to achieve a sound transmission class (**STC**) no less than 55, the Code does not control the absolute noise level inside the entertainment venue or the noise sensitive spaces. Compliance with the Code does not solve the potential incompatibility between the land uses.

It is therefore critical that the District Plan includes robust controls to manage the transmission of noise through common building elements inside buildings that have multiple owner/ occupier arrangements.

This can be achieved by drafting District Plan noise standards that specify the location where noise levels between separate units must be complied with and ensuring that the definition of “site” (or other such term) recognises separately leased areas inside a building on the same piece of land.

6.3.1.1 Controlling noise levels within the same site or building

The 2GP requires noise levels from entertainment activities to be complied with at the “*boundary of the receiving property*”. The 2GP defines “property” as “*Land held by one person, associated persons, company, or trust in one or more Certificates of Title, and managed as one entity*”. This definition does not recognise separately leased areas inside a building on the same piece of land (i.e. unit title or cross lease arrangements). This means that the 2GP does not control noise levels between units on the same site.

This policy gap may give rise to noise conflicts and Section 16 issues because:

- i. Music venues can operate in compliance with the noise limits applying at the closest receiving “property” (on another site)
- ii. The facades of the apartments located in the same building as the music venue may be acoustically insulated in accordance with the 2GP requirements, but this will not reduce the noise propagating through the structure itself. The occupants of those apartments will still be disturbed and exposed to potentially unreasonable levels of noise.

In this situation both the apartments and the music venue are technically permitted by and compliant with the 2GP, but the music noise levels inside the apartments are likely to be unreasonable. Council may be required to moderate ongoing conflicts between the two activities. It is our experience that the duties under section 16 of the RMA do not apply in respect of this situation, but this does not preclude the Council from writing rules into the District Plan to manage the issue.

As an example, the Auckland Unitary Plan controls noise levels between units that share common building elements and are on the same site. Standard E25.6.9 is one example of a standard where noise limits are applied between units¹⁵. The preamble to this standard states:

*“In situations where common building elements such as floors and walls connect two **units** in the Business – City Centre Zone...”*

Chapter J of the AUP defines Unit as:

¹⁵

<https://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20E%20Auckland-wide/3.%20Built%20environment/E25%20Noise%20and%20vibration.pdf>

“A defined part of a building under different ownership, including apartments and separate leased areas within a building.”

We recommend that future District Plan reviews consider the inclusion of standards to controls noise levels between units that share common building elements (walls and floors) and to recognise the complex ownership arrangements of buildings in the city centre.

6.4 Guidelines

6.4.1 For venue operators

Dunedin City Council could consider developing guidelines for music venue operators. The Guidelines would contain;

- i. Guidance on the 2GP zones in which entertainment venues are permitted, and the maximum permitted noise levels applying during the prescribed timeframes
- ii. Acoustic mitigation options that can be implemented to assist the venue to achieve compliance with the permitted noise levels (i.e acoustic treatments, position of stage/ loudspeakers, use of sound-lock entry/ exit arrangements, limiting use of outdoor areas, avoiding speakers in outdoor areas)
- iii. Guidance on the preparation and implementation of a venue management plan to control noise emissions from the venue, including management of patrons arriving and departing the premises
- iv. Managing low-frequency noise levels through speaker placement, sound system set up and system selection
- v. Recommendations to minimise late night noise effects, including closing windows and doors and restricting use of outdoor areas after 10pm
- vi. Guidance on installing a noise limiter to control amplified sound levels from performers

6.4.2 For residential occupants

Inner-city living guidelines could also be prepared to ensure occupants of the entertainment zones understand:

- i. The permitted land use activities and permitted noise levels in the zone, including music venues
- ii. The level of aural amenity being lower than other residential zones, both indoors and outdoors
- iii. The need for acoustic insulation in accordance with the 2GP
- iv. Other options for acoustic attenuation (closing windows and doors, sealing gaps and service penetrations, installing insulation and sealing draughts).

7.0 Case studies

7.1 Chapter E25 of the Auckland Unitary Plan

E25 is the noise chapter of the Auckland Unitary Plan (AUP). E25 provides a comprehensive noise management framework that requires activities to be located and/ or designed to avoid or otherwise mitigate reverse sensitivity effects on existing lawfully established activities.

This is primarily achieved by:

- i. Controlling the types of noise sensitive activities that can establish in high noise environments. Residential activity is restricted / precluded in some of the business zones.
- ii. Requiring noise sensitive activities and spaces in noisy zones to be acoustically insulated, based on the maximum noise level permitted in that zone or any adjacent zone.
- iii. Specifying internal design levels for bedrooms and sleeping areas that take into account low frequency noise.
- iv. Prescribing noise limits between units that share common building elements (walls and floors).
- v. Requiring mechanical ventilation and/ or cooling to ensure that occupants do not have to open windows to maintain a comfortable temperature¹⁶.

The AUP also relies on precinct overlays to apply bespoke controls in specific areas subject to noise events or noisy activities.

We have compared the AUP noise standards to the 2GP maximum permitted noise levels in the entertainment zones. In summary:

Key similarities:

- Both plans enable similar noise levels in zones in which entertainment activities are anticipated and provided for.
- The acoustic insulation standards of the AUP require noise sensitive spaces to achieve a noise level reduction of between 30-35 dB (depending on the specific zone). The 2GP acoustic insulation standards require a similar level of acoustic treatment.

Key differences:

- The AUP acoustic insulation standards require mechanical ventilation and mechanical cooling to be supplied in noise sensitive spaces. Providing mechanical cooling ensures

¹⁶ Refer to the full standard in <https://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20E%20Auckland-wide/3.%20Built%20environment/E25%20Noise%20and%20vibration.pdf> to see the mechanical ventilation requirements.

that occupants do not need to open windows and doors for thermal comfort during the warmer months. The need to open windows and doors to regulate internal temperatures invalidates the cost and effort of applying the acoustic insulation.

The 2GP only requires ventilation, which is often insufficient to allow doors and windows to remain closed.

- The AUP controls the potential internal noise levels between units inside the same building (as discussed earlier in this advice).

The 2GP contains no provisions controlling the noise levels between units in the same building.

- The AUP provisions provide a clear expectation for the burden of acoustic mitigation to lie with the noise sensitive activity in zones where entertainment activities are anticipated and provided for. Objective E25.2 and Policy E25.3(7) protect authorised activities (that by nature produce high levels of noise) from reverse sensitivity effects where it is reasonable to do so.

Objective 18.2.2 of the 2GP seeks to minimise the potential for conflict between activities within the commercial and mixed use zones, through adequate separation distances and mitigation measures which ensure the potential for reverse sensitivity effects is minimised. Policy 9.2.2.2 of the 2GP requires that noise sensitive activities in the entertainment zones to be adequately acoustically insulated to avoid “significant adverse effects from the higher noise environment” anticipated in the entertainment zones.

7.2 City of Melbourne

Like Dunedin, live music is an integral part of Melbourne’s culture and identity. Melbourne has a well-established live music scene and is recognised as the leading music city in Australia. Melbourne has experienced conflict in a similar fashion to the issues faced in Dunedin.

In 2003, the Minister for Planning and Minister for Arts, established the Live Music Taskforce (**LMT 2003**) to look at the issue of noise from live music venues on residential amenity in Melbourne. The LMT 2003 focussed on noise from live music venues and the rights and responsibilities of live music venue proprietors, property owners and residents, and the combination of building regulation, environment protection, and health and liquor licensing laws that regulate and influence live music noise.

The LMT 2003 considered 224 public submissions from stakeholders representing the music industry, residential and regulatory interests and ultimately produced the LMT 2003 Report and Recommendations (the **LMT Report**). We have attached the LMT Report to this advice in Appendix C.

The LMT Report identified the following issues:

- The role of Melbourne's diverse and vibrant live music culture, accessible through the "pub music scene"
- The influx of residential activity in inner urban areas, giving rise to conflict between residential and entertainment activities
- The role of various legislation (planning, building liquor licensing) in the regulation of live music noise and that the regulatory framework does not always operate smoothly, particularly in the resolution of complaints
- That lawfully operating activities may be rendered non-compliant through the encroachment of new residential land use
- That some music venues are not always able to achieve immediate compliance with noise standards, and require opportunities to deliver compliance over time
- That greater opportunities for dialogue between venue operators and residential communities could reduce the potential for, duration and cost of conflict

LMT 2003 Report and Recommendations promoted 13 outcomes, many of which are relevant to the Dunedin context.

A primary theme of the Report and Recommendations document relates to the "agent of change" in resolving land use conflicts:

"5.6 MANAGING URBAN CHANGE"

Principle 5: The onus of responsibility should be on the agent of change

Settlement trends over recent years have seen new residential development concentrating in and around activity centres, bringing residents closer to established entertainment precincts and live music venues. Inner urban neighbourhoods are becoming more 'mixed use' in character. This tends to increase the basis for conflict about music noise. This settlement and land use trend is provided for in Government policy and is expected to continue.

For both venue operators and residents, recognition should be accorded to the expectations generated by existing land uses.

For the resident, this implies a continued protection of amenity in the event of a change in venue operation or the development of a new venue. For the venue operator, this implies that where a venue is currently compliant with relevant noise attenuation standards and its operation does not change, new residential or other noise sensitive development should not lead to new compliance costs.

The onus of responsibility for the cost of noise management (which may include attenuation measures) should fall upon the agent of change.

In all cases of land use change, anticipation of issues of noise detriment, and implementation of predicted solutions at the planning and design stage are preferable to the adoption of measures to resolve an actual noise disturbance”¹⁷

We consider that apportioning the majority of the responsibility on the ‘agent of change’ is in some ways problematic as it tends to promote a first-in, first-served arrangement where the incumbent are advantaged. This may not accord with the intended planning outcomes for an area, particularly in a dynamic and evolving urban environment. The District Plan framework must set out the anticipated outcomes for the next ten years, provide clear direction on the land use activities anticipated and provided for within the zone, the aural amenity outcomes, and provide effective measures to manage compatibility such that reverse sensitivity conflicts are adequately avoided.

7.2.1 State Environment Protection Policy No N-2

“SEPP NO. N2 *Control of Music Noise from Public Premises*” (the **Policy**) sets out the state government’s objectives for controlling noise pollution from music produce at indoor and outdoor entertainment venues in Victoria.

The Policy “*establishes standards and controls over music noise which balance the right of people living in areas around entertainment venues not to be disturbed by unreasonable levels of music noise, with the right of people seeking musical entertainment at indoor or outdoor venues*”.

A copy of the Policy explanatory notes are provided in Appendix D.

The Policy provides:

- i. Noise limits for indoor venues, with more stringent night-time noise limits. For the day/evening period, noise from music is restricted to the background level plus five decibels [$L_{A90} + 5$ dB (A)]. For the night period, noise from music at particular frequencies (octave bands) is restricted to the background level plus eight decibels ($L_{OCT90} + 8$ dB). A fixed base level is used to determine objectives when background levels are unusually low.
- ii. No time limits are set on the operation of indoor venues.
- iii. Restrictions on outdoor venues operating after 11pm

In our opinion, the noise controls in (i) are very strict. They would require the majority of the burden of insulation to be borne by the music venue.

¹⁷ Online at <https://greens.org.au/sites/greens.org.au/files/Live%2BMusic%2BTaskforce%2B-%2BReport%5B1%5D.pdf>

7.3 City and County of San Francisco

The City and County of San Francisco passed the [Administrative Code Chapter 116-Compatibility and Protection for Residential Uses and Places of Entertainment](#) (the **Code**) in 2015.

The Code seeks to protect existing Places of Entertainment (PoE) from nearby residential development, provided that the PoE are operated in accordance with applicable noise restrictions. In turn, the Code protects future residential residents of high noise environments (industrial, commercial and mixed use zones where PoE operate) by *“providing notification processes to inform such residents of the possible noise levels in such neighborhoods and by requiring design features in new residential construction to promote the compatibility of residential uses and entertainment uses in adjacent or nearby Places of Entertainment”*¹⁸.

The Code provides protection for PoE by requiring that *“No establishment that has held a permit to operate as a Place of Entertainment within 300 radial feet¹⁹ of a building for which construction or conversion for Residential Use was completed on or after January 1, 2005, shall be or become a public or private nuisance on the basis of noise disturbance for a resident of that building, if the Place of Entertainment operates in compliance with the Municipal Code and the terms of its permit”*.

The Planning Department is required to maintain a list of permitted PoE (also publicly available on a website). If an application for a housing development is submitted and it is within 300 feet of a permitted PoE, the Code requires that the application is submitted to the “Entertainment Commission” to consider the acoustic measures that may be required to manage compatibility. Section 116.6 of the Code enables the Entertainment Commission to undertake noise measurements to determine the exposure of the development to music noise:

“In addition to any acoustical analysis required by the Building Code, prior to any hearing by the Entertainment Commission on a Project pursuant to Section 116.7, Entertainment Commission staff may take exterior acoustical measurements of conditions at the Project Site, to determine normal daytime conditions, normal nighttime conditions when no performance is taking place at any Place of Entertainment within 300 radial feet of the proposed Project, and conditions during a performance at any Place of Entertainment within 300 radial feet of the proposed Project. The Project sponsor shall provide Entertainment Commission staff with reasonable access to the Project Site for this purpose. This information may be made available to the Entertainment Commission to inform the Entertainment Commission's consideration of the Project”.

The Entertainment Commission determines whether a hearing is required to present evidence and testimony relating to noise issues, including *“noise levels in the area of the proposed Project, including all acoustical analysis conducted to date; the Project's proposed noise attenuation features; other possible noise attenuation measures, including voluntary collaboration with the Place of Entertainment; the projected level of interior noise for residential*

¹⁸ Sec 116.1 <https://sfgov.org/entertainment/sites/default/files/FileCenter/Documents/2790-Chapter116.pdf>

¹⁹ 300 feet is 91.44m

*units in the Project; and the Project sponsor's engagement or plans for engagement with the Place(s) of Entertainment*²⁰.

In considering whether to grant approval to the housing development, the Entertainment Commission is able to include any conditions relating to noise attenuation and to require a "disclosure notice" to be registered on the lease or purchase agreement. The disclosure agreement states:

"DISCLOSURE OF NEIGHBORING PLACE OF ENTERTAINMENT.

You are purchasing or leasing property that is adjacent or nearby to [name and address of the Place(s) of Entertainment]. This venue is an existing Place of Entertainment, as defined in Police Code Section 1060, which includes establishments such as live music venues, nightclubs and theaters. This establishment may subject you to inconveniences or discomfort arising from or associated with its operations, which may include, but are not limited to, nighttime noise, odors, and litter. One or more of the inconveniences or discomforts may occur even if the Place of Entertainment is operating in conformance with existing laws and regulations and locally accepted customs and standards for operations of such use. If you live near a Place of Entertainment, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in a neighborhood with mixed commercial and residential uses."

This approach prioritises the existing operation of the music venue and requires the sensitive land use moving into the area to be responsible for managing compatibility. There are several aspects of the Code that could be readily transferable to the New Zealand context. This could be achieved through District Plan standards that:

- Prescribe minimum setback distances between lawfully established music venues and incoming residential activity
- If the specified setback distance is not achieved, applying a more restrictive resource consent activity status (such as Discretionary or Non Complying) designed to control amenity effects and potential reverse sensitive effects on music venues.
- Requiring a no-complaints covenant (the New Zealand equivalent of the disclosure agreement) to be registered on the Certificate of Title of residential activities in close proximity to lawfully established music venues.

The advantages of this approach include:

- The nomination of a minimum separation distance (i.e. 100m) between music venues and residential activity is the primary measure to manage compatibility. In our experience, separation will ensure [discuss].
- Noise sensitive activities within the separation distance are subject to a more stringent decision-making process (e.g. Discretionary) and required to

²⁰ Sec.116.7(2)

demonstrate they incorporate sufficient acoustic measures to manage greater levels of noise exposure and avoid potential reverse sensitivity effects.

- Incoming occupants of the residential land use are informed of the proximity of the development to music noise.

This approach effectively promotes a ‘first in, first served’ approach to music venues but with a high degree of rigour and transparency applied.

We expect that adoption of such a policy has the potential to generate an influx of small music venues seeking to establish prior to the resident population of the CBD increasing. A scattered influx of many small-scale music venues (with setbacks applying to each) may potentially impede residential intensification plans in the CBD.

This scenario could be avoided through an alternative approach, where a precinct is applied to specific parts of the CBD where music venues are to be consolidated. A precinct overlay could be applied to identify specific locations in the CBD where residential activity is to be precluded or subject to more stringent controls to manage conflict from music venues. This approach is adopted in the Entertainment Precinct of the Queenstown Town Centre Zone, discussed below.

7.4 Queenstown Lakes District Council- Entertainment Precinct

The Queenstown Lakes District Plan (**QLDP**) includes an “Entertainment Precinct”²¹ (**EP**) overlay in the Queenstown town centre (Figure 3). The EP precinct was introduced by the draft 2015 District Plan as a means to promote the vibrancy and economic viability of the town centre.

The permitted noise standards in the EP are higher than other parts of the Town Centre to encourage those noisier operations to locate in the most central part of town, where it will have least effect on residential zones.

²¹ <https://www.qldc.govt.nz/media/5qedo1xh/pdp-decision-of-council-chapter-12-queenstown-town-centre-may-2018.pdf>

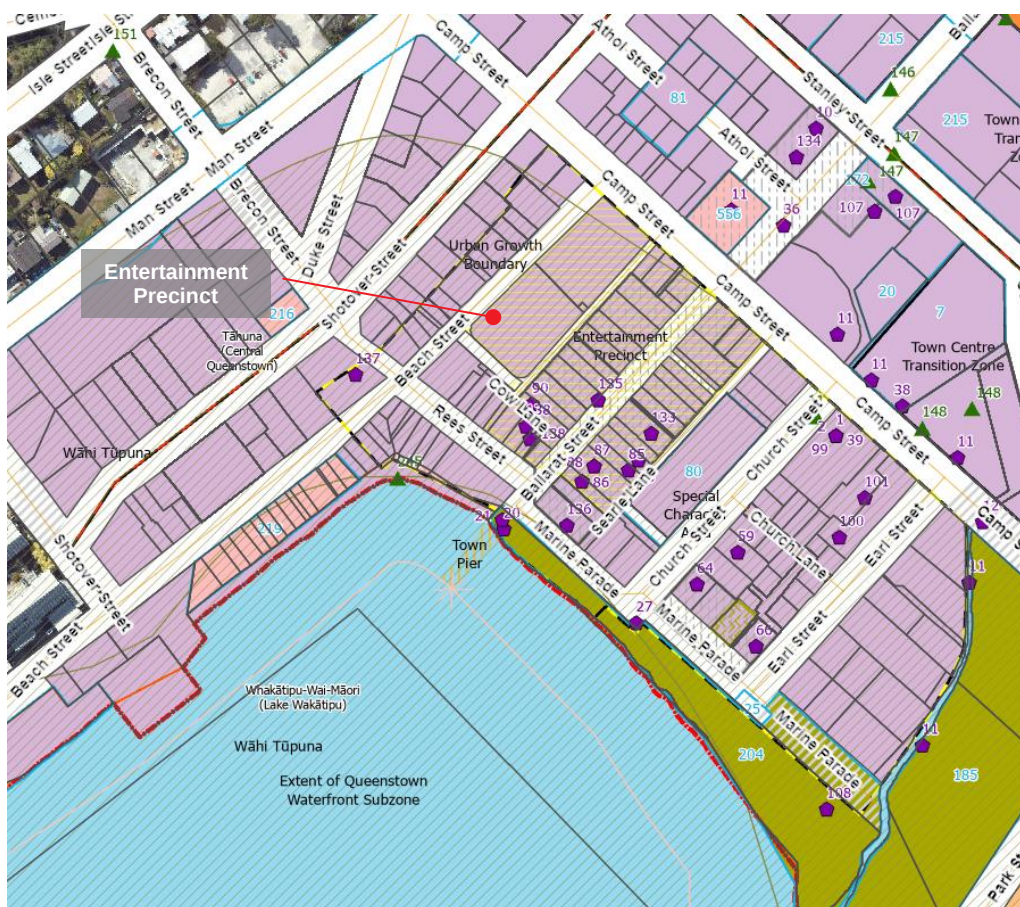


Figure 3 Entertainment Precinct- Queenstown

Objective 12.2.1.3 of the District Plan seeks to “recognise the important contribution that night time activity makes to the vibrancy and economic prosperity of the Town Centre by enabling restaurant and bar activities to occur subject to appropriate noise controls” and Objective 12.2.1.4 seeks to “Enable residential activities and visitor accommodation activities while acknowledging that there will be a lower level of residential amenity due to increased noise and activity resulting from the mix of activities and late night nature of the town centre”.

Residential and visitor accommodation within the Town Centre is enabled, subject to policies that:

- Acknowledge that the EP will be noisier and more active than in residential zones due to the density, mixed use, and late night nature of the Town Centre
- Require all sensitive uses to be acoustically insulated
- Only enable new residential and visitor accommodation uses within the EP where adequate insulation and mechanical ventilation is installed.

These objectives and policies are given effect to through:

- The maximum permitted noise levels for music and voices
- The acoustic insulation standards

Rules 12.5.10.3 prescribes maximum permitted noise levels for music, and Rule 12.5.10.4 controls noise generated by voices. These rules are reproduced below:

12.5.10.3

Within the Town Centre Zone, excluding the Town Centre Transition Sub-Zone sound* from music shall not exceed the following limits:

- a. 60 dB LAeq(5 min) at any point within any other site in the Entertainment Precinct;
- b. at any point within any other site outside the Entertainment Precinct, other than as allowed for in c.:
 - i. daytime (0800 to 0100 hrs) 55 dB LAeq(5 min)
 - ii. late night (0100 to 0800 hrs) 50 dB LAeq(5 min); and
- c. 55 dB LAeq(5 min) at any point along the eastern boundary of Searle Lane (excluding any frontage south of Lot 1 DP 27486).

*measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008, and excluding any special audible characteristics and duration adjustments.

12.5.10.4

Within the Town Centre Zone, excluding the Town Centre Transition Sub-Zone sound* from voices shall not exceed the following limits:

- a. 65 dB LAeq(15 min) at any point within any other site in the Entertainment Precinct;
- b. at any point within any other site outside the Entertainment Precinct, other than as allowed for in c.:
 - i. daytime (0800 to 0100 hrs) 60 dB LAeq(15 min)
 - ii. late night (0100 to 0800 hrs) 50 dB LAeq(15 min); and
- c. 60 dB LAeq(15 min) at any point along the eastern boundary of Searle Lane (excluding any frontage south of Lot 1 DP 27486).

*measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008.

The acoustic insulation standards within the EP are reproduced below.

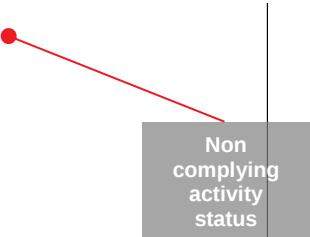
12.5.12	Acoustic insulation within the Entertainment Precinct NC where any new building is erected, or a building is modified to accommodate a new activity: 12.5.12.1 A mechanical ventilation system shall be installed for all critical listening environments in accordance with Table 5 in Chapter 36. 12.5.12.2 All elements of the façade of any critical listening environment shall have an airborne sound insulation of at least 40 dB Rw+Ctr determined in accordance with ISO 10140 and ISO 717-1.	
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Figure 4 QLDC acoustic insulation standards

We have compared the EP noise standards to the 2GP maximum permitted noise levels in the entertainment zones. In summary:

Key similarities:

- i. Both District Plans authorise similar noise levels (60 dB L_{Aeq}), however the QLDP is marginally more stringent as it requires noise levels to be assessed over a 5 minute period rather than a 15 minute period.

Key differences:

- ii. The QLDP differentiates between noise levels generated by music, and noise levels generated by voice. The permitted levels for voices are 5 dB higher because the character is generally less annoying and intrusive than music noise, especially music with a high bass content.
- iii. The acoustic insulation standards in the EP require the building envelope to achieve a noise reduction of 40 dB. This is 10 dB higher than the 2GP requirements, and requires a significant level of acoustic treatment and generally precludes large windows, sliding doors or windows. The facades of buildings generally have to contain only small windows and often require masonry construction to meet the criteria.
- iv. Dwellings in the entertainment zones of the EP that do not comply with the permitted acoustic insulation standards are a non-complying activity. The 2GP applies a discretionary activity status for the equivalent scenario.
- v. The objectives and policies for the EP send a clear signal to noise sensitive occupants of the precinct that a lower level of residential amenity is likely to be enjoyed. These provisions are likely to be more effective at “setting expectations” than the 2GP provisions.

8.0 Summary of approaches and recommendations

This advice has investigated and assessed a number of issues and approaches to managing the actual and potential conflict between music venues and noise sensitive activities.

The following section summarises the various controls and planning approaches and contains our assessment of the advantages and disadvantages of each. We have only commented on the advantages and disadvantages that are directly or closely related to acoustics and acoustics as a planning issue. We expect that there will be other advantages and disadvantages beyond the technical expertise of the authors that will require consideration. These may include policy, process or wider planning or infrastructure issues (for example).

8.1 Acoustic insulation controls

We consider that plan provisions requiring noise sensitive activities to be insulated from external noise to be mandatory in any of the wider planning options outlined below. We consider that the 2GP provisions are generally appropriate, but we consider the following improvements should be considered:

- 1) Including a requirement for mechanical cooling so that the windows and doors of noise sensitive activities can remain closed, even in warm weather
- 2) The insulation requirement of $DnT,w + Ctr > 30$ should be increased to $DnT,w + Ctr > 35$. This will increase the burden on the receiving environment somewhat but will increase the likelihood of compatibility overall. This increase could be considered for all entertainment zones or only for certain areas if a precinct approach is adopted as described below.
- 3) Including a requirement for noise to be controlled between units in the same building. The AUP example could be used as the basis for developing such controls.

8.2 Separation by zone

A simple means of managing compatibility between land use activities is through separation. Separating music venues from noise sensitive activities by large distances can ensure that no noise conflict can potentially arise between music venues and noise sensitive activities.

Full separation can be achieved by precluding noise sensitive activities or music venues from zone(s) in which music venues are to be prioritised. Partial or adequate separation could be achieved by defining areas within the entertainment zones and applying precinct overlays to the zone or specifying set back distances that can be used to manage the potential proximity of music venues to areas in which apartments are likely to consolidate, or vice versa

If Dunedin City Council seek to prioritise the operation of entertainment activities in certain zone(s), a plan change could consider whether to preclude or restrict noise sensitive activities (i.e. through a non-complying activity status) in those zone(s).

This approach would ensure that music venues are provided with a designated zone in which to operate, with a clear policy framework prioritising their operation and effects. The absence of noise sensitive land use would preclude noise conflicts from occurring, particularly during the night-time period. Compatibility with other land use activities would still need to be achieved during the day time period. The zone(s) would also need to be well separated from nearby zones that contain noise sensitive activities.

A disadvantage of this approach is that residential activity is often a key component of the vibrant hub mixed use environments. Precluding residential land use from entire zones may not be desirable from a broader planning perspective.

8.3 Separation by precinct

This approach is similar to the concept described above, however an overlay or ‘precinct’ is applied to specific parts of the City in which entertainment activities are to be prioritised. Overlays do not have to follow zone boundaries. This approach is often used in District Plan (such as Queenstown) to manage specific planning issues for that area. Precinct controls are used to identify the performance standards/ rules specific to that area.

In the case of Dunedin, an “entertainment precinct” overlay could be considered for parts of the City in order to recognise and protect key medium to large scale music venues and/ or parts of the City that are considered suitable for future music venues to consolidate.

Planning controls could be used to:

- Restrict noise sensitive activities within the precinct
- Require more stringent acoustic insulation standards if noise sensitive activities are enabled (the Queenstown approach)
- Specifying separation distances between the entertainment precinct and residential activity (the San Francisco approach).

8.3.1 The San Francisco approach

The San Francisco case study (Section 7.3) discusses the use of minimum setbacks between individual music venues and new dwellings in specified parts of the City. In San Francisco, this approach is used instead of blanket setback distances measured from the edge of a zone or precinct. A key benefit of this approach is that it still enables the co-location of residential activity, subject to achieving minimum separation distances to maintain compatibility.

We noted this approach is likely to promote a “first in, first served” approach. We also note it is likely to be difficult for Council to administer and regulate in terms of tracking the location of all music venues, and ensuring that the community is able to understand the setbacks applying from each venue. This may be problematic in a dynamic planning environment.

An alternative and more simpler approach may involve using precincts around the City’s key medium to large scale music venues, and using controls to specify minimum setback distances and/ or more stringent acoustic insulation standards from these venues/ and or areas.

9.0 Our recommendations

We recommend Dunedin City Council considers the creation of one or more entertainment precincts with associated provisions to identify those parts of the City where the operation of music venues will be prioritised over residential land use. The policy framework and performance standards for the entertainment precinct should:

- a. Provide clear objectives and policies that protect music venues from reverse sensitivity effects and incompatible land use. The policy framework should

state the anticipated aural amenity outcomes for the precinct (i.e. that the precinct will have a low level of residential amenity due to increased noise and activity from entertainment activities)

- b. Preclude or restrict residential activity unless they are designed and constructed in a way that ensures ongoing compatibility with the noise effects anticipated and provided for in the precinct.
- c. Require noise sensitive activities to be subject to more stringent acoustic insulation standards. We recommend the 2GP insulation requirement of $DnT,w + Ctr > 30$ should be increased to $DnT,w + Ctr > 35$, and potentially > 40 if this can be justified through a robust Section 32 analysis.
- d. Include noise standards to recognise the complex ownership arrangements of buildings in the inner city and to control noise levels between units that share common building elements (walls and floors)

We recommend Dunedin City Council publishes guidelines for both venue operators and residential occupants of entertainment zones. The guidelines could be implemented as an interim measure and updated to reflect future policy. In the short term, we strongly recommend the use of inner-city living guidelines to ensure incoming residential occupants are aware of the 2GP requirements for acoustic insulation, and the noise effects authorised in the 2GP entertainment zones.

As demand for inner-city living is increasing, we recommend the measures described in (a) to (d) are implemented before residential land use becomes more established in those parts of the City in which music venues are to be prioritised and consolidated.

10.0 After-hours noise control - managing conflict and complaints in real-time

We understand that Dunedin City Council contract their after-hours noise complaints response to an independent contractor, Allied Security. This is standard practice for many local authorities. We have reviewed Allied Security's standard operating procedure manual (the **Dunedin SOP**) for noise enforcement (July 2021) to understand the approach for complaints relating to music venues in the entertainment zones.

The Dunedin SOP contains a specific section for handling complaints from flats/ apartments in the CBD. The document correctly requires noise levels to be assessed inside the living area and bedroom of the complainant, and not outside (as is standard practice in residential zones). This approach requires permission to access the apartment to be obtained from the complainant, which may not always be possible.

The SOP notes that "*Flats in the city centre should expect more noise but should also be better insulated against noise than general residential properties. The noise level outside is not a useful guide in assessing noise effects*". The SOP provides the following guidelines for

determining whether the noise is “excessive”, and notes that “*where noise is borderline, consider time of day/night/likely duration of the noise event*”.

SOP guide to assessing noise inside apartments	Outcome
No noise audible – no noise	No noise
Just audible - only slightly (e.g. required a conscious effort to hear it) or very intermittent	Not excessive
Clearly / easily audible and sustained noise	Excessive

Styles Group considers that some improvements to the assessment process could be applied to improve the appropriateness and consistency of outcomes and to create a standardised process for dealing with entertainment venues.

We consider it necessary to divide the assessment approach in two:

- 1) Assessing the noise from parties or informal events that occur very infrequently and where the process for dealing with entertainment venues is inappropriate; and
- 2) Assessing the noise from entertainment venues where the same issues are likely to recur week to week or very frequently.

10.1 Assessing the noise from private / infrequent informal parties

We see this as a considerably easier task than dealing with entertainment venues. We suggest that the matrix assessment method described below should be implemented. The matrix process will refine the current assessment outcomes and will ensure that other relevant factors are taken into account, such as time of day and character of the noise.

We have provided a matrix assessment method below for consideration. The scoring system can be altered if required. A separate matrix could be used for Friday and Saturday evenings where the scores are slightly lower or the timeframes are altered to provide a slightly more lenient arrangement for those nights if desired.

10.1.1 The matrix assessment

The following matrix can be used as a guide for Noise Control Officers (NCO's) when subjectively assessing noise complaints. The matrix is predominantly designed for dealing with noise complaints from amplified music and general residential noise and as a 'first response' tool for dealing with the noise from entertainment venues. The matrix may not be appropriate for construction, mechanical or industrial noise.

Noise should be deemed as excessive when the total score is seven (7) or more. There may be circumstances where the officer's subjective assessment of the noise differs from the matrix

because of other factors not covered or not covered adequately by the matrix for the particular circumstance. The officer's subjective assessment should prevail in such cases.

Matrix assessment guideline		
		Score
Loudness	Barely audible	1
	Clearly audible	2
	Loud noise	4
	Extremely loud noise	5
Time of day	0700 to 2000hrs	1
	2000 to 2200hrs	2
	2200 to 0000hrs	3
	0000 to 0700hrs	5
Character	Slight bass	1
	Heavy bass	2
	Extreme bass	5

10.2 Assessing the noise from entertainment venues

We consider that assessing the noise from entertainment venues needs to be dealt with by a process separate to that used for informal or infrequent parties. The key reasons for this are:

- 1) The complaints are likely to arise every week or at least on a regular basis;
- 2) An Excessive Noise Direction (**END**) issued under section 327 of the RMA only lasts for 72 hours. Such a short period will not assist in managing noise events that occur on a weekly basis and only for 1-3 nights a week.
- 3) Even an improved assessment of excessive noise using the matrix system is still uncertain and inconsistent when applied by different NCOs and potentially at different times of the day and from different receivers. This creates uncertainty for the entertainment venue where they may perceive the compliance 'goal post' to be unreasonably dynamic.
- 4) The objective and standardised process using a sound level meter and New Zealand standards for measuring and assessing noise against the requirements of the noise limits in the 2GP provides a certain and repeatable process that does not shift the compliance goal posts. This process can be used to set a permanent regime in place that over time will significantly lessen the monitoring burden on the Council.

10.2.1 Recommended process for dealing with entertainment venues

We have prepared an outline of the process we recommend for dealing with noise complaints arising from entertainment venues in the entertainment zones.

We understand that the Council sometimes receives complaints and the complainant refuses access to their flat or apartment for the purpose of a noise assessment. It is our experience that assessing noise from any proxy location (not the flat or apartment in-question) is likely to generate significant uncertainty and inconsistency in the assessment process. This can often lead to unfair or unreasonable assessments on the entertainment venue.

We have also had experience of vindictive or vexatious complaints being lodged against entertainment venues from people not affected by the noise. These should not be investigated by the Council.

We strongly suggest that the Council adopt a policy where they refuse to attend to noise complaints unless the NCO has access to the flat or apartment to conduct an assessment. This will improve certainty and consistency in the process and will ensure that the matrix assessment is conducted fairly in each case. This will also avoid any response to vindictive or vexatious complaints.

10.2.1.1 First response – matrix assessment

We recommend the use of the standard response by NCO's using the matrix assessment system for the first time the Council receive a complaint about an entertainment venue or for situations where complaints about the particular venue are unusual or sporadic.

The matrix assessment should be conducted inside the activity sensitive to noise with windows and doors closed.

We recommend that matrix system continues to be used where the NCO assessments consistently return an outcome of not excessive.

We suggest that the following steps are adopted to manage the issue where the initial few NCO assessments return an outcome of excessive noise.

10.2.1.2 Commence objective assessment

As above, we recommend that an objective assessment process is adopted for situations where the Council can reasonably foresee a noise issue that requires resolution in the longer term. This will often be apparent after the first few visits of an NCO where the assessment outcomes are often or consistently deemed excessive.

If this issue has emerged unexpectedly, it could be an indicator of:

- The entertainment venue being newly established or recently modified in terms of hours, entertainment type, location or design of sound system, operating hours or general management style; and / or
- One or more newly established activities sensitive to noise in the area.

We recommend that the Council should take the following steps:

- 1) Investigate whether the activity sensitive to noise has been established in compliance with the 2GP acoustic insulation rules. If not, those rules can be enforced.

- 2) Whether or not the activity sensitive to noise meets the acoustic insulation requirements of the 2GP, the Council should consistently apply the external noise limits of the 2GP.

Council should arrange to objectively measure the noise at the boundary of the receiving property in accordance with Rule 9.3.6 of the 2GP. The noise limits in the entertainment zones are 60dB L_{Aeq} day and night, with an additional control of 85dB L_{AFmax} applying between 10pm and 7am.

The measurement and assessment should be conducted in accordance with NZS6801:2008 and NZS6802:2008. This would likely require measurement conducted 1m from the façade of the activity sensitive to noise in-question. This may involve using a microphone on a pole extended out an open window to a distance of 1m from the façade where the activity sensitive to noise in-question is higher than on the ground floor. An adjustment of -3dB should be applied to the measured level to account for the façade reflection.

This assessment will objectively determine whether the entertainment venue is compliant with the 2GP.

- 3) If the noise from the normal operation of the entertainment venue is likely to be comfortably compliant with the 2GP limits and no intervention or compliance measures are necessary, the Council should advise all stakeholders of that outcome. No further action may be necessary.

In some cases it may necessary to convey to the complainant that the noise levels are compliant, and that the 2GP anticipates and provides for noise levels in activities sensitive to noise in the entertainment zones to be audible at times but controlled to a level that is reasonable for all but the most-sensitive residents. It is often necessary to convey that inaudibility of entertainment noise is an unreasonably low test to apply.

- 4) We suggest that step (2) is conducted whilst there is a second sound level meter measuring the reverberant average noise level inside the entertainment venue itself. This will permit a 'Noise Level Difference' (**NLD**) between the entertainment venue and the activity sensitive to noise to be determined.

The NLD can be used to determine the noise level inside the entertainment venue that cannot not be exceeded before there is noncompliance with the 2GP noise limits.

For example, if the initial noise measurement at 1m from the façade of the activity sensitive to noise returns a level of 64 dB L_{Aeq} and the internal reverberant level inside the entertainment venue is 98 dB L_{Aeq} , the NLD is 34dB. To achieve a compliant level of 60dB L_{Aeq} at the activity sensitive to noise, the noise level inside the entertainment venue needs to be 34dB lower, or no greater than 94 dB L_{Aeq} . We suggest adding at least 2-3dB margin of safety on to the NLD to ensure consistent compliance. For the example, this would require the noise levels inside the entertainment venue to be no greater than approximately 91dB.

- 5) If noise mitigation is required to ensure compliance with the 2GP noise limits, the nature of the mitigation needs to be determined and confirmed as appropriate. Common mitigation measures include:
 - a. Reducing the output of the sound system. This can be controlled on a long-term basis by the installation of a limiter in the signal chain to limit the output of the speakers.
 - b. Closing external doors and windows
 - c. Turning outdoor speakers off at night or potentially permanently
 - d. Ensuring people do not congregate outside late at night
 - e. Installation of acoustic treatment inside the entertainment venue to increase the containment of noise. This could include the installation of solid-core external doors, improved glazing / windows, isolating the loudspeakers from the structure of the building etc.
- 6) If physical noise reduction or management measures are deemed necessary, the measures should be clearly described so the entertainment venue is clear about what measures will ensure consistent compliance.
- 7) Further measurement and assessment of the noise as in step (2) may be necessary to confirm that the mitigation measures are effective and consistently resulting in compliance with the 2GP noise limits.
- 8) The Council should notify all stakeholders of the outcome.

10.2.1.3 Formal enforcement action

If consistent compliance with the 2GP noise limits is not achieved, the Council may repeat some or all of the steps above from (2) onwards. If that does not work, Council may consider formal enforcement action.

10.2.2 Consistency of Councils' approach

There are likely to be cases where the following factors are found:

- 1) The noise level from the entertainment venue is compliant with the external noise limits set out in the 2GP; and
- 2) The activity sensitive to noise may pre-date the 2GP and is not acoustically insulated in accordance with the 2GP; and
- 3) The owners / occupants of the activity sensitive to noise are claiming a formal or informal existing use right to attempt to justify the noncompliance with the acoustic insulate requirements.

In such cases, it is likely that the entertainment venue will be under pressure to reduce their noise levels to below the limits in the 2GP. We consider that the 2GP makes it clear that the burden of managing noise in the entertainment zones is a shared responsibility (by imposing

limits on the noise generator and an insulation requirement on the receiver). We suggest that the Council make it clear to the occupants / owners of the activity sensitive to noise that the entertainment venue is compliant with the 2GP noise limits, and that if the noise levels in their flat or apartment remain unacceptable to them, the activity sensitive to noise should be acoustically insulated (at their cost). We suggest that this approach is adopted in the first instance, but that the Council seek legal advice depending on the situation to confirm this approach as valid and legally robust, or otherwise.

As a general principle, we encourage the Council to maintain the integrity of the 2GP provisions and make every effort to avoid outcomes where uninsulated activities sensitive to noise 'dictate' a requirement for entertainment venues to reduce their noise levels to below the 2GP limits.

Appendix A Glossary of terms

Noise	A sound which serves little or no purpose for the exposed persons and is commonly described as ‘unwanted sound’. The definition of noise includes vibration under the Resource Management Act.
Best practicable option	Defined in section 2 of the Resource Management Act as: in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to— - the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and - the financial implications, and the effects on the environment, of that option when compared with other options; and - the current state of technical knowledge and the likelihood that the option can be successfully applied.
dB (decibel)	The basic measurement unit of sound. The logarithmic unit used to describe the ratio between the measured sound pressure level and a reference level of 20 micropascals (0 dB).
Noise rating level	A derived noise level used for comparison with a noise limit.
Notional boundary	A line 20 metres from any side of a residential unit or other building used for a noise sensitive activity, or the legal boundary where this is closer to such a building.
The Act	The Resource Management Act 1991.
s16	Section 16 of the Act states that “every occupier of land (including any premises and any coastal marine area), and every person carrying out an activity in, on, or under a water body or the coastal marine area, shall adopt the best practicable option to ensure that the emission of noise from that land or water does not exceed a reasonable level”.

Appendix B 2GP Acoustic insulation requirements

Table 9A.1A Schedule of typical building construction to achieve acoustic insulation where required by Rule 9.3.1.1

Building element		Minimum construction requirement	
a.	External walls	i. Stud Walls: Exterior cladding	20mm timber or 9mm compressed fibre cement sheet over timber frame (100mm x 50mm).
		ii. Cavity Infill	Fibrous acoustic blanket (batts or similar of a minimum mass of 9kg/m ³) required in cavity for all exterior walls. Minimum 90mm wall cavity.
		iii. Interior lining	One layer of 12mm gypsum plasterboard. Where exterior walls have continuous cladding with a mass of greater than 25kg/m ² (e.g. brick veneer or minimum 25mm stucco plaster), internal wall linings need to be no thicker than 10mm gypsum plasterboard.
		iv. Combined superficial density	Minimum not less than 25kg/m ² being the combined mass of external and internal linings excluding structural elements (e.g. window frames or wall studs) with no less than 10kg/m ² on each side of structural elements.
		v. Mass Walls	190mm concrete block, strapped and lined internally with 10mm gypsum plasterboard, or 150mm concrete wall.
b.	Glazed areas	i. Glazed areas up to 10% of floor area	6mm glazing single float.
		ii. Glazed areas between 10% and 35% of floor area	6mm laminated glazing.
		iii. Glazed areas greater than 35% of floor area	Require a specialist acoustic report to show conformance with the insulation rule.
		iv. Frames to be aluminium window frames with compression seals.	
c.	Skillion roof	i. Cladding	0.5mm profiled steel or 6mm corrugated fibre cement, or membrane over 15mm thick ply, or concrete or clay tiles.
		ii. Sarking	17mm plywood (no gaps).
		iii. Frame	Minimum 100mm gap with fibrous acoustic blanket (batts or similar of a mass of 9kg/m ³).
d.	Ceiling	Two layers of 10mm gypsum plasterboard (no through-ceiling lighting penetrations unless correctly acoustically rated). Fibrous acoustic blanket (batts or similar of a minimum mass of 9kg/m ³).	
e.	Combined superficial density	Combined mass of cladding and lining of not less than 25kg/m ² with no less than 10kg/m ² on each side of structural elements.	



Building element		Minimum construction requirement	
f.	Pitched Roof (all roofs other than skillion roofs)	i. Cladding	0.5mm profiled steel or tiles, or membrane over 15mm thick ply.
		ii. Frame	Timber truss with 100mm fibrous acoustic blanket (batts or similar of a minimum mass of 9kg/m ³) required for all ceilings.
		iii. Ceiling	12mm gypsum plasterboard.
		iv. Combined superficial density	Combined mass with cladding and lining of not less than 25kg/m ² .
g.	Floor areas open to outside	i. Cladding	Under-floor areas of non-concrete slab type floors exposed to external sound will require a cladding layer lining the underside of floor joists of not less than 12mm ply.
		ii. Combined superficial density	Floors to attain a combined mass not less than 25kg/m ² for the floor layer and any external cladding (excluding floor joists or bearers).
h.	External door	Solid core door (minimum 25kg/m ²) with compression seals (where the door is exposed to exterior noise).	

Appendix C Live Music Taskforce Report and Recommendations



Live Music Taskforce

Report and Recommendations

**Elaine Carbines MLC,
Parliamentary Secretary, Environment**

5 December 2003

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1. EXECUTIVE SUMMARY

This report records issues and recommendations to the Minister for Planning, emerging from the work of the Live Music Taskforce.

Our Taskforce was established to examine the relationship between live music venues and residential amenity. Our membership represents live musicians, music and arts venues, planning, environment and licensing policy makers and regulators, Victoria Police, local government and the building and development industries. We have considered 224 public submissions. We asked selected submitters and stakeholders to present their views at workshops, representing the music industry, residential and regulatory interests. Workshops and Taskforce meetings sought broad agreement on issues and ways forward.

Submissions and investigations identified the following issues:

- Melbourne has a diverse and vibrant live music culture. It is widely acknowledged as the leading music city in Australia. It has individual venues (such as St Kilda's Espy) that are known internationally. Live music is made accessible through the 'pub music scene' distributed across many suburbs and rural and regional centres in Victoria. Submissions suggest broad public support for our live music culture and the venues that provide it.
- Demographic and land use change in our inner urban areas are increasing their residential population and making them more 'mixed' in character. These changes are resulting in diverse social, economic and environmental benefits. They are supported by a wide range of government policies and community opinion.
- Conflict between residential and entertainment land uses can emerge as a consequence of these changes. Live music venues can cause noise emissions. Although the number of formal noise complaints is not large, the live music industry perceives a threat to its operations. Residents are concerned that venues should operate responsibly, ensuring that reasonable standards of residential amenity are maintained.
- Planning, building, environment protection, health and liquor licensing legislation, administered by government departments and agencies, local government and the Victoria Police all regulate live music noise. The live music industry and residents share concerns that the regulatory framework is not well explained and that the different regulators do not always work smoothly together. There is uncertainty for the industry, wishing to understand and comply with relevant controls, and frustration for residents, wishing to find out if a breach has occurred or make a complaint.
- A live music venue which is compliant with relevant noise emission standards may be rendered non-compliant by the building of a new residential development nearby. The potential outcome may be annoying to new residents and costly to venues. There is no clear mechanism whereby a developer can contribute towards noise compliance costs made necessary by a development.

- Some venues are in constrained locations, where immediate compliance with noise standards cannot always be achieved. There is no clear mechanism to recognise plans or agreements to deliver compliance by such venues over time.
- The view was also expressed that greater opportunities for individual and community dialogue between venue operators and residential communities could reduce the potential for, duration and costs of conflict.

I am of the strong view that reasonable standards of residential amenity must remain at the core of our planning and regulatory systems. For this reason, proposals for change must proceed with care. Further, the issues raised are not of an order that warrant wholesale reform to existing planning and regulatory systems. However, I take the view that incremental changes could be made to achieve the following beneficial outcomes:

- Providing greater State and local policy recognition to the cultural role of the live music industry, particularly as part of the diversity of uses legitimately found in activity centres.
- Commencing as a live music industry initiative, the development and codification of 'best practice' approaches to live venue location, design and management.
- Subject to further investigations and public consultation, providing for the consideration of identified 'best practice' in planning and other regulatory decision-making.
- Establish that for planning purposes, the onus of responsibility for the cost of noise management should fall upon the 'agent of change'. This would mean that where new residential development takes place near existing live music venues that do not change their operation, the residential developer would in principle bear the new compliance costs. Conversely, if new venues are constructed or existing venues change their operation, the venue developer will bear the new compliance costs.
- Providing for the development and testing of 'Environment Improvement Plans' as a mechanism whereby existing venues that do not comply with noise standards can demonstrate their intent to apply best practice and move towards compliance, in consultation with regulators and their local residential communities.
- Clarifying, coordinating and better communicating the operation of the various jurisdictions and regulators to all stakeholders.

Thirteen recommendations articulate these changes. I commend them to the Minister for Arts and Minister for Planning and to her Ministerial colleagues responsible for the regulatory systems considered by the Taskforce.

1. Individual Venue Noise Management Plans

Individual live music venues should be encouraged to prepare and implement noise management plans. These plans should address:

- the nature, duration and noise effects of performances at the venue;
- as far as possible, means of confining noise impacts within the venue, including technical controls over noise emissions, programs of works to the venue and staff training as necessary;
- the environment surrounding the venue and the degree to which noise sensitive uses are present; and
- processes for receiving and responding to noise related complaints.

2 Industry Cooperation

Stakeholders in the various segments of the live music industry should strengthen joint working arrangements for the purposes of:

- forming shared understandings of best practice venue management; and
- engaging in dialogue with government and the wider community.

3 Industry Best Practice

The live music industry should draw its shared understandings of best practice venue management into 'Industry Best Practice Guidelines', setting out key reference standards. The adoption and implementation of the standards in the Guidelines by all live music venues should be encouraged.

4 Code of Practice

The live music industry and government should aim to prepare a Code of Practice.

The purpose of the Code should be to identify and set out best practice standards of venue location, design and management. The Code should be prepared in consultation with and should inform: individual live music venue operators; members of the public and communities potentially affected by noise emissions; decision makers in the planning system; decision makers under the Liquor Control Reform Act; persons and bodies responsible for the assessment, determination or prosecution of noise complaints.

Government should then consider the degree to which it is necessary and appropriate to give the Code (or parts of it) advisory and / or statutory force.

5 State Policy and the Live Music Industry

The cultural contribution and economic significance of the live music industry to Victoria should be recognised in State wide policy.

6. State Planning Policy: Noise Abatement

The State Planning Policy Framework in the Victoria Planning Provisions should be amended to make clear that appropriate controls over adverse amenity effects of noise emissions in activity centres and entertainment precincts can be implemented through building design and urban design techniques.

7 Planning Practice Advice

The following principles should be embodied in planning practice advice:

- For both venue operators and residents, recognition should be accorded to the expectations generated by existing land uses.

- For the resident, this implies a continued protection of amenity in the event of a change in venue operation or the development of a new venue.
- For the venue operator, this implies that where a venue is currently compliant with relevant noise attenuation standards and its operation does not change, new residential or other noise sensitive development should not lead to new compliance costs.
- The onus of responsibility for the cost of noise management (which may include attenuation measures) should fall upon the agent of change.

The Department of Sustainability and Environment, in consultation with local government and other relevant stakeholders, should consider the need for additional practice guidance on drafting conditions and/or agreements to address issues affecting the live music industry.

8. Local Planning Policy Support

Where appropriate, Councils should consider developing and incorporating into their Municipal Strategic Statements, policy about the sectoral and in some cases the individual value of live music venues.

It would also be appropriate for the structure planning process to identify that specific activity centres, mixed-use areas and entertainment precincts can offer a different standard of residential amenity to that enjoyed in traditional residential neighbourhoods. In such locations, building design and urban design are likely to offer more appropriate responses to noise emission issues than land use separation.

9 State Environment Protection Policy and Practice Support

The following principles should be considered in any review of SEPP N-2 and/or practice advice on the implementation of that policy:

- For both venue operators and residents, recognition should be accorded to the expectations generated by existing land uses.
- For the resident, this implies a continued protection of amenity in the event of a change in venue operation or the development of a new venue.
- For the venue operator, this implies that where a venue is currently compliant with relevant noise attenuation standards and its operation does not change, new residential or other noise sensitive development should not lead to new compliance costs.
- The onus of responsibility for the cost of noise management (which may include attenuation measures) should fall upon the agent of change.

10 Environment Improvement Plans

The Environment Improvement Plan mechanism available under SEPP N-1 should be extended to SEPP N-2 and made available for use by individual live music venues and entertainment precincts.

As a starting point, this mechanism should be applied through voluntary means, to test its value and effectiveness.

Subject to the outcome of testing, EPA should then consider whether the mechanism needs to be given statutory force, in consultation with relevant stakeholders.

Any Environment Improvement Plans for the live music industry should be prepared in consultation with and should inform:

- individual live music venue operators;
- members of the public and the community potentially affected by noise emissions;
- the local Council;
- EPA; and
- other persons and bodies responsible for the assessment, determination or prosecution of noise complaints.

11 Dispute Resolution Processes

All stakeholders in the live music industry are encouraged to investigate and document alternative means of dispute resolution, including mediation, to complement existing informal dispute resolution practices. They are encouraged to use new methods where these appear likely to lead to outcomes that benefit the community. However, enforcement agencies should retain the discretion to take formal action in cases where there is a clear public interest in the cessation of a substantial nuisance.

Venue owners are recommended to make their contact details known to the local community, together with the assurance that they welcome the opportunity to be the first point of contact for complaints. They should make clear that there are venue management procedures in place to ensure that complaints will be taken seriously.

12 Communications Framework

Government and local government agencies with an enforcement role should develop a joint communications network for live music industry related noise issues. This network should establish communications strategy to provide a consistent basis for each agency to advise venue operators and the general public when handling complaints. Agencies should accept 'lead' responsibility for particular aspects of the music noise complaint load.

Frontline staff should be made aware of the requirements of the communications strategy.

The network should be responsible for implementing a standard guidance leaflet and a web portal

A standard guidance leaflet should be published for distribution through venues, government and local government agencies with an enforcement role. This should explain:

- the noise responsibilities of music venues;
- the steps that can be taken by a person with a concern about venue management, including advice about alternative means of dispute resolution; and

- in the event that a dispute cannot be amicably settled, advice about how formal music noise complaints are dealt with, and to which agency particular types of complaint should be made.

A web portal should be developed providing directed access to information on live music noise related issues. This should include or link to:

- an action program for the implementation of the Conclusions set out above; and
- sources of advice on standards, compliance and dispute resolution for venue operators and residents.

13 Implementation and Monitoring

A reference group representing key government and local government agencies, the live music industry, the development industry and residents' interests should be established to develop and monitor the implementation of the initiatives recommended in this report.

Finally I would like to thank stakeholders, submitters to the Taskforce and staff from the Department of Sustainability and Environment for their commitment. People with different views have worked together to achieve proposals that should operate for the benefit of all.



Elaine Carbine MLC
Parliamentary Secretary, Environment

2. PROCESS

I believe a long term holistic view should be taken... to ensure that the interests of the whole community are considered and that a consistent and balanced approach is adopted for all residents and venues in all locations.
(Submission to the Live Music Taskforce)

2.1 THE TASKFORCE

Ms Mary Delahunty, Minister for Arts and Minister for Planning, announced the appointment of the Live Music Taskforce on 6 June 2003¹. The Taskforce was appointed to examine the relationship between live music venues and residential amenity.

Ms Elaine Carbines, Parliamentary Secretary for the Environment and Member for Geelong Province was appointed to chair the Taskforce. The Department of Sustainability and Environment provided administrative services, supported by staff from the Department's Planning, Land and Environmental Regulation Division, the Minister's Office and Planning Panels Victoria – the Taskforce 'secretariat'.

Ms Carbines invited membership from the following bodies:

- Arts Victoria;
- Australian Hotels and Hospitality Association;
- Building Commission;
- Department of Sustainability and Environment;
- Environment Protection Authority;
- Fair Go 4 Live Music;
- Housing Industry Association;
- Consumer Affairs Victoria/Liquor Licensing;
- Municipal Association of Victoria;
- Musicians' Union of Australia;
- VicMusic;
- Victorian Local Governance Association;
- Victoria Police; and
- Urban Development Institute of Australia;

These bodies nominated representatives to attend Taskforce meetings.²

¹ See Appendix A: Press Announcement.

² See Appendix B: List of Taskforce Representatives.

2.2 TERMS OF REFERENCE

The Minister provided Terms of Reference to guide the Taskforce in its work. These required it to examine noise from live music venues and the rights and responsibilities of live music venue operators, nearby property owners and residents. Minister Delahunty said:

Melbourne's live music culture is internationally recognised and locally celebrated, but as more people move to the inner city, tensions have risen about the noise coming from pubs and clubs.

Specifically the Taskforce's Terms of Reference asked it to examine:

- the effectiveness of relevant legislation;
- examples of how noise policies have been working;
- examples of how the live music industry is affected by current policies and controls; and
- approaches taken by other States in managing the issues.

The Taskforce was asked to focus on the impact of *live* music. Whilst the amenity issues arising from recorded music can be similar to those arising from live performance, the Taskforce acknowledged from the outset that resolution of disputes relating to live music would often require a more tailored response. In addition, the special value of *live* music in Victoria was recognised, as was its contribution to the cultural vitality of the State.

The key focus for the Live Music Taskforce was on music noise. The operation of live music venues can result in other amenity issues, for example arising from patron behaviour outside venues, garbage disposal, transport, traffic and parking. However, these considerations are not unique to the live music industry. They are also relevant to a wide range of entertainment, recreation and leisure uses and require more general consideration than can be provided by a taskforce focussed on live music alone.

That being said, once the Taskforce started work, it recognised that there was 'interconnectedness' between the issues raised by the live music industry and entertainment, recreation and leisure uses more broadly. Similarly, there was 'interconnectedness' around the amenity management of diverse inner city areas and activity centres of an increasingly mixed land use character. For these reasons, whilst this report does not consider issues and make recommendations outside its terms of reference, it should be acknowledged that some potential responses to live music industry amenity issues may also be relevant to other land uses, subject of course to further investigation and consultation.

2.3 PUBLIC INVOLVEMENT

The Taskforce involved the public by inviting submissions and by holding a number of workshops.

2.3.1 Submissions

Ms Carbines issued a general public invitation for people and organisations to make submissions. These were to assist the Taskforce to identify issues bearing on the terms of reference and solutions to them.

Advertisements were placed in 'The Age', metropolitan and regional local papers and the street press. Ms Carbines wrote to 37 residents groups inviting submissions. Submissions were also invited from key metropolitan and regional Councils.

A period of 4 weeks ending on 31 July 2003 was provided for submissions to be made. That being said, submissions continued to be received after that date. In all, 224 submissions received before this report was finalised were considered. These include submissions from community groups, the music industry, live music venue operators, residents and residents groups, local government, one Member of Parliament, professional organisations and consultants, and interested members of the public³.

2.3.2 Workshops

Having received and considered submissions, the Taskforce held workshops at which it could further investigate the issues raised in submissions and the degree to which there was common ground around issues and potential 'solutions'.

The workshops were chaired by Ms Carbines and independently facilitated by Mr Rynd Smith, a Senior Panel Member from Planning Panels Victoria. Live Music Taskforce members attended as observers.

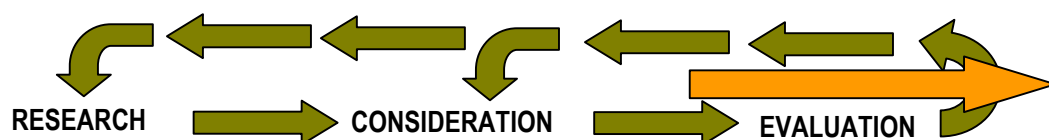
Three workshops were convened to address the following themes:

- **Venue operation and management**, to which submitters from the live music industry were invited;
- **Offsite impacts**, to which submitters representing residents' interests and Richard Wynne MP, Member for Richmond were invited; and
- **Regulation**, to which submitters and other stakeholders from a range of local government and government agencies involved in aspects of venue regulation were invited⁴.

The Taskforce invited workshop attendees from amongst the body of submitters and other relevant stakeholders. In issuing invitations, it considered all submissions to ensure that a diverse cross-section of views was represented.

2.4 TASKFORCE WORK PROCESSES

The Taskforce worked through a series of iterative cycles of research, consideration and evaluation, enabling it to inform the findings and recommendations set out in this report.



³ See Appendix C: List of Submitters

⁴ See Appendix D: Workshop Attendees

2.4.1 Research

The information inputs were from written submissions and from the contributions of submitters and stakeholders in the workshop processes. Additional information, including interstate experience, was sourced from individual Taskforce members and the secretariat. Many submitters, workshop attendees and others made valuable contributions.

The Taskforce also held a site visit to the Rainbow Hotel on 28 August 2003 to hear a live music performance.

2.4.2 Consideration

The members of the Taskforce met six times between July and November 2003. Its meetings enabled it to:

- analyse and respond to issues raised in submissions and research;
- consider outputs from the workshop processes;
- develop principles to guide responses to issues;
- develop and consider options for action including policy and regulatory change; and
- develop and consider the recommendations set out in this report.

The Taskforce meetings did not have an executive function. They were not required to agree to any of the subject matter of this report. Rather, the meetings served as a sounding board to assist the Chair in her task of developing the recommendations. However, they did attempt to obtain the broadest possible consensus on ways forward. Many discussions were held in a workshop format designed to focus on agreement and development of shared solutions.

2.4.3 Evaluation

In addition to considering principles, options and recommendations in Taskforce meetings, members and stakeholders were also asked to evaluate outputs with close reference to their own existing practice and experience. By this means, the secretariat was able to test Taskforce outputs and gain views about the degree to which they were practical or would be subject to constraints. Evaluation took place as part of Taskforce meetings and in a separate series of focussed meetings between the secretariat and groups of stakeholders.

2.5 PROCESS CONCLUSIONS

Drawing this work together, it is fair to state that the Taskforce has undertaken an appropriate public and inclusive process. It has involved a diverse range of stakeholders and undertaken necessary research and evaluation to assist in formulating this report and its recommendations. As a result of having carried out this rigorous process, it is also fair to conclude that the recommendations in this report are robust.

3. LAW & POLICY TODAY

The Tribunal appreciates the concerns of the residents and acknowledges that there have been negative impacts on their amenity. However, the Tribunal is also of the view that the area containing the subject site cannot be considered to be a standard or pristine area. The amenity of residents has to be assessed in the context of their location in the heart of the St Kilda foreshore district between two vibrant activity centres.

(Victorian Civil and Administrative Tribunal in Becton Corporation v Port Phillip City Council, 20 August 2003)

3.1 THE REGULATORY FRAMEWORK

Before embarking on a consideration of submissions or issues raised through the Taskforce process, it is valuable to set out the existing regulatory frameworks that bear on noise emissions from live music venues.

There is no single body of law or policy and no single agency responsible for administering issues of noise amenity in Victoria.

The current regulatory regime provides the following processes:

- use, development and building approvals for venues, dwellings and other noise sensitive land uses; and
- amenity regulation, including the monitoring and enforcement of venue operation standards.

There are three main pieces of legislation that shape the regulatory framework relevant to the management of noise issues from music venues in Victoria. These are listed below, together with the mechanisms and agencies largely responsible for their implementation.

Key legislation affecting noise			
Act	<i>Planning and Environment Act 1987</i>	<i>Liquor Control Reform Act 1998</i>	<i>Environment Protection Act 1970</i>
Subordinate instrument / means of implementation	▪ Planning Schemes ▪ Planning permit conditions ▪ Section 173 agreements	▪ Liquor licence conditions	▪ SEPP N-2
Responsible Agency	▪ Minister for Planning ▪ Local councils	▪ Consumer Affairs Victoria/Liquor Licensing ▪ Victoria Police ▪ Local councils	▪ Environment Protection Authority (EPA) ▪ Victoria Police ▪ Local Councils

The provisions of the *Health Act 1958* and the *Building Act 1993* are also relevant. The common law of nuisance is also potentially relevant, although rarely used in practice.

3.2 PLANNING AND ENVIRONMENT ACT 1987

3.2.1 Overview

The *Planning and Environment Act 1987* establishes a framework for the use, development and protection of land in Victoria.

The Act provides for the preparation and administration of planning schemes, which set out how land may be used and developed. Planning schemes set out policies to be considered by decision makers in relation to planning matters. They include zones, overlays and other provisions that control the use and development of land, establishing whether a planning permit is required for particular use or development and setting out standards that must be met. The Act also enables the use of planning agreements.

State Policy

State planning policy is set out in all planning schemes in Victoria in the State Planning Policy Framework (SPPF).

There is a noise abatement policy at SPPF Clause 15.03. This includes an objective:

To assist the control of noise effects on sensitive land uses.

In terms of implementation, the clause requires that decision makers should:

... ensure that development is not prejudiced and community amenity is not reduced by noise emissions, by ensuring that there is suitable separation between potential amenity reducing and sensitive land uses and developments.

SPPF Clause 15.03 provides that decision-making must be consistent with SEPP N-2. (See section 3.4 below.)

Other relevant SPPF policy includes:

- Clause 14.01 (settlement), which provides for the orderly development of urban areas;
- Clause 16.01 (housing), which encourages appropriate urban consolidation and increased residential densities;
- Clause 16.02 that includes an objective encouraging well designed medium density housing that responds to neighbourhood character; and
- Clause 17.01 (economic development), which seeks to focus entertainment and cultural development into activity centres containing a diverse range of other land uses.

In relation to the Melbourne metropolitan area, the Government has also prepared Melbourne 2030, the metropolitan strategy. This represents adopted policy and will be implemented by the inclusion of relevant material in the SPPF in due course.

Relevant Melbourne 2030 policies include:

- Policy 1.1, which provides for the building up of activity centres as a focus for high quality development, activity and living for the whole community;

- Policy 1.2, which calls for a broadening of the base of activity in centres that are currently dominated by shopping, to include a wider range of services over longer hours, and restrict out-of-centre development;
- Policy 1.3 which calls for the location of a substantial proportion of new housing development in or close to activity centres;
- Policy 5.1 which encourages good urban design to make the environment more livable and attractive;
- Policy 5.2 which provides for the recognition and protection of cultural identity, neighbourhood character and sense of place; and
- Policy 6.4 which calls for the development of a strong cultural environment and increased access to the arts, recreation and other cultural facilities.

It is clear that there is strong policy support for the diverse, active, mixed-use inner urban precinct. Music venues form part of the arts, cultural and recreational life of such precincts. However, planning must attend to the issues raised by the relationship between residential and non-residential uses in such locations.

Local Policy

Local policy is set out in the Local Planning Policy Framework (LPPF). The structure of the LPPF within each planning scheme is broadly similar. The content of the LPPF varies as each council (planning authority) in Victoria prepares its own policy.

Each planning scheme must include a Municipal Strategic Statement (MSS) at Clause 21. The MSS sets out the strategic planning, land use and development objectives of the planning authority, the strategies for achieving the objectives and a general explanation of the relationship between objectives, strategies and controls in the planning scheme. A planning scheme can (and in practice also does) include Local Planning Policies (LPP) at Clause 22. These guide the exercise of planning discretion.

While some municipalities have included or propose to include references to noise and amenity considerations in their MSS and LPP, many as yet do not.

Existing consideration of live music as an issue is limited. A number of inner urban municipalities have developed or are developing MSS policy that identifies the vibrant nature of mixed use areas and activity centres and, to a limited extent, the contribution that entertainment venues make to the life of such areas. References have also been made to the fact that raised levels of urban activity will affect residential amenity expectations and that building design solutions (as opposed to land use separation) will often provide the clearest means of resolving potential land use conflict.

Zones, Overlays and Other Provisions

Clauses 74 and 75 set out land use terms used in planning schemes and describe the relationships between these. In turn, these terms are employed in zones and other provisions as the basis for the exercise of controls over land use.

The use of land for live music is not a land use that is known directly to the Victorian planning system. The precise land use of a live music venue for planning purposes will depend on the facts of the use. Live music may not even be the primary land use in its own account. More typically it will be ancillary to another main use or part of a suite of uses.

Live music venue operation can take place in land characterised for the following uses:

- 'Education centre' use, for example, on land characterised as a 'Tertiary institution', which includes the student facilities of universities and TAFE colleges.
- 'Leisure and recreation' use, including a range of sports halls, stadia and equivalent facilities.
- 'Place of assembly' use, including the uses of 'Cinema', 'Function centre', 'Reception centre', 'Hall', 'Nightclub', 'Cabaret' and even in some circumstances 'Place of worship'.
- 'Retail premises' use, including the uses of 'Food and drink premises', 'Hotel', 'Restaurant', 'Tavern', 'Gambling premises' and 'Gaming premises'.
- It can occasionally take place ancillary or in addition to a range of other uses including that for agriculture, wineries and public open space used for recreation or for natural systems.

It follows that there is no existing land use provision or set of provisions that bears directly on the live music industry.

Permits

The Planning and Environment Act requires a permit decision maker to consider the effect a use or development may have on the environment or which the environment may have on the use or development.⁵ This requirement enables the consideration of music noise as an environmental effect. Social and economic effects (including the social and cultural value of live music or of an individual venue) may be considered as relevant.

The relevant zone and any relevant overlay or other provisions also include decision guidelines, matters that the decision maker must consider. It is fair to say that few of these are directly relevant to live music as an issue.

The Act and the planning scheme provide mechanisms for people to be provided notice of and make submissions on proposed developments, to receive a notice of decision and to subject decisions to review.⁶ These provisions are relevant to residents who may be concerned about proposals for a new or changed live venue in the neighbourhood or the operator of a live venue who may be concerned that residential encroachment could adversely affect its operation.

Planning Permits are usually issued subject to conditions. These can address issues of siting, design, construction and operation, relevant to noise and residential amenity.⁷

⁵ Section 60.

⁶ Section 52(1)(a), (b) and (d), Section 64(1), (2) and (3) and Section 82(1), together with the provisions of the planning scheme zone applying to the land.

⁷ A planning permit providing for the use of land has an ongoing life, as long as the use that it authorises. A permit providing for the development of land ceases to operate once the development process is complete. If the planning scheme provides that a use of land does not require a permit, a development permit cannot contain ongoing conditions that run to the use of the land.

Agreements

The Act also provides a basis for the responsible authority and a landowner to enter into a legal agreement that certain things will be done.⁸ Such an agreement is made under seal and will bind successors in title.

Agreements offer scope for the making of ongoing and binding requirements in circumstances where permit conditions cannot clearly achieve these objectives.

3.2.2 Enforcement

The 'responsible authority' for the administration of the planning scheme (usually the Council) ensures compliance with the provisions of the scheme and the conditions of any planning permit. As a signatory, the Council will also be able to enforce any legal agreements.

Depending on the nature and seriousness of an alleged breach of planning control, the Council may do one or more of the following:

- Negotiate informally to secure voluntary remediation of the concern.
- Serve a planning infringement notice – usually for less serious breaches.
- Apply to the Victorian Civil and Administrative Tribunal (VCAT) for an enforcement order to achieve compliance.
- Prosecute the venue.

3.2.3 Relevance to the Issue

The importance of the *Planning and Environment Act 1987* and the planning system it supports is that it determines both the siting and design of new use and development. The environmental effect of noise is a relevant planning issue. The social and economic effects of venue operation may on their facts be relevant issues. Adverse noise impacts can be prevented or controlled at source through planning decision-making about new venues or the encroachment of noise sensitive new uses on existing venues. However, it should be remarked that the weight of issues relevant to the amenity effects of the live music industry in the planning system to a large degree depends on the policy framework within which decisions are taken. At present, this policy framework contains little material of direct relevance to the issues raised by live music.

3.3 LIQUOR CONTROL REFORM ACT 1998

3.3.1 Overview

The *Liquor Control Reform Act 1998* provides controls over the supply and consumption of liquor. A key objective of the Act is to ensure as far as practicable that the supply of liquor contributes to and does not detract from, the amenity of community life. The Act is implemented through the grant of liquor licenses subject to conditions.

⁸ Section 173.

Consumer Affairs Victoria/Liquor Licensing has overall responsibility for carrying out the functions of the Liquor Control Reform Act 1998.

Licenses

Control of liquor is exercised primarily through the issue of liquor licenses. There are approximately 14,500 licensed premises throughout Victoria.

Consideration of amenity issues is an important component in any decision to grant, change or remove a liquor licence. When an application for a licence is lodged, the Act provides a mechanism for people to make submissions on the basis that changes to proposed or existing licensed premises might detract from or be detrimental to the amenity of an area.

The Act recognises the amenity of an area as being:

the quality that the area has of being pleasant and agreeable.⁹

The factors that may be taken into account in determining whether the grant, variation or relocation of a licence would detract from or be detrimental to the amenity of an area include:

- the presence or absence of parking facilities;
- traffic movement and density;
- noise levels; ¹⁰
- the possibility of nuisance or vandalism;
- the harmony and coherence of the environment;
- any other prescribed matters.

Conditions

All liquor licenses include conditions. The conditions may impose a range of management requirements including opening times, limits to the number of patrons, noise management practices, or any other relevant matter.

There are two standard conditions relating to noise that are imposed on nearly all licensed venues in the State:

The Licensee shall not cause or permit undue detriment to the amenity of the area ¹² to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence [; and]

The Licensee shall ensure that the level of noise emitted from the licensed premises shall not exceed the permissible noise levels for entertainment as specified in the State Environment Protection Policy (Control of Noise from Public Premises) No. N-2.

⁹ Section 3A.

¹⁰ Taskforce emphasis.

Any breach of conditions may result in enforcement action against the venue.

3.3.2 Enforcement

Enforcement under the Liquor Control Reform Act 1998 can occur where there is a breach of the Liquor Licence. The local council can take action, but more typically, Victoria Police is responsible for undertaking enforcement proceedings¹¹.

Enforcement may be initiated when there is a clear breach of the licence, and this includes where the breach is causing detriment to the community.

The preferred outcome on enforcement action is on obtaining compliance rather than on prosecuting offenders.

Depending on the nature and seriousness of the problem, the enforcement agency may do one or more of the following:

- Undertake informal negotiation or conciliation with the alleged offender and/or the complainant. This may avoid the need for formal action and is usually the first step taken. Such actions may include:
 - facilitating mediation between the parties;
 - providing advice to licensees on noise reduction strategies; and/or
 - verbal warnings;
- Serving a Penalty Infringement Notice;
- Issuing an “Official Written Warning” by the Licensing Inspector;
- Applying to the Victorian Civil and Administrative Tribunal (VCAT) for an Inquiry into the licensee.¹² An Inquiry may result in change to or removal of a liquor licence; and
- Instigating action before the Magistrates’ Court.

It is normal practice of both Victoria Police and Councils to attempt to resolve noise complaints through mediation, provision of advice, and by issuing verbal warnings. The Police may use infringement notices on subsequent visits where mediation and warnings have been unsuccessful. Where a number of infringement notices have been issued, it is police practice to serve an ‘official written warning’. Where further breaches are detected the Police or Council may initiate an application to VCAT.

The Magistrates’ Court has a number of roles. Where a summons or penalty notice is unpaid, the matter is referred to the Magistrates’ Court. The Court may also hear matters for which it is not considered appropriate to issue a penalty notice, or where a penalty notice cannot be issued for a particular offence.

¹¹ Section 90.

¹² Section 90.

3.3.3 Relevance to the Issue

Generally, live music venues are licensed premises. The *Liquor Control Reform Act 1998* sets the conditions under which licensed premises must operate, provides for a process of public consultation in the imposition of those conditions, and provides for enforcement action to be taken in the event of a breach of the licence. It provides the basis for much 'first contact' between complainants, venues and enforcement agencies. Complaints made at night during a live music performance will typically be dealt with under this legislation by the Police.

That being said, it must be noted that the relationship between the related concepts of amenity and neighbourhood character for the purposes of this legislation and the planning legislation is not clear. Licence conditions can also refer to State Environment Protection Policy (Control of Noise from Public Premises) No. N-2 (SEPP N-2). However, the relationship between the level of amenity impact required to lead to enforcement under an amenity condition to a liquor licence and the level required to breach SEPP N-2 is not formally defined. It would be expected that venue compliance with SEPP N-2 would indicate compliance with the amenity provisions of a liquor licence in respect of music noise emissions.

There appears to be general agreement that whilst SEPP N-2 provides an objective standard, it is a complex instrument that does not lend itself to the needs, skills or resources of 'first contact' enforcers. In contrast, the liquor licence amenity condition allows 'first contact' enforcers to make a subjective determination in the field and take immediate action in the case of an acute disturbance.

The potential for disparity between amenity standards under this legislation and the planning and environment protection legislation can be a source of uncertainty for live music venues and complainants.

3.4 ENVIRONMENT PROTECTION ACT 1970

3.4.1 Overview

The *Environment Protection Act 1970* provides a mechanism for the preparation, application and enforcement of State Environment Protection Policies (SEPPs). These in turn set relevant environmental performance benchmarks, with reference to which other legislation and particularly the *Liquor Control Reform Act 1998* and the *Planning and Environment Act 1987* anchor the standards they apply to live music venues.

The Environment Protection Authority (EPA) is the key agency with responsibility for the operation of the Act. The EPA has both a prevention, policy and enforcement role in a range of environmental matters including air, land and groundwater, litter, waste, water, and of course, noise pollution. Principles of the legislation are examined below, together with relevant SEPP provisions.

Principles

The Environment Protection Act 1970 reflects a number of key principles in achieving its environmental objectives, these include

- the 'precautionary principle', under which the absence of conclusive scientific proof should not be used as a basis for not initiating actions that in broad terms appear likely to benefit the environment or reduce environmental harm;
- the protection of intergenerational equity, under which regard must be had to the degree to which any action safeguards the future interests; and
- the 'polluter pays' principle, under which the emitter of any pollutant is normally seen as appropriately bearing the costs of control, mitigation and remediation.

SEPPs

The EPA has prepared a number of State Environment Protection Policies or SEPPs which have been adopted under the Act to protect Victoria's environment.

The State Environment Protection Policy (Control of Music Noise from Public Places) No. N-2 (SEPP N-2), has been developed as a specific policy for the control of music from non-residential premises. This is distinct from the generic control of noise from other forms of trade and industry, which are regulated under SEPP N-1. SEPP N-2 states:

The goal of this policy is to protect residents from levels of music noise that may affect the beneficial uses made of noise sensitive areas while recognising the community demand for a wide range of musical entertainment.

SEPP N-2 defines permissible noise emission levels and how noise levels are to be measured.

SEPP N-2 is strict as to the assessment of performance and compliance. If the standard (taking account of ambient noise) is met, it is met. If it is not met, then there is a breach and action may be taken. There is a contrast here between the approach taken by N-2 and that taken by SEPP N-1. N-1 contains provisions that recognise that there may be circumstances in which it may not be reasonable, economically feasible or indeed possible for its requirements to be met. In such circumstances, an 'Environment Improvement Plan' (EIP) can be prepared, having regard to best practice environmental management techniques and to the expectations of the local community. The EIP provides means whereby a noise emitter undertakes to optimise and continually improve their noise performance in a publicly accountable forum. Once an EIP is in place through a statutory tool such as a licence, implementation of the EIP constitutes compliance with SEPP N-1.

Noise requirements based on N-2 are included as a standard condition in venue liquor licences. They may also be included in a planning permit.

N-2 does not control the noise from people coming or going from the premises or other noises relating to venue operation, such as that from air conditioning, garbage and bottle handling. However, as a noise emission due to a trade activity, these may fall to be regulated under SEPP N-1.

3.4.2 Enforcement

Enforcement of the provisions of SEPP N-2 may be undertaken by the EPA, the Police or a Council, but is most commonly undertaken by a Council through a linking of the provisions of SEPP N-2 with a condition to a planning permit and/or liquor licence.

The *Environment Protection Act 1970*, also provides for direct and immediate action to be taken in the event of an acute noise disturbance. A member of the public who lives near an entertainment venue and is bothered by music noise may make a complaint to the police. A police officer may enter the entertainment venue and take any action that the member considers necessary to reduce the noise.¹³ Whilst the EPA does have an enforcement function, in practice it is unlikely to be EPA officers that attend when there is complaint about the operation of a live music venue. The EPA may become involved in monitoring, should it become clear that there is an ongoing and unresolved problem.

3.4.3 Relevance to the Issue

The importance of the *Environment Protection Act 1970* is that it provides the technical benchmarks for control of music noise from music venues through SEPP N-2. These controls are linked to the development approval processes under the Planning and Environment Act 1987 and licence processes under the Liquor Control Reform Act 1988. The *Environment Protection Act 1970* also provides for immediate enforcement action at the discretion of the police.

Issues about the relationship between enforcement under the *Environment Protection Act 1970* and the enforcement of liquor licence conditions have been discussed above at 4.3.3.

As a 'stand alone' measure relating to music noise, SEPP N-2 now stands to some extent aside from the mainstream of trade and industrial noise policy regulation under the *Environment Protection Act 1970* and SEPP N-1. It lacks the equivalent of an 'Environment Improvement Plan' measure and so has no clear basis to take 'best practice' standards of environmental management or the views of the local community into account. It cannot easily respond to unconventional circumstances, for example where a live music venue is located in a heritage building or precinct and in which certain noise attenuation techniques may not be appropriate or permissible.

An issue also arises from the strict application of the 'polluter pays' principle in SEPP N-2. It is clearly right in general terms that the emitter of noise should pay the costs associated with ensuring that the noise does not adversely affect others. However, the provisions of N-2 can place responsible venue operators into a situation in which they may be put out of compliance owing to activities beyond their control, such as the development of new residential apartments on nearby land. There is a need for a clearer accommodation between the SEPP and planning policy to ensure that this situation can be resolved without inequity or unwarranted costs to an otherwise well managed venue.

¹³ Section 48AB, with associated powers in Section 48.

3.5 HEALTH ACT 1958

The *Health Act 1958* provides a remedial mechanism for nuisances that are, or are liable to be, dangerous to health or offensive.¹⁴ The term 'offensive' is defined as meaning noxious, annoying or injurious to personal comfort and thus has some level of analogy to the concepts of amenity under planning and liquor control legislation.¹⁵ The Act creates a specific class of 'statutory nuisances', which can include noise emanating from a live music venue.

It is the duty of a council to remedy any nuisance in its municipality as far as reasonably possible. A council must investigate any notification (or complaint) it receives of a nuisance.

If after investigation it is found that a nuisance exists, the council must either take action to abate the nuisance or if the council considers that the matter would be dealt with privately, advise the complainant of the steps that need to be taken to resolve the matter privately.

Remedial action may be taken through the issuing of a 'Noise Abatement Notice' or by instigating proceedings in the Magistrates Court.

Submissions and discussions with stakeholders during the Taskforce process suggest that complaints and action against live music venues under the provisions of the *Health Act 1958* are not common.

3.6 BUILDING ACT 1993

The *Building Act 1993* and associated Building Regulations adopt the Building Code of Australia (BCA) which provides standards for the construction and maintenance of buildings. These standards are designed to enhance the amenity and protect the safety and health of people who use buildings. They are largely uniform throughout Australia.

For residential buildings containing more than one dwelling, the Regulations apply an airborne sound insulation rating standard for soundproofing within the building. However, there are no standards for soundproofing the external fabric of a residential building. There are no requirements for the soundproofing of single dwellings.

The Building Regulations operate by classifying buildings according to use (Class) and then applying relevant standards to all buildings in that Class. The Regulations are therefore not an efficient vehicle for identifying individual buildings and applying different standards to those buildings.

3.7 CURRENT ENFORCEMENT PROCESSES FROM A RESIDENT'S PERSPECTIVE

Having analysed the current legislative, regulatory and administrative frameworks for the control of noise from live music venues, it is appropriate to examine how they interact from a resident's perspective. What must a resident do to obtain remedy in a situation where they are annoyed by noise emissions from a live music venue?

¹⁴ Part III.

¹⁵ Section 40.

3.7.1 The Immediate Problem

To raise immediate concerns about noise, the venue itself will be the first point of contact. Good practice venue operators will be responsive in cases of genuine disturbance. The noise issues may be able to be remedied by simple management procedures such as closing a door or window, or removing a speaker from a patio area.

If direct contact produces no result or the resident is unable to or does not wish to make direct contact with the venue operator, the police will typically be the next point of contact. Although councils hold enforcement powers, they are less likely to offer 'crisis' assistance, particularly where calls are made out of office hours. Subject to resources and other policing requirements, the police are more likely to be able to go to the venue, observe the noise emission and, if necessary, issue a direction to reduce the noise. If the venue does not comply with the direction of an officer then the police can issue a penalty notice. The police can proceed under the Environment Protection Act or the Liquor Control Reform Act.

3.7.2 Continuing Problems

If noise is causing a loss of amenity and/or is of a continuing nature then councils or the police can act. Council or the police can negotiate with the venue operator to take appropriate action. This may include facilitating mediation, providing advice or issuing verbal warnings. If the issue persists, enforcement action may be taken through the serving of a Penalty Notice.

In extreme circumstances an application can be made by the police, a local council, or the Director of Liquor Licensing to the Victorian Civil and Administrative Tribunal (VCAT) for an inquiry into the licensee.¹⁶ After conducting an inquiry, VCAT can cancel, suspend or endorse a licence.

Councils can also check whether a venue is complying with the conditions of its planning permit. This will be particularly applicable to new venues or venues that have recently changed their hours of operation, as they will have been required to obtain a planning permit. The permit is likely to have included conditions regarding limitations on noise. Planning enforcement action can be taken if warranted.

Scope also remains for Council investigation and enforcement under the Health Act and for private legal action in nuisance by a complainant directly against a venue.

3.7.3 Preventative measures

Anyone can object to the grant or change of a liquor licence on the ground that it would detract from or be detrimental to the amenity of the area.

Where an application is made for a planning permit for a new venue or for a change in the hours of operation of an existing venue, affected persons will have an opportunity to make submissions on the proposal. The extent to which notice will be provided may vary from Council to Council.

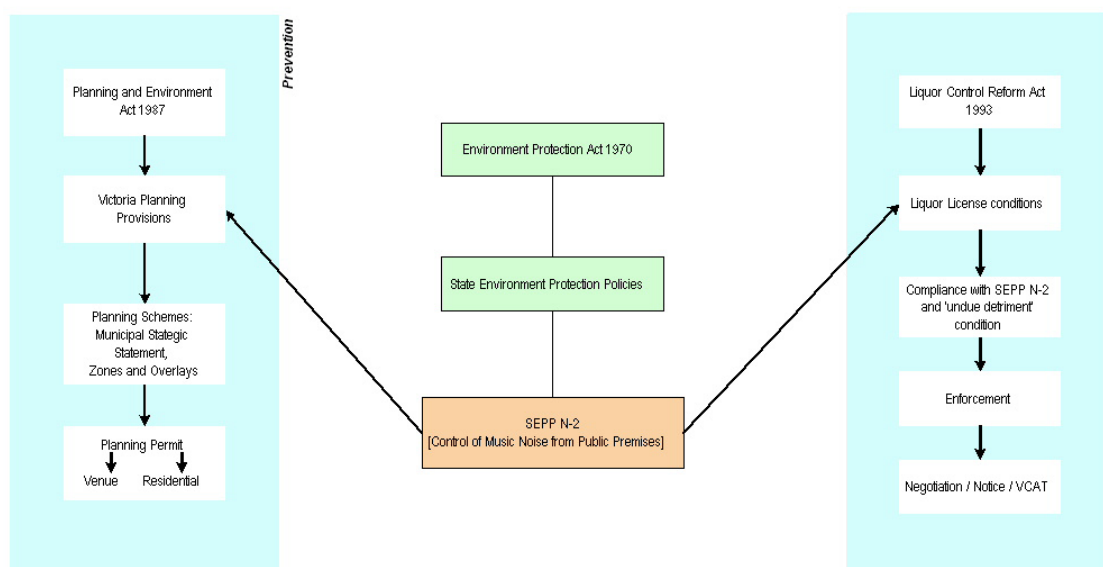
¹⁶ Section 90 of the Liquor Control Reform Act 1998

Equivalently, it is open to a venue operator to make submissions in cases where it proposed to commence a new sensitive land use close to an existing venue, where a planning permit is required for the new use. However, it should be noted that if the venue is in a residential zone, a planning permit may not be required for the use of land for a single dwelling, in turn raising issues about the scope of matters than can be addressed in permit conditions.

3.8 LAW AND POLICY CONCLUSIONS

The *Planning and Environment Act 1987*, *Environment Protection Act 1970* and the *Liquor Control Reform Act 1998* have a shared focus on the protection of amenity for residents. Compliance with SEPP N-2 is a key underpinning of reasonable standards of residential amenity. The core of a sound and integrated system is present, as summarised on the figure below. Individual regulators within the system are providing a good public service.

CONTROL OF MUSIC NOISE FROM PUBLIC PREMISES: INTEGRATED FRAMEWORK



However, it also appears clear that the system is not as integrated as it might be. Operating over several pieces of legislation and requiring the involvement of more than one regulator, the system is clearly complex. Music venue operators do not fully understand how it operates or their rights and responsibilities under it. Residents wishing to make a complaint are equally uncertain about how the system operates. There is scope for reform to underpin reasonable standards of residential amenity, whilst improving the clarity and consistency with which the current system operates from the standpoint of all stakeholders.

4. ISSUES

Rock and roll ain't noise pollution.
(AC/DC)

....get the whole Australian population to turn the VOLUME DOWN.
(Submission to the Live Music Taskforce)

Restricting the volume of music is like limiting the colour palate of paintings.
(Submission to the Live Music Taskforce)

Sometimes I would sell my soul for a cone of silence over my house.
(Submission to the Live Music Taskforce)

The music, the art, the coffee, the restaurant, the crazy blend of people, the friction and the bizarre harmony of these noisier areas are what make these places so appealing to so many in the first place.
(Submission to the Live Music Taskforce)

4.1 LIVE MUSIC

Victoria has a vibrant and diverse contemporary music culture. Gigs range from unplugged acoustic and traditional jazz to gangster rap and death metal. Live music events occur all over the state, on every night of the week, throughout the year.

There are no formal statistics that demonstrate precisely how widespread live music is, or how frequently it is performed at various different types of venues. However, to provide a flavour, the Australian Hotels & Hospitality Association estimates that on average there are 60,000 live music performances each year at Victorian hotel venues alone.

Performers and audiences in a number of genres of contemporary live music expect high volume. Noise impacts can occur on residential properties that are close to music venues.

The Environment Protection Authority, Victoria Police and some Councils report an increase in the number of music noise related complaints from residents, although relative to other sources of environmental complaint, there are still not many. The most common reason advanced for the increase is the continuing settlement trend over recent years which has seen residential development consolidating in the 'inner city' and around activity centres, bringing increased numbers of residents and established entertainment precincts and music venues into closer proximity.

The number of venues providing entertainment has also expanded as a result of the liberalisation of liquor licensing, which has increased the number of venues where alcohol may be served and has extended trading hours. This has in turn emerged as a response to increasing social demands for an active and diverse '24 hour' city.

It appears likely that noise issues emerging from greater diversities of land use and entertainment are likely to continue in the future – a direction strongly confirmed by Melbourne 2030. They could intensify if not well managed. Solutions need to be sought which balance

the needs of residents to be protected against the adverse effects from noise, while recognising the community demand for a wide range of musical entertainment.

4.2 VENUES

Like the industry they serve, live music venues are very diverse. Music is played at stadia, theatres, halls, hotels, pubs, clubs and outdoor events across the state. Many venues are in a wide range of entertainment, recreation or community uses in addition to their function for live music. Some are used as live venues infrequently, or on a 'one off' basis. Others are used more regularly, with gigs on several nights each week. Pub venues typically fall into this category and are seen as the 'backbone' of the Melbourne live music scene.

In 2000 – 2001, Victoria had 574 pubs, taverns and bars without gaming facilities.¹⁷ These non-gaming pubs had a total income of \$476m per annum and over 7000 employees. Many employees were hospitality staff. The hotel industry also sustains trade suppliers such as food, beverage, sound equipment and furniture manufacturers etc. that are all supported in part by the live music industry. It is clear that many of these non-gaming pubs rely on live music performances as their 'point of difference' to attract patrons.

Some venues hire bands, but more typically the musicians' income derives from a door charge, usually somewhere between \$5 and \$15 per person.

Whilst the total number of entertainment venues has been increasing over the last decade, anecdotal evidence suggests the proportion of these offering live music has been falling. This may be due to a number of factors including the introduction of more diverse forms of entertainment. Some pubs that once hosted bands have focussed on gaming. Changes in music culture over recent years have seen the introduction of DJ's in pubs and clubs that were once regular band venues. That being said, there are still a large number of venues hosting live music across the State, and new venues are still emerging.

Live music venues in Melbourne are distributed in activity centres precincts such as Brunswick Street, Fitzroy, or Acland/Fitzroy Streets in St Kilda. Venues are dispersed throughout Melbourne's CBD. There are also a number of stand-alone venues in predominantly residential areas, particularly in Melbourne's inner suburbs. Some long-standing venues are located in areas that were once industrial or mixed use and that are now evolving into predominantly residential neighbourhoods. The live music scene is also active in regional centres and towns where local bands perform at local pubs.

The typical Victorian pub venue is not located in a concentrated 'entertainment strip'. Often, the historical development of urban form has left the 19th century 'corner pub', the social venue constructed to be within walking distance of nearby residential areas, as the music venue of today. Even in activity centres venues have neighbours: shops, offices, community facilities and, increasingly, residential apartments. It is therefore typical that residents and venues are huddled, as one submitter put it, "cheek by jowl", where conflicting land uses can result in conflict.

Paradoxically, one reason put forward for the trend towards 'inner city' living is the contribution that live music venues amongst a diversity of other uses make towards the vitality of such

¹⁷ Source ABS 2002 (Catalogue no: 8687.0, 2000-01)

neighbourhoods. It can be argued that venues form a component of the desired neighbourhood character. They are one of the reasons why people now wish to live in the inner city. From a number of perspectives, it does not appear either possible or desirable to respond to the trend towards residential use in the inner city by reducing the mixture and extent of non-residential uses pursued there.

This is an issue that has recently been considered by the City of Melbourne in proposed changes to its MSS¹⁸, which seek to recognise that different residential amenity standards might apply to the CBD and inner urban strips, than to more typical residential suburbs. The Panel considering this proposed policy change summarised the issues in the following terms:

Areas that have had small numbers of residents for many years are hosting increasing numbers. Ex industrial premises are fashionably converted into dwellings and office space. The broad scale 'zone separation' approach to the management of urban amenity and strategic land use safeguarding issues that represented town planning orthodoxy for many years is breaking down. Melbourne (in common with many other world cities) is becoming a place used at an ever finer grain, where many uses co-exist. This issue raises the increased potential for amenity conflict and also suggests the enhanced opportunity for urban and building design solutions to these conflicts. Urban strategic planning needs therefore to shift from an urban social ecology akin to 'monoculture', to one more akin to the rainforest, accommodating great diversity over small distances. It needs to foster the urban and building design disciplines necessary to achieve this change in land use organisation as comfortably as possible, rendering the broadest distribution of benefits.

The issues raised by live music are but one dimension to this broader set of issues faced by our inner urban areas.

4.3 SUBMITTERS' VIEWS

4.3.1 General Support for Live Music

Of the 224 submissions received by the Live Music Taskforce, the majority included expressions of support for the live music scene, expressing views about its importance to the cultural vitality of Melbourne and Victoria. Many of these submissions advocated action to support and protect the live music scene. In particular, many wished to protect the venues where original live music is played.

4.3.2 Residential Amenity

Residential amenity issues were widely raised in submissions and constitute the most complex and significant subject of the Taskforce's investigations.

At its most basic, music noise can intrude upon the peace and quiet of local residents. One submitter described the emission of music noise as an "inconsideration and intolerance, as it testifies to disrespect of an individual's personal space". The assumption that music could

¹⁸ Melbourne Amendment C60(i)

legitimately be imposed upon residents equated to “an arrogated right to intrude”. For the receptor, this meant “the denial of choice and control of sensory perceptual input and privacy”. The submitter further suggested, “people had a right to be protected from such unwanted intrusion”. The emission of music can clearly have amenity implications.

A number of residents who suffered music noise detriment also identified a range of other amenity impacts from live venues including littering, car park noise, traffic issues, loud and raucous patrons and other issues of patron behaviour including urinating and abuse. One submitter recalled, “sometimes drunk individuals come to the door requesting that we call them a taxi”.

One remedial suggestion put forward by a number of affected residents was that there should be land use separation between venues and dwelling: venues should be located outside residentially zoned areas.

Other inner urban residents took a different view, suggesting that, in line with the ‘polluter pays’ principle, there should be a strict onus on every emitter of noise to contain all but the most limited and reasonable effects of emissions within their property boundary. In turn it was suggested by some that an ‘objective standard’ of residential amenity should apply, regardless of the land use or neighbourhood character and hence ambient noise environment of the venue location. It was also suggested that that this standard should apply to land capable of residential use and development, but not yet put to that use.

A number of submissions highlighted the cultural context of music as a mitigating factor in the assessments of music noise, taking the view that as music (not machinery), its effects should not be viewed as being quite so ‘bad’. However, there were also many submitters for whom the source or context of noise was irrelevant; noise was simply noise, an impact to be controlled where it became adverse to residential amenity.

Whilst recognising that music could constitute noise, many submissions supportive of the live music industry took the view that land use separation and ‘objective’ standards did not provide a practical answer. They referred to the need for residents to assume a higher level of tolerance for noise in activity centres or those areas zoned to provide for a mix of uses and to the need for building design measures to respond to the character of such areas. The key underlying assumption in these submissions was that vibrant areas can be noisy and should be expected to be noisy. Designers should take greater responsibility for the provision of appropriate standards of amenity inside dwellings. Residents should take greater responsibility in choosing where to live. Amenity conditions at 2.00 pm on a Saturday afternoon when many people examine a prospective neighbourhood in which to live may not be the same as conditions at 2.00 am on a Sunday morning. Should a resident moving into an activity centre bear a degree of responsibility for knowingly buying into an area likely to have a higher risk of adverse amenity impact? This exercise of ‘choice’, a number of submissions contended, should limit the capacity to require others to undertake measures to ameliorate noise.

4.3.3 Health Considerations

At its worst, uncontrolled and persistent music noise can be detrimental to individual and community health and well-being. A key concern was the hearing health of patrons, performers and staff within venues. However, the chief concern highlighted in many

submissions was the need to ensure residents nearby regular music venues were able to sleep.

Low frequency emissions or 'doof' were identified as the main disturber of sleep. Low frequency emissions can travel and penetrate building structures at a range beyond which the higher frequency components of music noise have been effectively attenuated.

4.3.4 Triggers for Complaint

Some submissions expressed concern that enforcement action against a venue could be taken on the basis of an individual complaint, potentially resulting in the closure of a venue. This was expressed as the concerns or needs of an individual being met at the expense of the enjoyment of many, or more simply as 'wowserism'. There was also a view that some complainants were vexatious, or had ulterior motives, such as desire to see a venue closed down. It was suggested that some public threshold in terms of the numbers or seriousness of complaints should be reached before action could be taken. However, submissions opposing this view suggested that the number of complaints was irrelevant. All residents should be entitled to a reasonable level of amenity protection from noise pollution. Remedies should be available even if there are only one or a few adversely affected individuals.

Several industry submitters contended that music noise was being unfairly 'singled out' for attention compared to other sources of urban noise such as traffic or garbage collection. One submitter observed, "I don't think that anyone moving into a house next to a train station would have the right to close down that particular train line in order to get more sleep". Noise emissions can originate from multiple sources, particularly in activity centres. These multiple sources have a cumulative impact and contribute to a broader ambient noise level in the activity centre. Of necessity, this will typically be higher than that for a single use residential suburb.

A number of submitters noted that noise disputes often arose when a venue changed management or if new management practices were introduced. Some residents had lived next to live music venues for many years, with mixed fortunes. Irresponsible or inexperienced venue management was identified as a cause of unnecessary conflict. It should be noted that many venue operators shared this view. Venue operators submitting to and appearing before the Taskforce at workshops stressed the importance of responsible venue management practices.

Other submitters noted that land use change around venues was a source of new disputes. Typical cases involved the development of new noise sensitive uses on land close to existing venues. In such cases, new 'sensitive receptors' moved to the immediate locality of the venue, possibly with unrealistic expectations of the standards of residential amenity to be enjoyed in inner urban activity centres and entertainment precincts generally.

Some submitters also identified problems with engaging the venue operators to resolve noise. Residents can feel intimidated and may fear reprisals or victimisation from publicans and patrons if they complain about noise. On this basis it was suggested that there could be a constituency of silent residents who do not lodge noise complaints. It was suggested that direct engagement by residents with venue operators could have mixed results. However, the penalty of a failure to directly engage was perceived by many as being an amplification of

frustration and anger around what in many cases should be small and simple issues capable of reasonable timely resolution.

4.3.5 Approaches to Amenity Standards

One key question raised in submissions was whether a live music venue operator should be allowed to create noise and allow that noise to escape outside the premises. The current regulatory regime allows for noise emissions outside the premises, provided the emission levels comply with State Government environmental standards set out in State Environment Protection Policy (Control of Music Noise from Public Premises) N-2 (SEPP N-2). N-2 recognises ambient noise levels and therefore responds to some extent to neighbourhood character, although in general terms it can be characterised as setting an objective standard. However, it is a technically complex measure that requires expert assessment to determine whether or not a breach has occurred,

It was a point of frustration for the live music industry that action in relation to the amenity conditions of liquor licenses was typically taken based on the, subjective assessments of a Council or Police officer present, rather than on the more objective provisions of SEPP N-2.

SEPP N-2 is based in part on the 'polluter pays' principle. The onus of responsibility for compliance with noise emission regulations falls entirely upon the venue operator as the emitter of the noise. A venue that is compliant with the SEPP may be rendered non-compliant due to encroaching residential development bringing a noise sensitive receptor use closer to the source of the emission. It should be noted that simple adherence to the Building Code of Australia in the construction of new dwellings may not sufficiently inhibit sound transmission to ensure that new residents are not exposed to undue amenity effects.

In such circumstances, venue operators must then introduce appropriate measures to ensure compliance with the changed circumstances. The starting point is that they do so at their own cost, despite the circumstances requiring this step having been generated by the decisions and actions of others. Venue operators pointed out that in some circumstances, this requirement could significantly curtail the activities of the venue, or even result in its cessation as a live music venue. Particular concerns were raised in relation to older and historic buildings (which are well represented in the pool of venues), where non-standard construction and heritage issues could reduce options for noise attenuation and significantly raise costs.

Many submissions supported the adoption of measures that would recognise the 'existing use rights' of venues. Such an approach might require the incorporation of noise attenuation measures into design and construction of new residential development that adequately accounts for the existing noise emission levels of a nearby venue. Alternatively, it might support a means by which the costs of up-rating the noise attenuation of the venue could be met by the encroaching residential development. The onus of responsibility would thereby be shifted onto the 'agent of change'.

A view tendered by residential and building industry submitters was that efforts should always be directed at controlling noise at source (the venue) in the first instance. Greater economic efficiencies in cost benefit terms would typically be achieved by attenuating a single venue as opposed to attenuating multiple residences.

It was suggested that many noise issues might be able to be solved with a simple venue management and design solutions, such as closing doors or windows, operating 'air locks', fitting double glazing, removing amplification from outdoor areas or even closing outdoor areas later at night. There would be virtue in developing best practice design and management systems, staff training and 'venue plans' to ensure that a venue was being responsibly managed to control avoidable adverse emissions.

The key message put forward by music industry submitters and venue operators was to ensure a regulatory framework for compliance that responded to 'best practice management' and did not place an undue burden on venues so as to compromise the continued vitality of the live music scene.

4.3.6 Regulatory Complexity

Both residents and venue operators identified the complexity of the regulatory regime as a hindrance to efficient resolution of noise issues. For residents, the key issue lay in not knowing where to go for help in the event of a noise disturbance. There was also felt to be an absence of information to assist both residents and venues in the event of a disturbance or assistance in understanding the regulatory regime. Some submissions referred to difficulties in finding out what agency would take 'ownership' of a particular noise related complaint. There were references to having been sent from one to another agency and to different departments within agencies, officers suggesting that the complaint was another's responsibility.

However, an interesting perspective on the significance of conflict around noise emissions from live music emerged from State and local government agencies charged with responding to complaints. In their clear view, whilst individual complaints were perceived as very serious by the complainants and could also have a serious effect on the operation of a venue, there was not a major order problem in terms of large numbers of complaints, relative to other industrial emissions or public order issues. This perception did manifest in the relatively limited resources available across public agencies to respond to live music related complaints. In the view of these submitters, the emphasis needed to be placed on the fine-tuning and enhancement of the existing system to respond to trends towards greater mixed use of inner urban precincts. Major order reform was not likely to be warranted.

4.4 INTERSTATE EXPERIENCE

The Taskforce has undertaken an analysis of responses to the issues raised by the live music industry in other States. The sources consulted are recorded in Appendix E.

Analysis of these sources has helped to provide direction and identified synergies between issues and potential solutions. In general terms, the approach of other jurisdictions has been to recognise the inherent and growing conflict between the live music industry and standards of inner urban residential amenity, in circumstances where inner urban areas are becoming more desirable locations for residential development. However, all of the studied jurisdictions have opted to work within their suites of existing tools to resolve this conflict as far as possible. No jurisdiction has opted for major legislative or regulatory reform.

Whilst interstate experience does to a large extent validate the issues and possible responses to them emerging in Victoria, this report recognises that the unique regulatory framework and operational conventions in Victoria require the resolution of issues here to be 'Victorian'; tailored to our legislative and policy environment. Analysis of inter-jurisdictional experience, whilst important in providing direction, has limitations in terms of application to the specifics of Victorian law and policy.

4.5 ISSUES CONCLUSIONS

It is fair to conclude that there was a coalescence in submitters' and stakeholders' views that the best response to social trends towards the increasingly mixed use of inner urban precincts would involve early action to prevent the emergence of noise related problems.

For this reason, many stakeholders expressed a preference for action through enhanced venue management, including the identification, application and enforcement of 'best practice' techniques. Means of bringing best practice standards to bear on planning and other regulatory decision making processes should also be explored, as should means of enabling venues to plan for and achieve compliance over a reasonable period of time, in cases where immediate compliance was not possible.

Many also supported action through the planning system to ensure appropriate control of noise at source and to ensure appropriate land use and design responses to prevent the emergence of new conflicts. This could include approaches to improve land use planning policy for 'mixed use' and high-density residential areas, and means of ensuring that the 'agent of change' was responsible for noise compliance costs.

There was also general support for any measures that may simplify, explain and make more certain the operation of the current noise control and complaint systems. Means of explaining the operation of multiple jurisdictions and providing better access to information should be explored.

These issues were considered by Taskforce and have been reflected in the development of principles and recommended options for system change, set out in the remainder of this report.

Finally it must be recorded that, although the health issues emerging from uncontrolled noise emissions can be significant, the Taskforce and this report have not attempted to deal with these beyond the broader social focus of providing appropriate standards of amenity.

5. PRINCIPLES

The goal of this policy is to protect residents from levels of music noise that may affect the beneficial uses made of noise sensitive areas while recognising the community demand for a wide range of musical entertainment

(State Environment Protection Policy (Control of Music Noise from Public Premises) No N-2)

This section of the report sets out preliminary definitions of the subject matter, together with principles that were agreed by the Taskforce as underpinning its consideration of options for system reform.

5.1 DEFINITIONS

5.1.1 'Music' or 'Noise'?

The concept of 'music' needs to be understood, as does its relationship to that of 'noise'.

Music is the art of organised sound. It is produced and reproduced for the stimulation of people who choose to hear it: the 'intended receptors'.

In contrast, and in relation to music:

Noise is that portion of music that results in detriment, largely because it is unwanted by and/or disturbing to people who did not choose to hear it: the 'un-intended receptors'.

What constitutes 'noise' is subjective and individual. It relies on the perceptions of individuals. Some un-intended receptors may enjoy music that they overhear. Others may find it profoundly annoying and hence view it as noise. The Taskforce considers that respect should be afforded to individual views about what constitutes noise.

In relation to music, noise amenity detriment may result from all types of music, whether 'live', or recorded. For the 'un-intended receptor', the origin or form of the detriment is usually irrelevant.

5.1.2 'Live Music'

For the purposes of the Taskforce, 'live music' can be understood in the following terms:

Music that is produced in whole or large part by a musician or musicians playing instruments in real time.

5.1.3 'Live Music Venues'

A 'live music venue' can be understood in the following terms:

A place at which live music is performed for the enjoyment of an audience.

An audience is characterised as a group of people not involved in the production of the music, who have nevertheless chosen (or paid) to listen to it. The music is produced for them. They are its 'intended receptors'.

5.1.4 Using Definitions for Policy and Regulatory Purposes

The definitions set out above are provided as a starting point, to assist the users of this report towards an understanding of the issues that are within and outside its scope. However, some care needs to be taken in making and applying definitions to the subject matter of live music, particularly where definitions are then to be used for policy or regulatory purposes.

For example, in relation to planning law, it is clear that the concepts of 'live music' or of a 'live music venue' as a self contained or free standing use of land is of very limited if any value. Live music is generally performed on land used for another broader purpose, ancillary to that purpose. (The issues arising from this are discussed in Section 4 of this report above.) For this reason, it is unlikely to be possible to adopt a single and simple definition of 'live music' for the purposes of planning control.

In relation to planning and to the other jurisdictions considered in this report, it is also clear that there will be a number of circumstances in which the impact of 'live music' may not be distinguishable from that of say recorded music, for the purposes of the un-intended receptor. The planning or enforcement decision maker has to consider questions of impact, but in addition needs to resolve whether the nature of the activity causing the impact ought be the subject of any special consideration.

It is also clear that the effects of live music are often matters of fact, degree and subjective personal perception.

- Submissions to the task force suggest that a receptor's perception of 'reasonableness' is critical. If a venue holds performances one night per week, but then changes to hold performances on four nights per week, it is likely that perceived annoyance will change, even though the 'objective' impact of the three new performances may be no different to that of the original performance, which was not perceived as annoying on a stand alone basis. Where a venue is used seldom or on a one-off basis, it may reach a threshold at which impact reduction expenditure by the venue operator or third parties is not warranted, having regard to its basic suitability as a venue and to the limited temporal extent of annoyance potentially caused through the use.
- Music that is performed at higher volume may be perceived as being more annoying to un-intended receptor than the same type of music that is performed at lower volume. However, the impact of volume as emitted in a venue will be affected by factors such as the adequacy of the building design and structure in terms of attenuation, the wind in dispersal, or the presence of particular rhythms or high and low frequency sounds in the music. All of these will affect the perceptions and hence potential for annoyance of the un-intended receptor. For impact assessment purposes, it is currently normal practice to assess unwanted music effects at the receptor. For the reasons set out above, there can be no basis for this approach to change.
- Music is also performed in many different styles. Some of these will lead to greater or lower levels of impact. For example, an 'un-plugged' acoustic guitar and vocal act will not originate the same sound output as a heavily amplified five piece 'thrash metal' outfit.

However, musical 'style' is not of itself regulable. It follows that care will need to be exercised around any assessments of venue and/or third party noise attenuation works, when a simple change of musical style can lead to changes in impact.

- Different styles of performance can also lead to different and entirely subjective perceptions in the un-intended receptor based on factors such as their personal taste in music or perhaps even mood at the time of the performance. It will be almost impossible for any regulatory system to fully understand and respond to the multiplicity of such factors.

For reasons such as those set out above, there will be a need for careful attention to the definition of live music for the purposes of any aspects of policy and regulation impacted upon by this report. Attention should be given to the appropriateness of policies and standards and most critically, to the thresholds at which these should come into effect. The Taskforce is clear that it cannot provide a holistic statement of definition in principle at the outset; a definition that will govern all aspects of planning, environment, liquor licensing, health and nuisance regulation that bear on live music. Rather, having established broad principles, options and recommendations for reform, it will be necessary to return to the act of definition and fill in the detail, ensuring that policies and regulations have appropriate effect and are subject to appropriate thresholds of operation.

5.2 FOCUS

Principle 1: This report is focused on the impact of noise from live music on residential amenity

The Live Music Taskforce is concerned with addressing issues relating to the impact of music noise from live music venues.

Live music venues may be subject to a range of other amenity issues, for example, patron behaviour, parking and traffic, garbage collection etc. However, these lie outside the Terms of Reference.

Some recommendations may be applicable in addressing noise issues resulting from recorded music and other sources, as well as live music. Wider beneficial outcomes should be recognised and pursued where opportune. Additional evaluation of the effects of such recommendations outside the field of live music may be required.

5.3 PARALLEL REGULATORY SYSTEMS

Principle 2: The 'solution' will not lie in any one jurisdiction

There are a range of legislative, common law and regulatory provisions which shape the rights and responsibilities of stakeholders in managing and resolving noise issues.

This report does not advocate major legislative and regulatory reform: rather its role is to make existing systems work better. For this reason, it recognises the likely continued involvement of all existing statutory agencies in addressing noise issues. However, the actions of these agencies should be complementary and proportionate to their statutory responsibilities.

5.4 THE CULTURAL VALUE OF LIVE MUSIC

Principle 3: Live music should be accorded recognised cultural value in Victoria

The live music scene is a cultural asset. Melbourne has a world-class contemporary music culture that contributes both culturally and economically to the State.

The live music scene comprises a community: patrons, musicians and other music industry professionals.

Many live music venues constitute a cultural infrastructure. They are places that nurture culture and social interaction. Some venues have attained an iconic status to Melbourne and are worthy of individual recognition and protection. The emergence of new venues is also important, as is the retention of a critical mass of venues. The continued viability of the live music scene is dependant upon the number, range, distribution and effective functioning of live music venues.

Particular cultural recognition should be afforded to those venues that provide ongoing opportunities for musicians playing original material.

5.5 RESIDENTIAL AMENITY PROTECTION

Principle 4: Residents should be afforded reasonable amenity protection

Noise from live music venues should not cause undue detriment to the amenity of residents. Venue operators have a responsibility not to cause unreasonable disturbance to their neighbourhood.

Whilst notions of 'undue detriment' and 'unreasonable disturbance' are subjective, a key test of amenity protection remains that a typically healthy person should not be prevented from sleep because of music noise. Other measures of amenity protection based on lifestyle standards should also be applied within dwellings; such as the ability to watch TV, listen to personal music or avoid the need to talk loudly to overcome high background noise levels.

Reasonableness of amenity protection also implies a reciprocal responsibility on residents.

The degree to which the amenity protection afforded to residents is 'reasonable' has to be assessed in context. A resident in or proximate to an activity centre cannot expect the same degree of amenity protection afforded to a residentially zoned area typical of neighbourhoods in the middle/outer suburbs or country areas. For this reason, amenity expectations should therefore be based upon and form part of understandings of neighbourhood character.

Live music venues contributing positively to the vitality of Victoria's live music scene can constitute a positive or desired element of neighbourhood character.

5.6 MANAGING URBAN CHANGE

Principle 5: The onus of responsibility should be on the agent of change

Settlement trends over recent years have seen new residential development concentrating in and around activity centres, bringing residents closer to established entertainment precincts and live music venues. Inner urban neighbourhoods are becoming more 'mixed use' in character. This tends to increase the basis for conflict about music noise. This settlement and land use trend is provided for in Government policy and is expected to continue.

For both venue operators and residents, recognition should be accorded to the expectations generated by existing land uses.

For the resident, this implies a continued protection of amenity in the event of a change in venue operation or the development of a new venue. For the venue operator, this implies that where a venue is currently compliant with relevant noise attenuation standards and its operation does not change, new residential or other noise sensitive development should not lead to new compliance costs.

The onus of responsibility for the cost of noise management (which may include attenuation measures) should fall upon the agent of change.

In all cases of land use change, anticipation of issues of noise detriment, and implementation of predicted solutions at the planning and design stage are preferable to the adoption of measures to resolve an actual noise disturbance.

5.7 BEST PRACTICE VENUE MANAGEMENT

Principle 6: Best practice venue management can contribute positively to neighbourliness and amenity

Responsible 'best practice' venue management provides clear opportunities for both prevention and resolution of most noise related disputes. Prevention is better than cure.

Best practice management may be codified at a number of levels:

- on an individual venue basis (through the venue management plan and staff training systems);
- through a collective voluntary basis (by agreement between venue owners);
- in local areas (through licensing fora or local government); and/or
- industry wide, (through State practice guidance, a 'Code of Practice' or an 'Environment Improvement Plan'; measures which can also involve wider stakeholder and community consultation).

This report commences from the perspective that industry self-regulation can be an efficient means of identifying and supporting best practice management and should be the starting point for any such initiatives. However, it also recognises that codes of practice that have been subject to appropriate public consultation can usefully be implemented by statutory or regulatory means.

5.8 CONTROLLING NOISE AT SOURCE

Principle 7: Noise should be contained at source where possible and practical

Reasonable management solutions to address noise detriment should be implemented by the emitter at the venue in preference to being implemented by the receptors at residential or other sensitive use premises.

In some instances, best practice management at a venue may include works undertaken to augment noise reduction. Noise attenuation works can be undertaken to control noise at the venue or to insulate the receptor.

Works undertaken to control noise at the venue are likely to provide the greatest efficiencies and benefits in addressing noise disturbance. For example, attenuation of one building (the venue) will likely be more economically efficient than attenuation of many dwellings. A more highly attenuated venue will also reduce the potential for disturbance in the event of future neighbouring development and change.

On the other hand, attenuation of dwellings is a capital investment that may provide wider sustainability and amenity benefits, including protection against a range of non-music noise detriments. This may be relevant in some activity centres or other locations exposed to a wide range of noise emissions and flexible opportunities provided for this response where appropriate.

It should also be recognised in the context of heritage buildings and precincts that some attenuation works may not be economically feasible or culturally appropriate.

Agents of change should consider an appropriate balance of attenuation expenditure. The planning system provides opportunities for engagement between stakeholders at the planning and design stage. A negotiated outcome may include attenuation of both the venue and residential dwellings.

5.9 DISPUTE RESOLUTION

Principle 8: Open communication, including facilitated negotiation or mediation, should be applied where possible and appropriate

Direct engagement between stakeholders provides the most simple and direct means of dispute resolution. Some agencies may be able to assist informally in facilitating dispute resolution.

Negotiated settlements may also be facilitated through more formal mediation processes.

Mediation requires all interested parties to accept 'ground rules' for the process, including the means of implementing negotiated outcomes.

Formal enforcement proceedings should normally be employed only where other methods have not led to a reasonable and ongoing resolution, or where the breach complained of is of substantial or flagrant nature, such that there is a clear public interest in the undertaking of 'exemplary' or 'punitive' action.

5.10 BETTER INFORMATION

Principle 9: All stakeholders require clear, simple and consistent access to information

The regulatory framework governing the management and resolution of noise issues is complex. All stakeholders have rights, restrictions and responsibilities.

All stakeholders would benefit from having access to clear, simple and consistent information, which includes:

- an overview of the regulatory framework;
- the rights and responsibilities of venue operators and residents;
- the roles and procedures of relevant agencies; and
- clear direction on where assistance and relevant contacts can be provided in specific circumstances.

The information should constitute a common resource and reference for all stakeholders, in particular, affected members of the public and venue operators.

6. RESPONSE AND CONCLUSIONS

This final section of the report sets out an integrated set of proposals for systems changes. The proposed changes run across the current jurisdictions and respond to opportunities for coordination between these. The proposals have been assessed and are considered to respond to the issues and perform well against the principles identified in sections 4 and 5 of this report.

6.1 THE STARTING POINT: TOWARDS 'BEST PRACTICE'

A key point of agreement between many submitters in the Live Music Taskforce process has been the opportunity that is present to develop and codify our understandings of best practice in venue location, design and management.

The best starting point appears to be within the industry and in relation to the management of existing venues. Industry stakeholders were supportive of the view that venues should be well managed and that it was beneficial to record the techniques used in venue management and in responding to complaints about noise emissions. These could then be communicated to musicians and venue staff, to ensure that avoidable complaints were minimised. For this to occur, it will be necessary for individual venues to prepare noise management plans.

Conclusion 1

Individual Venue Noise Management Plans

Individual live music venues should prepare and implement noise management plans. These plans should address:

- the nature, duration and noise effects of performances at the venue;
- as far as possible, means of confining noise impacts within the venue, including technical controls over noise emissions, programs of works to the venue and staff training as necessary;
- the environment surrounding the venue and the degree to which noise sensitive uses are present; and
- processes for receiving and responding to noise related complaints.

Although the preparation of noise management plans will often commence as an internal affair for individual venues, greatest benefit will emerge from these processes if two elements of external consultation are undertaken.

Firstly, there would be great value in cross industry benchmarking, so that individual venues are aware of the practices of others and the implications of these practices. What techniques are used by other venues? What levels of complaint do they experience? By talking to colleagues across the industry, the first step will be taken towards an identification of best practice techniques of venue management.

Secondly, a noise management plan is likely to have the greatest impact in terms of reducing complaints from surrounding residential communities, if its preparation is communicated to

them and opportunities are provided to influence its content. Once the plan is in operation, surrounding communities are most likely to respond positively to it if it puts a clear complaint management procedure into place and this is communicated to persons likely to be affected by venue operations from time to time. This in turn relates to the provision of dispute resolution procedures, an issue that is returned to in section 6.5 and Conclusion 14 below.

Having commenced dialogue with industry colleagues and with local residential communities, individual venues will be well on the way towards wider and more beneficial forms of industry cooperation and the identification of wider ranging bodies of best practice techniques. It is likely that they will also engage in considering the effects of surrounding land use and development proposals upon their operations, in addition to the effect of their operations on surrounding land uses.

The live music industry already has a number of representative bodies and these have been represented in the Taskforce membership. However, none appear to speak clearly for the industry as a whole. Whilst it is possible to conceive of formal, government endorsed best practice guidelines being developed under current industry arrangements, it would be easier to undertake such a task if there were a single peak body charged with that task by its members, the individual venue operators, other industry participants and their existing representative associations.

Conclusion 2

Industry Cooperation

Stakeholders in the various segments of the live music industry should strengthen joint working arrangements for the purposes of:

- forming shared understandings of best practice venue management; and
- engaging in dialogue with government and the wider community.

Conclusion 3

Industry Best Practice

Further to actions resulting from implementation of Conclusion 2, The live music industry is recommended to draw its shared understandings of best practice venue management into 'Industry Best Practice Guidelines', setting out key reference standards. The adoption and implementation of the standards in the Guidelines by all live music venues should be encouraged.

The achievement of actions resulting from the development of Industry Best Practice Guidelines by the industry, in consultation with and support from relevant government agencies, would represent an important step in its own right. If achieved in the context of a broadly based association of venues that was able to apply the provisions of the Industry Guidelines to its members and take credible disciplinary action in cases of breach, the public would have a much clearer assurance of quality venue management than it has today.

However, further benefits of Industry Best Practice Guidelines preparation could flow if it were then subject to further formal public consultation and review, enabling its incorporation into or reference within the planning, environment protection and liquor control systems. This could constitute a formal Code of Practice.

In developing the Code of Practice, ways in which the location of noise sensitive uses can affect the operation of venues and the standards of amenity enjoyed by residents also require

to be considered. A key aspect of this consideration would include the drafting of provisions to implement the principle that the 'onus is on the agent of change'. A code with such content would require appropriate consultation with key stakeholders and the public. It would contain standards and techniques to which decision makers in the planning, environmental regulation and liquor control systems should refer where relevant. A Code would be a strong force for consistency across the many different agencies and municipalities that currently make decisions affecting the live music industry.

Conclusion 4 Code of Practice

The live music industry and government should aim to prepare a Code of Practice.

The purpose of the Code should be to identify and set out best practice standards of venue location, design and management. The Code should be prepared in consultation with and should inform: individual live music venue operators; members of the public and communities potentially affected by noise emissions; decision makers in the planning system; decision makers under the Liquor Control Reform Act; persons and bodies responsible for the assessment, determination or prosecution of noise complaints.

Government should then consider the degree to which it is necessary and appropriate to give the Code (or parts of it) advisory and or statutory force.

6.2 THE PLANNING SYSTEM

The planning system was generally agreed by stakeholders as offering the best mechanisms for the prevention or minimisation of noise nuisances at the point of land use or built form change. Where new venues are built, existing buildings are put to new venue uses, or new noise sensitive uses are located close to existing venues or within entertainment precincts, the planning system provides a clear mechanism to ensure that appropriate standards are applied.

State Planning Policy Framework

Existing State policy ¹⁹provides for the separation of existing land uses as the primary means of controlling the adverse amenity impacts of noise emissions. Whilst this approach has been and may well remain relevant to issues such as the separation of noise emitting industrial uses from residential use, it is not relevant to noise emitted by live music venues. Nor is it clearly relevant to the general circumstances of inner urban activity centres or entertainment precincts, at a time in which social trends and planning policy are directing these areas to a higher density of occupation and a more mixed land use character. For reasons which extend significantly beyond the issues raised by the live music industry alone, it now appears appropriate for the Department of Sustainability and Environment to consider whether the existing policy should be changed, to make clear that appropriate controls over the adverse

¹⁹ Victoria Planning Provisions Clause 15.03.

amenity effects of noise emissions in activity centres and entertainment precincts can be implemented through building design and urban design techniques.

Residents would still be afforded reasonable amenity protection. Noise would still be contained at source wherever practicable. However, the proposed SPPF change would turn the minds of the planning authority to the fact that it can require building and urban design measures to control noise emissions. It would provide a better strategic basis for permit conditions and or agreements setting noise attenuation performance standards and requiring works to be done.

Conclusion 5

State Planning Policy: Noise Abatement

The State Planning Policy Framework in the Victoria Planning Provisions includes clause 15.05-2, Noise Abatement. The general implementation statement should be amended as follows:

“Planning and responsible authorities should ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.”

Planning Practice Advice

In addition to maintaining the State Planning Policy Framework, the Department of Sustainability and Environment provides practice note guidance to users of the planning system. Advice is provided addressing key issues and land use themes, ensuring that planning authorities adopt good practice and sound and consistent planning methodologies in amending and administering their planning schemes.

A number of principles emerged from Taskforce discussions that are best implemented by the planning system. However, these principles raise issues of practice as opposed to policy. They relate to questions of how existing policy should be interpreted and implemented, as opposed to requirements for change to existing policies. For this reason, it is proposed that these principles be reflected in new practice guidance specific to the live music industry, to be prepared by the Department of Sustainability and Environment in consultation with live music, development and residents' interests.

Conclusion 6

Planning Practice Advice

The following principles should be embodied in planning practice note advice:

- For both venue operators and residents, recognition should be accorded to the expectations generated by existing land uses.
- For the resident, this implies a continued protection of amenity in the event of a change in venue operation or the development of a new venue.
- For the venue operator, this implies that where a venue is currently compliant with relevant noise attenuation standards and its operation does not change, new residential or other noise sensitive development should not lead to new compliance costs.

- The onus of responsibility for the cost of noise management (which may include attenuation measures) should fall upon the agent of change.

Local Planning Policy Framework

The live music industry took the view that generic policy support for the cultural value of the industry should be provided in the State Planning Policy Framework. However, such policy support is not necessarily appropriate. The State Planning Policy Framework does not currently contain a recitation of specific support for every industry of value to Victoria. If such an approach were to be taken for the live music industry, then there would be powerful arguments for setting out generic statements of State policy support for many other industries. This would transform the SPPF into a more unwieldy, less clear and less user-friendly document.

It must also be considered that the specific value and interest of live music venues and entertainment precincts will often be most precisely and effectively identified at the municipal level, in the Local Planning Policy Framework of municipal Planning Schemes. The planning authority reviewing its planning scheme will be critically aware of the location within its area of key venues and venue clusters. It will understand the relationship between these, and activity centres and mixed use areas. It will understand pressures for new residential development and will be able to guide its location and form. It is therefore clear that the best location for planning policies expressing specific and directed support for live music venues is in the Municipal Strategic Statement.

This report cannot specifically mandate that individual planning authorities prepare such policies. However, it can promote the view that planning authorities with important venues and venue clusters should prepare policies. Many municipalities have already set out clear policy statements of existing and preferred urban character. Some inner urban municipalities have already commenced the preparation of 'residential amenity framework' policies, making clear that the standards of residential amenity to be enjoyed in activity centres and entertainment precincts will be different from those to be enjoyed in more typical outer residential suburbs. Others will have opportunities to do so, either through their three year Municipal Strategic Statement review processes or through the preparation of structure plans for activity centres as part of the Melbourne 2030 implementation process. Little further information and few additional resources are required to move from such policy positions to a clearer policy understanding of the role and contribution of the live music industry to local cultural life and urban character and its effects on residential amenity.

Many Municipal Strategic Statements already include a strategic analysis of the function and character of neighbourhoods. Municipalities should identify the contribution made to the character and vitality of neighbourhoods by existing entertainment precincts and live music venues.

Conclusion 7 Local Planning Policy Support

Where appropriate, Council's should consider developing and incorporating into their Municipal Strategic Statements, policy about the sectoral and in some cases the individual value of live music venues.

Structure plans are prepared to provide more detailed strategic guidance for particular areas. It is appropriate for the structure planning process to identify that specific activity centres, mixed-use areas and entertainment precincts can offer a different standard of residential amenity to that enjoyed in traditional residential neighbourhoods. In such locations, building design and urban design are likely to offer more appropriate responses to noise emission issues than land use separation.

Planning Implementation

In relation to the principles set out in Conclusion 6 above, planning permit conditions and or planning agreements will form the most likely means of ensuring that the onus of responsibility for the cost of noise management falls upon the agent of change.

Current operational difficulties with providing for ongoing and positive obligations in planning permit conditions relating to development as opposed to use have been described in section 3 of this report above. The State Government has undertaken the *Better Decisions Faster* review process of planning decision making systems is currently considering a number of relevant options, amongst which is an option to clarify and/or amend the legislative head of power for planning permit conditions. For this reason, it is too early to state definitively whether permit conditions or agreements will finally be the preferred means of implementation. However, once the directions of planning system review are clear, it will be possible to provide definitive advice and this should be done.

Conclusion 8 Conditions and Agreements

Planning permit conditions and/or agreements may be used as appropriate to implement actions relating to Conclusions 5, 6 and 7 above.

The Department of Sustainability and Environment, in consultation with local government and other relevant stakeholders, should consider the need for additional practice guidance on drafting conditions and/or agreements to address issues affecting the live music industry.

A second aspect of implementation in the planning system relates to the implementation of a Code of Practice or relevant planning standards from it, assuming this to have been developed with an appropriate form of public consultation and review. Statutory implementation would be necessary to give force to the land use and development aspects of the Code.

There are several options for Code of Practice implementation. A Code could be referred to or incorporated into individual planning schemes by local amendments. However, for the sake of consistent application, it may be better for it, or appropriate components of it, to be incorporated into all planning schemes by way of a Victoria Planning Provision amendment. This could be by way of reference in the State Planning Policy Framework at clause 15.03, with a policy that the Code should be referred to. It could be through references in appropriate zone provisions. It could be through a particular provision calling up the planning relevant standards and techniques. Or it could be simply through its inclusion as a Victoria Planning Provision incorporated document. However, these are detailed implementation questions for the Department of Sustainability and Environment to resolve in due course, assuming the Code to eventuate and depending on its content and form.

Conclusion 9 Statutory Recognition

To the extent that actions resulting from Conclusion 3 and 4 above are implemented and lead to best practice standards that affect the planning system, the Department of Sustainability and Environment should consider mechanisms whereby such standards can be given formal effect.

6.3 THE ENVIRONMENT PROTECTION SYSTEM

A key point of discussion in the Taskforce has been an inherent tension between the planning system, which in general terms recognises the lawfulness of existing uses, and the environment protection system which does not necessarily do so. Being founded on the 'polluter pays' principle, the environment protection system takes the view that whilst an existing use or operation may have persisted for some time, if it is an emitter it may nevertheless be held to account for the consequences of its emissions if these prove to be adverse to the interests of adjacent land uses or the quality of the receiving environment as a whole.

Translated into terms of direct relevance to the live music industry, it has been identified above that SEPP N-2 may be complied with by a venue, but the subsequent approach of another noise sensitive use – typically residential – may trigger non-compliance and additional compliance costs, through no 'fault' of the venue operator or change in the venue operation. Most Taskforce stakeholders acknowledged the sometimes inequitable and unlooked for consequences of SEPP N-2 in this regard.

Conclusion 6 seeks to embody basic principles that mitigate these effects into practice advice in the planning system, a step that is supported by the EPA. However, there is an underlying concern that if these principles are reflected in the planning system but are not given formal effect as a change to SEPP N-2, that live music venues complying in good faith with planning policy and practice may still themselves be open to enforcement under the environment protection system. In most instances, SEPP N-2 requires sound measurement points to be taken outside the residence, ie in the open air. Design measures to attenuate a residence will offer little assistance to the noise emitter in achieving compliance with SEPP N-2. This in turn led the Taskforce to investigate the feasibility of making parallel changes to SEPP N-2, or whether administrative and guidance changes were sufficient.

It must be noted that the process for amendments to SEPPs is not straightforward. The *Environment Protection Act 1970* requires:²⁰

- notification of the intent to make (or change) a policy;
- consultation with stakeholders including the invitation of submissions;
- preparation of a draft policy and policy impact assessment;
- consideration of submissions;
- these processes may include a review panel appointed by the Minister to review the draft policy impact assessment;
- consideration of the proposed policy by a 'Scrutiny of Acts and Regulations Committee';

²⁰ Sections 16 to 18.

- preparation of a final policy, policy impact assessment and summary of submissions;
- EPA consideration of all submissions and review Committee advice; and finally
- declaration of the policy by the Governor in Council.

The EPA is reluctant to embark on such a process unless there is a clearly demonstrated community need or benefit to be achieved from an amendment to policy.

On this basis, it appears appropriate to provide a period in which the voluntary application of the principles outlined in Conclusion 6 can be tested in the environment protection system. That being said, when SEPP N-2 comes to be reviewed the principles should be considered as a key candidate for a SEPP amendment.

Conclusion 10

State Environment Protection Policy and Practice Support

The following principles should be considered in any review of SEPP N-2 and/or practice advice on the implementation of that policy:

- For both venue operators and residents, recognition should be accorded to the expectations generated by existing land uses.
- For the resident, this implies a continued protection of amenity in the event of a change in venue operation or the development of a new venue.
- For the venue operator, this implies that where a venue is currently compliant with relevant noise attenuation standards and its operation does not change, new residential or other noise sensitive development should not lead to new compliance costs.
- The onus of responsibility for the cost of noise management (which may include attenuation measures) should fall upon the agent of change.

A second option for amendment to SEPP N-2 could provide for the recognition of Environment Improvement Plans, using the model of EIP's prepared under SEPP N-1 discussed in section 3.4.1 above).

In brief, such a Plan is a tool to guide environmental management through a process of continual improvement. Plans could be prepared at the instigation of a venue in partnership with the EPA, the local council, Consumer Affairs Victoria/Liquor Licensing, the police and/or any other relevant agency. Importantly, Plans are usually developed with the input of the local community, thereby fostering improved relations between the community and the noise emitter through an agreed program of environmental improvement. Plans set out actions with goals and timelines, together with provision for ongoing monitoring and reporting of environmental performance.

An amendment to SEPP-N-2 would be needed to formally provide that compliance with an Environment Improvement Plan amounted to compliance with the SEPP.

Alternatively, a process providing for the preparation of 'voluntary' Environment Improvement Plans would not require an amendment to SEPP N-2. Under this model, compliance with the Plan would not protect the venue against enforcement proceedings, but could act as a consideration in enforcement determinations. The Plan could assist in reducing environmental impacts, but also potential liabilities by demonstrating a venue's commitment to environmental responsibility. By building stronger links between a venue and its local community, the Plan

preparation process would also be likely to significantly reduce the likelihood of official complaints.

Again on balance, it appears appropriate to provide a period in which steps can be taken to test and develop the voluntary use of Environment Improvement Plans for venues subject to SEPP N-2. This should be followed by a formal appraisal exercise to determine their effectiveness and to determine whether an amendment to SEPP N-2 may be required.

Whilst statutory or voluntary Environment Improvement Plans would be venue or at the largest extent entertainment precinct specific, generic best practice environmental management guidelines as specified in an Industry or Planning Code of Practice would be likely to provide the starting point, key benchmarks and indeed much of the content for such Plans. This in turn suggests that the EPA should, in the interests of system consistency and integration, give consideration to the practical means by which relevant Code provisions could be considered in the environment protection system.

Conclusion 11

Environment Improvement Plans

The Environment Improvement Plan mechanism available under SEPP N-1 should be extended to SEPP N-2 and made available for use by individual live music venues and entertainment precincts.

As a starting point, this mechanism should be applied through voluntary means, to test its value and effectiveness.

Subject to the outcome of testing, EPA should then consider whether the mechanism needs to be given statutory force, in consultation with relevant stakeholders.

Any Environment Improvement Plans for the live music industry should be prepared in consultation with and should inform:

- individual live music venue operators;
- members of the public and the community potentially affected by noise emissions;
- the local Council;
- EPA; and
- other persons and bodies responsible for the assessment, determination or prosecution of noise complaints.

Conclusion 12

Code of Practice: Environment Protection Implementation

To the extent that actions resulting from Conclusions 3 and 4 above are implemented and lead to best practice standards that affect the environment protection system, EPA should consider the mechanisms whereby such standards can be given formal effect.

6.4 THE LIQUOR CONTROL SYSTEM

Whilst the development of best practice management techniques and a Code of Practice have been discussed above largely in the context of the planning and environment protection systems, there is a need to ensure that relevant considerations arising from them are drawn to the attention of decision makers in the liquor licensing and enforcement systems. Venue

operators would be rightly concerned if they were to enter into processes designed to significantly improve venue performance and control noise impacts, if little or no credit were to be given to the relevant outputs from these processes when matters were being dealt with under the liquor control system.

In terms of determining whether premises are appropriate for operation as a live music venue or a person is a fit and proper person to operate a venue, it would appear appropriate and consistent to have regard to the relevant standards of the same Code of Practice that is applied for planning and environment protection purposes. In terms of considering complaints about a venue or venue management, it would again appear appropriate and consistent to determine whether relevant Code standards have been met on an ongoing basis.

Equivalently, where a venue enters into a community-based Environment Improvement Plan, there will be an acknowledgment that the requirements of SEPP N-2 may not be capable of being immediately met. However, there will be noise management measures in place, a program of improvement and a reasonable level of community support for the venue to be given the opportunity to implement these. Again, it appears appropriate that the provisions of such a plan should be taken into consideration when discretion is exercised in the liquor control system.

This is not to say that the contents of a Code or any Environment Improvement Plan should ever bind the liquor control decision maker. There may be circumstances that are irrelevant to land use planning and environmental regulation, relating perhaps to the personal conduct or good character of a venue operator. These may indicate a particular result in liquor control proceedings, notwithstanding that the venue has fully adhered to Code or Plan provisions. However, where relevant, Code or Plan provisions should be considered before a decision is made. Consumer Affairs Victoria/Liquor Licensing should consider the practicality and means whereby relevant considerations can be brought to bear.

Conclusion 13

Code of Practice and Environment Improvement Plans: Liquor Control Implementation

To the extent that actions resulting from Conclusions 3 and 4 above are implemented and lead to best practice standards or local variations to these that affect the liquor control system, Consumer Affairs Victoria/Liquor Licensing should consider the best mechanisms whereby such standards or variations can be recognised.

6.5 DISPUTE SETTLEMENT

A significant concern of the live music industry was the degree to which formal enforcement proceedings could be initiated in one or more jurisdiction that could have the effect of significantly curtailing the activities of a venue, or resulting in the cessation of live music activities there.

Venues argued that they were often unable to bring about informally negotiated outcomes to complaints at an early stage, as their first awareness of the complaint was through official channels such as a Police or Council officer visit. Residential complainants were sometimes reluctant to engage directly with venue operators and felt intimidated by direct negotiation.

The absence of an informal dispute resolution stream meant that relatively minor issues became the subject of formal complaints.

Taskforce discussions examined the possible merits of a requirement for mediation or other means of alternative dispute resolution, to be put into effect before planning permit conditions, licence conditions or noise standards could be formally enforced.

The Dispute Settlement Centre of Victoria provides an informal, low cost dispute resolution service that could be appropriate for the early and informal resolution of complaints.

It was clear that Victoria Police already had a practice of 'staged' intervention, advice and warnings to a venue that would normally be pursued before formal enforcement action was undertaken. This approach was documented. Whilst such an approach was less immediately apparent in other jurisdictions, the other enforcement agencies (local government, the EPA and Consumer Affairs Victoria/Liquor Licensing) were all in strong agreement that it had merit.

That being said, all of the enforcement agencies considered that it was inappropriate to surrender the option to take formal proceedings until mediation or other alternative dispute resolution processes had been carried out. There would be circumstances in which a breach of the relevant condition or standard was of such a flagrant nature that immediate formal enforcement action would provide the only publicly credible response. The EPA pointed to their existing practice under SEPP N-1 and SEPP Air Quality Management. Under these instruments that already enable the preparation of Environment Improvement Plans, they nevertheless retain the discretion to enforce against emitters that have engaged in the plan making process and have done so to demonstrate their underlying obligation to ensure that flagrant breaches do not go unremarked.

The enforcement agencies also suggested that it was necessary to view interventions in the formal enforcement processes in the light of the relatively limited numbers of such actions. Of the hundreds of music noise related complaints fielded by police, councils and the EPA every year, very few result in enforcement action before the Victorian Civil and Administrative Tribunal. There are some 14,500 licensed premises in Victoria. In 2002, the police brought proceedings against 4 venues at the Tribunal on a live music noise related issue. The majority of disputes handled by police, council and the EPA are resolved through negotiated outcomes. From this it is clear that enforcement agencies do generally attempt a negotiated outcome with aggrieved parties in the first instance. This approach is to be encouraged. The very low number of litigated outcomes in music noise disputes testifies to high quality public service in this regard.

It therefore appears appropriate that informal dispute resolution procedures should continue. There should not be any set procedures for enforcement agencies that stipulate when or how such methods are to be applied. Some disputes require immediate and formal enforcement action. For other disputes, informal negotiation or conciliation between aggrieved parties will be appropriate and should continue to be offered. In many instances, a dual informal/formal approach may be appropriate where negotiations take place against a backdrop of 'official' enforcement proceedings.

There will be a valuable and enhanced role for venue management to play in ensuring that relatively small and easily resolvable disputes do not become artificially escalated or prolonged because the complainant feels they have no alternative but to go through official

channels. Further to Conclusions about the identification of best practice management techniques and the preparation of venue management plans above, it will be appropriate for venue managers to establish clear and open lines of communication with their local residential communities. Local residents associations, community organisations, Councillors and Council officers should be advised of processes whereby initial complaints against individual venues can be handled. It should be made clear that individual complainants will be treated with fairness and courtesy and that complaints will be investigated and taken seriously. If such mechanisms are available and well known, it is to be hoped that fewer complaints will need to be made through official channels. It would also be appropriate for venue managers to offer independent mediation as a means of dispute resolution, should a complainant wish.

Initiatives to formulate an industry Code of Practice for the management of noise, or the potential development of venue Environment Improvement Plans could assist in reducing disputes and engender the conditions for directly negotiated, community based outcomes. They could also provide means whereby the direct resolution of complaints between complainants and venues, or voluntary recourse to independent mediation become more commonly used.

Conclusion 14

Alternative Dispute Resolution Processes

All stakeholders in the live music industry are encouraged to investigate and document alternative means of dispute resolution, including mediation, to complement existing informal dispute resolution practices. They are encouraged to use new methods where these appear likely to lead to outcomes that benefit the community. However, enforcement agencies should retain the discretion to take formal action in cases where there is a clear public interest in the cessation of a substantial nuisance.

Venue owners are recommended to make their contact details known to the local community, together with the assurance that they welcome the opportunity to be the first point of contact for complaints. They should make clear that there are venue management procedures in place to ensure that complaints will be taken seriously.

6.6 BETTER COMMUNICATION

One of the key issues to emerge from submissions and workshop contributions was the view of a significant number of live music industry and resident stakeholders that they had no clear understanding of the way in which the existing noise regulatory system worked.

A number of the Conclusions suggest ways to bring about a practical clarification of the system and more integrated operation. However, whether or not actions arising from these Conclusions are implemented, there will still be a need for clearer and better communication about how whatever system we have in place actually operates, setting out the rights and responsibilities of the key stakeholders.

The provision of better information has a role to play in administrative efficiency: making sure the right issues are referred to the right organisations at first instance. However, better information also has a key role to play in the psychology of dispute management, by establishing the reasonable expectations of stakeholders and ensuring that disputes are not exacerbated and prolonged due simply to the frustration that can be experienced by a

complainant who does not know where to go in order to obtain information or to get their complaint attended to.

Production of a communications framework, information packages and a web portal would require the coordinated input of relevant State Government agencies, key local governments and venue operators. A web portal, equivalent to the existing www.environment.vic.gov.au would be most likely to require sponsorship by a State government agency, as it would link to existing web based information services largely controlled by the State.

Conclusion 15

Communications Framework

Government and local government agencies with an enforcement role should develop a joint communications network for live music industry related noise issues. This network should establish a communications strategy to provide a consistent basis for each agency to advise venue operators and the general public when handling complaints. Agencies should accept 'lead' responsibility for particular aspects of the music noise complaint load.

Frontline staff should be made aware of the requirements of the communications strategy.

The network should be responsible for implementing a standard guidance leaflet and a web portal

A standard guidance leaflet should be published for distribution through venues, government and local government agencies with an enforcement role. This should explain:

- the noise responsibilities of music venues;
- the steps that can be taken by a person with a concern about venue management, including advice about alternative means of dispute resolution; and
- in the event that a dispute cannot be amicably settled, advice about how formal music noise complaints are dealt with, and to which agency particular types of complaint should be made.

A web portal should be developed providing directed access to information on live music noise related issues. This should include or link to:

- an action program for the implementation of the Conclusions set out above; and
- sources of advice on standards, compliance and dispute resolution for venue operators and residents.

6.7 IMPLEMENTATION AND MONITORING

The Conclusions made in this report range over the responsibilities of a number of stakeholders. Several will require further consultation and inter-agency cooperation in their development if they are to be successfully implemented. Implementation and action programs need to be drawn up and commitments made to the necessary investigations and delivery within reasonable timelines. A number, and particularly the better information actions proposed in Conclusion 15, are likely to need the attention and focus of joint working

arrangements that could be provided by an implementation and monitoring working party and reference group.

Conclusion 16

Implementation and Monitoring

A reference group representing key government and local government agencies, the live music industry, the development industry and residents' interests should be established to develop and monitor the implementation of the initiatives recommended in this report.

6.8 INTEGRATION

As has been made clear in the discussion of individual Conclusions above, considerable attention in the evaluation of options for system change has been given to the degree to which options are capable of working in synergy; delivering a whole that is greater than the sum of their parts.

It would nonetheless be valuable for individual conclusions to be implemented without their neighbours and still deliver real improvements and benefits to the existing systems of noise and amenity management for live music venues.

APPENDICES

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A. Taskforce Press Announcement

PRESS RELEASE FROM THE MINISTER FOR ARTS, MINISTER FOR PLANNING

DATE: Friday, June 6, 2003

TASKFORCE TO FIND SOLUTIONS TO LIVE MUSIC BATTLE

Concerns among residents, musicians and venue operators about live music and its impact on residents will be examined by a State Government-led taskforce.

The Minister for Planning and the Arts, Mary Delahunty, said the Live Music Taskforce would examine these concerns in an effort to develop workable strategies for local government.

"Melbourne's live music culture is internationally recognised and locally celebrated, but as more people move to the inner city, tensions have risen about the noise coming from pubs and clubs," she said.

Ms Delahunty said there was strong legislation in place that allows councils to make local decisions: the Environment Protection Act, the Liquor Control Reform Act and the Planning and Environment Act.

"Councils have been struggling to arbitrate between residents, who understandably want amenity, and musicians, whose livelihoods depend on the survival of the venues they have played at for years.

"What we want to do is bring together the major players in an effort to help each party understand each other's concerns, and strive to develop practical solutions to them."

Ms Delahunty said the terms of reference for the Live Music Taskforce will be to examine:

- Effectiveness of current legislation;
- Examples of how noise policies have been working (including sound proofing);
- Examples of how the live music industry is affected by current policies and restrictions; and
- Approaches of other States in managing the issues.

"The issues involve real concerns and competing rights. We want to find a way forward that strikes a workable balance," she said.

Ms Delahunty said areas that could be looked at include the EPA requirements for noise levels and the process of making complaints, the building regulations, and even the idea of a "buyer beware" clause on property contracts of sale.

The Taskforce will invite representatives from the Victorian Local Governance Association, the Municipal Association of Victoria, Fair Go 4 Live Music, VicMusic, the

Urban Development Institute of Australia, the Housing Industry Association, the Department of Sustainability and Environment, Arts Victoria, Consumer Affairs Victoria/Liquor Licensing, the Australian Hotels Association and EPA Victoria.

The Live Music Taskforce will be led by the Parliamentary Secretary, Environment, Elaine Carbines (Member for Geelong Province), and will report back to Ms Delahunty by Wednesday 1 October 2003 with recommendations.

B. List of Taskforce Representatives

Mr	Chris McNeill	Urban Development Institute of Australia
Ms	Eleanor Mckay	Arts Victoria
Ms	Fiona Nield	Housing Industry Association
Mr	George O'Keeffe	Office of Director of Liquor Licensing
Mr	George Tsivoulidis	Environment Protection Authority
Mr	Heath Downie	Municipal Association of Victoria
Mr	James Milne	Fair Go 4 Live Music
Mr	James Nagy	VicMUSIC
Mr	John Shaw	Building Commission
Mr	Mathew Evans	Municipal Association of Victoria
Mr	Paddy O'Sullivan	Australian Hotels Association
Mr	Phil Eager	Victoria Police
Ms	Sally Isaac	Victorian Local Governance Association
Mr	Terry Noone	Musicians' Union of Australia
Mr	Ashley Admiraal	Department of Sustainability and Environment

The following persons acted as additional and regular delegates:

Mr	David Mollett	Fair Go 4 Live Music
Ms	Elaine Just	Environment Protection Authority
Mr	Jon Perring	VicMusic

C. List of Submitters

Submissions were received from the following organisations. Additional submissions were received from individuals:

Arts Centre Trust
Arts Victoria

Audiological Society Of Australia
Australian Hotels & Hospitality
Association Inc.

BarJAS Pty Ltd
Barker Street Studios
Beachnik Café
Brunswick Music Festival
Building Commission
Buxton Walker Pty Ltd
Capitol Promotions
City of Derabin
City of Greater Geelong
City of Port Phillip
City Of Yarra
Clement Stone Town Planners
Collingwood Branch of the Australian
Labor Party
Conservation League Inc
Consumer Affairs Victoria/Liquor
Licensing
Duke of Windsor Hotel

Entertainment Depo
Environment Protectin Authority
Fair Go 4 Live Music
Fitzroy Residents Group
Furst Publishing

Hardimans Café. Bar. Restaurant
Hardware Precinct Resident and Tenant
Association
Harwood Music Services
Highway 8 Exclusive Management Pty
Ltd
Housing Industry Association
Indent Music
Loudspot Audio
Marshall Day Acoustics
Melbourne City Council
Moreland City Council
MTA - One Stop Entertainment
Municipal Association Of Victoria
Nightclub Owners Association
Restaurant & Catering Victoria
Sophat Productions
The Empress Hotel
The Jam Tin Sound Studio

The Melbourne-South Yarra Group
The Musicians Union Of Australia

The Tote
Urban Development Institute of Australia
(Victoria)
VicMusic
Victoria Police
Victorian Local Governance Association
Yandoo
Yarra Wine and Wood

D. Workshop Attendees

Mr	Daniel Caneva	Duke of Windsor Hotel
Ms	Sandra Eunson	The Empress Hotel
Mr	Jon Perring	BarJAS pty Ltd
Mr	Andrew Powell	Arts Centre Trust
Mr	Richie Ramone	The Tote
Mr	Rick Richards	Hardimans Café. Bar. Restaurant
Mr	Geoff Barbour	Fitzroy Residents Group
Ms	Vicky Battin	Hardware Precinct Resident & Tenant Association
Mr	Peter Fitzgerald	Fitzroy Residents Group
Ms	Marina Perkovich	Interested Resident
Mr	Rod Burke	City of Port Phillip
Mr	Stephen Cooper	City of Port Phillip
	Sergeant Frank Holzer	Victoria Police
Mr	John Lombard	City of Yarra
Mr	Geoff Oulton	City of Port Phillip
Mr	Anne-Maree Pfabe	Moreland City Council
Ms	Sonia Ryan	City of Derabin
Mr	Steve Sadomanco	City of Greater Geelong
Mr	Paul Tierney	City of Yarra
Mr	Russell Webster	Melbourne City Council

E. Interstate Experience

LIVE MUSIC TASKFORCE – INTERSTATE EXPERIENCE

New South Wales

Report commissioned by the Music Board of Australia Council and the New South Wales Ministry for the Arts – *Vanishing Acts :An inquiry into the state of live popular music opportunities in New South Wales* (July 2002).

Wide ranging investigation into the viability of the Live Music.

A number of noise amenity related recommendations.

Western Australia

'Making Music' – A Report of the Contemporary Music Ministerial Taskforce (September 2002).

Wide ranging report primarily focussed on the promotion and development of Western Australian contemporary music talent.

No recommendations relating to noise amenity issues.

Queensland

Report commissioned by the Brisbane City Council - *Music Industry Development and Brisbane's Future as a Creative City*. August 2001.

Report identifies noise amenity as a key issue of concern but makes no recommendations.

Brisbane City Council in conjunction with the Liquor Licensing Division of the Department of Tourism, Sport & Racing are preparing a paper regarding noise restrictions and its impact on the live music scene and entertainment venues.

South Australia

Following noise related enforcement action against a live music venue and subsequent public action, Government established a Working Group,

Working Group provided a wide range of recommendations.

The key recommendation adopted was an amendment to the Liquor Licensing Act 1999, detailing procedures and decision making criteria in the undertaking of enforcement action.

F. Options

This Appendix summarises options arising from submissions and stakeholder contributions that were considered in the Taskforce process.

The Base Case: 'No Change'

As a starting point for the consideration of options, it was necessary to consider whether any change is required at all. The retention of the existing systems in their current configurations offers a starting point of low immediate cost.

This option was not considered desirable, for the following reasons:

- It does not respond to the changing land use patterns, urban character and amenity expectations of activity centres and entertainment precincts.
- It does not sufficiently protect industry or residential submitters from the adverse social, economic and environmental consequences of those changes.
- It fails to address the concerns of industry and residential submitters that the existing system is unclear and uncertain.

The Test Case: 'Major Change'

A 'Major Change' option was also briefly considered as a means of responding to the broad range of issues raised in submissions. Such an option would involve the generation of a new unified jurisdiction for the consideration of live music noise issues and in so doing would address the substantive concerns of submitters, whilst also removing the need for co-ordination between many different agencies.

This option was not considered desirable, for the following reasons:

- It does not recognise that noise and amenity regulation for the live music industry are only one facet of systems that regulate many industries and land uses.
- The cost of change would be likely to be high as against relatively small-scale social and environmental benefits.

Planning System Options

Eight planning system options were considered.

1 State policy recognising the cultural significance of live music.

This option had live music industry support. Other stakeholders did not support it. They questioned the degree to which 'industry specific' policy support might also be requested by other sectors, and whether such sector specific support was desirable in State policy.

On balance, it was considered that this should be a matter for further consideration by Government, as any statewide policy statement would impact on a number of jurisdictions across government.

2 A policy statement in the State Planning Policy Framework, clarifying the means of implementing the existing noise abatement objective.

This option was developed in discussions between the Taskforce secretariat, planning system stakeholders and the EPA. On balance it was seen as desirable for the SPPF to make clear that building design and urban design offer suitable means of controlling noise impacts, in addition to land use separation. Such a change would provide a clearer basis for planning permit conditions addressing building design requirements to respond to noise control issues.

3 Guidance on the preparation of planning policies for the identification and/or management of activity centres, entertainment precincts or specific venues. The Municipal Strategic Statement (MSS) could include activity centre or precinct based statements on residential amenity expectations and the contribution of venues to established or desired neighbourhood character.

Whilst local government stakeholders had some reservations about timing and resources, most stakeholders broadly supported this option. Discussions identified that resource concerns would be minor if the option were to be implemented as part of the 3 year MSS review cycle and/or as part of activity centre structure planning anticipated by Melbourne 2030. Planning practice guidance could also support this option. Some existing local policy provides a starting point from which the implementation of this option can be developed.

4 Guidance on planning permit conditions addressing venue noise considerations.

5 Guidance on Section 173 agreements addressing venue noise considerations.

The concept of promoting 'standard' planning permit conditions or section 173 agreements to address venue noise considerations was not supported, as the individual circumstances of particular localities and venues were unlikely to be amenable to standardised approaches.

However, stakeholders did broadly support the notion of providing planning practice guidance on the use of these tools to achieve appropriate noise outcomes. This guidance could also address the allocation of responsibility for additional compliance costs consequent on venue or adjacent land use change. The starting point should be the principle that the agent of land use change should bear the additional costs of noise standard compliance necessitated by that change. Costs could be dealt with directly, through the assumption of responsibility for on or offsite works, or indirectly, through a payment to a venue or other party to do offsite works. Whilst the control of noise at source principle would suggest that noise attenuation measures would take place in the venue, there may be circumstances in which negotiations would provide for other outcomes that would still result in the relevant performance standard being met.

Subject to the outcome of planning reforms currently under consideration in the *Better Decisions Faster* process, it would not be possible to state conclusively whether conditions, agreements or both would provide the most appropriate means of implementation. However, these were clearly options that provided benefit and could be developed within the planning system.

- 6 **The Design and Development Overlay (DDO) could be used to apply acoustic design requirements to buildings.**
- 7 **A new Neighbourhood Amenity Overlay (NAO) could manage entertainment uses whilst protecting the amenity of residents. It could require attenuation of new development (both venue and residential) with specific noise provisions, building requirements and testing/compliance procedures.**

Overlay options were considered but were not strongly supported. The main benefit of both options was perceived as being transparency and disclosure of the presence of a venue through planning certificates. The key disbenefits were seen as being high administrative costs, the significant time and resources necessary for the preparation and application of controls and the need for a planning scheme amendment and sometimes a Panel process to add, remove or vary them. In addition, a new overlay was seen as adding further complication to a planning system that was already seen by many as over-complicated.

The DDO has already been used to a limited extent to achieve acoustic design objectives and may have a minor role to play in the environs of major venues. As an existing VPP tool, it would be open to planning authorities to consider its use at any time.

8 A 'Code of Practice for the Planning and Development of Live Music Venues'.

This option was seen as being potentially fruitful, in circumstances where the live music industry first acted to develop its own understanding of best practice. Subject to appropriate consultation, standards from such a code that were relevant to the planning system could be consistently applied. Means of implementation could include the wholesale incorporation of a Code into the VPP, or the adoption of particular standards into a VPP particular provision.

Building System Options

Initial submissions and stakeholder comments expressed the view that options for change to the building system should also be explored. The Building Commission was a taskforce member and provided advice about the role of its legislation and code. The burden of this advice was that the Building Regulations adopt the Building Code of Australia (BCA) which provides standards for the construction and maintenance of buildings in a manner that are largely uniform throughout Australia.

For residential buildings containing more than one dwelling, the Regulations apply an airborne sound insulation rating standard for soundproofing within the building. However, there are no standards for soundproofing the external fabric of a residential building. There are no requirements for the soundproofing of single dwellings. Changes to this approach would, in principle, require to be addressed Australia wide, making this an inefficient vehicle for significant early change to address the subject matter of the taskforce. For this reason, no detailed building system options were developed.

Land System Option

One land system option was considered.

1 Vendor statements under Section 32 of the Sale of Land Act could inform purchasers of nearby liquor license conditions.

This option was not supported. It would provide transparency to intending residential freehold purchasers, although none for intending renters. Whilst purchasers would be alerted to the presence of the venue, this would not result in the loss of their capacity to complain or seek enforcement of SEPP N-2, liquor license or planning permit conditions. It would require legislative change. It would be administratively complex to implement and would have no benefit in terms of improving venue management, or planning responses to land use or design issues. It was considered that better benefit would be obtained from focussing on the better regulation of land use and development. Planning permit conditions and or agreements relating to acoustic issues were in any case considered likely to place the future occupants of new development close to venues on good notice.

Environment Protection System

Four environment protection system options were considered.

1 Remove the application of N2 in activity centres.

This option was not perceived as providing a responsible way forward for the management of music noise issues in activity centres. Nor would it address issues raised by venues not in activity centres.

2 Gazette ‘variations’ to N2 provisions in activity centres.

This option was seen as offering limited value, due to the potential offered for the proliferation of varying control standards and the administrative complexity of implementation. Nor would it address issues raised by venues not in activity centres.

3 Amend N2 or provide compliance guidance to recognise ‘existing use rights’.

The provision of compliance guidance to recognise ‘existing use rights’ would respond to the situations of acknowledged inequity and uncertainty that arise when existing live music venues are approached and put out of N2 compliance by a new sensitive receptor use. Guidance could suggest that in such circumstances, the onus was on the agent of change, as opposed necessarily to the venue, to bear any consequential additional compliance costs.

This option was seen as offering considerable value, with the possibility of an amendment to N2 to provide a solid statutory basis in the medium to long term. Short term implementation could be through planning system guidance and the use of planning permit conditions and/or section 173 agreements (see planning system options 4 and 5).

4 Amend N2 or provide compliance guidance to support the use of ‘Environment Improvement Plans’.

This option emerged in discussions between the Taskforce secretariat and EPA. SEPP N1 offers noise emitters who have practical difficulties with compliance the capacity to prepare either a statutory or a voluntary plan, indicating how best practice techniques will be deployed to bring it as far as possible towards compliance in a given time. Affected local residents can

be consulted as part of the plan preparation process. Its final provisions can therefore represent an informal 'contract' between the emitter and receptors, acting to considerably reduce the potential for complaints and disputes. However, there is no equivalent provision under N2. Although regulatory change would be required to generate statutory 'Environment Improvement Plans' under N2 and this would take time, EPA was of the view that guidance could support non-statutory plans and enable the concept to be tested in practice in the short to medium term.

This option was widely acknowledged as likely to offer significant benefits, particularly in the context of a code of practice having been developed providing standards and techniques that could be used in Environment Improvement Plans. It should be tested on a non-statutory basis, with a view to an eventual amendment to N-2 if it proves worthwhile.

Venue Management

Three venue management options were evaluated.

1 All live music venues to produce a noise management plan, dealing with complaints, staff training and related issues.

Industry stakeholders supported the first option as a measure that responsible venue operators would be willing to pursue. It enjoyed the strong support of other stakeholders. This option merits further consideration as a starting point for the development and documentation of industry best practice.

2 License Accord provisions for live music venues to assist venues in identifying noise management issues.

3 Development of an industry Code of Practice to assist all live music venues in their management of noise amenity issues.

Consideration was also given to means whereby relevant standards could be given general application throughout the industry or at least within geographical areas.

Some attention was given to the use of the 'License Accord' process under which venues in a local licensed premises forum would cooperate to identify issues and standards relevant to them all. Whilst initially attractive, the accord process did not appear to offer immediate routes forward, as most licensed premises in such processes would not necessarily be live music venues. More direct benefit and swifter results would be obtained through live music venues cooperating more directly.

However, considerable benefit appeared likely to flow through direct cooperation in the development of an industry specific code of practice. This in turn (with appropriate consultation) could form the basis for a planning code of practice and for standards and techniques deployed in the planning, environment protection and liquor control systems.

Dispute Resolution

Two options to provide better means of dispute resolution were evaluated.

- 1 The practice of attempting to facilitate a negotiated outcome to be formalised under Liquor Licensing enforcement and all Council enforcement processes.**
- 2 Mediation to be required prior to activation of enforcement procedures.**

Whilst all stakeholders acknowledged the value to be obtained from facilitated negotiation and mediation in an attempt to informally resolve disputes, the EPA, Victoria Police and Liquor Licensing Victoria strongly maintained their view that the enforcement agencies should not lose their discretion to enforce with immediate effect. There would be circumstances in which a noise or license control infringement would be serious and would require an immediate formal response, without negotiation or mediation.

Information

Four options to provide better information to stakeholders were considered.

- 1 The provision of basic information for residents outlining rights and where to go for assistance.**
- 2 The provision of best practice guidance targeted primarily at venue operators but outlining rights and responsibilities of all stakeholders. This could include an outline of procedures of agencies, including opportunities for negotiated outcomes.**
- 3 A package of practical attenuation measures/techniques produced for venue operators.**
- 4 Guidelines on tests of reasonableness for consistent application and assessment to assist participants in negotiation and for application by decision-makers to provide clarity on reasonable amenity and concepts of 'undue detriment' and 'unreasonable disturbance'.**

Options 1 to 3 above were broadly supported, subject to questions from public agencies about the ownership of and responsibility for such initiatives. However, it was generally agreed that better information about roles and responsibilities was critical to providing both industry and residential interests with a clearer understanding of the objectives and operation of the regulatory systems.

Option 4 was seen as more difficult to implement, although there was some recognition that this function could be addressed in a code of practice that had undergone appropriate consultation in its development.

Appendix D PPN81 Live Music and Entertainment Noise

Live Music and Entertainment Noise

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MAY 2016

This practice note gives guidance about the operation of Clause 52.43 – Live Music and Entertainment Noise

Live music is an important part of the state's rich culture. Melbourne has a long established and highly regarded live music scene, making it the leading music city in Australia. Live music makes a significant contribution to the state's economy, drawing visitors from near and far and provides vital opportunities for emerging and established local musicians.

Settlement trends, particularly in inner urban areas, are increasing the level of residential development in mixed use environments. While this creates more efficient and vibrant communities, close proximity between residential and entertainment uses can sometimes cause conflict about noise emissions.

A balanced approach is essential to support the viability of our valued live music entertainment scene and to ensure *live music entertainment venues* co-exist amicably with their residential neighbours. Planning seeks to achieve a balance between supporting live music and protecting residents from unreasonable noise disturbance.

Managing noise in the planning system

Clause 13.04-1 of the State Planning Policy Framework in the *Victoria Planning Provisions* sets out the overarching policy basis for planning decisions about noise:

Objective

To assist the control of noise effects on sensitive land uses.

Strategy

Ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.

Everybody living and working in an area has a role in maintaining a healthy level of noise amenity for that area, including taking responsibility for their own noise outputs or sensitivities. While a new use or development should include design measures to minimise noise impacts, existing residents and venues should also take action to prevent noise conflict.

This can mean ongoing compliance with noise-related planning permit conditions or it can mean simple measures such as cooperation between neighbours to manage noise attenuation with practical responses like residents or venues closing windows or doors at noisy or late times. However, noise management is not always straightforward.

Clause 52.43 – Live Music and Entertainment Noise

Clause 52.43 applies to a planning permit application for a *live music entertainment venue* or a *noise sensitive residential use* within 50 metres of a live music entertainment venue.

In this clause, live music entertainment venue means:

- a food and drink premises, nightclub, function centre or residential hotel that includes live music entertainment
- a rehearsal studio
- any other venue used for the performance of music and specified in clause 2.0 of the schedule to this clause, subject to any specified condition or limitation

Noise sensitive residential use means:

- a boarding house, dependent person's unit, dwelling, nursing home, residential aged care facility, residential village or retirement village.

This clause does not apply to:

- the extension of an existing dwelling
- a *noise sensitive residential use* that is in an area specified in clause 1.0 of the schedule to this clause.

The schedule to Clause 52.43 can be used to specify:

- areas to which Clause 52.43 does not apply: this may be necessary where alternative noise control requirements are already in place for a *noise sensitive residential use* through the planning scheme or SEPP N-2
- other venues to which Clause 52.43 applies.

Where a different venue may warrant the same protection as the defined venues, clause 2.0 of the schedule can include the venue. For example, a public hall or similar venue that is regularly used for the performance of live music.

The agent of change principle

The agent of change principle has been introduced into Clause 52.43 to manage the relationship between live music venues and residential uses.

In planning, the agent of change principle assigns responsibility for noise attenuation measures to the 'agent of change' – a new use or development that is introduced into an existing environment.

In practical terms this means that if a new or an existing live music venue seeks to establish or expand, they will be responsible for attenuating any noise effects that are caused by that change on nearby residential properties.

Similarly, a new residential development close to an existing live music venue will be responsible for noise attenuation of its building to protect future residents from the live music venue.

This does not mean however that any other person living or working in an area is free of any responsibility for noise management.

Everyone has a role in noise management, including existing permit holders and live music entertainment venues who must ensure they comply with *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* (SEPP N-2) and any relevant permits or other obligations.

Information to be submitted with an application

Clause 52.43-3 sets out what information needs to be submitted with an application and the requirements for noise attenuation:

- A permit application for a *live music entertainment venue* must be designed, constructed and managed to minimise noise emissions from the premises and provide noise control measures that will protect a *noise sensitive residential use* within 50 metres of the venue.
- A permit application for a *noise sensitive residential use* must be designed and constructed to include noise control measures that will reduce noise levels from any:
 - indoor *live music entertainment venue* (including an outdoor space of a substantially indoor venue) to below the noise limits specified in SEPP N-2

- outdoor *live music entertainment venue* (a public premises where music is played in the open air, such as a major sports and recreation facility) to below 45 dB(A), assessed as an Leq over 15 minutes.

An applicant must ensure the application is accompanied by the information required in Clause 52.43-4 or any alternative requirements of the council.

Meeting the requirements

Normally, the requirements of Clause 52.43-3 must be met. However, a council may reduce or waive these requirements if it is satisfied that an alternative measure meets the purpose of the clause.

In some instances, the most practical and effective outcome will involve treatment to both the noise making and noise receiving premises.

This allows for alternative approaches such as a residential developer improving the noise attenuation in the venue as an alternative to, or in combination with, attenuation measures in the proposed residential development. In some situations, this may be more cost effective than undertaking noise attenuation of multiple new dwellings.

It also provides for a residential or venue developer to implement established building and urban design techniques for noise attenuation without commissioning a detailed acoustic assessment, where the council considers this approach is warranted.

Some techniques used to address music noise can be easy to achieve and be low-cost. These measures can also result in other benefits. For example installing insulation, sealing draughts and effective window coverings will not only help address noise, but will also reduce the need for supplementary cooling or heating and will provide passive energy gains. Attenuating against music noise will also help address other noise nuisances such as waste collection and traffic noise.

While SEPP N-2 does not prescribe noise limits for noise associated with the arrival and departure of people attending the premises, an applicant should still identify how they propose to manage the behaviour of patrons coming and going from the venue so that nuisance impacts on neighbours are minimised. This information can be explained in a venue management plan.

ATTENUATING A LIVE MUSIC VENUE

One or more of the following measures may be considered to help achieve the requirements of Clause 52.43, as appropriate:

- implementing a venue management plan focussed on minimising noise
- positioning entertainment rooms, the stage and loudspeakers to increase the distance between the noise source and any *noise sensitive residential use*
- orienting the stage or loudspeakers of external entertainment spaces to direct noise away from any *noise sensitive residential use*
- incorporating measures such as acoustic glazing, wall, ceiling and roof construction
- sealing gaps, joints and service penetrations and using acoustic insulation
- using setbacks and acoustic fencing
- limiting noise leakage through the use of vestibule / sound-lock entry arrangements
- installing a sound limiter to cap the volume of any amplified sound to an appropriate level.

While all of the above measures will be helpful, some may have a limited overall effect on noise emissions in different circumstances. An acoustic engineer can advise on measures that are capable of achieving the requirements of Clause 52.43.

ATTENUATING A NOISE SENSITIVE RESIDENTIAL USE

Measures that may help meet the requirements of Clause 52.43 include:

- locating noise-sensitive rooms (particularly bedrooms) away from significant noise exposure by using spaces like walkways, laundries and storage as a buffer
- using acoustic glazing, wall, ceiling and roof construction
- sealing gaps, joints and service penetrations and using acoustic insulation
- using setbacks and acoustic fencing
- using a noise masking system (for example by relying on heating, ventilation or air-conditioning noise).

Understanding the noise limits specified in Clause 52.43-3

The Australian Standard for Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors – AS 2107:2000 (AS2107) recommends noise limits such as 40dB(A)Leq for bedrooms in dwellings near major roads. Noise limits typically ranging from 35dB(A)Leq to 45dB(A)Leq are often specified in local planning scheme provisions and permit conditions for new dwellings in locations with a high level of external noise. While these measures may be suitable in some environments, they do not properly address music noise.

The AS2107 Standard is primarily intended to be applied to steady noise sources, such as road traffic and mechanical plant noise. This standardised measure does not acknowledge that music noise presents variable noise characteristics – specifically low frequency and rhythmic qualities that can interrupt sleep.

The SEPP N-2 noise standards were developed specifically to protect residents from potential music noise impacts. The policy recognises that music noise can have a more significant effect on residents than other urban noises.

It prescribes separate noise limits for the late evening period and for the night period for an indoor venue, taking into consideration the particular characteristics of music noise which need to be assessed differently to more broadband noise sources. The standards in Clause 52.43-3 for a *noise sensitive residential use* are based on the SEPP N-2 model, but with an adjusted measurement point.

The normal SEPP N-2 standards are applied to a new or modified *live music entertainment venue* to help achieve the Clause 52.43 requirement.

The 45dB(A)Leq specified for outdoor venues in Clause 52.43-3 is equivalent to the standard in place for the Docklands Scheduled Area in SEPP N-2.

SEPP N-2 – Schedule B1, which generally specifies an outdoor measurement point, does not apply in Clause 52.43. The measurement point is modified in Clause 52.43 to allow noise to be measured inside a habitable room of a *noise sensitive residential use*, with the windows and doors closed.

This approach protects the amenity of residents inside, when windows and external doors are closed.

Is a professional acoustic assessment always required?

A report from a suitably qualified acoustic engineer will normally be required with an application. The report should detail recommended mechanisms to mitigate noise impacts and should verify that the proposed mitigation measures will be satisfactory to meet Clause 52.43-3.

To avoid imposing the cost burden of a professional acoustic assessment (to demonstrate compliance with Clause 52.43-3) on small residential developments or for minor changes to an existing live music venue, a council could also consider requiring established design measures for acoustic attenuation, such as locating bedrooms of a new dwelling away from a low-impact venue.

An acoustic report should not be necessary if the context of the site, surrounds and proposal present clear options for straightforward remedies and a professional assessment and report is unlikely to improve outcomes.

Venue compliance with SEPP N-2

Clause 52.43 provides that a new residential use is to be satisfactorily protected from unreasonable levels of live music and entertainment noise. It is therefore unnecessary to consider whether existing noise emissions from a live music entertainment venue complies with SEPP N-2. This is a matter to be determined by a separate process through enforcement action or other proceeding.

An existing venue's compliance, or otherwise, with SEPP N-2 does not change a residential developer's obligation under Clause 52.43 to satisfactorily protect a new residential use from existing noise emissions. This is the case regardless of whether an existing noise sensitive residential use in the area has taken limited or no measures to protect themselves from noise emissions of an existing venue.

Any information supporting an application for a new residential use should address the existing noise impact on the proposed residential use.

This principle is in keeping with Clause 52.43 which seeks to provide for higher standards of acoustic protection in dwellings and venues and minimise the possibility for conflict between these land uses.

Enforcement of noise complaints

Neighbours and *live music entertainment venues* should be encouraged to cooperatively solve noise issues by communicating directly to achieve a balanced solution. A collaborative approach is often the most effective and quickest means of solving noise conflict.

Where SEPP N-2 or relevant planning permit conditions are breached and a workable solution is not established between parties, a council may take formal enforcement action to achieve compliance.

A decision under Clause 52.43 of the planning scheme is based on the requirements set out in Clause 52.43-3. Enforcement will therefore generally be to ensure compliance with conditions specified in the planning permit.

Despite Clause 52.43, venues must still meet specified noise limits in SEPP N-2. Regardless of the establishment of a new *noise sensitive residential development*, a venue that is in breach of SEPP N-2 is still capable of being separately enforced under the policy.

Enforcement action against noise complaints can be taken by:

- Local government planning enforcement officers, who can enforce against planning permit conditions pursuant to the *Planning and Environment Act 1987*.
- EPA officers, who can issue a remedial notice under section 31A of the *Environment Protection Act 1970* for breach of SEPP N-2.

- Liquor licence compliance inspectors, who can enforce liquor licence conditions under the *Liquor Control Reform Act 1998*.
- Police officers, who can enforce liquor licence conditions, as well as direct a venue to take action to abate noise under section 48AB of the *Environment Protection Act 1970*.
- Local government environmental health officers, who can take action under the nuisance provisions of the *Public Health and Wellbeing Act 2008*.

Some useful contacts

Local Government

Find contact details for all Victorian councils at:

www.delwp.vic.gov.au/localgovernment

Environment Protection Authority (EPA) Victoria

www.epa.vic.gov.au

Department of Environment, Land, Water and Planning (DELWP)

www.delwp.vic.gov.au/planning

Victorian Commission for Gambling and Liquor Regulation (VCGLR)

www.vcglr.vic.gov.au

Music Victoria

www.musicvictoria.com.au

Association of Australian Acoustical Consultants

www.aaac.org.au

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Appendix 1

Writing permit conditions

Conditions to attenuate noise in buildings are best established on a case-by-case basis, taking into account the site context and surrounding land uses. A suitably qualified acoustic engineer can provide advice to inform the drafting of effective noise attenuation conditions. In some instances, local circumstances may warrant conditions requiring verification testing by a suitably qualified acoustic engineer at a specified stage.

However, the following model conditions are useful in addressing noise issues that are typically generated from a *live music entertainment venue* or for a *noise sensitive residential use* near a *live music entertainment venue*.

Permit conditions for a live music entertainment venue

SEPP N-2 compliance

Noise levels emanating from the premises must not exceed those required to be met under *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*.

A report from a suitably qualified acoustic engineer should set out appropriate noise mitigation measures that are relevant to the subject site and its surrounds. These may include requirements for airlock entrances, sound limiters and other building design measures that can be translated as planning permit conditions. Further examples of permit conditions include:

Acoustic report

The use must not detrimentally affect the amenity of the area or the amenity of persons living in proximity to the site by reason of the emission of noise. The responsible authority may at any time require an acoustic report, prepared by a suitably qualified acoustic engineer. The report must be to the satisfaction of the responsible authority and identify all potential noise sources and noise attenuation work required to address any noise issues to comply with *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*. The recommendations of the report must be implemented and complied with to the satisfaction of the responsible authority.

The above condition can be used if an acoustic report is not considered essential for the initial assessment.

Acoustic report – required before use or development commences

Before the use and/or development commences, an acoustic report must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the responsible authority. When approved, the acoustic report will be endorsed and will form part of this permit. The acoustic report must assess the noise impact resulting from the proposed use and/or development and must make recommendations to limit the noise impacts in accordance with *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* or any other requirement to the satisfaction of the responsible authority.

The provisions, recommendations and requirements of the endorsed acoustic report must be implemented and complied with to the satisfaction of the responsible authority.

The above condition can be used to demonstrate that the constructed development meets the approval requirement.

Management details sign

Prior to the commencement of the use, a clearly legible sign must be placed directly outside the entrance to the premises, providing a telephone number for contacting the designated manager at all hours during which the premises is operating. The design, lighting and maintenance of the sign must be to the satisfaction of the responsible authority.

Window and door closure

Any external openable walls, windows, glazing systems or doors shown on the endorsed plans must be closed at [insert time] except for access and egress to the satisfaction of the responsible authority.

Timeframe for music / entertainment

Amplified music or entertainment (other than background music or entertainment played at background music levels) must cease by [insert time] to the satisfaction of the responsible authority.

Background music

Except with the prior written consent of the responsible authority, the provision of music and entertainment on the land must be at a background noise level.

Background music only is permitted in the [insert room name] to the satisfaction of the responsible authority.

A condition specifying background music levels would typically be used in situations where music would be ancillary to the main use. It can also be used for a room in a venue that is in close proximity to a *noise sensitive residential use*, to help buffer impacts from a main performance room of a *live music entertainment venue*.

An accepted measure of what constitutes 'background music' is that the music is played at a level that enables patrons to conduct a conversation at a distance of 600mm without having to raise their voice to a substantial degree. The meaning of background music is discussed in detail in the VCAT decision *Whiting v Hosier Bar Pty Ltd* (Occupational and Business) [2005] VCAT 814.

Noise limiter

Prior to commencement of the use, a noise limiter must be installed on the land. The noise limiter must:

- be set at a level specified by a qualified acoustic engineer,
- ensure the emission of noise from amplified music does not exceed the levels specified in the *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*,
- be maintained and operated at all times music is played, and
- be to the satisfaction of the responsible authority.

Noise limiters that employ a power cut-off silencing device are not necessary, as a properly programmed noise limiter should ensure that noise emissions achieve compliance with SEPP N-2.

No sound amplification

No external sound amplification equipment or loud speakers may be used for the purpose of announcement, broadcast, playing of music or similar purpose, to the satisfaction of the responsible authority.

No external speakers

Speakers external to the building must not be erected or used without the prior written consent of the responsible authority.

Other conditions that may be useful in the context of a *live music entertainment venue* include conditions seeking to address patron behaviour outside a premises and potential noise caused by those patrons arriving and leaving the venue. This could be set out in a venue management plan. Separately, a liquor licence will address matters of community safety, setting out obligations such as trading hours, responsible serving of alcohol and crowd control.

Any conditions of a planning permit should, as far as possible, be consistent and complementary to the conditions of a liquor licence.

Permit conditions for a noise sensitive residential use

When drafting permit conditions for a *noise sensitive residential use* near a *live music entertainment venue*, it is important to note that:

- Specifying SEPP N-2 noise limits in a permit for a *noise sensitive residential use* does not preclude a venue from having to comply with SEPP N-2. Compliance with SEPP N-2 remains mandatory for all public premises emitting music noise.
- While a *noise sensitive residential use* may be built with a suitable level of noise protection, openable windows may still render a nearby previously compliant venue as non-compliant with SEPP N-2. A balance needs to be struck between attenuating noise and ventilating a habitable room. Living near a *live music entertainment venue* means that both ventilation and noise attenuation at optimal levels may not be capable of being achieved at all times. A SEPP N-2 compliant venue will provide a reasonable balance between the requirements

of the noise maker and the nearby *noise sensitive residential use*.

- Addressing low frequency noise can be challenging, as individual contexts will present different noise resonance conditions. The advice of an acoustic engineer will usually be needed to establish the most appropriate requirements for a development proposal.

In keeping with Clause 52.43, council may specify a standard noise limit for a *noise sensitive residential use* near a *live music entertainment venue*. The limit can focus on habitable rooms, allowing non-habitable rooms such as walkways and laundries to be less attenuated. An example permit condition could read:

Noise attenuation of habitable rooms

Habitable rooms must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any indoor live music entertainment venue to below the noise limits specified in *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* to the satisfaction of the responsible authority.

For the purpose of assessing whether the above noise standard is met, the noise measurement point may be located inside a habitable room with windows and doors closed (Schedule B1 of SEPP N-2 does not apply).

Where a less stringent approach is being used for a *noise sensitive residential use* near a low-impact *live music entertainment venue* (such as a venue with daytime performances, background music only, performances of non-amplified music only or a modern, highly attenuated venue) the following permit condition may be sufficient:

Noise attenuation to protect sleep

The development must be designed and constructed to include noise attenuation measures capable of protecting occupants from levels of music noise that may affect sleep in the night period in habitable rooms with windows and external doors closed, to the satisfaction of the responsible authority.

To supplement the above condition, the council may consider including a permit condition that provides for a later requirement for an acoustic report and remedial action, if needed. This would help address any situation where an occupant complains about music noise from an unchanged, pre-existing *live music entertainment venue*, recognising that the new *noise sensitive residential use* is the agent of change and is therefore responsible for addressing the noise issue.

Request for acoustic report

The responsible authority may at any time require an acoustic report, prepared by a suitably qualified acoustic engineer. The report must be to the satisfaction of the responsible authority and identify all potential noise sources and noise attenuation work required to address any noise issues to comply with *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*. The recommendations of the report must be implemented and complied with to the satisfaction of the responsible authority.

The building and urban design techniques suggested for *noise sensitive residential uses* in this practice note, could also inform the drafting of relevant permit conditions. For example:

Glazing, doors and ventilation

The development must include external glazing and doors and an air conditioning or ventilation system designed by a suitably qualified acoustic engineer to the satisfaction of the responsible authority.

A high standard of noise attenuation control can be obtained with:

- External walls- minimum of 100 mm concrete precast panels, and
- Glazing- double glazing consisting of 8mm to 10 mm laminated glass and incorporating a minimum of 200 mm air gap between the glass panes.

The examples proposed in this practice note are provided as a guide only. Councils may have their own standard permit conditions and an acoustic engineer may suggest further alternatives.