

## **FLYING MINUTE -**

### **Submission Position Statement: Special Entertainment Precincts & Options Paper for proposed amendments to the Environmental Protection (Noise) Regulations 1997 (05-036-02-0022 VJ)**

**Closed 12 Feb**

*Vanessa Jackson, Policy Manager, Planning and Improvement*

**That State Council endorse the submission on Position Statement: Special Entertainment Precincts & the Options Paper for proposed amendments to the Environmental Protection (Noise) Regulations 1997.**

#### **RESOLUTION 194.FM/2020**

**CARRIED**

#### **Executive Summary**

- The State Government has prepared a position statement and options paper, which outlines possible planning and environmental approvals processes to manage noise within entertainment precincts.
- Three options are provided: Status Quo, agent of change and indoor assigned noise levels or establishment of a Special Control Area (SCA) for an entertainment precinct.
- The submission is due by 14 February 2020, prior to the next WALGA State Council meeting. Consequently, the submission will be processed through WALGA's interim submission process, to be endorsed by State Council by Flying Minute.

#### **Attachments**

WALGA Submission - Position Statement: Special Entertainment Precincts & Options Paper for proposed amendments to the Environmental Protection (Noise) Regulations 1997.

#### **Background**

The State Government prior to the last State election committed to supporting the arts sector and exploring reforms to encourage development of live music and entertainment venues and cultural industries. Inner city areas with a higher density of entertainment venues are experiencing significant infill development with an increasing number of mixed-use and high density residential developments. There are growing concerns that as Perth, and Northbridge in particular, diversifies and densifies that there will be increased conflict between noise emitting premises and noise-sensitive premises.

In September 2019, the Department of Planning, Lands and Heritage (DPLH), on behalf of the Western Australian Planning Commission, and the Department of Water and Environmental Regulation (DWER) prepared a Position Statement: Special Entertainment Precincts & the Options Paper for proposed amendments to the Environmental Protection (Noise) Regulations 1997. These papers outline proposed reforms that address the issue of entertainment noise impacts in the Northbridge mixed use entertainment precinct. The City of Perth has been an integral contributor to these reforms.

The consultation includes two parts,

1. [Draft Position Statement – Entertainment Precincts,](#)
2. [Options Paper – Managing Noise in Entertainment Precincts - Possible amendments to the Environmental Protection \(Noise\) Regulations 1997.](#)

(Both documents can be accessed through the links).

The Draft Position Statement seeks 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, and
- provide an increased level of assurance for entertainment venues by establishing a framework to achieve greater operational certainty.

The Options Paper puts across three possible regulatory approaches for changes to the Noise Regulations:

- Option 1 – status quo
- Option 2 – agent of change and indoor assigned levels, and
- Option 3 – special entertainment precincts.

The Options Paper outlines the advantages and disadvantages of the three options. The State Government has declared that their preference is for Option 3.

## **Comment**

DPLH and DWER have been working collaboratively on reforms to better manage noise from amplified music in entertainment precincts. The reforms are centered on the desire to ensure the ongoing viability of our State's entertainment industry by balancing the needs of venues with other businesses and residents in vibrant entertainment areas.

WALGA has prepared a draft Submission which provides general support for both the draft Position Statement and the Option 3 of the Options Paper.

Association officers previously considered the matter of entertainment noise through DPLH's discussion paper on 'Planning for entertainment noise in the Northbridge area' (November 2018). Qualified support was provided for what is now regarded as 'Option 2', though noted a number of technical and implementation matters that would require addressing. Following the release of that paper, the State has determined that the technical and implementation matters with Option 2 are unable to be suitably addressed. Thus Option 3, a new approach, has been developed by DPLH, DWER and the City of Perth. In light of this, the draft Submission rescinds the previous support the 'Option 2' and in turn provides support for 'Option 3'.

The draft Submission deals extensively with the matter of who should be able to lodge a Scheme Amendment request for the establishment of a special entertainment precinct. The Association has taken the view that the identification of an SCA as proposed in the draft Position Statement is a matter of strategic concern for Local Governments. Other comments and recommendations provided in the draft Submission are largely technical in nature.

Feedback from the sector to date:

- City of Fremantle has provided their submission on the proposals, which has been incorporated in the submission
- The views of the City of Perth have been ascertained from their recent Scheme Amendment initiation to establish a special entertainment precinct in Northbridge, and
- The views of the Local Government Managers of Environmental Health Group were also obtained.

The submission will be processed through WALGA's interim submission process and comments are due in to the State Government by Friday 14 February 2020.

## Flying Minute Outcomes

Total Invited to Survey: 24

Total Finished Survey: 14

That State Council endorse the submission on Position Statement: Special Entertainment Precincts & the Options Paper for proposed amendments to the Environmental Protection (Noise) Regulations 1997.

<b>First Name</b>	<b>Last Name</b>	<b>Completed Date</b>
Tracey	Roberts JP	13/02/2020 at 11:37
Phillip	Blight	06/02/2020 at 9:38
Jenna	Ledgerwood	05/02/2020 at 10:57
Paul	Kelly	05/02/2020 at 21:39
Malcolm	Cullen	Not Completed
Cheryl	Cowell	Not Completed
Stephen	Strange	05/02/2020 at 8:48
Chris	Mitchell JP	11/02/2020 at 8:32
Les	Price	05/02/2020 at 8:01
Russ	Fishwick JP	Not Completed
Karen	Chappel	05/02/2020 at 11:09
Michelle	Rich	Not Completed
Julie	Brown	12/02/2020 at 10:28
Doug	Thompson	05/02/2020 at 19:17
Carol	Adams OAM	11/02/2020 at 15:46
Logan	Howlett JP	11/02/2020 at 11:58
Tony	Dean	10/02/2020 at 11:55
Ken	Seymour	Not Completed
Peter	Long	Not Completed
Ronnie	Fleay	Not Completed
Catherine	Ehrhardt	Not Completed
Cate	McCullough	Not Completed
Mark	Irwin	Not Completed
Ruth	Butterfield	12/02/2020 at 15:51

## Responses

Created: 04/02/2020 at 10:13 Results Exported: 13/02/2020 at 3:38

(14) Endorse Recommendation

Tracey Roberts JP (on: 13/02/2020 at 11:37), Phillip Blight (on: 06/02/2020 at 9:38), Jenna Ledgerwood (on: 05/02/2020 at 10:57), Paul Kelly (on: 05/02/2020 at 21:39), Stephen Strange (on: 05/02/2020 at 8:48), Chris Mitchell JP (on: 11/02/2020 at 8:32), Les Price (on: 05/02/2020 at 8:01), Karen Chappel (on: 05/02/2020 at 11:09), Julie Brown (on: 12/02/2020 at 10:28), Doug Thompson (on: 05/02/2020 at 19:17), Carol Adams OAM (on: 11/02/2020 at 15:46), Logan Howlett JP (on: 11/02/2020 at 11:58), Tony Dean (on: 10/02/2020 at 11:55), Ruth Butterfield (on: 12/02/2020 at 15:51)

(0) Endorse Recommendation subject to comment below

(0) Oppose Recommendation

Cr Ronnie Fleay declared an interest as a member of the WAPC and did not vote.

## Secretariat Comment

The submission has now been sent to the Department of Planning Lands and Heritage.



# WALGA Submission

## Position Statement: Special Entertainment Precincts & Options Paper for proposed amendments to the Environmental Protection (Noise) Regulations 1997

### INTRODUCTION

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and interests of 138 Local Governments in Western Australia.

The Association provides an essential voice for 1,222 Elected Members and approximately 15,000 Local Government employees as well as over 2 million constituents of Local Governments in Western Australia. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

### GENERAL COMMENTS

The Association welcomes the release of the draft Position Statement: Special Entertainment Precincts ('draft Position Statement') and the accompanying Options Paper for proposed amendments to the *Environmental Protection (Noise) Regulations 1997* ('Options Paper'). The Association also acknowledges the advocacy of the City of Perth on these matters, and collaboration between the City and the Department of Planning, Land and Heritage ('DPLH'), and the Department of Water and Environmental Regulation ('DWER') in the formation of these documents. The Association strongly supports this form of collaborative approaches between State and Local Government on policy changes now and into the future.

It is acknowledged that the City of Perth is currently progressing an amendment to its Local Planning Scheme to implement a 'special entertainment precinct' within the Northbridge locality which utilises elements of the draft Position Statement and Option 3 of the Options Paper. The Association does not usually comment on planning proposals that impact one Local Government. Therefore the Association has no comment on matters that sit wholly within the purview of the City of Perth. As such, comments below will generally discuss the intent of the proposed changes more broadly, the Association's views on how these changes could be implemented, and applicability of those policy changes to entertainment precincts across the State. That being said, this submission will draw attention to discrepancies between the approach of the City of Perth and the draft Position Statement as matters of discussion.

The importance of the tourism, entertainment and hospitality industries to Western Australia is well known, and the draft Position Statement and Options Paper correctly note the night-time economy as an important element in the wider Western Australian economy. The Association and the wider Local Government sector welcomes the State Government's commitment to the tourism and entertainment sectors, and understands the important role they can play in local economic development. However, as the consultation paper correctly

points out, these industries can come into conflict with noise sensitive land uses, with this conflict likely to increase as towns and cities continue to densify.

The release of the draft Position Statement and Options Paper follows considerable engagement with the community and impacted industries on the most appropriate way forward to address the conflict between noise emitting venues and noise sensitive land uses in an entertainment precinct. The Association previously commented on the DPLH's consultation paper on '*Planning for entertainment noise in the Northbridge area*', providing qualified support for the proposed approaches. Concerns raised in this previous submission noted that there was limited detail in how the 'agent of change' concept would work in WA or how it is working in other jurisdictions, limited detail of the proposed amendments to the noise regulations and how the proposal would be implemented, particularly in regard to how Local Government would apply and enforce these proposed changes.

The draft Position Statement deviates from the 'agent of change' proposal outlined in the consultation paper, and instead proposes a precinct based approach to managing the interaction between noise emitting entertainment venues and noise sensitive uses. The Options Paper in outlining the 'disadvantages' of the 'agent of change' model articulated clear implementation issues within this approach, consistent with those raised by the Association and Local Governments. In light of the evidence provided by DWER and the inability to address the implementation challenges of such an approach, the Association rescinds its previous qualified support for the implementation of 'agent of change' principles for the management of noise in entertainment precincts.

In reading the draft Position Statement and the DWER options paper it is clear that the State Government has a clear preference for Option 3 of the Options Paper, that is 'special entertainment precinct'. While the Options Paper outlines three approaches for amendments to the *Environmental Protection (Noise) Regulations 1997*, only Option 3 aligns with the approach taken in the draft Position Statement and the recently adopted amendment 41 to the City of Perth's Town Planning Scheme No. 2. Thus, the comments on the Options paper below will focus on this option, rather than Option 1: the status quo and Option 2: agent of change and indoor assigned levels.

The Association provides general support for both the draft Position Statement and the Option 3 of the Options Paper. The approach selected by DPLH, DWER and supported by the City of Perth in their draft scheme amendment remains consistent with the intent outlined in the previously released consultation paper. Further, the proposed reforms have maintained this intent while also addressing the underlying weaknesses of the previously proposed approach, being the implementation of the reforms through the planning and building systems. Of general concern is the continued risk of adverse impact on the physical and mental health that some existing noise-sensitive premises in entertainment precincts will remain exposed to. However, the advantages of the proposed reforms are generally acceptable and supported. This qualified support should be read in conjunction with the specific comments and recommendations below.

While the Association provides general support for Option 3 of the Options Paper, there remains a lack of detail as to the exact wording of the amendments to the *Environmental Protection (Noise) Regulations 1997*. Thus, the Association, regardless of any general support for Option 3, reserves the right to review and comment on the wording of the proposed regulatory amendments once drafted and formally advertised. On this matter, the Association expects that any regulatory amendments would be advertised for three months, in line with the State-Local Government Partnership Agreement.

Due to the interrelationship between the two advertised documents, the Associations comments have been combined into one submission which will be provided to both DWER and DPLH.

*Recommendations:*

1. The Association provides general support for both the draft Position Statement and the Option 3 of the Options Paper, subject to the comments below.
2. The Association rescinds its previous qualified support for the implementation of 'agent of change' principles for the management of noise in entertainment precincts in light of confirmation that the implementation challenges are unable to be adequately addressed.

## **SPECIFIC COMMENTS**

### **Draft Position Statement: Special Entertainment Precincts**

#### **Section 5.1 Special entertainment precincts**

The draft Position Statement guides Local Government and other responsible authorities on implementing a Special Control Area (SCA) for an entertainment precinct, articulating the relevant planning principles; how to define an entertainment precinct; matters related to external amplified noise levels; and a model text for an SCA. As noted in the Association's comments on the previously released consultation paper, the use of Special Control Areas (SCA) as a means of designating areas determined to be entertainment districts and thus requiring special planning controls for noise, is supported. SCAs are used regularly in the WA planning framework to apply area specific planning controls, and these mechanisms are well understood by Local Government.

The Association reiterates previous comments that the identification of an SCA as proposed in the draft Position Statement is a matter of strategic concern for Local Governments. Thus entertainment precincts, where possible should be identified by the Local Government strategically, in collaboration with their community. While the draft Position Statement alludes to the fact that such scheme amendments would be guided by Local Governments and other relevant authorities, there is scope to strengthen the wording to make clear that such amendments will only be supported by the WAPC where they are initiated by the Local Government itself or the relevant authority. Considering the complexity of such amendment, including the level of justification required for higher acceptable amplified noise levels, allowing land owners or proponents to initiate such amendments would be an unacceptable proposition and likely interfere in the orderly strategic planning of precincts.

The draft Position Statement has taken a staged approach to the introduction of SCAs to manage entertainment noise. Thus, the use of SCAs is limited to a precinct-based approach centred on a specific area in recognition of the challenges the implementation of the principles into the planning system would initially bring. WALGA has previously supported this staged approach. Going forward, should the identification through precinct level planning be successful, the identification of individual sites, or city centre precincts with more dispersed arrangement of entertainment venues, where there is a social or economic imperative to protect the entertainment value of the location should be considered. For example, a tavern or hotel in a rural or regional town that features live music, but has sensitive land-uses in close proximity. In certain situations, a Local Government may see a benefit in protecting the existing external amplified music noise levels to protect the benefit the venue provides the community.



There is a lack of discussion and direction in the draft Position Statement on how Local Government should go about identifying special entertainment precincts through their local strategic planning framework or activity centre and precinct planning activities. The early identification of a special entertainment precinct through a local planning strategy will allow the holistic consideration of what external amplified music noise level is appropriate in new and developing centres. The early identification of the intent to identify a centre as an entertainment precinct and then the setting of a higher noise level will allow centres to develop around an understood constraint early, thus hopefully avoiding land use conflict as the centre matures.

*Recommendations:*

3. That the draft Position Statement be amended to make clear that Scheme Amendments for special entertainment precincts and amendment to external amplified music noise levels should only be considered for adoption where they have been initiated by the relevant Local Government or responsible authority.
4. Further to recommendation 1, that the Minister for Planning consider making a declaration that the use of powers under s.76 of the *Planning and Development Act 2005* to compel a Local Government to 'adopt' a scheme amendment for advertising relating to special entertainment precinct will not be contemplated.
5. That the WAPC through the DPLH, and subject to the successful implementation of special entertainment precinct, consider the appropriateness of utilising similar SCA provisions to individual entertainment venues sites and other more dispersed entertainment precincts where the venue has been identified as having significant social and/or economic value to a local community and would benefit from protection of its higher than permitted external amplified music noise level.

## **Section 5.2 External amplified music noise levels**

The draft Position Statement makes clear that the ability to identify a SCA can be by either the Local Government or the relevant planning authority. Other relevant planning authorities are likely to be Development WA or the WAPC. In contrast, the role of providing a 'venue approval' under the proposed Option 3 of DWER's Options Paper falls solely to the Local Government.

While the various roles in the proposed framework are clear, what is not clear is the responsibility of other relevant authorities to consult with the Local Government on the proposed 'noise attenuation standard' proposed under their planning regimes. As the Local Government is the approval body under the proposed Option 3, there exists the possibility that conflict may occur between the other relevant planning authority and the Local Government over the appropriateness of the 'noise attenuation standard' in the special entertainment precinct. Requirements exist for consultation with impacted Local Governments when mechanisms such as Improvement Schemes or Redevelopment Schemes are amended. However, other relevant planning authorities can chose to not support the views of the Local Government. Strengthening expectations around the agreement between both parties on 'noise attenuation standards' through the draft Positon Statement, will reinforce the fact that the establishment of special entertainment precincts is a shared responsibility.

The City of Perth as part of their amendment No. 41 has proposed to identify different 'noise attenuation standards' for existing venues compared to new entertainment venues. This decision was following consultation with their community and extensive analysis of existing noise levels within the Northbridge area. The draft Position Statement, while not directly excluding this option, does not speak to the ability for existing entertainment precincts to consider such an approach. The Association sees merit in the City of Perth's approach, and supports the clarification of this as an option for decision makers within the draft Positon Statement.



*Recommendations:*

6. Modify section 5.2 to make clear that where the responsible authority is not the Local Government, that extensive engagement should occur with the relevant Local Government/s and, where possible, agreement should be reached on the acceptable 'noise attenuation standard' for the precinct,
7. Clarify within section 5.2 that variable 'noise attenuation standards' can be applied within a precinct for existing and proposed entertainment venues.
8. Reword the first sentence in section 5.2 to read:

*'Local governments or responsible authorities should have regard to the strategic role and...'* (emphasis added)

#### **Section 5.4 Construction and design standards**

The proposals in the Options Paper and draft Position Statement to adopt precinct-wide design and construction standards for new residential development to achieve internal noise levels consistent with the protection of health and amenity, is supported. The proposed internal noise levels, no more than 47 Leq dB(Lin) in the 63 Hz octave band and no more than 41 Leq dB(Lin) in the 125 Hz octave band, are consistent with the World Health Organisations standards for the protection of health and amenity. Further, the Association supports the proposal to require new noise-sensitive premises to provide a 'building transmission loss' report to outline how the new development will meet this level.

It is important to note that a Local Government can only require the provision of such a report and condition compliance with this report where the proposal requires a development application. Where a noise-sensitive premises only requires a building permit, such as in the case of an R-code compliant single dwelling, there is limited opportunity to adequately ensure the sound attenuation has been provided. Thus, the draft Position Statement, and the model SCA provisions must be entirely clear that any noise-sensitive premises requires development approval.

The second last paragraph of section 5.4 makes note of establishing a 'process' for the post-construction certification of the noise attenuation requirements. Such a requirement requires the application of a planning condition on any approval. Thus, this paragraph should be reworded to explain this requirement. A template condition would be of use in this regard, and would help establish consistency within the planning system. This has been common in other recently endorsed position statements released by the WAPC.

Lastly, clarification is required to the last sentence, to note that noise attenuation can be considered on existing venues where a proponent has sought an approval for development to modify the built structure or use.

*Recommendations:*

9. Make clear in section 5.4 that all noise sensitive premises are expected to require a development approval.
10. Provide a template planning condition within section 5.4, for a post-construction certificate of measures incorporated to achieve building attenuation/ transmission loss. This condition should be written in the form that it is 'to the satisfaction of the Local Government' and also 'provided prior to occupation of the development'.
11. With regard to the last paragraph of section 5.4, Clarify that noise attenuation requirements may be required where an existing development has sought a

modification to their existing approval, including where an existing approval has lapsed, or where modifications are proposed to an existing venue.

### **Section 5.5 Noise assessments for new development**

The final paragraph of section 5.5 outlines a 'check-list' detailing acoustic solutions utilised by the entertainment venue to meet the required external amplified music noise level. Such a requirement requires the application of a planning condition on any approval. Thus, this paragraph should be reworded explaining this requirement. A template condition would be of use, and would help establish consistency within the planning system. This has been common in other recently endorsed position statements released by the WAPC.

#### *Recommendation:*

12. Provide a template planning condition within section 5.5 related to the need for a post-construction certificate of measures incorporated to achieve the external amplified noise levels outlined in the SCA. This condition should be written in the form that it is 'to the satisfaction of the Local Government' and also 'provided prior to occupation of the development'.

### **Section 5.5 Notifications on titles**

The Association supports the use of notifications on title for noise-sensitive premises within special entertainment precincts. The inclusion of a model wording for this notification would assist in ensuring consistency across Local Governments. The phrasing of this model notification should be undertaken in conjunction with the Local Government sector.

#### *Recommendation:*

13. Include a model wording for a notification on title within the draft Position Statement, subject to consultation with the Local Government sector.

### **Definitions**

The definition for Noise-sensitive premises includes the sentence: 'May also include rehabilitation centres and residential aged care facilities'. The use of the word 'may' in this definition is confusing as there is no clarification around when the uses 'may' or 'may not' be included. Further, the definition under the Noise Regulations for noise-sensitive premises would seem to already include both these land-use definitions, thus the reason for the clarifying sentence in the draft Position Statement is unclear.

In relation to the noise-sensitive premises definition, it should make clear that residential dwelling, grouped dwelling, and multiple dwelling definitions under the *Planning and Development (Local Planning Scheme) Regulations 2015* are incorporated into this definition. The current exemptions from Development Approval for some residential land uses necessitates the need to be exceptionally clear on the need for any dwelling to require development approval when proposed within a special entertainment precinct.

#### *Recommendations:*

14. Modify the definition of noise-sensitive premises to remove the last sentence, 'May also include rehabilitation centres and residential aged care facilities', as it is redundant.
15. Modify the definition of noise-sensitive premises to make clear that residential land uses are land uses subject to this definition.

## Appendix 1: Model Text Provisions for Special Entertainment Precincts

### Other Comments and Recommendations

16. Within the 'entertainment venue' definition: the word 'applicable' is spelt incorrectly,

### Proposed amendments to DWER's Environmental Protection (Noise) Regulations 1997

As has been noted above, the Association provides general support for Option 3 of the Options Paper. The Options Paper through its assessment of the three options clearly highlights the deficiencies of continuing with Option 1 in an entertainment precinct context and the ongoing implementation challenges that would exist should Option 2 be advanced.

However, there remains a lack of detail as to the exact wording of the amendments to the *Environmental Protection (Noise) Regulations 1997*. Regardless of any general support for Option 3, The Association reserves the right to review and comment on the wording of the proposed regulatory amendments once drafted and formally advertised. On this matter, the Association expects that any regulatory amendments would be advertised for three months, in line with the State-Local Government Partnership Agreement.

It is expected that following this consultation process the DWER will issue drafting instructions for proposed amendments to the Noise Regulations. Should the State Government determine to go forward with Option 3, the Association recommends the following matter be considered for incorporation into the drafting instructions:

1. the provision for a head of power to provide the CEO of the Local Government with the discretion to modify the assigned nominal external amplified music noise levels established for a Special Entertainment Precinct through a Venue Approval and
2. consider the appropriateness of removing the additional nuisance factor level assigned under the Regulations to music in City Centre zones areas or other designated precincts.

With regard to the first point. The inclusion of such a provision would allow, where appropriate, for existing entertainment venues to be granted approval (on a temporary basis) to operate at a higher external amplified music noise level than generally allows, where it can be demonstrated that the proposed level will not create a greater impact on existing noise sensitive uses than the specified nominal levels. The approval of such a decision would rest with the Chief Executive Officer of a Local Government

With regard to the second point, under the existing Noise Regulations various adjustments can be applied to a venue that plays music, and this can result in a noise assessment being set up to 15 decibels higher than the base assigned level. The inclusion of these adjustments can have significant cost implications on new venues. There is scope in light of the proposed approach in the Options paper to consider removing these requirements for new venues within special entertainment precincts or city centre areas.

#### *Recommendations:*

17. Support Option 3 as the preferred option within the DWER's consultation paper and
18. That DWER consider the inclusion of the additional matter raised above when issuing drafting instructions for the amended Noise Regulations.