

Music NT – The Live Music Office Alcohol Policies and Legislation Review Joint Submission

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Introduction

MusicNT and the Live Music Office appreciates the opportunity to provide a response to this review.

MusicNT is the peak body supporting the growth and development of contemporary music in the Northern Territory. Representing over 3500 members and undertaking programs across the Territory the organisation seeks to grow the capacity and capability of the Northern Territory music sector of which the live music sector is a core component. MusicNT strongly advocates for policy positions that will grow a vibrant creative sector and creative communities as the overwhelming evidence is that the benefits of this type of policy direction are substantial.

Established in July 2013, the Live Music Office works to increase opportunities for live music in Australia by identifying and advocating for better policy, regulation and strategy. Our advocacy encompasses regulation, research, audience development initiatives and support for music industry development.

We recognise that the liquor licensing regulatory framework is closely associated with the development of the music industry:

- Many live music performances are provided by dedicated licensed live music venues which may also be hotels, clubs, or nightclubs or as ancillary entertainment in hospitality industry premises also including cafes and restaurants.
- Licensed festivals, concerts and events also provide significant jobs and opportunities for musicians, as do community organisations

Given this relationship, this review has far reaching implications for the provision of employment, creative opportunities, and the cultural and economic development of the Northern Territory.

Objects

For the record, the Objects of the LIQUOR ACT under SECT 3 are as follows -

[LIQUOR ACT SECT 3 Objects](#)

(1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:

- (a) so as to minimise the harm associated with the consumption of liquor; and
- (b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.

(2) The further objects of this Act are:

- (a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;
- (b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and
- (c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.

(3) A person exercising a power or performing a function under this Act must have regard to the objects of this Act and must exercise the power and perform the function in a way that is consistent with those objects.

Currently the Objects reference that might be referred to where the interests of the live music and performance sector would likely be supported is under S.3.(b) as follows - *to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory;*

Including a specific reference here to the live music industry would align with similar references nationally, and provide a position from which the application process and public interest criteria be adjusted. Businesses could refer to this when applying for, transferring, or varying licenses.

This would also be an important reference for governments and for policy consideration where there is a need for better regulation to support industry development.

Other associated references in Australia include –

[NSW LIQUOR ACT 2007 - SECT 3 Objects of Act](#)

*(c) to contribute to the responsible development of related industries such as the **live music**, entertainment, tourism and hospitality industries.*

[SA LIQUOR LICENSING ACT 1997 - SECT 3 3—Objects](#)

*(b) to further the interests of the liquor industry and industries with which it is closely associated—such as the **live music industry**, tourism and the hospitality industry—within the context of appropriate regulation and controls; and*

[VIC LIQUOR CONTROL REFORM ACT 1998 - SECT 4 Objects](#)

*(c) to contribute to the responsible development of the liquor, licensed hospitality and **live music industries**;*

[WA LIQUOR CONTROL ACT 1988 - SECT 5 Objects of Act](#)

*to facilitate the use and development of licensed facilities, including their use and development for the **performance of live original music**, reflecting the diversity of the requirements of consumers in the State;*

Further to this, a reference in the second reading speech as any associated amendment is progressed through Parliament that clearly speaks to the aspiration and intent of the function of these provisions would provide an additional ‘extrinsic’ point of reference if ever the intended operation of the objectives were brought into question.

Liquor Licence Application Process and Public Interest Test

Looking to the [Application for the Grant of a Liquor Licence](#), there are over 8 questions relation to probity, including criminal history of applicants, financial management, legal and employment history.

[The LIQUOR ACT - SECT 6 Public interest criteria in respect of licence or licensed premises](#) has multiple subsections along similar lines referencing public health and safety, emissions, vessels, use of credit and more.

In neither the application process nor public interest criteria is there any capacity to reference cultural, social and economic benefit.

- No reference to how many jobs would be created for artists and hospitality workers
- No reference to valuing the positive contribution of live music and hospitality industry businesses.

We submit that both the application process and the Public Interest criteria be adjusted to also provide a formal opportunity for the cultural and economic contribution of licensed premises, events or program that provide jobs and opportunities for artists to be a specific matter for consideration.

Minors in Licensed Premises

The permissibility for minors to remain on licensed premises is addressed under S.106 and associated subsections.

[LIQUOR ACT - SECT 106, Director-General may declare licensed premises prohibited areas for children](#)

(1) The Director-General may, by notice in writing, declare licensed premises or parts of licensed premises to be an area or areas where a child:

- (a) must not enter or remain; or*
- (b) must not enter or remain unless the child is in the company of an adult who is the child's parent, guardian or spouse.*

Many live performance opportunities are in licensed premises, which may then restrict the development of younger artists when under certain conditions there should be options available to support their development.

For teachers who have young students showing promise, or for parents who perform and for whom whose children might be able to accompany them on the show, providing a reference in the legislation that recognises their situation would enable younger musicians to avail themselves of otherwise unattainable performance and employment opportunities under the right conditions.

We submit that this section be amended to include the following reference:

A minor does not commit an offence under section 106 if the minor is performing in a show or other live entertainment performance held in the bar area, and is in the company of a responsible adult while in the bar area.

Entertainment Conditions on Liquor Licenses

A number of live music venues have identified that they have entertainment conditions on their liquor licence that unnecessarily restrict the types of entertainment that may be provided, including for example, the regulation of genres and types of music.

Currently under the [LIQUOR ACT - SECT 31 Conditions of licence](#), the Director-General may, subject to the Regulations, determine conditions with respect to

(g) the provision of entertainment on or at licensed premises;

Firstly, if we look to adjacent work interstate, the South Australian Government has recent recommended that entertainment consent conditions after midnight be removed completely (except for sexually explicit entertainment) - under:

[Liquor Licensing \(Liquor Review\) Amendment Bill 2017](#)

Part 4—Other matters 11—Entertainment consents and conditions

11—Entertainment consents and conditions

(1) A consent in force immediately before the commencement of this clause is, by force of this clause, revoked.

(2) An entertainment condition will be taken to be of no effect from the commencement of this clause

Along with the negotiation of the SA Small Arts Venue NCC variation, one of the other primary motivational factors that informed the establishment of the recent Streamlining Live Music Regulation 90 Day Change Project in South Australia was the removal of entertainment conditions from liquor licenses across the state with [changes to the entertainment consent process that commenced 20 December 2015](#).

The compounding red tape from the operation of the entertainment consent provisions had become a significant issue of over-reach by licensing authorities. This was enacted through conditions on liquor licenses that regulated genres and instruments.

In NSW a level playing field had been the state government policy since 2009 under planning reforms to encourage more live music and performance.

[Bringing Back the Music Community Brochure](#)

A level playing field? We can enjoy a wide range of entertainment when we go out to pubs, clubs, restaurants and cafés . Large screens broadcast the latest sports or entertainment, recorded music is played through speakers. Many venues have been deterred from having live music because of the cost of licences and compliance measures—which in some cases do not have any relevance to the performance of music. Restaurants, pubs, cafés and clubs no longer need additional approval to have live music. Venues across NSW can now offer musicians more opportunities to perform.

MusicNT and the Live Music Office submits that the government re-considers the capacity for these laws to regulate certain types of live music and entertainment, and looks to endorsing a process where licensees can apply for a removal of existing entertainment conditions restricting the growth of the live music industry in the NT.

“Ensuring Safe and Vibrant Entertainment Precincts”

As the terms of reference identify both “Ensuring safe and vibrant entertainment precincts” as well as “density of premises” as a matter for consideration, we would submit that this would be an area where careful deliberation around the positive benefits from better regulation aligned with associated town planning would provide more certainty for business and reduce potential land use conflict between music venues and adjacent short and long term residential development.

Where discussion around venue precincts might be premised under narratives associated with saturation and undesirable consequences, we should be careful not to also provide for the recognition of the social, cultural, and economic benefits of ‘destinations’. It has been said before that *‘no-one goes to Las Vegas because there’s only one casino’*.

Coordinating Associated Functions of Government

It is recognised that it is out of the scope of this review to also provide for the associated revision of town planning controls as well as to the National Construction Code and other regulatory measures that are to be required if the genuine aspiration of achieving safe and vibrant entertainment precincts is to be realized, however we would like to provide some national references as a matter of public record to intentionally inform a wider policy revision.

Looking again to recent work in other states, from the consideration that followed in South Australia of the associated adjacent regulations across other departments that eventuated as the NCC variation, small bar liquor licenses and entertainment consents were progressed, it was recognised that

“There is ample scope to simplify the current regulatory system whilst still ensuring that common neighbour and community concerns about noise and safety are addressed”.

We submit that this observation is equally applicable in the NT at this time.

National References to Entertainment Precincts

Setting the Ground Rules.

- Land use conflict remains a relentless issue for live music venues as they operate in established night economy areas that have no planning controls to support their business or provide certainty
- No alignment between land use aspirations, planning controls, a complete absence of external acoustic privacy requirements for mixed use residential developments, EPA noise assessment and then liquor licensing ...

Varying national approaches to entertainment precincts are developing – many achieved from live music plans or coordinated regulation working groups.

ACT Urban Sounds Discussion Paper

Looking to who is doing good work in setting the ground rules nationally, the best recent example has been in the ACT, with the ACT Government undertaking a consultation on the [Urban Sounds Discussion Paper](#) between 2 August and 23 September 2016.

The Urban Sounds Discussion Paper invited the community and related industries to consider how the planning framework could cater for everyday noise from restaurants, licensed premises, music venues and one-off events in mixed-use areas. Mixed-use areas refer to spaces where residences are located together with businesses, entertainment venues and services.

The discussion paper sought community input on how the ACT planning and regulatory framework could support a range of activities where there is potential for conflict between venues and residents such as events and music in mixed-use areas. The aim was to maintain a balance between the needs of different users.

QLD Special Entertainment Precincts

Queensland is in a unique position from a regulatory aspect to address the fundamental issue faced by the live music sector of land use conflict between venues and adjacent short and long term residential development, with the capacity in the Local Government Act for a local authority to declare specific areas with live music venues as special entertainment precincts.

[Fortitude Valley – Brisbane, QLD](#). *On 1 July 2006, Brisbane City Council created Australia's first designated Special Entertainment Precinct in Fortitude Valley (the Valley). Its creation was one of the first steps towards achieving the aims of the Valley Music Harmony Plan. The precinct was created to ensure the long-term future of the music-based entertainment industry in the Valley without exposing residents or businesses to unreasonable levels of amplified music noise.*

[LOCAL GOVERNMENT ACT 2009 – SECT 264](#)

264 Special entertainment precincts

- (1) This section is about establishing a special entertainment precinct.
- (2) A special entertainment precinct is an area in which—
 - (a) Amplified music that is played at premises in the area is regulated by a local law, and not by the [Liquor Act 1992](#); and
 - (b) The requirements about noise attenuation under the Planning Act apply to certain types of development in the area.
- (3) If a local government wants to establish a special entertainment precinct in its local government area, the local government must—
 - (a) Amend the local government's planning scheme to identify the special entertainment precinct; and
 - (b) Make a local law to regulate noise from amplified music from premises in the special entertainment precinct, in accordance with a permit that is issued for the premises.

Agent of Change – Victoria

From the Music Victoria website - [How to: Agent of Change](#)

On 4 September 2014, the Victorian state government introduced the 'agent of change' principle into planning law by way of Planning Scheme Amendment VC120 and [Clause 52.43](#).

The new provisions impose obligations on the 'agent of change', for example a residential developer, with respect to noise from live music performance across Victoria, and aims to protect live music venues from residential encroachment. The agent of change principle requires a developer to include noise attenuation measures when a proposed residential development is within 50m of an existing live music performance venue. In practical terms, this means that a new residential planning proposal close to a live music venue will need to include appropriate noise attenuation measures. Similarly, if a live music venue seeks to expand, the owner/operator will be responsible for attenuating any noise effects that are caused by that change.

Sydenham Station Creative Hub

Marrickville Council’s [Local Environment Plan 2011](#) recognises that the Marrickville area is the centre of Sydney’s independent arts scene and is home to many artists, studios, commercial art galleries, artist-run initiatives, theatres and festivals.

The LEP includes a ‘B7 Business Park’ zone that has the objective of providing for creative industries such as the arts, technology, production and design sectors. It is an employment zone that permits limited residential development in conjunction with employment uses at the ground floor.

Sydenham Station Creative Hub



<http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+645+2011+cd+0+N>

The 'IN2 Light Industrial' zone will allow for certain creative industries which take the form of business premises or office premises in the arts, technology, and production and design sectors.

The creative industries provided for include:

- audio-visual, media and digital media
- advertising
- craft, visual arts and Indigenous arts
- design
- film and television
- music
- publishing
- performing arts
- cultural heritage institutions

From the LEP -

6.12 Business and office premises in certain zones

(1) The objective of this clause is to promote certain types of business and office premises in Zone IN2 Light Industrial and Zone B7 Business Park.

(2) This clause applies to land in the following zones:

- (a) Zone IN2 Light Industrial,
- (b) Zone B7 Business Park.

(3) Development consent must not be granted to development for the purpose of business premises or office premises on land to which this clause applies unless the consent authority is satisfied that the development will be used for a creative purpose such as media, advertising, fine arts and craft, design, film and television, music, publishing, performing arts, cultural heritage institutions or other related purposes.

On 12/01/2017 the proposed Sydenham Station Creative Hub entertainment and employment precinct was approved at Gateway and with Relevant **Planning** Authority for implementation.

<http://leptracking.planning.nsw.gov.au/PublicDetails.aspx?Id=2761>

Wollongong Live Music Taskforce

Undertaken in 2013/14, the City of Wollongong Live Music Taskforce also used City of Sydney Live Music and Performance Taskforce terms of reference. This initiative saw [42 Actions passed through Council in April 2014](#), including;

- Streamlined events process – no need for development applications for live music events on a range of designated live sites in the LEP.
- Conveyancing reference – s.149 Certificate.

The Wollongong City Centre and Town Centres, play a key role in accommodation, cultural, sporting and business uses. A key to the revitalisation of these centres' is to build on these aspects through greater activation and investment beyond 5pm through an evening economy. Future residents should be aware that these uses may generate noise, odour, traffic and have longer hours of operation, which is part of living in/near a commercial centre.

- Acoustic privacy conditions on residential development in the CBD - Double glazing external sliding doors and windows for reducing traffic and other low frequency noise such as music from surrounding night clubs

The double glazing from the facades specification is as follows:

Glazing for Acoustic requirement – Double glazing external sliding doors and windows:

- a. 6mm glazing –100mm air gap –6 mm glazing set in a sealed metal or timber frame to achieve the sound insulation of a window and sliding door system (Rw40 –45).
- b. The apartments from 1st/2nd floor to 7th floor window and sliding door system should achieve sound insulation (Rw43 –45).
- c. The apartments from 8th floor and above window and sliding door system should achieve sound insulation (Rw40–45).
- d. Frames should be well sealed internally and externally to provide acoustic, thermal and moisture protection. Awning windows are preferred to sliding windows as they are able to achieve a positive compression seal.
- e. The air gap between the two panes should be at least 100mm that is good for reducing traffic and other low frequency noise such as music from surrounding night club

- Small to Medium Enterprise Planning advice team focus on applications such as new cafés, small bars, shops, service providers, or new industrial unit occupiers. Small businesses including creative looking to establish in the Wollongong LGA can access guidance from Council.



Development Approval info session
Tuesday 16 August 2016, 5.30 - 6.30pm, Wollongong City Council Administration Building, Level 9 Function Room, 41 Burelli Street, Wollongong

Are you looking to start a café, bar, shop, gym, light industry or other small business venture? Or are you a property owner, commercial property agent or planning consultant dealing with small businesses?

Join Council's Small Business Planning Team for a free one hour session on getting the necessary approvals. Topics to be discussed will include the following:
Do I need approval?; Development application process; Common problems; Local case studies; Q&A. Refreshments (tea & coffee) provided.

RSVP: www.eventbrite.com.au (search Small Business Planning)
For any queries, contact the Small Business Planning team:
email smallbusiness@wollongong.nsw.gov.au
call (02) 4227 7111

Small Business planning wollongong

NSW Acoustic Privacy Controls

In September 2014 the NSW Department of Planning and Environment placed draft guidelines for NSW residential development on exhibition. These provisions include seals preventing noise transfer through gaps as well as double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens).

<https://majorprojects.affinitylive.com/public/7708922f528df709034d841fa30e7c53/SEPP%2065%20-%20Apartment%20Design%20Guide.pdf>

Properties located near major roads, rail lines and beneath flight paths can be subject to noise and poor air quality. Similarly, hostile and noisy environments such as industrial areas, substations or sports stadiums can have impacts on residential amenity. Careful design solutions can help to improve quality of life in affected apartments by minimising potential noise and pollution impacts.

This section addresses design responses on sites that are affected by significant noise and pollution sources. Section 4S Acoustic Privacy deals with more typical residential developments that do not face these challenges

4T-1 The siting and layout of buildings minimise the impacts of external noise and pollution

Acceptable solutions

1. A number of the following design solutions are used:
 - residential uses are located perpendicular to the noise sources and where possible buffered by other uses
 - non-residential buildings are positioned parallel to the noise source to provide a continuous building shielding residential uses and communal open spaces
 - non-residential uses are located at lower levels vertically separating the residential component from the noise source
 - where solar access is in the opposite direction to the noise or pollution source, habitable rooms are located away from these and storage areas, circulation areas, non-habitable rooms and kitchens provide a buffer to the noise or pollution source
 - where solar access is in the same direction as the noise or pollution source, apartments are dual aspect with shallow building depths
 - landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry

4T-2 Noise transmission is mitigated by appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials

Acceptable solutions

2. A number of the following design solutions are used:
 - number and size of openings facing noise sources are limited
 - seals prevent noise transfer through gaps
 - double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens)
 - materials with mass and/or sound insulation or absorption properties e.g. balcony balustrades, external screens and soffits