

# Live Music and Entertainment Noise

Planning Practice Note 81

November 2022

**This practice note gives guidance about the operation of clause 53.06 (Live Music and Entertainment Noise)**

Melbourne has a long established and highly regarded live music scene, making it the leading music city in Australia. Live music makes a significant contribution to the state's culture and economy, drawing visitors from near and far and providing vital opportunities for emerging and established local musicians.

Settlement trends, particularly in inner urban areas, are increasing the level of residential development in mixed use environments. While this creates more efficient and vibrant communities, proximity between residential and entertainment uses can sometimes cause noise conflicts.

Planning seeks to achieve a balance between supporting live music and protecting residents from unreasonable noise disturbance.

## Managing noise in the planning system

Clause 13.05-1S of the Planning Policy Framework in the *Victoria Planning Provisions* sets out the overarching policy basis for planning decisions about noise:

### **'Objective**

*To assist the control of noise effects on sensitive land uses.*

### **Strategy**

*Ensure that development is not prejudiced and community amenity and human health is not adversely impacted by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.'*

Everybody living and working in an area has a role in maintaining a healthy level of noise amenity for that area, including taking responsibility for their own noise outputs or sensitivities. While a new use or development should include design measures to minimise noise impacts, existing residents and venues should also take action to prevent noise conflict.

This can mean ongoing compliance with noise-related planning permit conditions or it can mean simple measures such as cooperation between neighbours to manage noise attenuation with practical responses like residents or venues closing windows or doors at noisy or late times. However, noise management is not always straightforward.

## Clause 53.06 (Live Music and Entertainment Noise)

Clause 53.06 applies to a planning permit application for a *live music entertainment venue* or a *noise sensitive residential use* within 50 metres of a live music entertainment venue.

In this clause, *live music entertainment venue* means:

- 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 and specified in clause 3.0 of the schedule to clause 53.06, subject to any specified condition or limitation.

*Noise sensitive residential use* means:

- a community care accommodation, dependent person's unit, dwelling, residential aged care facility, residential village, retirement village or rooming house.

This clause does not apply to:

- the extension of an existing dwelling
- a *noise sensitive residential use* that is in an area specified in clause 2.0 of the schedule to clause 53.06.

The schedule to clause 53.06 can be used to specify:

- areas to which clause 53.06 does not apply: this may be necessary where alternative noise control requirements are already in place for a *noise sensitive residential use* through the planning scheme or Part 5.3, Division 4 of the *Environment Protection Regulations 2021*.
- areas or other venues to which clause 53.06 applies: for additional areas or venues that may warrant the same protection as defined venues. For example, a public hall or similar venue that is regularly used for the performance of live music.

### Entertainment venue noise regulations

Entertainment venue noise is regulated by Part 5.3, Division 4 of the *Environment Protection Regulations 2021* (the Regulations).

The Regulations are supported by the Environment Protection Authority's publication *1826.4: Noise limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues* (May, 2021) (the Noise Protocol).

The Noise Protocol prescribes the methodology for assessing effective noise levels to determine unreasonable noise under the Regulations. Part II of the Noise Protocol applies to entertainment venues and events.

### The agent of change principle

The agent of change principle has been introduced into clause 53.06 to manage the relationship between live music venues and residential uses.

In planning, the agent of change principle assigns responsibility for noise attenuation measures to the 'agent of change' – a new use or development that is introduced into an existing environment.

In practical terms this means that if a new or an existing live music venue seeks to establish or expand, they will be responsible for attenuating any noise effects that are caused by that change on nearby residential properties.

Similarly, a new residential development close to an existing live music venue will be responsible for noise attenuation of its building to protect future residents from the live music venue.

This does not mean however that any other person living or working in an area is free of any responsibility for noise management.

Everyone has a role in noise management, including existing permit holders and live music entertainment venues who must ensure they comply with the Regulations and any relevant permits or other obligations.

### Information to be submitted with an application

Clause 53.06-3 sets out the requirements for noise:

- A permit application for a *live music entertainment venue* must be designed, constructed and managed to minimise noise emissions from the premises and provide noise control measures that will protect a *noise sensitive residential use* within 50 metres of the venue.
- A permit application for a *noise sensitive residential use* must be designed and constructed to include noise control measures that will reduce noise levels from any:
  - indoor *live music entertainment venue* (including an outdoor space of a substantially indoor venue) to below the noise limits specified in the Regulations

- outdoor *live music entertainment venue* (a public premises where music is played in the open air, such as a major sports and recreation facility) to below 45 dB(A) (a-weighted decibel), assessed as an  $L_{eq}$  (Equivalent Continuous Sound Level) over 15 minutes.

A permit application must be accompanied by the information required in clause 53.06-4 or any other information required by the council.

### Meeting the requirements

Normally, the requirements of clause 53.06-3 must be met. However, a council may reduce or waive these requirements if it is satisfied that an alternative measure meets the purpose of the clause.

In some instances, the most practical and effective outcome will involve treatment to both the noise making and noise receiving premises.

This allows for alternative approaches such as a residential developer improving the noise attenuation in the venue as an alternative to, or in combination with, attenuation measures in the proposed residential development. For example, this may be more cost effective than undertaking noise attenuation of multiple new dwellings in some situations.

It also provides for a residential or venue developer to implement established building and urban design techniques for noise attenuation without commissioning a detailed acoustic assessment, where the council considers this approach is warranted.

Some techniques used to address music noise can be easy to achieve and be low-cost. These measures can also result in other benefits. For example, installing insulation, sealing draughts and effective window coverings will not only help address noise, but will also reduce the need for supplementary cooling or heating and will provide passive energy gains. Attenuating against music noise will also help address other noise nuisances such as waste collection and traffic noise.

While the Regulations do not prescribe noise limits for noise associated with the arrival and departure of people attending a premises (see Regulation 124), a venue applicant should still identify how they propose to manage the behaviour of patrons coming and going from the venue so that nuisance impacts on neighbours are minimised. This information can be explained in a venue management plan.

### ATTENUATING A LIVE MUSIC VENUE

Measures that may help meet the requirements of clause 53.06 include:

- implementing a venue management plan focussed on minimising noise
- positioning entertainment rooms, the stage and loudspeakers to increase the distance between the noise source and any *noise sensitive residential use*
- orienting the stage or loudspeakers of external entertainment spaces to direct noise away from any *noise sensitive residential use*
- incorporating measures such as acoustic glazing, wall, ceiling and roof construction
- sealing gaps, joints and service penetrations and using acoustic insulation
- using setbacks and acoustic fencing
- limiting noise leakage by using vestibule / sound-lock entry arrangements
- installing a sound limiter to cap the volume of any amplified sound to an appropriate level.

While all the above measures will be helpful, some may have a limited effect on noise emissions in different circumstances. An acoustic engineer can advise on measures that can achieve the requirements of clause 53.06.

### ATTENUATING A NOISE SENSITIVE RESIDENTIAL USE

Measures that may help meet the requirements of clause 53.06 include:

- locating noise-sensitive rooms (particularly bedrooms) away from significant noise exposure by using spaces like walkways, laundries and storage as a buffer
- using acoustic glazing, wall, ceiling and roof construction
- sealing gaps, joints and service penetrations and using acoustic insulation
- using setbacks and acoustic fencing
- using a noise masking system (for example by relying on heating, ventilation or air-conditioning noise).



### Understanding the noise limits specified in clause 53.06-3

The *Australian Standard for Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors – AS 2107:2000 (AS2107)* recommends design noise levels such as 35 to 40dBAL<sub>eq</sub> for bedrooms in dwellings near major roads. Noise levels typically ranging from 35dBAL<sub>eq</sub> to 45dBAL<sub>eq</sub> are often specified in local planning scheme provisions and permit conditions for new dwellings in locations with a high level of external noise. While these measures may be suitable in some environments, they do not properly address music noise.

The AS2107 standard is primarily intended to be applied to steady noise sources, such as road traffic and mechanical plant noise. This standardised measure does not acknowledge that music noise presents variable noise characteristics – specifically low frequency and rhythmic qualities that can interrupt sleep.

The noise standards in the Regulations were developed specifically to protect residents from unreasonable and aggravated noise from entertainment venues. The Regulations recognise that music noise can have a more significant effect on residents than other urban noises.

It prescribes separate noise limits for the day and evening period and for the night period for an indoor venue, taking into consideration the particular characteristics of music noise which need to be assessed differently to more broadband noise sources. The standards in clause 53.06-3 for a *noise sensitive residential use* operate together with the Part II – A provisions of the Noise Protocol to protect the amenity of residents while inside, when windows and external doors are closed.

Note that aggravated noise is prohibited by the *Environment Protection Act 2017*, carrying significantly higher penalties than unreasonable noise. These terms are defined in regulations 125 and 127 for indoor entertainment venues and regulations 130 and 131 for outdoor entertainment venues.

### Is a professional acoustic assessment always required?

A report from a suitably qualified acoustic engineer will normally be required with an application. The report should detail recommended mechanisms to mitigate noise impacts and should verify that the proposed mitigation measures will be satisfactory to meet clause 53.06-3.

To avoid imposing the cost burden of a professional acoustic assessment on small residential developments or for minor changes to an existing live music venue, a council could also consider requiring established design measures for acoustic attenuation, such as locating bedrooms of a new dwelling away from a low-impact venue.

An acoustic report is not necessary if the context of the site, surrounds and proposal present clear options for straightforward remedies and a professional assessment and report is unlikely to improve outcomes.

### Venue compliance with EPA regulations

Clause 53.06 requires a new residential use to be satisfactorily protected from unreasonable levels of live music and entertainment noise. It is therefore unnecessary to consider whether existing noise emissions from a *live music entertainment venue* comply with the Regulations. This is a matter to be determined by a separate process through enforcement action or other proceeding.

This is the case regardless of whether an existing *noise sensitive residential use* in the area has taken limited or no measures to protect themselves from noise emissions of an existing venue.

Any information supporting an application for a new residential use should address the existing noise impact on the proposed residential use.

### Enforcement of noise complaints

Neighbours and *live music entertainment venues* should be encouraged to cooperatively solve noise issues by communicating directly to achieve a balanced solution. A collaborative approach is often the most effective and quickest means of solving noise conflict.

Where the Regulations or relevant planning permit conditions are breached, and a workable solution is not established between parties, a council may take formal enforcement action to achieve compliance.



A decision under clause 53.06 is based on the requirements set out in clause 53.06-3. Enforcement will therefore generally be to ensure compliance with conditions specified in the planning permit.

Despite clause 53.06, venues must still meet specified noise limits in the Regulations. Regardless of the establishment of a *new noise sensitive residential development*, a venue that is in breach of the Regulations can still be subject to separate enforcement action.

Enforcement action against noise complaints can be taken by:

- Local government planning enforcement officers, who can enforce against planning permit conditions pursuant to the *Planning and Environment Act 1987*.
- EPA officers, who can issue a remedial notice under section 271 or 272 of the *Environment Protection Act 2017* for breach of the Regulations.
- Liquor licence compliance inspectors, who can enforce liquor licence conditions under the *Liquor Control Reform Act 1998*.
- Police officers, who can enforce liquor licence conditions, as well as direct an entertainment venue to act to abate noise under section 169 of the *Environment Protection Act 2017*.
- Local government environmental health officers, who can act under the nuisance provisions of the *Public Health and Wellbeing Act 2008*.

## Some useful contacts

### Local Government

Find contact details for all Victorian councils at: [localgovernment.vic.gov.au](http://localgovernment.vic.gov.au)

### Environment Protection Authority (EPA) Victoria

[epa.vic.gov.au](http://epa.vic.gov.au)

### Department of Environment, Land, Water and Planning (DELWP) planning

[planning.vic.gov.au](http://planning.vic.gov.au)

### Victorian Commission for Gambling and Liquor Regulation (VCGLR)

[vcglr.vic.gov.au](http://vcglr.vic.gov.au)

### Music Victoria

[musicvictoria.com.au](http://musicvictoria.com.au)

### Association of Australian Acoustical Consultants

[aaac.org.au](http://aaac.org.au)



## Writing permit conditions

Conditions to attenuate noise in buildings are best established on a case-by-case basis, taking into account the site context and surrounding land uses. A suitably qualified acoustic engineer can provide advice to inform the drafting of effective noise attenuation conditions. In some instances, local circumstances may warrant conditions requiring verification testing by a suitably qualified acoustic engineer at a specified stage.

However, the following model conditions are useful in addressing noise issues that are typically generated from a *live music entertainment venue* or for a *noise sensitive residential use* near a *live music entertainment venue*.

### Permit conditions for a live music entertainment venue

#### Compliance with noise regulations

Noise levels emanating from the premises must not exceed those required to be met under *the Regulations*.

A report from a suitably qualified acoustic engineer should set out appropriate noise mitigation measures that are relevant to the subject site and its surrounds. These may include requirements for airlock entrances, sound limiters and other building design measures that can be translated as planning permit conditions. Further examples of permit conditions include:

#### Acoustic report

The use must not detrimentally affect the amenity of the area or the amenity of persons living in proximity to the site by reason of the emission of noise. The responsible authority may at any time require an acoustic report, prepared by a suitably qualified acoustic engineer. The report must be to the satisfaction of the responsible authority and identify all potential noise sources and noise attenuation work required to address any noise issues to comply with Part 5.3, Division 4 of the *Environment Protection Regulations 2021*. The recommendations of the report must be implemented and complied with to the satisfaction of the responsible authority.

The above condition can be used if an acoustic report is not considered essential for the initial assessment.

#### Acoustic report – required before use or development commences

Before the use and/or development commences, an acoustic report must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the responsible authority. When approved, the acoustic report will be endorsed and will form part of this permit. The acoustic report must assess the noise impact resulting from the proposed use and/or development and must make recommendations to limit the noise impacts in accordance with Part 5.3, Division 4 of the *Environment Protection Regulations 2021* or any other requirement to the satisfaction of the responsible authority.

The provisions, recommendations and requirements of the endorsed acoustic report must be implemented and complied with to the satisfaction of the responsible authority.

The above condition can be used to demonstrate that the constructed development meets the approval requirement.

#### Management details sign

Prior to the commencement of the use, a clearly legible sign must be placed directly outside the entrance to the premises, providing a telephone number for contacting the designated manager at all hours during which the premises is operating. The design, lighting and maintenance of the sign must be to the satisfaction of the responsible authority.

#### Window and door closure

Any external openable walls, windows, glazing systems or doors shown on the endorsed plans must be closed at [insert time] except for access and egress to the satisfaction of the responsible authority.

#### Timeframe for music / entertainment

Amplified music or entertainment (other than background music or entertainment played at background music levels) must cease by [insert time] to the satisfaction of the responsible authority.



### Background music

Except with the prior written consent of the responsible authority, the provision of music and entertainment on the land must be at a background noise level.

Background music only is permitted in the [insert room name] to the satisfaction of the responsible authority.

A condition specifying background music levels would typically be used in situations where music would be ancillary to the main use. It can also be used for a room in a venue that is near a *noise sensitive residential use*, to help buffer impacts from a main performance room of a *live music entertainment venue*.

An accepted measure of what constitutes 'background music' is that the music is played at a level that enables patrons to conduct a conversation at a distance of 600mm without having to raise their voices to a substantial degree. The meaning of background music is discussed in detail in the VCAT decision *Whiting v Hosier Bar Pty Ltd (Occupational and Business)* [2005] VCAT 814.

### Noise limiter

Prior to commencement of the use, a noise limiter must be installed on the land. The noise limiter must:

- be set at a level specified by a qualified acoustic engineer
- ensure the emission of noise from amplified music does not exceed the levels specified in Part 5.3, Division 4 of the *Environment Protection Regulations 2021*
- be maintained and operated at all times music is played

be to the satisfaction of the responsible authority.

Noise limiters that employ a power cut-off silencing device are not necessary, as a properly programmed noise limiter should ensure that noise emissions achieve compliance with the Regulations.

### No sound amplification

No external sound amplification equipment or loudspeakers may be used for the purpose of announcement, broadcast, playing of music or similar purpose, to the satisfaction of the responsible authority.

### No external speakers

Speakers external to the building must not be erected or used without the prior written consent of the responsible authority.

Other conditions that may be useful in the context of a *live music entertainment venue* include conditions seeking to address patron behaviour outside a premises and potential noise caused by those patrons arriving and leaving the venue. This could be set out in a venue management plan. Separately, a liquor licence will address matters of community safety, setting out obligations such as trading hours, responsible serving of alcohol and crowd control.

Any conditions of a planning permit should, as far as possible, be consistent and complementary to the conditions of a liquor licence.

### Permit conditions for a noise sensitive residential use

When drafting permit conditions for a *noise sensitive residential use* near a *live music entertainment venue*, it is important to note that:

- Specifying the regulated noise limits in a permit for a *noise sensitive residential use* does not preclude a venue from having to comply with the Regulations. Compliance with Part 5.3, Division 4 of the Regulations remains mandatory for all public premises emitting music noise.
- A compliant venue will provide a reasonable balance between the requirements of the noise maker and the nearby *noise sensitive residential use*.
- While a *noise sensitive residential use* may be built with a suitable level of noise protection, opening windows may allow greater levels of music noise to enter. For this reason, clause 53.06 and the Noise Protocol allow for a noise measurement within a habitable room of a *noise sensitive residential use* with windows and doors closed.



- A balance needs to be struck between attenuating noise and ventilating a habitable room. Living near a *live music entertainment venue* means that both ventilation and noise attenuation at optimal levels may not be capable of being achieved at all times.
- Measuring noise levels indoors is not always practicable. An alternative to measuring inside the *noise sensitive residential use* is to measure immediately outside and account for the noise attenuation of the noise sensitive residential use. To use this assessment method, details of the noise reduction performance of the *noise sensitive residential use* must be documented in the application or the planning permit. This measurement approach is described in Noise Protocol clauses 106, 129 and 130 and sections 5.3.4 and 6.3.4 of *Technical Guide: Measuring and Analysing Industry Noise and Music Noise* (EPA, 1997).
- It is appropriate to assess the music noise outdoors when attenuation measures are designed to reduce noise levels in outdoor areas of the noise sensitive residential use, for example by setback distances, acoustic fencing, or the residential developer has contributed to improved noise attenuation of the venue. Outdoor measurements may also be made when the noise attenuation of the *noise sensitive residential use* is based on specific outdoor levels of music noise. This allows an assessment of whether building façade of the noise sensitive residential use is performing as designed or the venue has increased the level of music noise emitted.
- Addressing low frequency noise can be challenging, as individual contexts will present different noise resonance conditions. The advice of an acoustic engineer will usually be needed to establish the most appropriate requirements for a development proposal.

In keeping with clause 53.06, council may specify a standard noise limit for a *noise sensitive residential use* near a *live music entertainment venue*. The limit can focus on habitable rooms, allowing non-habitable rooms such as walkways and laundries to be less attenuated. An example permit condition could read:

### Noise attenuation of habitable rooms

Habitable rooms 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 the Environment Protection Regulations and Part II - A of the Noise Protocol to the satisfaction of the responsible authority.

For the purpose of assessing whether the above noise standard is met, the noise measurement point may be located inside a habitable room with windows and doors closed consistent with Part II - A of the Noise Protocol.

Where a less stringent approach is being used for a *noise sensitive residential use* near a low-impact *live music entertainment venue* (such as a venue with daytime performances, background music only, performances of non-amplified music only or a modern, highly attenuated venue) the following permit condition may be sufficient:

### Noise attenuation to protect sleep

The development must be designed and constructed to include noise attenuation measures capable of protecting occupants from levels of music noise that may affect sleep in the night period in habitable rooms with windows and external doors closed, to the satisfaction of the responsible authority.

To supplement the above condition, the council may consider including a permit condition that provides for a later requirement for an acoustic report and remedial action. This would help address any situation where an occupant complains about music noise from an unchanged, pre-existing *live music entertainment venue*, recognising that the new *noise sensitive residential use* is the agent of change and is therefore responsible for addressing the noise issue.

### Request for acoustic report

The responsible authority may at any time require an acoustic report, prepared by a suitably qualified acoustic engineer. The report must be to the satisfaction of the responsible authority and identify all potential noise sources and noise attenuation work required to address any noise issues to comply with Part 5.3, Division 4 of the *Environment Protection Regulations 2021*. The recommendations of the report must be implemented and complied with to the satisfaction of the responsible authority.





The building and urban design techniques suggested for *noise sensitive residential uses* in this practice note, could also inform the drafting of relevant permit conditions. For example:

### Glazing, doors and ventilation

The development must include external glazing and doors and an air conditioning or ventilation system designed by a suitably qualified acoustic engineer to the satisfaction of the responsible authority.

A high standard of noise attenuation control can be obtained with:

- External walls - minimum of 100 mm concrete precast panels, and
- Glazing - double glazing consisting of a minimum of 8mm laminated glass and incorporating a minimum of 200 mm air gap between the glass panes.

The examples proposed in this practice note are provided as a guide only. Councils may have their own standard permit conditions and an acoustic engineer may suggest further alternatives.

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