



Department of **Planning, Lands and Heritage**
Department of **Water and Environmental Regulation**



Planning for entertainment noise in the Northbridge area

Public consultation paper

September 2018



Contents

Executive Summary	3
1. Introduction	6
2. Creative WA	7
3. Issues associated with the Northbridge entertainment precinct	8
4. Existing legislative framework	9
4.1. State planning framework	10
4.2. Planning and development controls in Northbridge	10
4.3. Regulation of environmental noise in Western Australia	11
5. Reform objectives	13
6. Proposed reforms	14
6.1. State Planning Position Statement	14
6.2. Designation of a Northbridge Entertainment Precinct in City of Perth City Planning Scheme No 2	16
6.3. Proposed amendments to the Noise Regulations	19
7. Other matters for consideration	23
8. Have your say	24

The Department of Planning, Lands and Heritage acknowledges the traditional owners and custodians of this land. We pay our respect to Elders past and present, their descendants who are with us today, and those who will follow in their footsteps.

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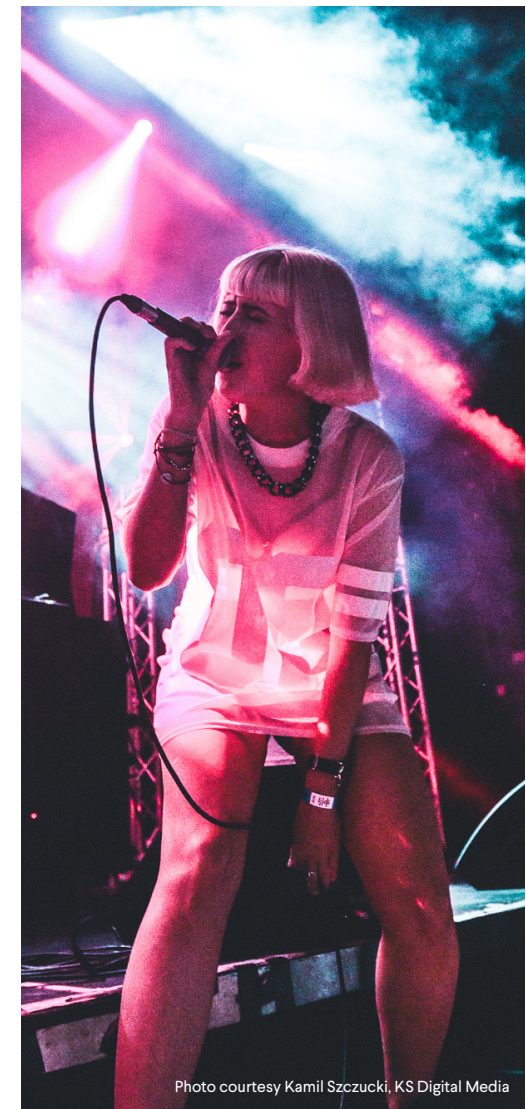


Photo courtesy Kamil Szczucki, KS Digital Media



Executive Summary

Northbridge is a vibrant entertainment district which offers a diverse mix of music venues, contributing significantly to Perth’s cultural diversity and economic prosperity. Northbridge is also experiencing significant urban development, with an increasing trend towards mixed-use, high-density city living.

This mix of land uses is likely to result in increased noise complaints, and a balance needs to be found between protecting residents’ health and amenity while ensuring the viability of entertainment venues.

The City of Perth has advocated for reforms to help maintain the unique character of Northbridge as the State’s premier entertainment precinct. The State Government is committed to exploring reforms that aim to support existing music venues and Western Australia’s cultural industries that create employment opportunities, particularly for young Western Australians.

This discussion paper is seeking comment on proposed reforms to State and local government land use planning frameworks and environmental regulations.

The reforms aim to:

- balance the ongoing viability of the Northbridge entertainment industry with the protection of the amenity of residents and other businesses;
- provide clear and consistent development guidance for new developments in the Northbridge entertainment precinct;
- shift the responsibility for noise attenuation in new developments to the ‘agent of change’; and
- provide an increased level of assurance to music venue operators.

The proposed amendments to the Environmental Protection (Noise) Regulations 1997 (Noise Regulations) endeavour to make compliance less onerous for entertainment venues by removing the existing outdoor amenity protections for noise-sensitive premises within the Northbridge entertainment precinct. This means affected noise-sensitive premises would potentially receive higher levels of noise in outdoor areas, including balconies, patios or alfresco areas, and higher levels of noise inside the dwelling if the doors and windows are open.

While outdoor protections are removed, those applied to indoor areas must be consistent with the protection of public health and amenity and international evidence on health impacts.

Supplementary planning measures would introduce the ‘agent of change’ principle, which would require development proposals to demonstrate appropriate siting, design and construction measures to achieve the

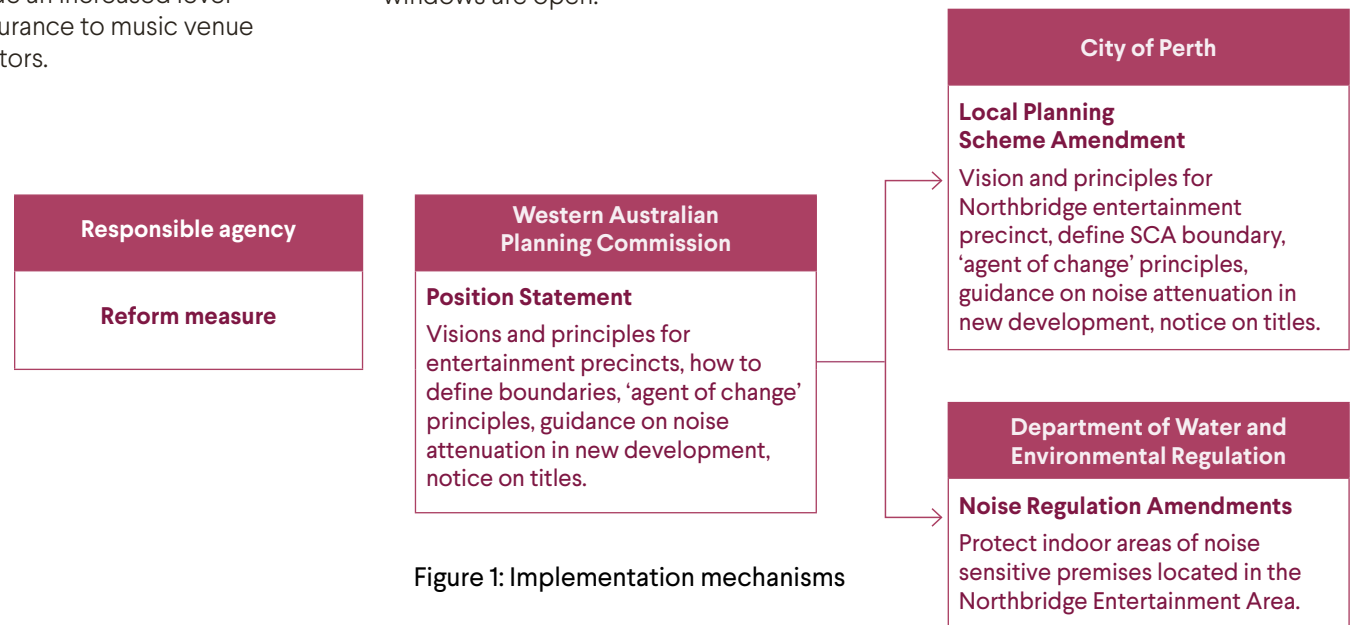


Figure 1: Implementation mechanisms





required noise attenuation to support the intended use of the development and to minimise impact on existing land uses.

The proposed measures would be implemented in a sequenced and integrated manner with each undergoing its own implementation process. Figure 1 shows how reforms would be implemented.

Implementation of reforms would require the designation of a Special Control Area (SCA) for the entertainment precinct in the City of Perth's City Planning Scheme No 2. Within the SCA, special development controls would apply, including:

- the 'agent of change' principle that ensures primary responsibility for noise attenuation in buildings rests with the party that is making changes to the environment, such as new development and redevelopment, and would apply to both noise-sensitive and noise-emitting developments;

- requirements for development proposals to determine the level of noise to be attenuated through design and construction measures, to comply with the Northbridge Entertainment Area standards specified in the Noise Regulations;
- requirements for development proposals to demonstrate, to the local government's satisfaction, how the design and construction of the development will achieve noise attenuation to meet the (indoor) assigned levels for the Northbridge Entertainment Area in the Noise Regulations; and
- requirements for notices on titles to inform buyers and commercial operators of the existence of entertainment noise in the area.

Amended Noise Regulations would apply to all premises within the designated SCA:

- requirements for outdoor levels for noise-sensitive premises in the Northbridge Entertainment Area would be removed, with a focus on protecting health and amenity indoors (in habitable areas with doors and windows closed).

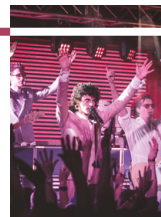




Table 1 demonstrates the main changes in regulatory requirements resulting from the proposed reforms.

These proposed reforms relate only to noise emissions from the regular operations of Northbridge entertainment precinct venues. The Noise Regulations already provide suitable approval mechanisms for higher noise emissions from occasional concert events.

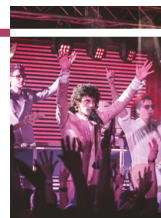
This discussion paper will help inform future planning and environmental reforms and interested stakeholders are encouraged to provide comment. While the proposed reforms will apply to the Northbridge area only, consideration may be given to adopting elements of the reforms elsewhere if need is demonstrated.

Throughout the discussion paper a number of questions are posed for stakeholder consideration. These are to prompt consideration of issues but do not determine the extent of comment to be provided. Submitters are encouraged to provide comment via the [online consultation hub](#) where these questions

will be duplicated, but where there are also opportunities to provide free text commentary and/or upload written submissions.

Reform measure	Current situation	Proposed changes within SCA
Agent of change	There is no current protection for existing entertainment venues. Noise emitters are held responsible for the cost of noise attenuation regardless of whether they are an established business that existed before noise sensitive land uses were developed.	New development (both noise sensitive and noise emitting) responsible for noise attenuation. <i>NOTE: This does not apply retrospectively and does not remove the requirements for noise emitters to comply with the Noise Regulations.</i>
Designation of Special Control Area (SCA)	There are no special planning controls for entertainment precincts within the City of Perth.	Designation of a SCA will apply special planning controls to protect the health and amenity of residents and the viability of entertainment venues; and maintain the special character of the entertainment precinct.
Noise impact assessments as part of development application process	Proposals for new noise sensitive development are not always required to take into consideration noise from existing nearby entertainment venues.	All planning proposals for new noise emitting and noise receiving developments are required to undertake a noise assessment to determine the level of noise to be attenuated through design and construction measures.
Construction standards	Proposals for new noise sensitive developments are not always required to attenuate for entertainment noise.	All planning proposals for new noise emitting and noise receiving developments are required to demonstrate how construction and design will achieve acoustic attenuation to comply with the standards set in Noise Regulations.
Notice on title	There is no formal requirement to notify owners of the potential issue of noise from entertainment venues.	Requirement for notice on title for all approved planning proposals affected by entertainment noise.
Amendments to Noise Regulations	Assigned levels are outdoor levels and protect amenity within 15 metres of a building as well as indoors.	Indoor areas protected only (with doors and windows closed).

Table 1: Regulatory changes





1. Introduction

Perth’s metropolitan area 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 City’s cultural life and economic prosperity. Entertainment venues and event spaces contribute to the development of the arts and creative industries, and broader tourism and hospitality industries, and provide opportunities for a variety of complementary business activities.

The contemporary music industry in WA has a total economic impact of nearly \$1 billion per annum, and is an important contributor to new employment, with nine new jobs created for every \$1 million increase in output in the industry¹. According to a 2015 report by the then Department of Culture and the Arts², 19 of metropolitan Perth’s 111 music venues were located in Northbridge. Northbridge has a relatively high density of entertainment venues so noise that affects residential premises may be cumulative rather than from a single entertainment venue.

Northbridge is experiencing significant urban development, with an increasing trend towards mixed-use, high-density city living. The convergence of mixed land uses can cause conflict, particularly when noise-sensitive development is permitted close to existing noise emitters, such as entertainment venues. As Northbridge’s residential population increases, noise-related conflict may intensify.

Achieving a harmonious balance can be a challenge. While those choosing to live in mixed use centres may be willing to accept higher noise levels on certain days and at certain times, residents have a right to a reasonable level of amenity including environmental noise levels which do not adversely impact on their health. Careful consideration of the needs of both music venue operators and residents is required.

This paper seeks comment on measures to address entertainment noise in Northbridge. Managing and planning for entertainment in the Northbridge precinct is a complex challenge that requires the review of both planning and environmental policy and legislation.



¹ WAM media release 16/11/16

² 'Live Music Venues Review' Department of Culture and the Arts 2015





2. Creative WA



Photo courtesy Kamil Szczucki, KS Digital Media

Photo courtesy Jack Rabbit Slims

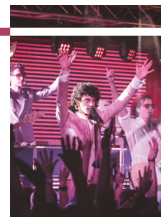
The reforms proposed in this paper are driven by the State Government's commitment to support the arts sector as articulated in *Creative WA: Supporting the arts and creative industries* (2017). It includes commitments to explore reforms to support existing live music venues, supporting cultural industries and creating employment opportunities, particularly for young Western Australians.

The music industry contributes significantly to a growing Western Australian Night Time Economy (NTE). NTE establishments (such as hotels, taverns and nightclubs) represent 16 per cent of all businesses in Western Australia and in 2015 generated more than \$1 billion in sales in the City of Perth³.

The proposed reforms aim to protect existing entertainment venues in Northbridge from the pressures of future encroachment of noise-sensitive uses, while maintaining appropriate protection for the health and amenity of residents living nearby. While the specific reforms will apply only to Northbridge, this paper also seeks stakeholder input on possible expansion of the reforms to other areas of the State if it proves to be beneficial and if need is demonstrated.

For the purposes of this paper, entertainment venues are defined as nightclubs, taverns, hotels and bars that, as part of their normal operations, host music events. This definition does not generally include cafes and restaurants unless these establishments host music events. It also does not include festivals, micro-festivals or one-off public events, for which suitable case-by-case-approvals processes already exist.

³ *The Australian Night Time Economy 2015* Prepared for National Local Government Drug and Alcohol Committee (Ortus Economic Research, June 2017).





3. Issues associated with the Northbridge entertainment precinct

Economic analysis of the Northbridge Entertainment Precinct conducted by Lucid Economics (2018) demonstrates that the value of tourism generated within the precinct equates to \$174 million in Gross State Product and almost 1,600 jobs (both directly and indirectly). Late night activity (10pm-4am) is responsible for 40 per cent of total activity in the precinct, generating \$70 million in Gross State Product and supporting 639 jobs (both directly and indirectly).

These figures underscore the significance of Northbridge as a key destination for visitors to Perth, in particular, its significance in providing night time activities and entertainment options. It is estimated that in 2017 the precinct attracted approximately 916,000 visitors⁴.

Recognising the importance of the creative industries and tourism to the economy, the City of Perth has advocated for reforms to help maintain the unique character of Northbridge as the State's premier entertainment precinct. Northbridge plays a significant economic and cultural role and is home to approximately 100 licensed premises of which about half currently

host, or have the capacity to host, music events. Tourism WA research in 2016 found Northbridge was ranked in the top three entertainment precincts in the metropolitan area. A predominantly night-time precinct, it is the most popular precinct for nightclubs and more popular with younger age groups. It is also seen as the most vibrant and lively of all precincts⁵. The completion of the Perth City Link (including better connectivity to the Perth Arena), opening of the new museum and DoubleTree by Hilton along with the development of over 3000 beds in the City for international students are likely to drive increased night time activity in the precinct.

The population in Northbridge grew by 21 per cent between 2011 and 2016 and it is expected to experience significant development and increased densification. The State Government's medium-term population forecasts *WA Tomorrow* (2015) for the City of Perth under the median (Band C) forecast is around 27,000 people in 2026. The City of Perth anticipates a future resident population of around 41,000 by 2036, of which around 14,000 will be within the central city areas of Perth and Northbridge⁶.

As entertainment venues in Northbridge are clustered in a relatively limited area, the high density of noise emitters may result in cumulative emissions from a number of venues impacting on nearby noise-sensitive premises. While other localities host entertainment venues, the density of venues contributing to noise emissions is more pronounced in Northbridge.

City of Perth data on complaints about Northbridge entertainment noise suggest that complaints fluctuate from year to year. Between 2012 and 2017, the annual level of complaints about music noise varied from 10 and 45 (of which between 7 and 20 relate to established music venues). Complaints in relation to established entertainment venues in Northbridge represent a portion of total noise complaints, with other noise sources being a mix of private events and music noise from other types of venues, such as food outlets.

Consultation with live music venue operators by the Department of Local Government, Sport and Cultural Industries in 2018 suggests that compliance with environmental and Liquor Licensing regulation coupled

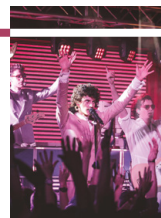
with the upsurge of residential infill is placing a burden on venue operators. Established entertainment venues are aware of regulatory requirements and the constraints these could impose on their ongoing operation, regardless of whether they are actively receiving complaints from nearby residents. It is recognised that venues contribute significant resources to noise management to avoid complaints and ensure compliance on an ongoing basis, and these costs can stifle industry growth.

In addition, live music venues with a liquor license may be subject to conditions on their licence, which in some cases require the provision of entertainment in order to serve alcohol, or in other cases prohibit provision of entertainment if a written complaint under section 117 of the *Liquor Control Act 1988* is upheld.

⁴ Northbridge Economic Assessment Final Report, Prepared for Tourism Western Australia by Lucid Economics 2018

⁵ Population and household forecasts, 2016 to 2036, prepared by the .id population experts, September 2017.

⁶ Population and household forecasts, 2016 to 2036, prepared by the .id population experts, September 2017.





4. Existing legislative framework

The City of Perth City Planning Scheme 2 and the Metropolitan Redevelopment Authority Central Perth Redevelopment Scheme designate where entertainment and residential uses are currently permitted and contemplated in Northbridge. Proactive measures will help mitigate future land use conflicts and in doing so, should encourage growth in the entertainment industry and protect the character of Northbridge as a strategic entertainment hub. The legislative framework for land use planning and noise management in Northbridge is detailed in Figure 2.

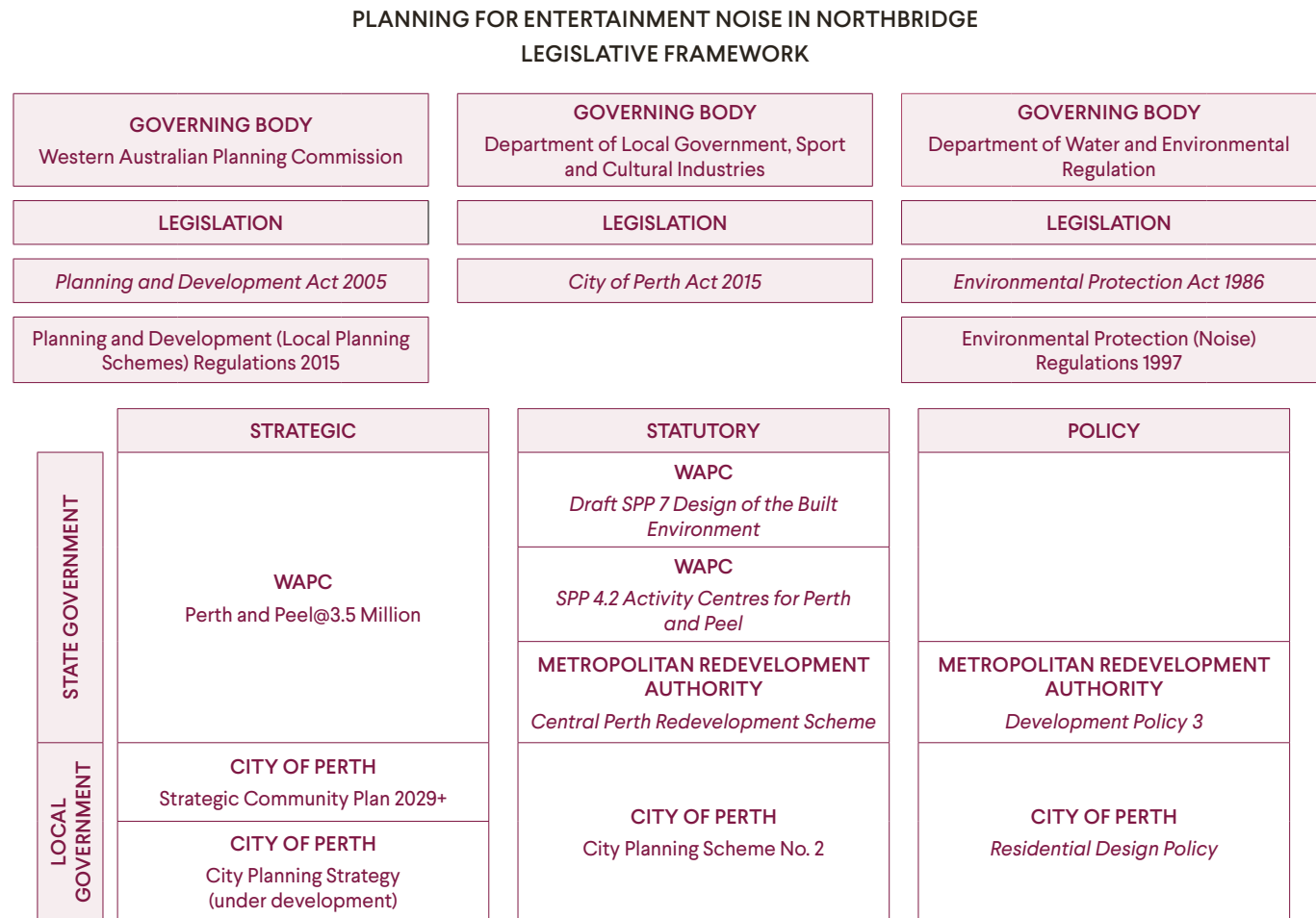


Figure 2: Legislative framework





4.1 State planning framework

The *Perth and Peel@3.5million* strategic land use planning and infrastructure frameworks estimate that the regions' population will increase by 1.5 million by 2050 and recognise that continued urban sprawl is placing unsustainable pressure on the environment, resources, infrastructure and amenity. To help create vibrant and liveable communities, State planning strives to make better use of existing infrastructure by increasing residential density in centres that are well serviced and have access to employment and amenity.

Rebalancing the share of greenfield development to infill and reaching the housing targets set in the frameworks require increased infill levels in existing areas and greater dwelling density in greenfield developments. New mechanisms that assist in managing conflict between entertainment venues and noise-sensitive land uses will underpin vibrant, liveable and successful communities.

The distribution, function, broad land use and urban design criteria of activity centres is described in *State Planning Policy 4.2 Activity Centres for Perth and Peel* (SPP 4.2), which specifies broad planning requirements for the development of new activity centres and the redevelopment and renewal of existing centres.

Draft State Planning Policy 7.3 Apartment Design (SPP 7.3) provides apartment design guidance to minimise the impacts of noise using apartment siting and layout, and construction techniques for noise attenuation, to deliver broad economic, environmental, social and cultural benefits.

4.2 Planning and development controls in Northbridge

Northbridge is governed by the *City of Perth Act 2016* (the Act) which articulates the role of the City as an 'innovative, sustainable and a vibrant global city' with 'cultural and entertainment precincts'.

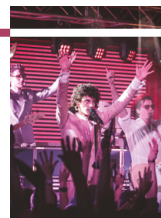
The City of Perth's role is to ensure appropriate planning controls exist for land use and development by preparing and administering local planning schemes and strategies. Local planning schemes contain planning controls such as designation of appropriate land-uses, residential densities and development standards. Local government can also designate Special Control Areas (SCAs) in local planning schemes to control particular types or characteristics of development associated with the precinct which does not generally coincide with a zone or reserve.

Development in Northbridge is controlled by the City of Perth through its City Planning Scheme No 2 and the Metropolitan Redevelopment Authority (MRA) through its Central Perth Redevelopment Scheme. Development proposals are required to align with the vision and principles set out in the

planning scheme and are assessed against the scheme and any relevant State and local planning policies.

Northbridge is divided within these schemes into a number of planning precincts with varied land use preferences and development controls. Common to all precincts in Northbridge is the preference for mixed use activity and acknowledgment of the unique cultural and economic significance of the area.

The *City of Perth's Residential Design Policy* and the Metropolitan Redevelopment Authority's *Development Policy 3 – Sound and Vibration Attenuation* provide design guidance on noise attenuation. These include requirements for developers to demonstrate an understanding of the noise context of the site and provide appropriate construction measures to achieve sound attenuation, such as glazing options and wall and roof treatments, to meet the requirements of the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations) and comply with the Building Code of Australia.





4.3 Regulation of environmental noise in Western Australia

Environmental noise can be described as unwanted sound or noise pollution that originates from sources such as transport, commercial and industrial activities, construction sites, residential activities, entertainment and so on.

Environmental noise can impact on public health and amenity. According to the World Health Organisation (WHO), 'excessive noise seriously harms human health and interferes with people's daily activities at school, at work, at home and during leisure time. It can disturb sleep, cause cardiovascular and psychophysiological effects, reduce performance and provoke annoyance responses and changes in social behaviour'. (WHO 2016)

The impacts of environmental noise in Western Australia are managed through a suite of measures, including planning policy and environmental legislation. The primary instruments for noise regulation in the State are the *Environmental Protection Act 1986* (EP Act) and the Noise Regulations.

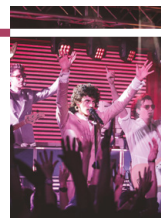
The EP Act provides for regulation of noise emissions, with 'noise' defined by the EP Act as including 'vibration of any frequency, whether transmitted through air or any other physical medium'. Section 3(3) of the EP Act defines what is considered to be 'unreasonable' noise, which includes noise which exceeds a prescribed standard.

The Noise Regulations set legally enforceable (prescribed), assigned (or allowable) noise levels for noise emitted from a premises or public place when received at another premises. The assigned levels (which are defined as outdoor levels) 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.

The highest levels of protection apply within the 'highly sensitive area' of noise-sensitive premises, which covers the building used for the noise-sensitive purpose and any other part of the premises within 15 metres of the building. For typical residential lots, including high-density residential development, the most stringent noise requirements would apply to all outdoor areas such as patios, balconies and alfresco areas (within 15 metres of the building).

Noise emitters (including entertainment venues) can ascertain where future noise-sensitive development is permissible in nearby locations. This allows existing venues to plan for the most noise-sensitive use permitted and assess noise attenuation requirements. This method places responsibility for noise attenuation on the noise emitter which is in accordance with the "polluter pays principle" of the EP Act.

The assigned levels for highly sensitive areas of noise-sensitive premises rely directly on the planning decisions made for the area within which they are located. Assigned levels for noise-sensitive premises include an influencing factor which is calculated by reference to the amount of particular land uses (such as roads and commercial or industrial land) within a 450 metre radius of the noise sensitive premises. The influencing factor therefore varies according to land use zoning and transport infrastructure around the noise-sensitive receiver, and attempts to reflect the background noise levels associated with surrounding land uses and the expectations of residents.





4.3.1 Administration of the Noise Regulations

Local governments administer the Noise Regulations throughout Western Australia unless a premises is licensed under Part V Division 3 of the EP Act, where it is the responsibility of the Department of Water and Environmental Regulation (DWER).

Local government Chief Executive Officers have delegated powers to address noise issues from premises within their jurisdiction. Environmental Health Officers can also be appointed as Authorised Persons and Inspectors under Sections 87 and 88 of the EP Act for the purpose of investigating unreasonable noise emissions.

Noise emitted in contravention of a prescribed standard is defined as 'unreasonable noise' and requires an objective assessment to determine the noise emissions and compare those noise emissions with the prescribed standard. The Noise Regulations require that noise from a premises or public place when received at another premises must not 'cause or significantly contribute to' noise in excess of the

assigned levels. A noise emission is taken to significantly contribute to a level of noise if it exceeds a value which is 5 dB below the assigned level at the point of reception.

If the level of noise received at noise-sensitive premises is determined to exceed the assigned levels, the officer may take regulatory action through a range of enforcement options, including infringement notices, noise abatement directions, environmental protection notices, and prosecution, if appropriate.

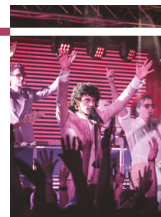
4.3.2 Noise Regulation amendments in 2013

Amendments to the Noise Regulations were gazetted in 2013 to improve the management of noise from entertainment venues. The amendments allow venues to apply to the CEO under Regulation 19B for approval to hold a given number of "notifiable events" per year that exceed the assigned levels.

Under regulation 19B, a venue occupier can apply for a venue approval, which (if granted) will set out the numbers and types of events, latest finishing times, maximum durations and noise levels, together with how the community is to be consulted.

Regulation 19B provisions were intended to provide certainty for approved venues to exceed assigned levels in specific circumstances and in relation to defined events and are based on the operations of large event venues such as the Claremont Showground. Regulation 19B does not, therefore, provide an avenue for pubs, clubs and bars to emit noise in excess of assigned levels in the course of ordinary, day-to-day operations.

The amendments also included a clarification of the calculation of influencing factors when zoning indicates that mixed uses are permitted. In the context of Northbridge, all mixed use land is assumed to be commercial which means that the highest influencing factor is calculated for the highly sensitive areas of noise-sensitive premises regardless of the actual use of the land.





5. Reform objectives

Balance protection of the entertainment industry with the protection of the health and amenity of residents and other businesses

There is currently limited protection for entertainment venues and/or precincts to ensure that operations are not impacted by the encroachment of noise-sensitive uses. The significant economic and cultural benefits the entertainment industry provides could be at risk if noise-sensitive developments are allowed close to venues without any noise attenuation treatment. Noise-sensitive uses such as residential developments are currently protected by the Noise Regulations, with the onus on noise emitters to control emissions to meet assigned noise levels.

Provide clear and consistent development guidance for new developments in the Northbridge entertainment precinct

While existing local planning policies for noise attenuation provide some guidance for new developments in the Northbridge area, a stronger statutory planning mechanism needs to be applied specifically for a designated entertainment precinct. This would provide for greater surety in the planning approval process.

Agent of change

The term 'agent of change' refers to a planning principle that allocates the primary responsibility for noise attenuation to the party that is changing the environment, and applies to both noise sensitive and noise emitting developments. For example, if a new residential development is proposed near an existing live music venue, it would be the responsibility of the developer to ensure that the construction achieves indoor noise levels that comply with the prescribed standards for the area.

Provide increased level of assurance to music venue operators

Venue operators are required to moderate noise emissions in relation to the impact on nearby noise-sensitive receivers. While the requirements of the Noise Regulations are well defined, the impact on a receiver (such as a residence) may only be brought to light when a noise complaint is made and a noise assessment is undertaken. Future development in the Northbridge entertainment precinct creates uncertainty for venue operators through the introduction of new noise-sensitive receivers which may be impacted by noise from existing operations. Incorporating the 'agent of change' principle into the planning process would provide a greater level of assurance for venue operators that they will not need to modify operations and/or premises as a consequence of encroaching noise-sensitive development.

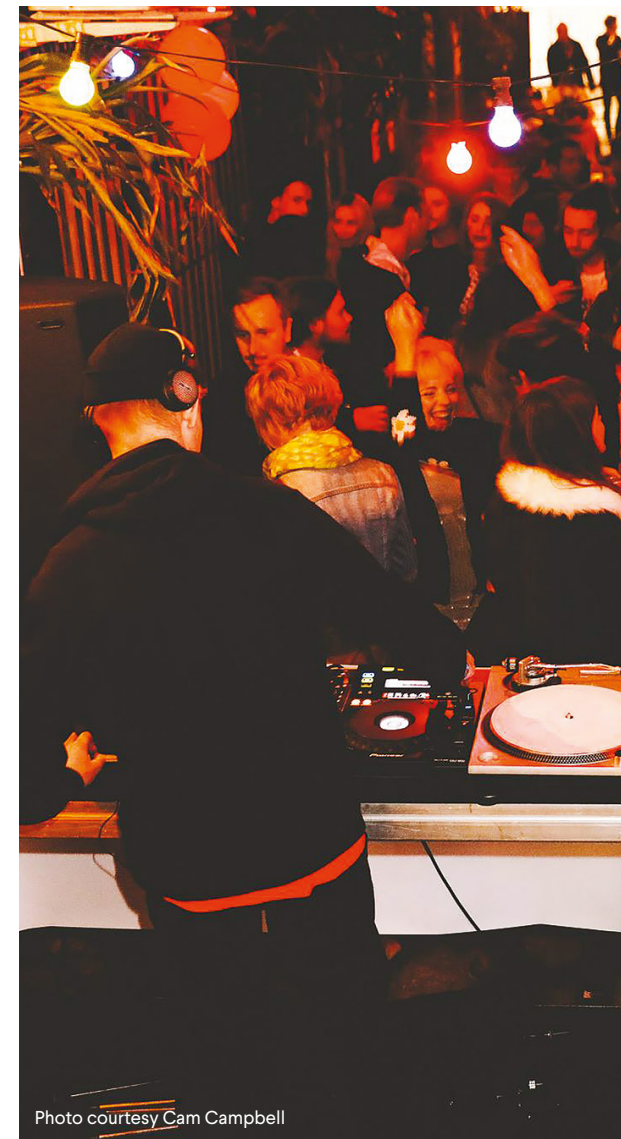


Photo courtesy Cam Campbell





6. Proposed reforms

6.1 State Planning Position Statement

The planning measures proposed in this discussion paper are relevant only to new development within the Northbridge entertainment precinct and would not be applied retrospectively.

Under the proposed reforms, new noise-sensitive development in the Northbridge Entertainment Area will be required to incorporate noise attenuation measures to comply with the Noise Regulations. Similarly, new noise-emitting development will be required to incorporate appropriate higher building and construction standards to attenuate entertainment noise to meet the relevant prescribed standards in the Noise Regulations.

Additional noise attenuation measures in new developments may add to construction costs and these would typically be assessed at the detailed project planning stage. Further consultation on the application of 'agent of change' will occur as part of the public advertising of the local scheme amendment.

The introduction of the 'agent of change' principle into the planning framework for Northbridge does not remove the responsibilities of noise emitters as regulated through the Noise Regulations. It will, however, relieve some of the burden on entertainment venues to manage the impact of their emissions on future noise-sensitive development and provide a level of assurance that the impact of encroaching noise-sensitive uses will be reduced.

While these reforms relate exclusively to the Northbridge area, consideration may be given to the broader adoption of agent of change planning mechanisms subject to careful evaluation of the risks and the benefits. While the 'agent of change' concept cannot address conflicts between existing venues and noise-sensitive receivers, it may assist in relieving pressures on established venues in some areas and in more equitably sharing the noise attenuation burden between venues and new development in high-density, mixed use areas.

VICTORIA VC120 CLAUSE 52.43

In 2014, the Victorian State Government introduced the 'agent of change' principle into planning schemes, requiring live music entertainment venues to be:

Designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue. Similarly, noise sensitive development that is proposed within 50 metres of an existing live music venue 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 (SEPP N2)*.
- outdoor live music entertainment venue to below 45dB(A), assessed as an Leq over 15 minutes.

For the purpose of assessing whether the above noise standards are met, the noise measurement point may be located inside a habitable room of a noise sensitive residential use with windows and doors closed (Schedule B1 of SEPP N2 does not apply).



Adoption of 'agent of change' in Victoria in 2014 highlighted some operational challenges associated with the planning approach. Some of these include:

- The mechanism alone is limited in its ability to effectively address operational changes in use, as it is triggered at the application stage of new or expanded development. An existing venue that introduces entertainment to its operations, for example, will not necessarily be considered an agent of change in a planning sense, despite the fact that such changes may result in a material change in noise emissions. Supplementary measures in other regulatory regimes, such as liquor licensing, may be needed to optimise reform benefits.
- 'Agent of change' planning principles are not consistent with Western Australia's existing Noise Regulations, which set outdoor levels. Similarly, the Victorian State Government is yet to resolve inconsistencies between the broader objectives of the reforms and the existing framework for noise regulation⁷.

- Noise complaints from residents of new-noise sensitive development (built after introduction of agent of change) need to be investigated from the perspective of both compliance of the noise emitter with prescribed noise standards and compliance of the new development with construction and development standards.
- Under 'agent of change', noise levels for new noise-sensitive development are assumed to be indoor levels. The measurement of noise indoors (particularly low frequency music noise) is complex and subject to significant uncertainties, which may present issues for compliance.

Recognising these challenges, the 'agent of change' principle would initially be adopted under a more confined, precinct-based approach through the release of a Position Statement. This would articulate the Western Australian Planning Commission position on planning for noise in the Northbridge entertainment precinct and facilitate a pathway to implement reforms relating to the Noise Regulations.

A Position Statement on entertainment noise would include the following:

- planning principles to encourage the night-time economy, tourism, entertainment and cultural value, sustainable infill development and urban regeneration;
- how to define an entertainment precinct boundary as a Special Control Area in a local planning scheme;
- 'agent of change' principles, to ensure that responsibility for the cost of noise attenuation rests with new development, whether it be a new residential building or a new entertainment venue;
- noise attenuation building design and construction standards;
- process for noise impact assessment, referral and scheme amendments; and
- requirements for notices on titles to inform buyers and commercial operators of the existence of entertainment noise in the area.

⁷ State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2





6.2 Designation of a Northbridge Entertainment Precinct in City of Perth City Planning Scheme No 2

Development proposals would need to demonstrate appropriate siting, design and construction measures to achieve the required sound attenuation to support the intended use of the development and to minimise impact on existing land uses. Acoustic reports may be required to demonstrate how attenuation measures will achieve noise levels at receivers as prescribed in the Noise Regulations.

QUESTIONS:

1. Do you support the introduction of the 'agent of change' principle in the Northbridge Entertainment Area? What are the advantages and disadvantages?
2. Do you support the requirement for Notifications on Titles within the Northbridge Entertainment Area, as a mechanism to communicate to prospective buyers/developers that the area is and will continue to be noisy?
3. Do you think 'agent of change' planning principles should be investigated for broader adoption? What are some of the benefits and challenges of the broader adoption of agent of change?
4. How do you see the proposed reforms will impact on the building and construction industry, particularly with regard to compliance issues?
5. How do you see the proposed reforms will impact on the live music and entertainment industries, particularly with regard to compliance issues?

It is proposed to designate the Northbridge Entertainment Area as a Special Control Area (SCA) through an amendment to the City of Perth City Planning Scheme No. 2 (CPS 2). This will ensure that future development will be designed and constructed to achieve the Noise Regulation assigned levels. This discussion paper provides a indicative Northbridge Entertainment Area boundary. Further consultation on the boundary will occur as part of the public advertising undertaken by the City of Perth as part of a local scheme amendment

The broad objectives of the SCA would:

- Ensure that the Northbridge Entertainment Area continues to operate as a vibrant entertainment area, while enabling appropriately located and designed Residential and Special Residential Development, and other noise sensitive premises, to be constructed.

- Ensure that new development (including expansion) of existing noise emitting and noise sensitive premises include appropriate noise attenuation.
- Ensure that the responsibility for the cost of noise attenuation rests with new development, whether it be a new residential building or a new entertainment venue

The specific provisions would be articulated in the application for a planning scheme amendment and advertised according to the statutory requirements of the *Planning and Development Act 2005*.

Amendments to the scheme would be guided by the WAPC Position Statement as outlined in Section 6.1. Provisions to achieve the objectives of the SCA would include:

- introduction of the 'agent of change' principle;





FORTITUDE VALLEY BRISBANE

In 2005, Brisbane City Council undertook a number of regulatory reforms involving amendments to five pieces of legislation, including 'the *Local Government Act 1993* to allow local authorities to declare a 'special entertainment precinct' and use local laws to manage noise emissions and planning schemes to ensure attenuation of noise emissions in new developments within those precincts'.

In the Brisbane City Plan, Fortitude Valley is a designated Special Entertainment Area (SEA) created to protect music venues from encroaching development. Key elements of this example include allowance of noise levels that are set at the venue and prescriptive design and construction standards for all new residential development within the SEA. While these elements are worth consideration in the Northbridge instance, the Fortitude Valley precinct differs from Northbridge in that entertainment uses have been prioritised while in Northbridge a more balanced outcome is sought to facilitate a more diverse mix of uses. It is important to adopt a managed approach to protecting the viability of the entertainment industry and help to create vibrant urban communities which balance the needs of businesses and residents.

- requirements for development proposals to determine the level of noise to be attenuated through design and construction measures in order to comply with the standards for the Northbridge Entertainment Area specified in the Noise Regulations;
- requirements for development proposals to demonstrate, to the local government's satisfaction, how the design and construction of the development will achieve sound attenuation to meet the prescribed standards for the Northbridge Entertainment Area in the Noise Regulations; and
- requirements for notices on titles for new development to inform buyers and commercial operators of the existence of entertainment noise in the area.

Based on previous noise studies and recent planning in the area, a proposed boundary for the SCA has been identified and will define the area where amended Noise Regulations (as proposed in section 6.3) and enhanced construction standards will apply (See Figure 2 page 18). It is intended that the scheme amendment will be adopted in parallel with the changes to the Noise Regulations.

Some portions of land within the SCA boundary are currently under the control of the Metropolitan Redevelopment Authority (MRA). While amendments to the City of Perth CPS 2 will not apply to MRA-controlled land, their objectives align with existing MRA Development Policy 3. Eventually, the City of Perth will resume planning and development control over this land.

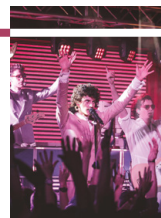




Figure 3:
Indicative draft Northbridge
Entertainment Precinct
Boundary

Note: The final boundary will be identified by the City of Perth as part of a proposed future amendment to the City of Perth City Planning Scheme No. 2.

Further consultation on the draft Northbridge Entertainment Precinct Boundary will occur as part of the public advertising of the local scheme amendment.



6.3 Proposed amendments to the Noise Regulations

Noise monitoring in Northbridge in 2011 by the City of Perth, the City of Vincent and the former Department of Environment and Conservation revealed that entertainment noise is most prominent on Friday and Saturday nights.

While parameters from the 2011 study are not directly comparable with the Noise Regulations, measured levels suggest that venues may have difficulty complying with standards prescribed in the Noise Regulations, as these are outdoor levels. Measured outdoor noise levels when received at noise-sensitive premises are generally in excess of assigned night-time levels, and compliance with existing standards would require changes to the ongoing operation of some Northbridge venues and may adversely impact on the future character of the area. The pressure on existing venues is reflected in feedback provided by the industry to the Department of Local Government, Sport and Cultural Industries in 2018.

The State Government is contemplating amendments to the Noise Regulations to remove outdoor assigned levels for noise sensitive premises located in the Northbridge Entertainment Area, and focus only on protection of health and amenity indoors.

The proposal to protect only indoor areas aims to make compliance with the Noise Regulations less onerous for entertainment venues, particularly for new residential development. The proposed amendments would remove the existing outdoor amenity protections for noise-sensitive premises located in the Northbridge entertainment precinct.

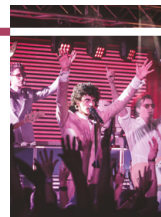
Focussing on indoor, rather than outdoor, assigned levels will mean it is allowable for affected noise-sensitive premises to receive higher levels of noise in outdoor areas, including balconies, patios or alfresco areas, and higher levels of noise inside the dwelling if the doors and windows are open.

This proposal would affect both new and existing noise sensitive development within the Northbridge Entertainment Area.



QUESTIONS:

6. Do you see any advantages or disadvantages in only applying protections for noise-sensitive premises to indoor areas?
7. Do you think the overall approach to amending the Noise Regulations is reasonable to balance the needs of residents and the entertainment industry in Northbridge?
8. Are there other approaches to regulating noise in the Northbridge entertainment precinct which should be considered?



6.3.1 Setting appropriate standards for indoor noise in Northbridge

When determining a suitable indoor level for Northbridge premises, it is necessary to consider the evidence on impacts of environmental noise on health and amenity. The WHO provides guidance on the impact of noise on human health. Direct comparison of WHO guidance levels is difficult as WHO uses L_{eq} (or 'equivalent continuous sound level') whereas Western Australia's Noise Regulations define three assigned level parameters, including two statistical levels and a maximum level (L_{A10} , L_{A1} and L_{Amax}). L_{A10} assigned level is the level which is not to be exceeded for more than 10 per cent of the representative assessment period, while L_{A1} is not to be exceeded for more than one per cent of the assessment period and L_{Amax} is not to be exceeded at any time. The concept underpinning the three assigned levels is to allow for brief louder noises, while ensuring that noise which is more continuous in nature is managed appropriately.

In the *Guidelines for Community Noise* (1999), the WHO sets an internal criterion of $L_{Aeq} = 30$ dB, although this does not address the presence of dominant or intrusive characteristics associated with

music noise. In Western Australia this is addressed by a 10 dB 'penalty' (that is, adjustment) for music noise to reflect the additional annoyance associated with music.

The WHO *Night Noise Guidelines for Europe* (2009) provide additional scientific advice on the health effects of night-time noise exposure and guideline values to prevent harmful effects. The WHO L_{Aeq} outdoor criterion in the European guidelines is 40 dB^{8,9}. A building attenuation of 21 dB is assumed in the 2009 WHO study, hence this level roughly equates to an indoor criterion of L_{Aeq} 19 dB.

WHO guidance suggests that Western Australia's current assigned levels, and equivalent indoor levels, are consistent with protection of health and amenity and international evidence on health impacts.

Further consultation on specific criteria for protection of indoor health and amenity will be undertaken as part of the implementation of proposed reforms.



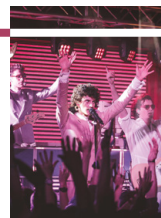
Photo courtesy Kamil Szczuicki, KS Digital Media

QUESTIONS:

- Do you support the application of the new indoor levels on all nights of the week? Is there a case for setting different levels on different days of the week or times of the day in Northbridge?

⁸ The 1999 criteria also included a L_{Amax} value and the 2009 criteria are an average over all nights of the year with the building attenuation being an average attenuation over the year (including periods of windows being open and closed). This criterion does also not address the presence of dominant or intrusive characteristics associated with music noise.

⁹ As discussed above, the WHO and Western Australian criteria are not directly comparable. As the 2009 WHO $L_{Aeq} = 40$ dB criterion is an outdoor level, when measured over an eight-hour period it can be compared to the summation of the energy that the baseline night time Noise Regulations allow when summed over a similar eight-hour period (for example 10pm to 6am). Western Australia's baseline assigned level set of $L_{A10}/L_{A1}/L_{Amax}$ of 35/45/55 dB is equivalent to an L_{Aeq} of 39.5 dB. Thus the L_{A10} parameter alone *under represents* the allowable acoustic energy by 4.5 dB compared to a L_{Aeq} parameter.





6.3.2 Compliance with proposed standards

As new noise-sensitive development in Northbridge will be designed and built to manage noise intrusion, it is likely to be less impacted by entertainment noise. Assuming that the noise attenuation required for new development can be robustly evaluated through acoustic studies, adequate protection of noise-sensitive indoor areas can be reasonably assured.

Achieving this outcome can be challenging. Acoustic predictions and measurements, like all scientific predictions, contain a degree of error or uncertainty. The uncertainty associated with acoustic predictions in the lower frequency bands (including amplified music noise) is much greater than that for higher frequency bands.

A further element of complexity relates to the measurement of, and compliance with, indoor levels. Typically, prescribed noise standards are outdoor levels because:

- it is simpler and more accurate to predict external noise levels;
- compliance monitoring is easier outside noise-sensitive premises;
- external assessment points may provide a clearer benchmark for businesses as noise criteria are not dependent on the acoustic properties of buildings where noise is received; and
- soundproofing of noise-sensitive premises is ineffective if residents open their windows.

Measurement of noise indoors, particularly entertainment noise which has significant low-frequency components, is inherently challenging. Low-frequency noise is more able to penetrate the building façade than general environmental noise, and the tonal, modulating characteristics mean that it is also less likely to be masked by general environmental noise.

Low-frequency noise can also vary significantly throughout a room, so measured levels fluctuate depending on where in the room the measurement is taken. Some jurisdictions attempt to address this by considering average noise levels, however the measurement methods are complex, the uncertainties are significant and there is no consensus among low-frequency noise experts about which method is best.

QUESTIONS:

10. How can uncertainties associated with indoor noise measurement and acoustic assessment be addressed?
11. Are there alternatives to measurement of noise indoors which could provide an equivalent level of protection for indoor areas?

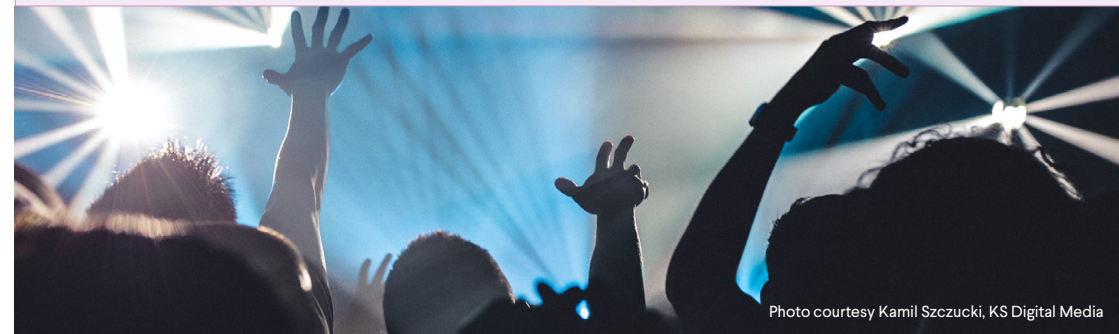
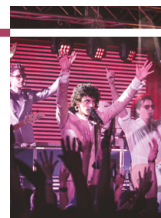


Photo courtesy Kamil Szczucki, KS Digital Media





Existing noise-sensitive development in the Northbridge entertainment precinct, which may have been designed and built to lower construction standards, may not achieve the same level of noise attenuation. As all occupants must be afforded acceptable levels of health and amenity, in some cases this may require an entertainment venue to attenuate its noise emissions to ensure noise received inside dwellings complies with the proposed indoor levels.

To minimise non-compliance, consideration should be given to options for noise amelioration. Responsibility for such remediation will generally rest with the noise-emitting premises, and options may include upgrading existing adjacent noise-sensitive premises, in particular those internal spaces most sensitive to noise intrusion.

Measures which should be considered, and are already being undertaken by some venue operators, to ameliorate noise at source and manage annoyance include:

- location of noise-generating plant and equipment to minimise noise emission and/or facilitate the construction of noise barriers;

- limitations on where amplified music may be provided, with particular reference to outdoor spaces;
- sound attenuation to reduce noise transmission and emission from the source premises, for example upgraded windows, doors, sealing air gaps;
- notification to potentially affected owners and/or occupiers of noise-sensitive premises, of the potential for noise nuisance;
- control of noise at source through limitations on noise output and/or operational restrictions;
- limitations on the times of day and/or days of the week when amplified music may be provided; and
- managing complaints through mediation, conciliation and negotiation.

Under the proposed reforms, local government Authorised Officers will continue to play a vital role in the day-to-day administration of the Noise Regulations through dealing with complaints, advising on noise emissions from proposed developments, managing event approvals and advising on approvals being considered under the Noise Regulations including entertainment venues.



QUESTIONS:

12. Are there any additional measures available to venues to ameliorate/attenuate environmental noise received at noise-sensitive premises?
13. What are the impacts on live music and entertainment venues, businesses and home owners associated with the outlined noise management options?
14. What are the limitations for venues or noise-sensitive premises in relation to attenuating music noise?
15. Can you foresee any issues with the management of noise complaints or enforcement of assigned levels as a result of the proposed reforms?





7. Other matters for consideration

While the proposed reforms will provide a measure of assurance for venues, particularly regarding new noise-sensitive development, it may be worthwhile exploring additional mechanisms to assist venues to better manage their noise emissions and comply with prescribed Noise Regulations standards.

This is particularly relevant for areas with a high density of entertainment venues where ambient noise levels can result from cumulative noise emissions, and where existing development was not constructed with noise attenuation in mind. Compliance may continue to be a concern for a small number of venues.

Stakeholder input is sought on the merits and mechanisms of setting outdoor levels external to entertainment venues (such as in Fortitude Valley). This may be particularly useful for certain types of venues, including those with limited ability to attenuate or incorporating outdoor entertainment spaces, such as beer gardens and rooftop bars. Noise emissions from these venues have the potential to impact significantly on surrounding noise sensitive premises. Venues with minimal street frontage or those purpose-designed and built to contain noise are less likely to require such assistance.

Previous research on entertainment noise in Northbridge has identified the potential value of entertainment noise contour mapping by local authorities to identify noise 'hotspots'. Research also suggests that Northbridge venues could be broadly classified as having a high, medium or low noise impact to simplify noise modelling to provide guidance to venue operators and to identify areas where future noise-sensitive development will need to meet higher attenuation standards.

There may also be mechanisms, beyond the initial proposed reforms which create greater certainty for existing and new entertainment venues, through local laws and noise contour mapping. These mechanisms would not replace, but complement proposed planning mechanisms and amendments to the Noise Regulations. Noise contour mapping/modelling could provide critical information for local planning authorities on minimum building and development standards.

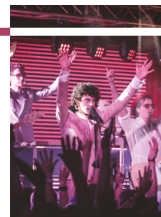
The reforms proposed in this discussion paper set the foundation for a better managed Northbridge, to support industry and community in the future. A broader dialogue regarding noise management in Northbridge may be required, to consider the potential for further measures in planning and environmental reform and other legislative reforms being undertaken separately to support Creative WA objectives.

Circumstances in other local government areas, including broader mechanisms to recognise first occupancy, may be considered. While the measures outlined in this paper are specifically focussed on Northbridge, other local governments are encouraged to provide submissions to inform the future regulatory approaches to measures that support live music.



QUESTIONS:

- 16. What other mechanisms are available to help enhance certainty for entertainment venues in relation to noise levels?
- 17. Are there approaches adopted in other jurisdictions which could be contemplated here? If so, what?





8. Have your say

The WAPC and the Department of Water and Environmental Regulation are seeking feedback on the possible introduction of reform measures as outlined in this Consultation Paper. The reforms are intended to provide clearer guidance to minimise the noise impacts of new development in entertainment precincts on existing uses.

This consultation paper will be open for comment from 20 September to 26 November 2018.

Comments can be provided through Citizen Space

<https://consultation.dplh.wa.gov.au>

or by mail to:

Planning for entertainment noise
Department of Planning, Lands and Heritage

Locked Bag 2506
Perth WA 6001



Photos courtesy Kamil Szczucki, KS Digital Media



Photo courtesy Marnie Richardson

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