

ACOUSTIC AND PLANNING CONSIDERATIONS FOR PLANING SCHEME AMENDMENT VC120

CLAUSE 52.43 – LIVE MUSIC AND ENTERTAINMENT NOISE

This document has been prepared to highlight some of the key issues introduced by Clause 52.43, and the implications they may have for existing and proposed music venues and nearby residential development.

Please contact us if you would like further information:

Gillian Lee glee@marshallday.com

INTRODUCTION

Planning Scheme Amendment VC120 (the Amendment) introduced Clause 52.43 (the Clause) to planning schemes on September 4, 2014. This Clause implements the 'Agent of Change' principle with respect to noise from live music performance across Victoria and aims to protect live music venues from residential encroachment.

The new provisions impose new obligations for new residential developments, placing obligations on the developer to include noise attenuation measures. The provisions apply when a proposed residential development is within 50m of an existing live music performance venue. Previously the control of music noise was the sole responsibility of the noise emitter (the venue).

While the decision to allocate responsibility for the costs of noise mitigation is a straightforward principle, complexities arise as to how the amendment can coexist with existing music noise legislation in Victoria. In addition, the provisions may not yet adequately account for technical issues surrounding measurement procedures and the setting of appropriate noise limits.

This briefing note summarises the requirements of the Clause highlighting inconsistencies between the two documents and issues for stakeholders.

WHY IS THE AMENDMENT REQUIRED?

- To recognise that live music is an important part of Victoria's culture and economy
- To protect live music entertainment venues from the encroachment of noise sensitive residential uses
- To provide satisfactory protection to new residential uses from unreasonable levels of live music and entertainment noise
- To ensure that the primary responsibility for noise attenuation rests with the agent of change.

AFFECTED USES

The Clause applies to an application in relation to;

- A live music entertainment venue
 - Defined as: a food and drink premises, nightclub, function centre or residential hotel that includes live music entertainment; a rehearsal studio; any other venue used for the performance of music.
- A noise sensitive residential use that is within 50m of a live music entertainment venue
 - Defined as: a boarding house, dependent person's unit, dwelling, nursing home, residential aged care facility and residential or retirement village.

While the types of live music premises are well defined, the term 'live music entertainment' is not. It may be that venues that play pre-recorded audio material only are not covered by the Amendment. Further, venues that provide both live and pre-recorded musical entertainment may find that the pre-recorded portion of the program drives the sound insulation requirements of nearby residential uses, which seems contrary to the intent of the Amendment.

The 50m buffer distance is also not well defined. Where a live music venue may form part of a large development such as a convention centre, it is unclear whether the 50m buffer applies only to the internal space containing the live music entertainment, or the larger building envelope. Similarly, the buffer extent at the residential receiver is also not well defined.

REQUIREMENTS TO BE MET FOR NEW RESIDENTIAL DEVELOPMENT APPLICATIONS

The requirements for a new residential development within 50m of a live music performance venue are as follows:

A noise sensitive residential use must be designed and constructed to include attenuation measures that will reduce noise levels from any:

- Indoor live music entertainment venue to below the noise limits specified in SEPP N-2
- Outdoor live music entertainment venue to below 45dB $L_{Aeq(15min)}$.

The Amendment states:

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 N-2 does not apply)

Because SEPP N-2 currently specifies compliance measurements to be made outdoors (with limited exceptions), the Amendment seeks to modify SEPP N-2 by allowing noise to be assessed inside a residential development, thus taking into account any noise reduction by the facade. SEPP N-2 is currently under review by the EPA Victoria and the Department of Environment and Primary Industries with the amended policy planned for release in 2016. The amended policy may include provisions to allow the above internal measurement procedure when acoustic treatment is provided to a receiving building facade.

However, until SEPP N-2 is amended to reflect these changes, compliance with the above requirements does not remove the current statutory requirement for a venue to meet SEPP N-2 obligations externally to a receiving building.

Based on discussions with the EPA, it is our understanding that where the conflict between Clause 52.43 and SEPP N-2 exists, the EPA are not proposing to enforce external music noise limits at new residential developments which have been designed to achieve the internal SEPP N-2 noise limits.

One way that the 'Agent of Change' principle may be accommodated that accords with with current SEPP N-2 requirements is when the provision of acoustic treatment is directed at the music venue, rather than the residential development. In this instance the treatment costs for would still be the responsibility of the developer, but could allow compliance with SEPP N-2 external limits without placing limitations on the operations of the venue.

We note that control of noise at the source (i.e. venue) is generally the preferred mode of treatment, particularly where an amicable relationship exists between the developer and venue. In terms of design efficiency, noise is more readily controlled close to the source of noise, and mitigation measures are likely to be far more cost effective when the venue is treated.

INDOOR MEASUREMENTS

Although SEPP N-2 primarily sets outdoor noise limits, it also provides technical procedures for calculating internal noise limits. However, the current SEPP N-2 procedures are somewhat unclear. In any case, the use of an indoor assessment location for planning and compliance purposes is inherently more complex and variable than outdoor assessment locations.

In addition to the practical issues associated with policy conflicts outlined above, MDA recognises that there are other complexities that may arise from an indoor measurement procedure:

- During planning and design, noise levels external to buildings may be predicted more accurately than internal noise levels
- Monitoring compliance indoors will require access to residential dwellings to provide suitable test conditions, and may even require residents to vacate sleeping areas while compliance is assessed
- The reduction of noise intrusion as a result of providing facade treatments to residential buildings may limit 'masking' inside the building, leading to a requirement to upgrade inter-tenancy partitions to reduce neighbour noise audibility.
- Whilst facade treatments reduce both background (masking) and music noise, then works do not necessarily reduce music audibility, even if limits are achieved.

It can be appreciated that where the background noise inside the receiving building is dominated by external sources, ambient noise transmitted via the same building element (e.g. a window) is also reduced and the ability to reduce the margin between of the music and the background noise is limited.

It is noted that a Practice Note to accompany the Amendment is planned for release in September 2014, which may include planning guidance for some points raised in this document.