



Department of Planning,
Lands and Heritage



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Draft **Position Statement:** Special Entertainment Precincts

November 2019

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1. Purpose

To provide guidance on the designation of special entertainment precincts. A special entertainment precinct will comprise a diverse mix of land uses, including entertainment venues, which contribute to an active night-time economy.

2. Special entertainment precincts in Western Australia

Western Australia is home to a number of vibrant entertainment districts, which offer a diverse mix of live music venues, nightclubs, bars, cafes and restaurants and make a significant contribution to the State's culture and economy. However, with an increasing trend towards mixed-use, high-density living, the convergence of land uses can cause conflict, particularly when noise-sensitive development is permitted close to existing noise emitters, such as entertainment venues. Managing and planning for entertainment in mixed-use areas is a complex challenge that requires careful consideration of the needs of both entertainment venue operators and residents.

3. Application of this policy

This position statement applies to the establishment of special entertainment precincts in local planning schemes, improvement schemes or redevelopment schemes. It is expected that responsible authorities will undertake a scheme amendment to introduce a special control area (SCA) when a special entertainment precinct is to be established. The scheme amendment will include provisions that apply to both entertainment venues and noise-sensitive developments within the boundary defined by the SCA.

3.1 Other relevant regulation and policies

Other regulations and policies overlap with the planning system, and some proposals may require approvals outside of the planning system.

The primary instruments for noise regulation in the State are the *Environmental Protection Act 1986* and the Environmental Protection (Noise) Regulations 1997 (Noise Regulations).

The Noise Regulations set legally enforceable assigned (or allowable) levels for noise emitted from a premises or venue at the point of a sensitive receiver. The assigned levels are outdoor levels and vary according to the type of premises receiving the noise and

the time of day the noise is received. Higher levels of protection are afforded to the most sensitive premises, classed as 'noise-sensitive'. Premises classified as noise-sensitive are listed in Schedule 1 Part C of the Noise Regulations and include residential accommodation, small hospitals, schools, aged care facilities and short-term accommodation.

This position statement does not override the requirements of the Noise Regulations.

To complement the planning components outlined in this position statement, the Department of Water and Environmental Regulation are concurrently considering proposed amendments to the Noise Regulations. One of the options being considered includes the introduction of provisions for a venue approval for the day-to-day operations of entertainment venues located within a recognised SCA. This will allow venues to exceed the assigned noise levels, subject to conditions. Under this approach, venue compliance in relation to the Noise Regulations would be assessed against the individual conditions of the venue approval. Venue approvals are proposed to operate on an opt-in basis.

4 Policy objectives

The objectives of this position statement are to:

- provide clear and consistent development guidance for designated special entertainment precincts
- establish a framework that reduces potential land use conflicts between noise-sensitive receivers and entertainment venues through the application of relevant planning considerations
- provide an increased level of assurance for entertainment venues by establishing a framework to achieve greater operational certainty.

5 Policy measures

The following measures should be implemented in local planning schemes, improvement schemes or redevelopment schemes to establish special entertainment precincts.

Model SCA provisions (Appendix 1) have been prepared as a guide for local governments wishing to establish a special entertainment precinct. Local planning policies may also be required to manage the impacts of entertainment noise in these areas.

5.1 Special entertainment precincts

The establishment of a special entertainment precinct can be considered where a diverse mix of existing or planned land uses, including entertainment venues, contribute to an active night-time economy. Establishment may be appropriate where it can be demonstrated that the precinct has strategic importance to the area in which it operates, particularly with regard to its tourism, cultural and commercial value.

A special entertainment precinct is established through the designation of a SCA in a local planning scheme, improvement scheme or redevelopment scheme. The primary function of the SCA is to manage existing and/or potential

land use conflicts associated with entertainment venues and noise-sensitive uses.

The relevant local government or responsible authority is to identify the case for a special entertainment precinct SCA and define its boundary. Examples of materials which may be provided to support the establishment of the SCA include:

- a robust problem definition statement, including current noise levels and any entertainment noise-related complaints
- evidence of consultation with the local community and adjoining/impacted local governments
- demonstration of a significant night-time economy supported by an economic assessment
- evidence of an established strategic vision for the precinct, including the existing and/or intended land use mix and the potential for future entertainment venue development
- specific performance criteria, development requirements and/or guidance to be applied to development through a local planning scheme, redevelopment scheme or local planning policy.

The establishment of the SCA requires early consultation with the Western Australian Planning Commission and the Department of Water and Environmental

Regulation (or the Government agency responsible for the administration of the Noise Regulations) ahead of the scheme amendment process. The SCA will identify the precinct boundary and contain provisions to guide development.

The boundary of the special entertainment precinct should give consideration to the location of existing entertainment venues, especially where the boundary abuts another local government. A local planning policy for noise attenuation in surrounding areas may be appropriate to reduce the impact on noise-sensitive land uses outside the SCA.

Following the possible introduction of new provisions in the Noise Regulations, entertainment venues located within a designated SCA/special entertainment precinct recognised by the Noise Regulations will be eligible to apply for a venue approval to exceed the assigned levels for day to day operations, subject to conditions.

The designation of special entertainment precincts in local planning schemes, improvement schemes or redevelopment schemes will facilitate a balanced approach to protecting the viability of the entertainment industry and supporting vibrant urban communities.

5.2 External amplified music noise level

Local governments should have regard to the strategic role and function of the precinct and future direction of surrounding land uses to determine a desired level of entertainment noise for the special entertainment precinct. The desired external amplified music noise level should be incorporated into the SCA to inform construction and design standards for new noise-sensitive development and new entertainment venue proposals in the precinct. The external amplified music noise level will provide the community with an indication of the noise they could expect to receive within the precinct area. The external amplified music noise level should be articulated in decibels, and expressed as L_{Leq} in the 63 Hz octave band and 125 Hz octave band.

The external amplified music noise level in the SCA serves a planning purpose and does not regulate the level of noise emitted by entertainment venues or override the requirements of the Noise Regulations.

5.3 Venue approvals

Under the possible changes to the Noise Regulations currently being considered by the Department of Water and Environmental Regulation, venues within a special entertainment precinct may apply for a venue approval to exceed the

assigned levels for day-to-day operations, subject to conditions. The venue approval will be issued by the responsible local government in accordance with the Noise Regulations. The venue approval will specify a maximum allowable noise level at the venue boundary, or a defined point, for compliance purposes and may have other conditions attached. The maximum allowable venue level will be set with regard to the external amplified music noise level in the SCA, consistent with the attenuation requirements adopted for the precinct.

Venues operating without a venue approval within the special entertainment precinct will continue to be subject to the assigned levels set out in the Noise Regulations.

5.4 Construction and design standards

The local planning scheme, improvement scheme or redevelopment scheme must outline the level of attenuation or 'building transmission loss' that needs to be achieved for new noise-sensitive development. New entertainment venues may also require construction and design standards to demonstrate compliance with the external amplified music noise level. Precincts with higher external amplified music noise levels will require greater levels of attenuation/transmission loss to ensure acceptable indoor levels can be met.

Enhanced noise attenuation for new development will ensure areas designated as special entertainment precincts become better protected from the impacts of amplified music noise over time.

The construction and design standards should be informed by the transmission loss design report and/or acoustic report (refer to section 5.5) and any applicable local planning policy (if relevant).

Where approval is contemplated, a process should be established that provides for post-construction certification of measures incorporated to achieve building attenuation/transmission loss.

Noise attenuation requirements should not be applied retrospectively to existing development.

5.5 Noise assessments for new development

Within a special entertainment precinct, applications for new noise-sensitive development must be accompanied by a transmission loss design report setting out measures to be adopted in the construction and design of the development to achieve indoor levels set out in the SCA.

Applications for development of new entertainment venues will be required to submit an acoustic report demonstrating

how the venue will achieve the external amplified music noise level set out in the SCA.

Assessments must be undertaken by a qualified acoustic consultant and should incorporate the measures required to meet the SCA objectives. The acoustic consultant should remain engaged through the design, construction and practical completion stages of the project. A checklist detailing acoustic solutions which can be signed off post-construction is to be included.

5.6 Notification on titles

In a special entertainment precinct, residents should expect ambient noise levels to be relatively higher both inside and outside residences, due to the proximity of entertainment venues.

A condition of approval for noise-sensitive land uses is to have a notification placed on the title. This will inform prospective purchasers of the existence of entertainment noise in the area.

Definitions

Entertainment venue: a hotel, tavern, nightclub, small bar, function centre, entertainment complex, theatre, or other such entertainment premises that plays amplified music, either live or pre-recorded, on a regular or periodic basis. This includes both indoor and/or outdoor areas where applicable.

External amplified music noise level: the maximum, nominal noise level directly attributable to amplified music emitted by an entertainment venue or multiple entertainment venues.

Noise-sensitive premises: has the same meaning as defined in the Environmental Protection (Noise) Regulations 1997, however excludes the following: churches, education establishments and day-time childcare facilities. This definition includes, but is not limited to, the following land use terms as defined in Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 1, clause 38: bed and breakfast, caravan park, caretakers dwelling, holiday accommodation, holiday house, hospital, hotel, motel, serviced apartment, tourist development, and workforce accommodation. May also include rehabilitation centres and residential aged care facilities.

Special entertainment precinct:

a precinct containing a number of entertainment venues and includes a diverse mix of land uses which contribute to an active night-time economy as referenced in the Environmental Protection (Noise) Regulations 1997.

Appendix 1: Model Text Provisions for Special Entertainment Precincts

Part X – Special control areas

XX. Special control areas

- (1) Special control areas are marked on the Scheme Map according to the legend on the Scheme Map.
- (2) The purpose, objectives and additional provisions that apply to each special control area are set out in the section below.

X.1 *<Name of precinct>* Special Entertainment Precinct – Special Control Area

The following provisions apply to the land marked *<Insert name of precinct>* Special Entertainment Precinct Special Control Area on the Scheme Map.

[Additional text if Core and Frame Entertainment Areas are proposed]

The special control area comprises a Core Entertainment Area and a Frame Entertainment Area.

X.2 Purpose

The purpose of the special control area is to establish a framework that reduces potential land use conflicts between noise-sensitive premises and entertainment venues through the application of relevant planning considerations.

NOTE – the special control area does not regulate the level of noise emitted by entertainment venues or override the requirements of the Environmental Protection (Noise) Regulations 1997.

X.3 Objectives

- (a) Ensure the *<Insert name of precinct>* Special Entertainment Precinct is a primary entertainment area, evolves as a vibrant cultural and arts scene, with a variety and a high concentration of entertainment venues.
- (b) Reduce potential land use conflicts between noise-sensitive uses and entertainment venues by ensuring the design and construction of buildings incorporate appropriate noise attenuation measures.

- (c) Acknowledge and support a higher concentration of entertainment venues by ensuring development incorporates noise attenuation measures which respond to external amplified music noise levels which may be permitted under the Environmental Protection (Noise) Regulations 1997, including levels that may not comply with the standard prescribed under Regulation 7.

OR

- (c) [Alternative text if Core and Frame Entertainment Areas are proposed]
Acknowledge and support a higher concentration of entertainment venues in the Core Entertainment Area by ensuring development incorporates noise attenuation measures which respond to external amplified music noise levels which may be permitted under the Environmental Protection (Noise) Regulations 1997, including levels that may not comply with the standard prescribed under Regulation 7; and
- (d) [Alternative text if Core and Frame Entertainment Areas are proposed]
To provide a Frame Entertainment Area, which acts as a transitional area between the Core Entertainment Area and the area outside the special control area, by ensuring development incorporates noise attenuation measures which respond to external amplified music noise levels which may be permitted under the Environmental Protection (Noise) Regulations 1997, including levels that may not comply with the standard prescribed under Regulation 7.

X.4 General Provisions

X.4.1 Noise Attenuation Standards

- (a) Within the *<Insert name of precinct>* Special Entertainment Precinct, the noise attenuation standards for entertainment venues and noise-sensitive premises shall be based on a nominal external amplified music noise level of L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band.

OR

- (a) [Alternative text if Core and Frame Entertainment Areas are proposed]
Within the Core Entertainment Area, the noise attenuation standards for entertainment venues and noise sensitive premises shall be based on a nominal external amplified music noise level of L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band.

- (b) [Alternative text if Core and Frame Entertainment Areas are proposed]
Within the Frame Entertainment Area, the noise attenuation standards for:
- (i) entertainment venues shall be based on a nominal external amplified music noise level of L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band.
 - (ii) noise-sensitive premises shall be determined as part of a Transmission Loss Assessment, prepared by a qualified acoustic consultant, which takes into consideration that an external amplified music noise level of up to L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band could be received from the adjoining Core Entertainment Area, in addition to any external amplified music noise levels assigned for entertainment venues situated within the special control area.
- (b) Where an application for development approval relates to a noise-sensitive premises and/or an entertainment venue, the noise attenuation standards outlined in clauses X.5 and X.6 [update as necessary] respectively shall be complied with.
- (c) Where an application for development approval relates to a mixed-use development which incorporates noise-sensitive premises and/or entertainment venues, the noise attenuation standards for these uses outlined in clauses X.5 and X.6 [update as necessary] respectively shall be complied with.
- (d) Noise attenuation measures must be carefully integrated into the design of the development and not significantly detrimentally impact upon:
- (i) the buildings aesthetics, environmental sustainability, and cultural heritage significance where applicable;
 - (ii) the internal amenity for building occupants; and
 - (iii) the public realm.

X.4.2 Requirement for Development Approval

- (a) In accordance with clause 61(3) of the Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2, an application for development approval within this special control area shall be required for:
- (i) any works associated with a noise-sensitive premises, entertainment venue or mixed-use development (which contains a noise-sensitive premises and/or entertainment venue) excluding works under clause 61(1) (d) of the Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2; and
 - (ii) any change of use involving a works component (as defined under Part 1 of the Deemed Provisions) to a noise-sensitive premises or an entertainment venue.

X.5 Noise-Sensitive Premises

- (a) Noise-sensitive premises located in the special entertainment precinct shall be located, designed and constructed so that the Transmission Loss is a minimum of L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band.

OR

- (a) [Alternative text if Core and Frame Entertainment Areas are proposed]
Noise-sensitive premises within the Core Entertainment Area shall be located, designed and constructed so that the Transmission Loss is a minimum of L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band.
- (b) [Alternative text if Core and Frame Entertainment Areas are proposed]
Noise-sensitive premises within the Frame Entertainment Area shall be located, designed and constructed so that the Transmission Loss is a minimum of L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band, plus any additional Transmission Loss required to achieve a theoretical internal design level of L_{Leq} 47 dB in the 63 Hz octave band and L_{Leq} 41 dB in the 125 Hz octave band.
- (b) Where an application for development approval relates to:
 - (i) an extension or addition of an existing noise-sensitive premises, and/or
 - (ii) proposed works or changes in use to a noise-sensitive premises outlined in clause x.4.2 (a)the applicable noise attenuation standards outlined in clause x.4.1 shall only apply to any new habitable room(s).
- (c) Transmission Loss Design Report
 - (i) An application for development approval relating to a noise-sensitive premises shall include a Transmission Loss Design Report, prepared by a qualified acoustic consultant in a manner and form approved by the local government. The Transmission Loss Design Report shall include the details of noise attenuation measures that will be included in the proposed development's design and construction to achieve the applicable [Core and Frame] Transmission Loss levels prescribed by subclause[s] x.5 (a) [and (b)] to the satisfaction of the local government.
 - (ii) Noise-sensitive premises shall be designed and constructed in accordance with the attenuation measures detailed in the approved Transmission Loss Design Report, in addition to any other attenuation measures required by the city.

- (d) Noise-sensitive premises shall not be approved where the local government is not satisfied that the development can be acoustically attenuated to meet the applicable Transmission Loss levels.
- (e) The local government shall, as a condition of development approval for noise-sensitive premises, require a notification pursuant to section 70A of the *Transfer of Land Act 1893* to inform prospective owners of the likelihood of elevated noise levels from entertainment venues.
- (f) Prior to the commencement of development, a qualified acoustic consultant shall review the construction drawings and certify to the satisfaction of the local government these documents incorporate all the necessary noise attenuation elements described in the approved Transmission Loss Design Report.
- (g) After practical completion stage and prior to occupation of the development, a qualified acoustic consultant shall certify to the satisfaction of the local government that all the recommendations of the approved Transmission Loss Design Report have been implemented.

X.6 Entertainment Venues

- (a) Appropriate noise mitigation shall primarily be achieved through design and construction methods rather than reliance upon on-going operational management measures.
- (b) Entertainment venues located in the special entertainment precinct shall be designed and constructed to incorporate noise attenuation measures to ensure that a level of L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band is not exceeded at 1 metre from the entertainment venue boundary.

OR

- (b) [Alternative text if Core and Frame Entertainment Areas are proposed]
Entertainment venues located in the Core Entertainment Area shall be designed and constructed to incorporate noise attenuation measures to ensure that a level of L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band is not exceeded at 1 metre from the entertainment venue boundary.
- (c) [Alternative text if Core and Frame Entertainment Areas are proposed]
Entertainment venues located in the Frame Entertainment Area shall be designed and constructed to incorporate noise attenuation measures to ensure that a level of L_{Leq} xx dB in the 63 Hz octave band and L_{Leq} xx dB in the 125 Hz octave band is not exceeded at 1 metre from the entertainment venue boundary.

- (c) Where an application for development approval relates to:
- an extension or addition of an existing entertainment venue; and/or
 - proposed works or changes in use outlined in clause x.4.2 (a) above
- the applicable noise attenuation standards outlined in clause x.4.1 above shall only apply to the new or substantially modified component of an entertainment venue.
- (d) Acoustic Report
- (i) An application for development approval relating to an entertainment venue shall include an Acoustic Report, prepared by a qualified acoustic consultant, in a manner and form approved by the local government, detailing existing and proposed attenuation and mitigation measures to meet the applicable [Core and Frame] noise levels prescribed by subclause[s] x.6 (b) [and (c)].
 - (ii) Entertainment venues that have potential noise impacts, as identified in the Acoustic Report shall incorporate appropriate design, construction methods, materials and devices to mitigate noise emissions to the satisfaction of the local government.
- (e) Prior to the commencement of development, a qualified acoustic consultant shall review the construction drawings and certify to the satisfaction of the local government that these documents incorporate all the necessary noise attenuation elements described in the approved Acoustic Report.
- (f) After practical completion stage and prior to occupation of the development, a qualified acoustic consultant shall certify to the satisfaction of the local government that all recommendations of the approved Acoustic Report have been implemented.

X.7 Definitions

[Additional text if Core and Frame Entertainment Areas are proposed]

Core Entertainment Area means the area designated as such in Map xx.

Entertainment venue means a hotel, tavern, nightclub, small bar, function centre, entertainment complex, theatre, or other such entertainment premises that plays amplified music, either live or pre-recorded, on a regular or periodic basis. This includes both indoor and/or outdoor areas where applicable.

Entertainment venue boundary means the perimeter walls or outdoor containment structures, floors, ceiling or roof, that form the horizontal and vertical extent of an entertainment venue, unless the entertainment venue is the sole land use on a lot, in which case its horizontal extent shall be the

boundaries of the lot upon which it is located. Where an entertainment venue has no physically defined vertical extent, such as in the case of an outdoor area or roof top venue, its vertical extent shall be 4 metres above the ground or floor level of the venue.

External amplified music noise level means the maximum, nominal noise level directly attributable to amplified music emitted by an entertainment venue or multiple entertainment venues.

[Additional text if Core and Frame Entertainment Areas are proposed]

Frame Entertainment Area means the area designated as such in Map xx.

Noise-sensitive premises for the purposes of this special control area has the same meaning as defined in Environmental Protection (Noise) Regulations 1997, however excludes the following: place of worship, education establishments and day-time childcare facilities. This definition includes, but is not limited to, the following land use terms as defined in Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 1, clause 38: bed and breakfast, caravan park, caretakers dwelling, holiday accommodation, holiday house, hospital, hotel, motel, serviced apartment, tourist development, and workforce accommodation. It may also include rehabilitation centres and residential aged care facilities.

Receiver facade means the roof and all external walls of premises situated within the special entertainment precinct.

Special entertainment precinct means a precinct containing a number of entertainment venues and includes a diverse mix of land uses which contribute to an active night-time economy as referenced in the Environmental Protection (Noise) Regulations 1997.

Transmission loss means the noise level reduction provided by a receiver façade that is required to meet acceptable internal noise levels.