

# COOL LITTLE CAPITAL

A centre of government action plan for the development of music and cultural practice in the Australian Capital Territory



Super Best Friends by Martin Ollman

Presented to the ACT Government by

- MusicACT [www.musicact.com.au](http://www.musicact.com.au)
- Live Music Office [www.livemusicoffice.com.au](http://www.livemusicoffice.com.au)



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Accompanying reports -

*Low Risk Arts and Cultural Venues - A NSW Case Study of Live Performance for National Application.*

*Live Music Venues and the Building Code of Australia Issues Paper.*



Chanel Cole by Katherine Griffiths



Smells Like Centenary Spirit by Martin Ollman



Bonnie McArthur, Barbara Jane Gilby and Canberra Symphony Orchestra ensemble by Alex Bell Moffatt

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# 1. EXECUTIVE SUMMARY

The Canberra music scene comprises genuine diversity and artists of capacity. Musicians are vital cultural practitioners that help this city develop character, liveability, population and visitation. Urban planners often talk about how to create a sense of community and vibrancy, but all too often this neglects the central role that music and cultural events play in creating our cities – a throng of retail shoppers remains a gathering of individuals, whilst the people attending music and other cultural events are an audience, a community. A robust live music scene indicates a strong local culture, yet Canberra's live music is too often forced to the margins by a lack of understanding of what is required for it to grow and to thrive.

Although there are opportunities for musicians to perform, artists, event producers and venues face significant challenges from red tape and poor alignment of regulation.

Important issues facing the Canberra music scene have been raised across a number of reviews, and whilst recent investigations into the issues facing the Canberra cultural scene have identified the problems, they have been less direct about indicating solutions.

Key issues include:

- Zoning and planning controls
- Environmental protection regulations and associated noise limits
- Liquor licensing and application process
- Building code classification and change of use process
- Lack of suitable performance venues between 200-400 capacity
- Events approval process
- ACT Government bureaucracy's culture
- Lack of policy for live music in the ACT Arts Policy

Many of the day-to-day problems being experienced by the ACT music scene involve regulation:

- Liquor licensing and planning red tape has been a serious impediment as demonstrated by the experience of the Chop Shop and the Art, Not Apart festival.
- The ACT Government in 2011 agreed to recommendations to review noise regulations but no changes have been implemented to date.
- Land use conflict impacts such as in the NewActon Cultural Precinct and the Kingston Foreshore.
- Access to suitable venues continues to be a concern for community music organisations, touring acts and larger ensembles.

The creation of Access Canberra to simplify the creation of a business or event is a very important development and ingredient for better regulation – and early signs show it is working very well. Access Canberra however, is principally an operational agency and it is not clear to what extent any evaluation of process will generate strategic policy and momentum for regulatory change.

Currently Victoria, South Australia and NSW are leading the way in policy development in these areas. There are important precedents in these jurisdictions that are working through identified issues with promising signs of workable solutions to these complex problems. There is an opportunity for the ACT to take up best practice from other jurisdictions and establish a regulatory environment that supports Canberra's cultural aspirations and responds to changing business practices.

*Cool Little Capital* presents a strategic framework for the development of the ACT music sector and is designed to inform the development of an ACT Live Music Policy for the ACT Government. This report identifies short, medium and long term actions that need to be taken to ensure live music, as well as small to medium arts scene and live cultural events, play an important part in a diverse and dynamic ACT.

The report has been developed through wide engagement across the ACT music sector in reference to local issues with national solutions.

The ACT is the only state or territory that does not fund a peak body for music and this is reflected in the current state of the industry here: passionate but behind the times. This report was written in partnership with the Live Music Office by MusicACT volunteers on Sunday afternoons and late at night throughout 2015. The ACT Music Industry needs better regulation *and* a strong peak body to create a Cool Little Capital.

This report is delivered to the ACT Government with the intention that it be a working, consultative document that will be added to and refined. Our intention is to make the report available to the music community as soon as it has been delivered to the Government and to undertake an ongoing series of public forums to inform further work.

*The recommendations of this report are:*

1. *Develop an overarching ACT Government Live Music Policy.*
2. *Establish an ACT Live Music Regulation Roundtable to address the longer-term regulatory issues impacting on the cultural development of the ACT, including events approvals process and alignment of the operation of Liquor, Planning and Environmental Protection regulations and process.*
3. *Amend the objectives of the Liquor Act s9(b) to include a reference to the live music, arts and entertainment sector.*
4. *Introduce a liquor permit scheme where a single applicant can present a number of creative events under a multi-location limited permit.*
5. *Exempt non-profit community organisations from having to obtain a permit to sell liquor at up to six small fundraising events per year.*
6. *Introduce a Building Code variation and associated planning provision to ensure that a) venues where live performance is ancillary to hospitality industry consent and b) premises that comply within certain low risk provisions are not assessed as an assembly building under the Building Code of Australia / National Construction Code.*
7. *Access Canberra (or an ACT Live Music Regulation Roundtable) to investigate policy development for the reuse of buildings for creative use underway from the City of Sydney and the South Australian Department of Planning, Transport and Infrastructure.*
8. *Access Canberra (or an ACT Live Music Regulation Roundtable) to investigate policy development from the Sydney Fringe Festival and the City of Sydney for pop up venues and low risk entertainment use for the purposes of an ACT pilot.*
9. *Access Canberra to consider allocating a duty planner to provide technical support for the creative sector and give guidance in navigating building codes, planning controls and community engagement for the reuse of buildings for live music and creative use.*
10. *Ensure conveyancing references that acknowledge arts and cultural land use and entertainment hubs in evening economy areas.*
11. *Develop standard planning provisions for residential and mixed use development to attenuate external noise informed by precedents in Wollongong, NSW residential apartment design guidelines, the Central Sydney DCP, as well as the Fortitude Valley Music Harmony Plan.*
12. *That consideration is given to the effectiveness and by association introduction of Order of Occupancy principles to s.179 of the Liquor Act 2010 in the context of the broader regulatory framework through a coordinated dialogue with Planning and EPA agencies.*
13. *That consideration is given to the introduction of Agent of Change provisions in the Territory Plan, either as a territory wide control or as a geographically finite overlay to protect designated arts and cultural land use.*
14. *Review the Territory Plan to support places of assembly for live music, arts and entertainment use within the General Industrial Zone approved development planning controls for Mitchell, Fyshwick and Hume, and to investigate arts and cultural land use controls for other less developed areas in the Territory Plan.*
15. *Align planning provisions and EPA for residential and mixed-use developments to achieve the policy objectives of activated cultural use within identified evening economy areas.*

16. *Introduce the capacity for voluntary planning agreements for cultural development in the ACT informed by s.93F of the NSW Environmental Planning and Assessment Act 1979.*
17. *Consideration is given to the appropriateness of the current noise levels in established town centres and their capacity to deliver vibrant and sustainable places for arts and cultural participation with a view to raising limits within established night economy areas.*
18. *Adjust the point of measurement for noise assessment from an external boundary to an internal reading at noise sensitive premises within identified evening economy zones, to align EPA process with primary land use aspirations and to guide planning controls.*
19. *Review the operation of and application process for Environmental Authorisations for live music events to better support the development of cultural events, taking into consideration a) the appropriateness of blanket 11pm closure; b) increasing sound limits in certain circumstances c) relativising sound limits to the environment; and d) providing for the capacity to exempt the requirement of costly sound measurement where it can be demonstrated to be unnecessary.*
20. *artsACT to support and resource an ongoing ACT Music Forum to support the development of the music sector in the ACT.*
21. *artsACT to work with music and other cultural organisations to develop policy to support enterprise development, through business and marketing skills development in the small to medium music and cultural events sector in the ACT.*
22. *That funding for a peak music body and other arts industry service organisations also include a contribution from business development as well as through arts funding. Like the Music Development Office in South Australia, this will reflect the two components needed for music sector development.*
23. *Align the Arts Hubs Master Plan to ensure that the music community has affordable access to all publicly owned venues.*
24. *Support the availability of a 300-400 seat recital hall for classical music, and a 200-400 capacity venue for contemporary music.*
25. *That the Government provide seed funding of \$40,000 per year for three years to support a rebranded CBR Music Awards to better support the development of the music sector in the ACT.*

## Acronyms

ACTPLA	Planning and Land Authority within the ACT Environment and Sustainable Development Directorate
EPA	ACT Environment Protection Authority
ESA	Emergency Services Authority
ESDD	ACT Environment and Sustainable Development Directorate
LDA	Land Development Authority
NCC	National Construction Code of Australia (Formerly Building Code of Australia or BCA)
NCA	National Capital Authority
P&D	Act Planning and Development Act 2007
TAMS	ACT Territory and Municipal Services Directorate

## 2. INTRODUCTION

Canberra has an established and growing live music sector and increasing cultural industries.

The current groundswell in national and international media on Canberra's liveability and 'cool' factor highlights an increasingly vibrant local culture. This culture has not developed by accident. It is the latest manifestation of its urban development and has taken energy, vision and a willingness to change the existing landscape for it to flourish.

This Live Music Strategy was developed by MusicACT and the Live Music Office at the request of the ACT Deputy Chief Minister, Attorney-General and Minister for the Environment, Simon Corbell MLA. It should be considered at a whole-of-government level, to coordinate areas that are the responsibility of several directorates and agencies (see 6. Summary of Issues, below). For this reason the response to this report needs to come from the centre of Government.

Shortly after Minister Corbell's request, the ACT Legislative Assembly passed a motion moved by Minister Rattenbury, as amended:

That this Assembly:

(1) notes that:

- (a) live music and events are an integral part of our culture and essential for our increasingly vibrant and culturally diverse community;
- (b) the Legislative Assembly inquired into live community events in 2009, and there are still opportunities to implement many of the recommendations; and
- (c) as the density of our city and town centres continues to increase, music venues are facing complaints from local residents. We have even had recent examples where daytime jazz music has been prevented within what has become known as a cultural precinct; and

(2) calls on the ACT Government to develop a policy and actions to support live events in our community, with consideration of:

- (a) identifying and designating particular areas as entertainment zones which would allow greater flexibility around noise levels;
  - (b) implementing the principle of order of occupancy, so that residents moving into areas with existing venues are not able to cause the closure of venues;
  - (c) revising building codes for residential developments in mixed use zones to require acoustic insulation; and
  - (d) review the impact of the Liquor Act on small venues and music events.
- (e) report back to the Assembly by the last sitting day in June 2015.

Minister Corbell, in speaking to the motion, noted the constructive discussions with MusicACT and the Live Music Office about the case for an overarching live music policy and the need for further discussion and consultation.

This report consists of a situation analysis, a number of relevant case studies, and discussion in detail of possible solutions to the key issues facing the sector with reference to recent developments and best practice in other jurisdictions. The length of the document and the coverage of issues across the purview of multiple ACT Government directorates is ample demonstration of the complexity of issues facing the music sector.

MusicACT represents and promotes Canberra's music culture. MusicACT aims to support all aspects of the music industry by providing advice, access to resources, information and professional development, and policy development and advocacy to government, businesses and the community.

Established in 2013, The Live Music Office works to increase opportunities for live music in Australia by identifying and advocating for better policy, regulation and strategy, and by providing best practice guidance to support audience and sector development.



### 3. COOL LITTLE CAPITAL ACTION PLAN OBJECTIVES

1. To provide a comprehensive assessment of the issues facing the live music sector and broader cultural events sector in the ACT.
2. To identify how ACT Government policy, programs, and regulatory frameworks impact these issues.
3. To provide examples of innovation and best practice in the live music sector and government regulation, policy and programs of other jurisdictions.
4. To inform ongoing consultation and discussion between the ACT Government, the music and broader cultural sectors, and relevant stakeholders such as the hospitality and tourism sectors and property developers.
5. To put forward a connected, forward looking live music strategy to address these issues and facilitate the development of a whole-of-government ACT Live Music Policy to support growth, innovation, job creation and skills development in the music sector in the Canberra Region.





## 4. BACKGROUND

MusicACT was formed in 2010 by a group of passionate music supporters who saw a gap in advocacy, promotion and development for live music. This led to creation of the ACT Music Awards in 2012 (repeated in 2013), the development of a Venue Directory with funding through artsACT, and regular consultations and representations on behalf of the music sector. Policy development has always been in view.

MusicACT supports and advocates for the development of all genres of music. While this report is primarily concerned with the popular live music sector, which is generally accepted to include rock, pop, jazz, blues, country and electronic dance music, many of the issues raised are applicable to other styles including classical, musical theatre and opera. Similarly the broader cultural and community events sector, which often include music, are also affected, and will be referenced as appropriate.

Since 2009 a number of important reviews and reports have been tabled that identify issues experienced by the live music sector in the ACT, as well as the broader arts and cultural sector and the associated issue of urban renewal. These include:

- 2009/10 Standing Committee On Planning, Public Works and Territory and Municipal Services Inquiry Into Live Community Events
- March 2010 Contemporary Music Inter-Departmental Committee (IDC)
- March 2010 Loxton Review Of The Arts In Canberra
- April 2011 ACT Planning and Land Authority (ACTPLA) Night time economy discussion paper
- *Transforming Canberra's City Centre*, Property Council of Australia and Canberra CBD Limited
- 2015 ACT Arts Policy Framework Review
- April 2015 ACT Noise Zone Review

Key findings and recommendations from these that are relevant to this study are outlined in **Appendix A**. Overall, the picture of the live music sector and issues affecting it can be summarised by the following findings drawn from these reports:

- Live music and other areas of arts activity, when working constructively and creatively with the hospitality industry and with Government, can encourage the growth of Canberra's evening economy.
- It is very difficult to survive as a full-time professional artist in Canberra, especially as a young or emerging artist.
- There is rigour in Government processes, but they are also often complex, slow, inflexible and unresponsive to the needs of the arts.
- There should be a greater awareness and connection of the arts to education, events, community, social, and economic development.
- There is a shortage of accessible mid-sized live music venues (For classical 300-400 capacity, contemporary music 200-400 capacity) in the ACT.
- The Government should review regulations, particularly of EPA and liquor licensing, to provide more flexibility for small and medium organisations and venues to run live events.

Further local commentary is provided by author Peter Dawson in his book *Creative Capital* which speaks to a future where Canberra embraces innovation and activating the latent potential of creative ACT residents, whilst cultural commentator and urban renewal advocate Marcus Westbury in his book *Creating Cities* investigates the same challenges identified in this report as universal issues for urban environments nationally and beyond.

## 5. ECONOMIC CONTRIBUTION OF THE LIVE MUSIC SECTOR

There has to date been no targeted research into the size and economic value of the live music sector in the ACT. The following data has been selected from a range of surveys and reports on arts employment and participation. The different methods used to collect the data make some of the correspondences between studies difficult to reconcile without specialist help and in places has been bolstered by anecdotal evidence.

The just-released study, [The Economic & Cultural Value of Live Music in Australia 2014](#), strongly supports the position that live music is a larger and more important part of the economy than standard industry statistical analysis suggests. This reinforces the widely held view that arts and cultural industries, as well as tourism, have been disadvantaged in terms of policy and program support as these industries are not separately recognised in the main classifications, and valued for their contribution to social capital and health and well-being.

The report, undertaken by a team led by the University of Tasmania (UTAS) and the Live Music Office in partnership with the City of Sydney, City of Melbourne and the South Australian Government, uses alternate but robust methodology, built on a significant platform of existing research, to calculate the social and economic value of the sector.

Most importantly, it finds that **for every dollar spent creating live music, three dollars are returned to the community**. When audiences attend live music, they also spend money on travel, hospitality comprising drink and food, accommodation, communications and merchandise. This provides clear evidence of the critical importance of live music overall to the hospitality and tourism sectors, as well as its much higher position overall in the relative sizes of industries than is shown by conventional industry statistics. Live music is also identified as being a source of regional competitive advantage, and providing 64,000 full and part-time jobs nationally.

Some highlights of report's data for live music in the ACT in 2014 are as follows:

Attendance (ticketed and free)	775,729
Ticket sales	\$8.9 million
Demand expenditure	\$46.4 million
Output impact	\$59.5 million
Gross Value Added	\$28.1 million
Employment FT	265
Employment PT	192

The employment and output figures are similar to our analysis of the ACT Government Economic Overview, and adds further weight to the position that the sector is significant enough to warrant dedicated cross-portfolio policy and program support.

The [Arts in Daily Life](#) report published by the Australia Council reports that in 2013, around 24 per cent of Canberrans were creative participants in a musical activity, the highest of any artform. That is a staggering 91,104 people. It should be noted that the vast majority of musicians in Canberra (as anywhere) are amateur or hobbyist, the latter earning small amounts for gigs cash in hand and often using the Australian Taxation Office hobbyist declaration. However, these small amounts add up. If even a quarter of these were hobbyists who earned just \$500 in a year that would amount to some \$11.4 million that is unlikely to be counted in Australian Bureau of Statistics Census data for the output of the sector.

The ACT Government recently published the very welcome [Economic Overview of the Arts in the ACT](#), which while not showing music as a discrete sector, can be analysed to draw some of the picture for live music. The data are mainly drawn from Australian Bureau of Statistics Census and other surveys, using the Arts Culture and Leisure Classification (ACLC).

The category for Performing Arts employment includes musicians, but is not broken down into art-forms, whilst other data in this report suggest it is reasonable to say that music probably accounts for about half the 440 persons giving performing arts as their main occupation. Similarly, music likely accounts for at least a third of the 220 odd employed in arts education (which would also include visual arts). The tiny music composition and publishing category (12, down 40% from 2006) reflects the limited opportunities for these specialties in Canberra: the presence of this classification separately could be quite misleading to the casual reader. We estimate therefore 305 persons whose primary occupation is music performers, teachers, composers and publishers.

Using the same approach on the output and value, we would arrive at \$27 million and \$11 million respectively, not counting the suggested \$11 million for hobbyists (which probably have a proportionately high added value factor as hobbyists would spend less on equipment and production). This would put the music sector alone ahead of some other non-arts industries in the ACT, and would likely increase the value add percentage and Location Quotient indicators for music in the ACT Government report.

The attendance figures appear to support these propositions, with popular music concerts the third highest in arts venue and event attendance after art galleries and museums. A large proportion of the attendances at these are from interstate, which could push popular music concerts above them in terms of local attendance. If combined with strong numbers for Classical music concerts and Musicals and Opera, music concert attendance easily surpasses attendances of the major cultural institutions including the National Gallery of Australia and the National Museum, and approaches that of cinema. The Economic Overview analysts appear to have overlooked this remarkable fact.

The output tables do not appear include music education, which appears in a later section and reports 2,232 creative arts students at university level at a contribution to the economy valued at \$45 million through fees. Music, alas, will have dropped significantly since 2012. The report unfortunately does not provide any figures on the vital contribution of the Canberra Institute of Technology's music industry program.

The ACLC classifications also do not include music retail, which is strong in the ACT, no doubt a reflection of the high participation rates. As Letts and Hoegh-Guldberg (2005) argued in a [report to the Cultural Ministers Statistical Working Group](#), music more than any other creative endeavour must be examined as an ecosystem to understand its size and importance.

For example: school music teachers are also usually performers; music retail workers are also usually performers. The education sector is an absolutely vital pillar of the music sector, providing many full time jobs and casual teaching that professional performers use to bolster their incomes. Community organisations like Music for Canberra provide at low cost extra training to our next generation of Canberra Symphony Orchestra players. ACT fetes and festivals wouldn't be the same without our brass and concert bands, and so on.

The report does acknowledge the importance of volunteers but does not give an estimate of its economic value. Importantly, the report articulates the case for the arts as an economic catalyst for innovation, growth and resilience. It unfortunately does not mention the clear benefit of the arts on health and wellbeing.



Suburban House Festival by Duncan Jake



John Mackey and Miroslav Bukovsky by Adam Thomas



## 6. 2014 MUSICACT / LIVE MUSIC OFFICE FORUMS

In July 2014 the first of two music sector forums convened by MusicACT and the Live Music Office were held in Canberra. An observation from the Live Music Office was that the Territory organisation reflected a wide range of musicians and genres – from orchestras and folk music, to youth, electronica and singer/songwriters.

In November 2014 a second MusicACT / Live Music Office Forum was held at the Chop Shop in Braddon. This event was curious in that a security guard was required for a 6pm meeting of 20 people around a table for the venue to comply with its liquor licence conditions. The venue was only open for the forum and MusicACT needed to pay for the guard to watch the meeting. This is a case in point of the inherent impracticality of the current regulatory framework for temporary venues, and further proof of the need for the forum.

Issues identified through sector consultation at the 2014 MusicACT Issues Forums included:

- The **impact of the changes to the ANU School of Music** are still being absorbed. Over a dozen of Canberra's best musicians and teachers were let go, many have left Canberra and the decreased flow of top-level students to study with them has changed the local musical landscape drastically. The Government needs policy for the music sector to support job creation through innovation and entrepreneurship.
- The **Live Music Office** has been working around the country with state and local governments to establish best practice in policy and regulation surrounding live music, with a growing body of work across built environment and cultural policy frameworks ([livemusicoffice.com.au](http://livemusicoffice.com.au)). The ACT has a solid policy framework on which to achieve excellent outcomes, if the will is there.
- There is concern at the length of time it has taken for action or advice to the public on the Government's response to the **Inquiry into Live Community Events**, especially in the area of noise regulation.
- The **City to the Lake** initiative is an unprecedented opportunity to establish supportive environments for live music, including cultural spaces, developer-supported activation strategies, defined entertainment precincts, sufficient sound attenuation and agent-of-change or order of occupancy principles.
- The MusicACT **Venue Directory** funded by a grant through artsACT is well used but needs updating.
- The **venues made available by the ACT Government**, including the arts hubs, are not able to be used to their full potential for live music because of regulatory issues and cost of use, compounded when requirements to use professional contractors are considered. (This situation is evolving due to the welcome renovations at the reopened Ainslie Arts Centre).
- There is strong interest in the idea of a **Regional Touring Network** to expand the music economy in Canberra and the surrounding region.
- **Noise regulation** in the ACT needs updating to take account of changing land and building use and community expectations, and consideration of principles such as order of occupancy and agent of change.
- **Liquor permits** are an essential factor of the live music sector and current rules urgently need to be reconsidered. Before the most recent review of liquor legislation, temporary permits could be obtained within a week. Current waiting times of up to three months and a 60 page form for the receipt of a permit stifle organic activity. To hold the Live Music Office/MusicACT Issues Forum at the Chop Shop, for example, required a special application (which can take up to 3 months) and hiring a security guard for a meeting of 20 people.
- **Liquor licensing** requirements are often not proportional to risk despite alterations to fees made in 2014. It was noted that NewActon's courtyard is operationally dysfunctional as multiple licensees share the space, inevitably meaning liquor laws are broken although there is no risk of major issues. This is a particular problem for the Art, Not Apart Festival and anywhere there are multiple licensees trying to work together. The Hamlet in Braddon was also heavily restricted from delivering its initial vision due to cumbersome conditions on liquor licences. Innovative spaces are being held back.
- The next **ACT Arts Policy Framework** (since reviewed) should include specific policy to support artistic enterprise development, audience development and marketing. The live music sector, like all arts activity, is also a small business sector: it needs a supportive regulatory regime and room to innovate to optimise the potential for grants programs to deliver the most value.
- Sounds Australia recommended **building further industry contacts** by inviting the Association of Artist Managers (AAM) and the Australian Music Industry Network (AMIN) to guide local artists and industry with workshops, sector and skills

development opportunities. MusicACT would also continue to run professional development workshops for musicians if it had sufficient resources.

- The **City of Sydney Live Music and Performance Action Plan** has passed 60 actions. These include making a range of community venues available for free use by students and teachers for teaching and rehearsal, matching grants to venues for acoustic auditing, GIG BUDDIES - that matches people with learning disabilities and autism with volunteers to attend gigs and, a shift in cultural grants from solely not-for-profits to also include project based private sector initiatives with community benefit. This model could easily be adapted for use in the ACT.

In August 2014, MusicACT wrote to the Minister for the Arts, Joy Burch MLA, and the then Treasurer and Minister for Economic Development, Andrew Barr MLA, outlining some of the issues raised at the first forum. MusicACT at this time also flagged a request for financial support for three years in order for the ACT Music Awards to continue and be made sustainable. This request was put again to the Chief Minister in May 2015.

Eerily echoing the findings of the previous reviews into the cultural, events and music sector, this list of issues and actions should to be progressed at a whole of government level if the music sector in the ACT is to reach its inherent potential, and contribute to the diversity, livability and vibrancy of what really can be - a very Cool Little Capital.

#### *Recommendation*

1. *That an overarching ACT Government Live Music Policy be developed*



## 7. CASE STUDIES

A number of recent live music initiatives have made the news in Canberra over the last twelve months as red tape and regulatory dysfunction brought profile events and venues to a standstill, creating a disproportionate burden on operators and diminishing confidence generally for the creative sector. Other significant initiatives have experienced considerable issues as they grapple with planning, licensing and approvals process and policy. The closure of the Canberra School of Music has also had an impact on the music ecosystem of the ACT.

In developing this report, MusicACT and the Live Music Office undertook a number of targeted consultations with some key individuals and organisations that have recently been affected by regulatory issues.

### 7.1 The Chop Shop

Young creative Canberra entrepreneurs Pat Rose and Sancho Murphy saw potential in a vacant warehouse in Braddon adjacent to the Lonsdale Street Traders and were given a 5-month window to transform the space for creative use.

The initial proposal was for an intended use for street art, skate ramps, film screenings and live music supported by a temporary liquor permit for 2-3 nights per week, with a venue capacity of 167. The project was funded through a successful Kickstarter campaign, personal credit cards and philanthropy.

The initial advice from a private certifier was that the change of use for the premises did not require 9b BCA theatre level building compliance and the venue operators commenced establishing the Chop Shop, however a contradictory and overriding interpretation was subsequently submitted by ACTPLA.

The initiative ground to a halt as the change of use activated burdensome BCA provisions and associated liquor licensing complications. These compounded delays, red tape and cost.

With executive intervention and assistance from the ACT Government the Chop Shop was eventually able to navigate the complexities of the planning laws and licensing process and finally open in September 2014 for four months. During the negotiations senior ACT Government officials indicated that the lessons from this case would be considered in future policy development.

### 7.2 Transit Bar

Transit Bar has been the leading venue for live bands in the ACT in recent years, especially mid-level touring acts from Australia and abroad. It is also one of few venues to cater to hip-hop and touring DJs that do not fit the commercial nightclub scene. Despite this success, the business has been deeply affected by noise and licensing issues and has been forced to cut its trading hours substantially, placing its long-term viability in doubt.

Transit has built on the live music tradition of the venue's earlier incarnations as Church Bar and Aree Bar, when the area was a thriving live music precinct in tandem with the since-closed Toast, on the other side of the Waldorf Hotel. The construction of the Waldorf Hotel is an example of where Canberra's regulatory framework is not supportive and weighted against entertainment venues. This is further detailed in the Toast case study below.

In combination with the opening of the Youth Hostel upstairs and increased security and liquor license costs, Transit has been forced to make the decision to end music on most nights at midnight, despite having a 4am licence. As with most live music venues in Canberra, Transit has an exemplary record with regard to a lack of alcohol related violence. Since the last round of Liquor Act changes, the significantly increased costs of licensing and security after midnight has been clearly unfair and unwarranted for such venues. They are being penalized for the sins of larger venues who can absorb such costs through sheer volume of liquor sales. Blanket licensing policy that fails to reflect business metrics of entertainment types and operating history has the very real potential to deliver a perverse result, as has been identified from the CBD plan of management and lockouts in the City of Sydney, where policy designed to reduce consumption results in businesses shifting entertainment presentation away from live music in order to sell more alcohol in shorter opening hours.

Transit Bar has also put forward a number of observations that highlight lack of alignment in regulation, resulting in impractical outcomes. For example, the requirement for smokers to be more than five metres away from the door places them outside the venue's lease line and therefore outside the venue security's jurisdiction or ability to control.



Restrictions on liquor discounting in venues has all but ended the once thriving Thursday night student crowds for live music in Civic – not, they point out, because Transit was ever offering 2 for 1 drinks as was readily available in the immediate area, but because the absence of cheaper drinks has resulted in students staying home or increased pre-loading.

### 7.3 Toast

The legendary Toast was located on the other side of the Waldorf Hotel from Transit and is a classic case of the kind of regulatory failure that has contributed to the national groundswell of action to save live music venues and the establishment of the Live Music Office.

The Waldorf was constructed without double-glazing in a busy central business area, which had been for many years a locale for live music (see Transit Bar, above). However, the regulatory regime means that in the case of land use conflict, the onus falls solely on the proprietor of any nearby business that is making noise.

Toast was granted a restaurant café license to present live music and to operate until 4am, and opened in 2001. The venue operated for about a year before complaints began to emanate from the Waldorf, which began to send letters through the Liquor Board. The complaints were primarily concerned with noise from people outside the venue, rather than the music. The venue became subject to frequent inspections by liquor licensing inspectors and monitoring by the Environmental Protection Authority.

The proprietor of Toast went to considerable effort and expense to try and rectify the issue by making modifications to the venue, including moving the stage and amplification to direct sound away from The Waldorf, lifting speakers off the floor and installing acoustic foam, curtains and building alcoves at entrances to trap sound.

Despite only ever once being found to exceed the sound limits, Toast was charged on multiple occasions by the Liquor Board with causing undue disturbance or causing a loss of amenity. In most cases these charges were dismissed at the tribunal due to lack of evidence. After six years, the proprietor was worn down by the process and one of Canberra's finest music venues was closed.

This case highlights again the effects of aspects of liquor regulation and poor regulatory alignment. Despite the venue complying with its noise limits, it was continually charged on the basis of circumstances of which it could exert no control. The location of the building over a covered road meant that the ample forecourt outside Toast was not able to be utilised as an outdoor seating area and thereby subject to control by Toast's security. It is almost impossible for small venues to be able to obtain a license for an outdoor smoking area, meaning that patrons will spill over into uncontrolled spaces.

### 7.4 NewActon Cultural Precinct

Land use conflict broke out in the NewActon Precinct in November 2014 as small-scale live music at 5:30pm on a Friday brought a very small representation of residents in the mixed-use precinct to contact the EPA about adverse noise. Venue programming of jazz, funk and electronic music motivated the complainant living within the entertainment precinct to make formal representation that 5:30pm music was 'breaking the law'.

The resident was factually correct: the music was fluctuating between 55dBA, though 60 dBA on the outside balustrade of the resident's balcony. The limit in NewActon is 55dBA and 60dBA across the road (Edinburgh Avenue). Even a saxophone was a problem with the changeable wind and regardless of the amenable nature of the jazz, the time of day, and location in a vibrant precinct where people actively pursue cultural practice such as music within what was designated and marketed as an entertainment precinct, the music was breaking the law and the resident had the power to force its cessation.

None of these contextual elements in what is a designated entertainment precinct were taken into consideration in this important case study, of how EPA process and a lack of alignment with residential building controls such as acoustic privacy provisions failed the land use aspiration in the planning objective to provide for an entertainment precinct.

*For anyone not familiar with what a 55dBA / 60dBA level is like, we encourage you to investigate smart-phone apps or online resources and measure for yourself ambient, speaking and music sound as a reference for the NewActon entertainment precinct case study.*

## 7.5 Kingston Foreshore

Land use conflict has also been experienced at the Kingston Foreshore, where where licensed venues on the ground level co-exist with residential apartments immediately above. Restaurants along the foreshore have found themselves involved in amenity disputes, with intimate live entertainment venue the Rum Bar and sports bar The Dock all having fractious interactions with residents directly above.

The Kingston Section 49 master plan tables a vision for arts and cultural practice to live and work alongside commercial development, but the question should be asked: how supportive has the existing development been for mixed use evening economy in providing jobs and opportunities for musicians and creating a dynamic and interesting living environment?

## 7.6 Art, Not Apart Festival

### Access Canberra

Art, Not Apart festival was one of the initial events supported by Access Canberra. The relationship enabled significant streamlining of regulatory process and access to knowledge about complex compliance and legislation. Art, Not Apart management believe the festival was vastly improved by working with Access Canberra.

Festival management have given a list of recommendations on how Access Canberra might be more supportive for future events, and suggested Access Canberra develop and analyse a big picture timeline of what large events need to do to comply with ACT, NCA and other legislation. This would have made the process clearer and easier to prepare for. It would also help the government see, for itself, where double-ups, inconsistencies and overregulation exist. Specific things to come from this process might include:

- Identifying forms from different agencies asking the same questions. Integration of these documents, perhaps through an online checklist, would prevent doubling up and help higher-level officials understand what overlaps.
- The creation of a logical order to the process of approvals.
- The reconsideration of documentation and compliance costs so that they become proportional to risk. The festival witnessed a disconnection between the compliance requirements of bureaucrats and the costs of these expectations. Some officials were oblivious to the costs of their compliance requirements and the realities of running events. Some requirements seemed unnecessary and wildly expensive (specifically noise monitoring, life-guard requirements and security for the provision of liquor by the lake). This also raised questions about prudent spending and fiscal responsibility for event producers in the delivery of government-managed events. A compliance proportional to risk approach may adjust these costs to manageable levels.

By the government requiring specific compliance measures by private industry, compliant events are subject to inflated costs. Art, Not Apart management identified that contractor prices varied significantly and, if not challenged, would have further resulted in a blow out in costs. Providing historical prices for these services would help event managers understand if they are being over-quoted.

As a promising sign, flexibility within the system can be found - Access Canberra was very helpful by allowing festival management to submit amendments to Risk Assessed Management Plans (RAMPs), whereas the stated requirement is to re-submit the entire document.

Some agencies requested additional compliance measures the week before the event, despite having many documents months prior. This included the expectation of two lifeguards for an event that had minimal swimming. See photo of two lifeguards and no swimmers. No more than about 10 people swum in Lake Burley Griffin at one time, and this was submitted in the RAMP and stated in conversation, but the festival was told that two guards would be preferable, at the festival's cost.

Below are the compliance costs of Art, Not Apart festival. These were heavily massaged by management to bring them to an affordable level. The compliance manager was underpaid due to a significant amount of work being required but not budgeted for.

- Security (exc. Westside): \$2160
- Liquor Permit for Nishi Gallery: \$469
- Traffic monitors to close West Basin bike path: \$2800

- EPA application: \$488.20
- Noise monitoring (despite many required documents and meetings done without the consultant's input): \$3839
- Cleaners and waste management (exc. Westside): \$3185
- Compliance officer in lead up and on-the-day: \$6000 (this resulted in an hourly rate of about \$10 per hour: the festival couldn't afford to pay this person properly)
- Lifeguard: \$130 (one was a volunteer)
- First Aid: \$600

**TOTAL: \$19,671**

**It's worth noting that this style of event is only eligible for up to for \$20,000 from EventsACT – effectively the cost of compliance.**



Lifeguards patrolling Art, Not Apart by Martin Ollman

## National Capital Authority

One of the festival's biggest hurdles was double paperwork and managing relations with two authorities: NCA and ACT Government. This was said to be an issue for more than just events in the area. Developers, businesses and Westside have noted similar problems.

A further complicating factor was that the NCA often wanted to be involved in the curation of art, posing challenges for event producers. Festival management facilitated the NCA to develop clear policies during the coordination of the event, without which the arts festival would have become unworkable. Initially, the NCA wanted to approve individual artworks presented by the festival, especially at Westside. After some negotiation, the following policy was developed for the purpose of presenting art at Westside during the 2015 festival (14 March 2015):

*The exterior [container] art of the festival will remain except those works rejected by either NCA or Westside Management after the event. Rejected works will be painted over by Westside [Westside may and did expect the festival to pay this cost, which was roughly \$1500].*

The possible reasons for rejection have not been explained, though it is assumed they are to do with offensiveness and skill. Specific colours were an initial NCA guideline for the festival but were superseded by the above. Attempts to establish a similar policy for 2016 have so far gone unanswered, creating uncertainty for the capacity of the festival to deliver a complex and large-scale activation of the West Basin.



Problematically, NCA management also ruled that minor ‘structures’ such as chairs, tables and easels required detailed Works Approval. Low-risk event activity such as this ought to be free from regulatory requirements to support organic events and reduce the staff costs of compliant events.

## Sound Permits

The NewActon component of the event was not applicable for an Environmental Authorisation (noise permit). The festival was contractually required by the sponsor, the ACT Government, to comply with all relevant laws but was also ineligible for an EA to allow the festival to occur in NewActon, where it had been held four times prior. This was the festival’s biggest legal contradiction. EAs require a space that can hold at least 2,000 people (as defined by the Liquor Act) and so NewActon was not eligible, but it also had to deliver the festival as per the sponsorship agreement, which included stages in NewActon.

Due to the EA size requirement, NewActon is ineligible to host sound emissions measurable at a residential outdoor boundary above 55 dBA (less than conversation level).

## 7.7 Changes to the ANU School of Music

The 2012 structural changes to the ANU School of Music saw the loss of more than just the instrumental students and staff from the Canberra musical ecosystem. Thirteen staff including some of Australia’s most highly regarded teachers and performers were let go, and an elite body of jazz and classical students left the following year across Performance, Composition and Musicology. Those staff and students contributed significantly throughout the community through private teaching, tutoring and conducting community music organisations, and playing in bands and orchestras.

The concern in the community in response to these changes was noteworthy in Canberra’s arts sector. It was apparent that the loss of the School with its illustrious history as an instrumental teaching institution, the fine staff and the students they brought to Canberra would not be able to be replaced. One of the most challenging decisions by the ANU was to disband the Jazz program, universally regarded as second only to the Sydney Conservatorium. Alumni from the Jazz school include Mark Hannaford and Nick McBride, Ben Hauptmann and Jenna Cave, and many many more fine musicians.

Whilst audiences for jazz and art music are here, the vitality of the scene has diminished since these students left. The loss of capable staff and students affects the makeup of bands and venues throughout town where they would engage as performers and audiences. Corporate gigs are likely to go to members of the army bands.

The situation parallels the loss of Canberra’s professional theatre, puppetry and dance companies in the late 1990s. Canberra had four of the best: Meryl Tankard Dance Theatre, Splinters Theatre of Spectacle, Skylark Puppet Theatre, and Kailash Indian Dance. The ACT Government subsequently determined that full-time professional performing arts companies could no longer be afforded and most of the elite performers left the ACT. Without professional mentors and job opportunities, the top of Canberra’s young talent in these fields almost inevitably go interstate for tertiary study. Few are able to return to pursue their careers.

Consultation with the arts community suggests there could be greater recognition that the School of Music and School of Art were originally built for the people of the ACT. Llewellyn Hall has been the home for the Canberra Symphony Orchestra (CSO) and Canberra Youth Orchestra (CYO) for decades. Many in the community feel that the ANU and the ACT Government should take the opportunity presented by the presence of the incoming Vice Chancellor, Professor Brian Schmidt, to investigate the feasibility of ideas that could better leverage the resources of the music school for the benefit of the broader community, beyond what is provided only in return for ACT Government funding.

A revived tertiary-level instrumental teaching program with nationally recognised teachers is an important component for the future health of Canberra’s music scene. It would support the CSO and CYO as well as other existing activities like the Canberra International Music Festival and annual Australian Youth Orchestra program. Canberra is currently without any full-time performing arts companies. If the ACT was to aspire to have local performing arts organisations of a national standard to match our national galleries, the Canberra Symphony Orchestra is well placed to reach that standard in the future, with support from a corresponding tertiary-level instrumental teaching program.

## 7.8 Canberra Musicians Club

The Canberra Musicians Club (CMC) is one of Canberra's most successful and innovative presenters of live music. The CMC is a not-for-profit community group formed to support local original contemporary musicians. Its primary activity is presenting local music live in various locations, traditional and otherwise, around Canberra. In the year to September 2014 the CMC presented 140 events, with the vast majority of revenues from ticket sales going directly to artists.

The CMC has previously made representations to the ACT Government about the lack of suitable larger venues in the City and Inner North, having formerly used the now demolished McGregor Hall. Since then it has forged a successful relationship with the Polish Club and a number of other community organisations with venues, but still believe that the addition of a venue of 300-400 capacity that can accommodate higher profile touring acts and higher volumes where the presenter is able to operate a bar under a liquor permit is still needed.

The CMC continues to be hampered by issues in respect to liquor permits when using unlicensed venues for one-off events, despite an exemplary record of safe event management over many years. They have called for a system whereby organisations with a demonstrated track record should be able to apply for permits that can cover multiple small events and locations.

While they support efforts to tackle the issues of antisocial behaviour around alcohol, recent changes to the Liquor Act have impacted disproportionately on small (low risk) venues and one off events.

The CMC strongly supports the view that the live music scene in Canberra is facing a number of immediate challenges, particularly the growing conflict between live music and encroaching residential development, and a lack of suitable venues.

They are concerned, and have made representations to the Government previously, that certain licensed clubs that have been granted leases over public land for community purposes are not doing the right thing. The CMC maintains that if a club identifies that a particular location is no longer financially viable, there should be a process of review to find an alternative community usage (and manager) rather than be able to turn the sites over to commercial redevelopment.

The CMC has noted that conflict around noise can also emerge where residential development occurs on club sites in precincts where there are a number of clubs. Some of these clubs may have traditionally hosted live music or events and then face complaints from new neighbours. Best-practice acoustic privacy construction should become a requirement in all-new residential developments in commercial areas, town centres and adjacent to clubs to ameliorate the sound of night economy areas where residents choose to live adjoining to these land uses.



Digital Feast by Martin Ollman



ACT Music Awards by Martin Ollman

## 8. SUMMARY OF ISSUES

Issue	Directorate/s and agencies involved
Liquor licensing (permanent) and liquor permits (temporary)	Justice and Community Safety, ORS, ACTPLA
Zoning and Planning Controls	Environment and Planning
Environmental Protection regulations and associated noise levels	Environment and Planning
Silo effect in ACT bureaucracy	Chief Ministers, all directorates
Building code classification and change of use process	ACTPLA, Environment and Planning
Lack of medium size live music venues (between 200-400)	Environment and Planning, ORS, artsACT
Complicated events approval process	Territory and Municipal Services, ORS, NCA, ACTPLA, EventsACT
Lack of policy on live music in arts policy	artsACT
Decrease in national/international touring acts	Chief Ministers, artsACT, Environment and Planning
Long-term impact of the changes to the School of Music	Chief Ministers, artsACT
Support for MusicACT	Economic Development, EventsACT, artsACT

This list is not comprehensive nor the list of agencies involved definitive: it is intended to summarise the scale and complexity of the issues affecting the music sector and indicate the barriers and process the music sector has to navigate in order to enable what are often small to medium size events and venues.



Michael Liu by Alex Bell Moffatt



Chris Endrey by Martin Ollman



## 9. DISCUSSION AND RECOMMENDATIONS

### 9.1 Regulatory Environment

The complexity of the ACT regulatory framework and density of bureaucracy pose challenges for both operational practices for venues and events as well as strategic policy development. A perception of processes as involving duplication and being cumbersome in comparison to associated regulation in other states erodes confidence for the cultural sector and for business.

In 2014 Access Canberra was established to be a one-stop shop for approvals and guidance for events, community groups and business. MusicACT made an important contribution to thinking about this issue through its submission to the inaugural Digital Canberra Challenge. The submission suggested a client facing online service for integrated regulatory permit approvals and tracking. The proposal was accepted into the competition and the proof of concept by the DigiACTIVE team was awarded first prize in the initial round. MusicACT was also invited to Minister Rattenbury's roundtable in red tape reduction for community events and was pleased to be advised that the Access Canberra initiative had been established, and that data and policy lessons from the initiative would be used to drive improvement to ACT Government services and future policy thinking.

This report recommends specific actions in regulatory areas that can be undertaken as shorter term priorities, however the longer term challenges will require buy in across co-regulatory agencies.

Venues exist within a co-regulatory environment across liquor, planning and environmental protection law, where Built Environment Policy and Cultural Policy overlap. The usual practice has been for these provisions to be developed without practical consideration of how they will interact with the other regulations.

Looking in other areas of the country where big changes have been delivered across regulatory frameworks for the live music sector, all of these have involved coordination of agencies.

- In 2004/5 Brisbane City Council Valley Music Harmony Plan – Coordinating Local Government, Liquor Licensing and EPA.
- In 2004-9, NSW Liquor Act, BCA variation and removal of Place of Public Entertainment (PoPE) consents - ArtsNSW, the NSW Premiers Office, and NSW Department of Planning
- 2014 the Victorian Live Music Roundtable delivered all ages amendments to the Liquor Control Reform Act, Agent of Change and BCA exemptions in Planning legislation.

At this time South Australian government agencies and the live music sector have recently established a similar standing committee, with the inaugural South Australian Live Music Regulation Roundtable convening at the St Pauls Creative Centre in Adelaide on 4 September 2015.

As Access Canberra was established to be an operational vehicle to improve the operation of the regulatory environment, this forum would have a strategic function to optimize the policy and legislative development of the regulatory framework.

An ACT Live Music Regulation Roundtable membership should include:

- The Office of Regulatory Services
- National Capital Authority
- ACT Planning and Land Authority
- Land Development Authority or Urban Renewal
- Events ACT
- artsACT
- MusicACT
- Live Music Office
- ACT Policing

It's important that this forum is chaired by Government, recognising both responsibility and obligation for better regulation. This Standing Committee would establish productive relationships across Government and the music sector that will see further benefits broader than the specific agenda actions, as advisory pathways are developed through contact, and capacity and understanding is nurtured.

For reference, draft Terms of Reference for an ACT Live Music regulation Roundtable are included in the Appendix C.

#### *Recommendation*

2. *Establish an ACT Live Music Regulation Roundtable to address the longer-term regulatory issues impacting on the cultural development of the ACT, particularly events approvals process and alignment of the operation of Liquor, Planning and Environmental Protection regulations and process.*

## **9.2 Liquor Licensing**

A number of states in Australia have supporting references in the objectives of their Liquor legislation, which recognise the importance of the regulation in sustaining the live music sector.

Having a specific reference to the live music, arts and entertainment sector within the objectives of the legislation would support cultural development and live music, as it can be referenced when applying for or transferring licenses for venues, for issuing temporary permits for pop-ups or events, as well as in future evaluation and reviews of the Legislation to ensure the interests and issues facing the sector are considered in these processes.

Currently the objective of the ACT legislation is:

#### **LIQUOR ACT 2010 - SECT 9**

##### **Object of Act**

The object of this Act is to regulate the sale, supply, promotion and consumption of liquor—

- (a) to minimise the harm associated with the consumption of liquor; and
- (b) to facilitate the responsible development of the liquor and hospitality industries in a way that takes into account community safety; and
- (c) in a way that encourages and supports liquor consumers to take responsibility for—
  - (i) their consumption of liquor; and
  - (ii) their behaviour if it is affected by the consumption of liquor.

The NSW Liquor Act 2007 however includes as an objective to:

contribute to the responsible development of related industries such as the **live music, entertainment, tourism** and hospitality industries.

This principle also poses an important question. Are liquor licensing regulatory frameworks intended to discourage activity principally, and to what extent there is a capacity to regulate for desirable activity?

#### *Recommendation*

3. *Amend the objectives of the Liquor Act s9(b) to include a reference to the live music, arts and entertainment sector.*

## **9.3 Liquor Permits**

Accessing temporary Liquor Permits for live music and cultural events has been a significant hurdle for event producers and pop up venues such as The Chop Shop, with the issues involving cost, complexity and cumbersome process. These are often disincentives to events or deterrents to making events legal.

Liquor Permits are described as follows from the ORS website;

*There are two types of permits that can be applied for if a limited amount of liquor is to be sold at a single premises. A commercial permit is for an event and a non-commercial permit is for a not for profit organisation and may apply to a specific event if relevant.*

*Two festivals held on consecutive weekends by the same promoter would require separate permits as the names of the events are different and there is no regularity to the initial event.*

Loadings and fees are identified here: [www.ors.act.gov.au/community/liquor/forms\\_and\\_fees](http://www.ors.act.gov.au/community/liquor/forms_and_fees)

Other states in Australia are recognising the importance of flexible and affordable licenses for live music, arts and community events.

Following from the review of the NSW Liquor Act 2007, two important precedents have been introduced for these types of situations in NSW.

*Multi-function limited licence holders no longer need to apply to the Independent Liquor and Gaming Authority for approval to hold up to 52 events per year. Instead, licensees will need to provide at least 14 days notice to the local police.*

*This will ensure police continue to be notified of these events for patrol and operational purposes while reducing the red tape burden and allowing licensees to focus on fundraising and community support. The notification form is available here: [www.olgr.nsw.gov.au/pdfs/L\\_F\\_LLMF.pdf](http://www.olgr.nsw.gov.au/pdfs/L_F_LLMF.pdf)*

*Non-profit community organisations are exempted from having to obtain a licence to sell liquor at up to six small fundraising events per year. This exemption will help to reduce costs and boost fundraising efforts. Exempted events are subject to responsible service of alcohol and community protection safeguards to ensure they are conducted responsibly by legitimate community organisations.*

*A function is any dinner, ball, convention, seminar, sporting event, race meeting, exhibition, performance, trade fair or other fair, fete or carnival, or any other event or activity, that is conducted for public amusement or entertainment or to raise funds for any charitable purpose*

[www.olgr.nsw.gov.au/pdfs/FS\\_exemption\\_fundraising\\_notProfit.pdf](http://www.olgr.nsw.gov.au/pdfs/FS_exemption_fundraising_notProfit.pdf)

#### Recommendations

4. *Introduce a liquor permit scheme where a single applicant can present a number of creative events under a multi function limited licence.*
5. *Exempt non-profit community organisations from having to obtain a licence to sell liquor at up to six small fundraising events per year.*

A further consideration for the Liquor Act 2010 would be for - SECT 120 with regards to *Offence—child or young person in adults-only area—licensee or permit-holder*. Whilst s.120 (5) specifies that this section does not apply in relation to a young person if the young person is in the adults-only area in the course of the young person's employment at the licensed premises or permitted premises, including a further reference to also include *or performing in a show or other live entertainment performance held in the bar area whilst accompanied by a responsible adult* would further support the professional development and employment of younger musicians in the ACT.

## 9.4 Classification of Buildings under the National Construction Code Of Australia

Facilitating temporary venues and enabling smaller to medium size venues will require changes to planning legislation and the application of the Building Code of Australia (BCA) under the National Construction Code Of Australia (NCC), as has occurred in NSW and Victoria and is in train in South Australia.

In 2009 changes were made to NSW Planning Legislation to encourage more live music and performance. A number of adjustments to regulation were made that has created many of the new gigs in small bars, restaurants, pubs, clubs and cafes since then. [Read more about the NSW changes here – Planning For Entertainment.](#)



By having the reference to 'bar area of a Hotel or Motel providing live entertainment' in the national BCA 9b Assembly Building definition, some authorities interpret this to give no latitude but to require theatre level 9b BCA fire safety for any live music use in licensed premises.

This changes the BCA classification of the building from retail Class 6 in a hotel or restaurant for example to an Assembly Building Class 9b. The extensive building work required for theatre level compliance will more than likely make independent small-scale entertainment unviable.

The national Assembly Building definition reads as follows (emphasis added)

Assembly building means a building where people may assemble for—

- (a) civic, theatrical, social, political or religious purposes including a library, theatre, public hall or place of worship; or
- (b) educational purposes in a school, early childhood centre, preschool, or the like; or
- (c) entertainment, recreational or sporting purposes including—
  - (i) **a discotheque, nightclub or a bar area of a hotel or motel providing live entertainment or containing a dance floor;** or
  - (ii) a cinema; or
  - (iii) a sports stadium, sporting or other club; or
- (d) transit purposes including a bus station, railway station, airport or ferry terminal.

The NSW Variation does not have the previous (c)(i) reference.

Assembly building means a building where people may assemble for—

- (a) civic, theatrical, social, political or religious purposes including a library, theatre, public hall or place of worship; or
- (b) educational purposes in a school, early childhood centre, preschool, or the like; or
- (c) entertainment, recreational or sporting purposes including—
  - (i) a cinema; or
  - (ii) a sports stadium, sporting or other club; or
  - (iii) transit purposes including a bus station, railway station, airport or ferry terminal.

On 29 October 2014 the Building Amendment (Live Music) Regulations 2014 were introduced to amend the Building Regulations 2006 in relation to the classification of small live music venues under the Building Code of Australia in the state of Victoria.

The intent of this amendment is to exempt primary purpose live music venues that are at or under 500msq and with a vertical travel of two floors or less from being assessed as a BCA class 9b assembly building for compliance.

This issue is investigated in detail in the *Live Music Venues and the Building Code of Australia Issues Paper* that accompanies this report.

Currently the South Australian Department of Planning, Transport and Infrastructure are in the later stages of developing a state assembly building 9b variation, a new low risk arts and cultural venue classification, as well as an adaptive re-use of existing buildings for live music venues policy addressing Building Code Classification issues, Class 6 v Class 9b. The building code variation and the low risk arts and cultural venue classification are being developed as a response to Recommendation 2 of the March 2015 South Australian Music Industry Council report *Enhancing Live Music in South Australia*.

At the June 2015 Creative Spaces and the Built Environment Forum at The University of Sydney co-presented by the City of Sydney, the Live Music Office and the University's Faculty of Architecture, Design and Planning attended by MusicACT, The Australian Building Codes Board and other presenters identified the tendency of consent authorities to arbitrarily require building compliance for higher Deemed-To-Satisfy (DTS) prescriptive standards than the BCA provides, even though a building may have achieved performance requirements through alternative solutions. The point being made that DTS can be

used as a yardstick, but is not the only measure to be applied in the assessment of performance requirements.

It was also raised at this forum that the BCA should not be used as a mechanism to control or regulate human behaviour – it is designed to address structural reliability and fire certification, and that this is a performance-based code and is not a single unified solution to every situation. State, Territory, and local applications of the National Building Code are impeding performance based, agile outcomes. This is seriously hampering live music.

Released in October 2015, the *Low Risk Arts and Cultural Venues – A NSW Case Study of Live Performance for National Application* planning study further investigate issues such as those raised in the Chop Shop case study, with the discussion paper from the 12 June Creative Spaces and the Built Environment symposium presented by the City of Sydney, the Live Music Office and Sydney University's Faculty of Architecture, Design and Planning being tabled later this year.

We hope that the more supportive regulations in NSW and Victoria, the unfolding reforms in SA, as well as the planning study and the discussion paper will inform a review of the associated regulatory framework in the ACT.

#### *Recommendation*

6. *Introduce a Building Code variation and associated planning provision to ensure that a) venues where live performance is ancillary to hospitality industry consent and b) premises that comply within certain low risk provisions are not assessed as an assembly building under the Building Code of Australia / National Construction Code.*

## **9.5 Adaptive Re-Use Of Buildings**

Apart from theatres, nightclubs and ancillary entertainment in hospitality industry liquor licensed premises, it is often the case that small scale and experimental live performance happens in buildings designed for industrial or retail use that are underused or in transition.

The Property Council and Canberra CBD Limited also identified these issues and associated support actions in the *Transforming Canberra's City Centre* report.

Including pop up venues and low risk entertainment use characterisation and associated planning challenges, the adaptive reuse of buildings for creative use is recognised as a complex and difficult area of built environment policy, however there are initiatives underway in other states investigating these problems.

As identified in the previous chapter, in 2015 the City of Sydney and the Live Music Office are releasing a discussion paper and a planning study into the application of building code and planning approaches for arts and cultural uses, and we encourage Access Canberra to investigate these as well as to establish dialogue with the City of Sydney and the South Australian Department of Planning, Transport and Infrastructure (DPTI) as they both investigate policy for the reuse of buildings for creative use in 2015.

Planning initiatives in Geelong (VIC) and Sydney (NSW) also recognise the potential for the adaptive reuse of existing building stock for live music and related uses that support a creative and diverse night economy.

In January 2014, the City of Greater Geelong adopted the [Central Geelong Action Plan](#) developed by the Central Geelong Taskforce, and whilst not a dedicated live music plan, this initiative has some key aspects to it that align with issues raised in the *Transforming Canberra's City Centre* report as well as important actions from Sydney, Wollongong and Marrickville to support venues - such as identifying night economy areas and planning for venues, providing guidance on compliance with building regulations (Wollongong), and encouraging the adaptive reuse of buildings (Marrickville/Sydney).

Endorsed actions from Geelong include:

- Establish an external Building Approvals Support Program for providing advice on compliance with Building Regulations.
- Extend and actively promote the Future Proofing Geelong commercial building retrofit scheme to support investment in older buildings and create an innovative demonstration project.
- View existing Urban Design Guidelines to ensure consistency with Action Plan directions and to provide policy direction relating to building over laneways and acoustic treatments.

#### *Recommendations*

7. *Access Canberra (or an ACT Live Music Regulation Roundtable) to investigate policy development for the reuse of*

*buildings for creative use underway from the City of Sydney and the South Australian Department of Planning, Transport and Infrastructure.*

8. *Access Canberra to consider allocating a duty planner to provide technical support for the creative sector and give guidance in navigating building codes, planning controls and community engagement for the reuse of buildings for live music and creative use.*

## 9.6 Pop Up Venues and Low Risk Entertainment Uses

Contemporary case studies such as the Chop Shop in Braddon, The Red Rattler in Sydney and The Chipppo in Darwin demonstrate the issues faced nationally by the creative sector as practitioners seek to establish pop up venues and artist run spaces within a regulatory framework that can support large capacity premises with either significant public funding or a focus on alcohol sales, but where smaller scale primary purpose creative use becomes unachievable without significant capital investment and in the case of the Chop Shop, additional intervention from the highest levels of government.

Issues for pop up venues and low risk entertainment uses in the ACT encompass challenges across the identified range of built environment regulation.

- Complexity and cost of the planning system for applicants.
- Permitted use across federal, territory and leasehold zoning.
- Classification of buildings under the BCA.
- Liquor licensing options and process.
- Adequacy of planning and EPA provisions to deliver affordable cultural and mixed land use.

We recommend that Access Canberra partner with one of the funded music events in the annual calendar or seek expressions of interest to develop a pilot process for pop up venues and low risk entertainment uses as a case study for both the compliance and cultural practitioner level to then inform better regulation.

This would identify areas of inflexibility within the planning system in permitting low risk entertainment as an independent land use and come up with a way to appropriately define or characterise premises that wish to provide entertainment, and by association, to gauge appropriate levels of intervention for risk based assessment for fire, acoustic and social impact.

### *Recommendation*

9. *Access Canberra (or an ACT Live Music Regulation Roundtable) to investigate the Sydney Fringe Pilot Pop-Up Theatres project run with the support of the City of Sydney for pop up venues and low risk entertainment use for the purposes of an ACT pilot.*

## 9.7 Planning

Planning in the ACT is a complex business made more challenging in that the statutory planning system does not have the final say on land use. Whilst the Territory Plan can give a list of permissible uses, the uses that you are able to undertake are also described in the purpose clause of the crown lease. To vary a crown lease requires a Development Application (DA), a function of the Planning and Development Act 2007, as well as the Unit Titles Management Act where shared ownership of buildings such as industrial or retail complexes require further consent of the owners corporation. The previous planning system allowed for temporary use, however this also may not be possible without triggering a DA.

However, circumstances will often arise whereby the use is included in the lease purpose clause but the space has not previously been used for that purpose. For example, you may have an industrial building with “drink establishment” included in the crown lease- although the building was never used as a bar/music venue. The building approval will have been issued for an industrial or office class building. However, in order to “trigger” – even temporarily - the drink establishment/music venue permitted by the crown lease the class of the building must be altered. Changing the class of the building may for example require installation of a kitchen or additional toilets or the like. Prior to the Planning and Development Act 2007 an applicant simply submitted the plans of the internal alterations to the building controller for assessment and approval. Now, a full blown merit track development application with public notification is required. Remember, this is despite the development rights already being included in the crown lease.



A merit track development application involves fees of approximately \$4,000 and involves a time frame of three (3) to four (4) months. As you will appreciate this is a disincentive to the temporary use of vacant office or industrial space as ‘Chop Shop’ style cultural venue. We need a mechanism in the Territory Plan and P&D Act that facilitates timely support for low risk temporary cultural use of otherwise vacant space in our commercial centres.

Back to the Territory Plan, Master plans for all of the town centres – Civic, Woden, Belconnen Gungahlin and Tuggeranong are performance based and don’t articulate economic, social or cultural objectives. Looking at the difficulties faced by venues throughout the city it could be argued that there is a mismatch between the planning aspirations/land use intent and a raft of planning controls.

Learning from the lessons of Kingston Foreshore, mixed-use development isn’t delivering genuine mixed use for live music venues with the current recipe.

Without setting better ground rules that can identify the land use and align residential developments with rational EPA standards alongside trading hours within night economy zones, the intent of development initiatives such as NewActon, Braddon and the Kingston Foreshore as well as the City To The Lake urban renewal projects to provide for vibrancy and an adjacent quality of living will not be achieved, and what had been intended to nurture ‘vibrancy’ will not deliver.

It should also be noted that there are some low risk and low impact entertainment activities which should be identified clearly as exempt or ancillary and not trigger a change of use or require consent from the Territory Plan. The *Low Risk Arts and Cultural Venues – A NSW Case Study of Live Performance for National Application* planning study provides an important reference for policy development in this area.

The key findings arising from the research are:

- The barriers to obtaining approval to provide entertainment are too high in order to encourage low key, live performances at the community and grass roots level.
- Inflexibility of the planning system in permitting low risk entertainment as an independent land use.
- The need to appropriately define and characterise low risk premises that wish to provide entertainment.
- High complexity and cost of the planning system for applicants.

## Setting the Ground Rules

Ensuring the current planning system can support grass roots arts and cultural land use in the ACT is a difficult challenge. What is crucial in developing a coordinated response is setting the ground rules and identifying the land use intent.

There are some noteworthy precedents nationally in setting the ground rules and communicating the arts and cultural or entertainment land use in various ways.

The Valley Sound Machine from Brisbane City Council is an online reference to enable potential residents to experience simulated noise levels at different times and places in the Fortitude Valley Special Entertainment Precinct.

In NSW, before purchasing a residential property in the Wollongong CBD, a s.149 certificate must be signed that acknowledges:

*The Wollongong City Centre and Town Centres, play a key role in accommodation cultural, sporting and business uses. A key to the revitalisation of these centers’ is to build on these aspects through greater activation and investment beyond 5pm through an evening economy. Future residents should be aware that these uses may generate noise, odour, traffic and have longer hours of operation, which is part of living in/near a commercial centre.*

Ensuring residents in evening economy areas have recognised the land use intent in the planning scheme is an important step in setting the ground rules.

## Acoustic privacy construction for short and long term residential development

The Building Code has no provisions for residential apartment buildings to address external noise.

Whilst the NCC / Building Code of Australia has provisions for constructing residential development to ensure acoustic

privacy for internal noise between adjacent dwellings, there are no requirements for residential development to be constructed to reduce noise from external sources.

This issue was investigated in a 2007 report by Bassett Consulting, *The External Noise into Residential Apartment Buildings Scoping Study Report*.

Some State Governments have introduced planning controls for residential development along railway corridors and busy roads to reduce noise, whilst others have introduced development control plans or local overlays requiring acoustic glazing within specific geographic boundaries. These provisions would be unsuitable for entertainment areas in towns and cities as they are rated using dBA measurement specifications designed for transport noise with a different character to sound generated by entertainment and night economy areas.

In 2005 Brisbane City Council introduced their Valley Music Harmony Plan special entertainment precinct to support the live music scene in Fortitude Valley which has a raft of controls designed to support the entertainment premises and the night economy as the primary land use and short and long term residential as subordinate within a finite area.

In 2014 Wollongong City Council determined that mixed-use residential development in the CBD should have appropriate acoustic construction measures for the location and double glazing for acoustic privacy should be required in the entertainment area of the CBD.

For example, the old Oxford Tavern site mixed use DA on Corrimal St in the Wollongong CBD has the following conditions for acoustic privacy;

The double glazing from the facades specification is as follows:

Glazing for Acoustic requirement – Double glazing external sliding doors and windows:

- (a) 6mm glazing – 100mm air gap – 6 mm glazing set in a sealed metal or timber frame to achieve the sound insulation of a window and sliding door system (Rw40 – 45).
- (b) The apartments from 1st/2nd floor to 7th floor window and sliding door system should achieve sound insulation (Rw43 – 45).
- (c) The apartments from 8th floor and above window and sliding door system should achieve sound insulation (Rw40 – 45).
- (d) Frames should be well sealed internally and externally to provide acoustic, thermal and moisture protection. Awning windows are preferred to sliding windows as they are able to achieve a positive compression seal.
- (e) The air gap between the two panes should be at least 100mm that is good for reducing traffic and other low frequency noise such as music from surrounding night clubs

Another contemporary design condition from The NSW 4T-2 Apartment Design Guide requires that noise transmission is mitigated by appropriate noise shielding or attenuation techniques for the building design, techniques in the construction and choice of materials

A number of the following design solutions are used:

- number and size of openings facing noise sources are limited
- seals prevent noise transfer through gaps
- double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens)
- materials with mass and/or sound insulation or absorption properties e.g. balcony balustrades, external screens and soffits

Ensuring residential development within town centres and mixed use evening economy areas are constructed with appropriate acoustic privacy provisions will reduce land use conflict and provide a better foundation on which to align EPA processes and associated overlays to encourage arts and cultural land use in the ACT.

## Recommendations

10. *Introduce conveyancing references that acknowledge arts and cultural land use in evening economy areas.*
11. *Develop planning provisions for residential and mixed use development to attenuate external noise informed by precedents in Wollongong, in NSW residential apartment design guidelines, the Central Sydney DCP, as well as the Fortitude Valley Valley Music Harmony Plan.*

## 9.8 Order of Occupancy and Agent of Change

It should be noted that Order of Occupancy and Agent of Change are two separate processes, with Order of Occupancy being a series of principles for consideration in arbitration on amenity complaints within liquor licensing frameworks, and Agent of Change being a planning direction where the obligation for attenuating either emissions from a music venue or attenuating external sound through acoustic privacy construction for a residential development is on the new party to the existing environment.

The principles for consideration in Order of Occupancy circumstances are:

- (a) the order of occupancy between the licensed premises and the complainant,
- (b) any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises,
- (c) any changes in the activities conducted on the licensed premises over a period of time.

Whilst these would all be important matters to give context to complaints against venues, in the case of the NewActon entertainment case study they would be ineffectual, as EPA conditions are definitive.

This asymmetry between Order of Occupancy principles and varying EPA regulations results in duplication of process in the jurisdictions nationally where this is in place. The music is either EPA compliant it is not regardless of Order of Occupancy principles under liquor legislation if a complainant wishes to prosecute EPA process instead of Liquor.

There are further deficiencies in that except in South Australia, Order of Occupancy does not always take into account the desired future character of the locality in which the licensed premises are situated as stated in any relevant Development Plan.

For Order of Occupancy to be effectual, removing duplication between environmental protection and liquor licensing process would need to be ensured.

Under the Agent of Change principal, a new residential development built near an existing live music venue would be responsible for noise mitigation as part of the planning process. The same principle would also apply to a new music venue or a change to an existing venue, which will be responsible for mitigating the impact of their noise on neighbours.

This planning protection for live music venues was introduced statewide in Victoria in September 2014 to protect the inner city venues of Melbourne from land use conflict and non-compliance in the face of increased residential development.

Agent of Change is an important principle for the live music sector although the Victorian government is yet to produce a practice note to give direction on the operation of these regulations.

For either of these to be efficient processes in the ACT, aligned development plans and associated rationalised EPA regulations would be required.

## Recommendations

12. *That consideration be given to the effectiveness and by association introduction of Order of Occupancy principles to s.179 of the Liquor Act 2010 in the context of the broader regulatory framework through a coordinated dialogue with Planning and EPA agencies.*
13. *That consideration be given to the introduction of Agent of Change provisions in the Territory Plan, both as a territory wide control and as a geographically finite overlay to protect designated arts and cultural and entertainment land use.*



## 9.9 Urban Renewal

### Capital Metro: Light Rail Corridor Land Use Planning

The construction of the light rail corridor has real potential to provide for cultural development as well as being a catalyst for urban renewal. The corridor between the City and Gungahlin passes through Mitchell, where residential development is not supported in the zoning, and like Mitchell, Fyshwick and Hume are all zoned Industrial, and have significant potential for establishing affordable live music scenes away from residents.

There are other areas where arts and cultural land use could be designated away from residential density.

- Philip has light industrial areas and car yards.
- Belconnen – Nettlefold St.
- Canberra Airport.

These are all interesting areas with potential to nurture creative industries, where a vision for arts and cultural land use and development could be realised as a long term plan for the ACT.

As well as live music venues, popups and theatres in the city, there should also be at least one place in the ACT where performance venues and a night economy can exist without having to experience land use conflict from adjacent residents.

In 10, 15, 20 years time, imagine a thriving live music and arts scene in one of these areas where commercial leases are affordable, and where the emphasis and land use controls prioritise arts and cultural use alongside light industry and fine grain food production over residential accommodation.

There are developing precedents for this - one in particular in Marrickville in NSW where the Sydenham Station Traditional & Creative Industries Hub has a relevant blueprint for encouraging live music venues alongside fine grain light industrial use.

In September 2014, Marrickville Council tabled their vision for the industrial lands adjacent to Sydenham Station in Sydney. The area has a number of live music venues as well as small scale manufacturing and food production.

The Sydenham Station Traditional & Creative Industries Hub proposal:

1. Enhances the industrial character with reuse of adaptable buildings to allow traditional industries alongside more forms of creative industry and business especially live music and related uses that support a night economy.
2. Improves pedestrian priority by:
  - removing one way traffic system
  - completing a network of lanes and slow traffic speed on main through routes
  - creating multi use space below the brick wall adjacent to railway station
  - introducing a green street on Barclay Street
3. Exploits the adaptability of industrial buildings by incubating a wider mix of uses
4. Creates a sustainability identity with green streets and integrated precinct management of services such as water harvesting, community solar electricity generation, and eco-hub recycling stations.
5. Considers short term residential uses such as artist/artisan/key worker in residence or the 'caretaker flat' model, in specific locations. It also considers tourist accommodation hotels.

To support the development of this zone for arts and cultural use a specific 'B7 Business Park' zone was included in the Marrickville Council Local Environment Plan 2011:

The 'IN2 Light Industrial' zone will allow for certain creative industries which take the form of business premises or office premises in the arts, technology, production and design sectors.

The creative industries provided for include:

- audio-visual, media and digital media
- advertising
- craft, visual arts and Indigenous arts
- design
- film and television
- music
- publishing
- performing arts
- cultural heritage institutions

Marrickville Council is currently investigating how to turn the fascinatingly gritty area known as Marrickville/Sydenham Industrial Lands into a thriving, 24-hour destination that live music venues and traditional and creative industries call home – a 'creative industry hub' servicing the whole of Sydney.

#### *Recommendation*

14. *Review the Territory Plan to support place of assembly for live music, arts and entertainment use within the General Industrial Zone approved development planning controls for Mitchell, Fyshwick and Hume, and to investigate arts and cultural land use controls for other less developed areas in the Territory Plan as well as the established Town Centres, mixed use and urban renewal initiatives.*
15. *Align planning provisions and EPA for residential and mixed-use developments to achieve the policy objectives of activated cultural use within identified evening economy areas.*

## **9.10 Voluntary Planning Agreements**

A voluntary planning agreement (VPA) in NSW is an agreement entered into by a planning authority (such as the Department of Planning and Environment) and a developer. Under the agreement a developer agrees to provide or fund community infrastructure as a contribution in return for development approval. This could be in the form of:

- public amenities and public services
- affordable housing
- transport or other infrastructure

Contributions can be made through:

- dedication of land
- monetary contributions
- construction of infrastructure
- provision of materials for public benefit and/or use

This planning provision is provided for under section 93F of the Environmental Planning and Assessment Act 1979 (the Act).

[www.austlii.edu.au/au/legis/nsw/consol\\_act/epaaa1979389/s93f.html](http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s93f.html)

In Sydney in 2014 an important VPA between the City of Sydney and the developers of The Greenland Centre was approved where a \$25m creative hub has been included in a \$439.5m CBD residential development.

The creative hub will provide space for Sydney's creative sector in the form of rehearsal spaces and studios and would grant tenancy rights to the City for the use of the creative hub for a 99-year term.

#### Recommendation

16. *Introduce the capacity for voluntary planning agreements for cultural development in the ACT informed by s.93F of the NSW Environmental Planning and Assessment Act 1979.*



## 9.11 Environment Protection

The regulation of sound from entertainment premises and events varies significantly across the states and territories.

In the ACT, emissions are regulated depending on land use and time of day or night with concert events issued an Environmental Authorisation (EA) – essentially a licence for emissions.

The department website states:

*Under the Regulation, the ACT is divided into noise zones based on land use policies defined by the Territory Plan. Noise standards apply to each zone. Except where otherwise permitted under the Regulation, an activity causes environmental harm if that noise exceeds the noise standard at the compliance point set either by the Regulation, an environmental authorisation or an approval.*

*Section 25 of the Regulation provides that excessive noise causes environmental harm. The EPA will only take action if an affected person lodges a complaint about the noise, consistent with Section 22(3) of the Regulation.*

*The standards permit the highest noise levels in industrial areas and are most stringent in residential areas. Noise standards must not be exceeded at the lease boundary of the land from which the noise is being emitted.*

The capacity for entertainment both as a featured event or as ancillary to licensed premises to be hosted even in what has been designated and marketed as an entertainment precinct is not supported by the current EPA process in the ACT. The experience of presenting live entertainment in NewActon and Kingston Foreshore identifies the unworkable nature of the current framework for evening economy areas where licensed premises and cultural activity has been identified in the planning scheme.

There have been an ongoing series of reviews into this issue, the most recent being the April 2015 ACT Noise Zone Review undertaken by Marion Burgess from the Acoustics & Vibration Unit at the School of Engineering and Information Technology, UNSW, Canberra.

There have been important discussions with regards to increasing limits at the lease boundary of the land from which the noise is being emitted aligned to certain areas of the land uses approved in the Territory Plan. This is strongly supported by the live music sector in the ACT.

This report recommends that the onus is shifted, and that there is a re calibrating of the EPA process to support the primary

land use for town centres and arts and cultural land use identified in the Territory Plan. There are good precedents for local noise policy overlays that align with land use planning where noise is measured inside noise sensitive premises with doors and windows closed within designated night economy and entertainment areas. These currently exist in SA, QLD and NSW.

For example, the South Australian Music noise from indoor venues and the South Australian Planning System July 2015 guidelines recommends:

*Noise from any music venue must not exceed 43dB Leq in any one-third octave band between and including 31.5Hz and 125Hz when assessed inside a noise sensitive development, including a bedroom and living room of a residential or short term accommodation premises with windows closed.*

#### *Recommendations*

17. *Consideration is given to the appropriateness of the current noise levels in established town centres and their capacity to deliver vibrant and sustainable places for arts and cultural participation with a view to raising limits within established night economy areas.*
18. *Adjust the point of measurement for noise assessment from an external boundary to an internal reading at noise sensitive premises within identified evening economy zones, to align the EPA with land use aspirations and to guide planning controls.*

## **9.12 Environmental Authorisations (Sound Permits)**

It is the view of much of the music industry that Environmental Authorisations (EAs) for temporary events are not providing certainty or workability for music events in the ACT.

Four core concerns suggest a need to reform the mechanisms of EAs:

1. the blanket closure of events EAs at 11pm,
2. the absolute nature of sound limits fails to account for relative environments,
3. sound monitoring is unaffordable for less commercial or smaller events,
4. events with less than 2000 people are ineligible for an EA and must comply with noise zone standards,

Environmental Authorisations currently stop at 11pm anywhere in the ACT. There is no legal opportunity after this for an ACT event to emit more than 45dBA (a soft whisper). The ACT could never have contemporary activations like Melbourne's White Night or even a concert in the city after 11pm. This meant Art, Not Apart's successful event at Westside, which had no incidents or noise complaints, closed at 11pm with over 1000 people cheering for more. They didn't want to go to the city's late trading nightclubs but the festival's EA gave attendees no choice. Environmental Authorisations should not have mandated cessation times but, rather, be judged on the likelihood of adverse impact based on the venue and Noise Management Plan, application by application.

Art, Not Apart was also unable to gain an Environmental Authorisation for NewActon. Because the outdoor area of the precinct, as defined by the Liquor Act, can not hold 2000 people at one time it is ineligible for an EA. This meant the festival had to operate within an uncompliant residential noise level. The capacity criteria of EAs needs to be reviewed and, if they are lowered, the scale and cost of complying with the EA should be proportionate to the risk of the applicant event.

Current EA sound limits are absolute, as are the ACT's permanent Noise Standards. This means they are indifferent to surrounding or environmental noise. This is not the case in, for example, Sydney where limits are relative to environmental noise such as traffic. There are countless instances of an EA requiring costly sound monitoring in environments where the required limit for the event is below the surrounding noise. Sound reports from these monitors cannot be used in court and prove the redundancy of absolute sound limits. If a road is emitting 70dBA on a regular basis, there is no point limiting an event to less than this level.

A step beyond relative sound limits would be to make them relative to the value of the event to the community. If a small number of people are going to attend an exclusive function, then they should not have authorisation to emit as much as a cultural event that is good for the community. The latter should be authorised to emit more noise into the community it is helping to build.



c-a readings are a powerful tool to kill the positivity of events in the ACT. Whilst increasingly popular, the use of c-a readings need to be complemented by understanding that tight restrictions will adversely damage the effect of the event. Bass is important to the enjoyment of many contemporary events.

*Recommendation:*

19. *Review the operation of and application process for Environmental Authorisations for live music events to better support the development of cultural events, taking into consideration a) the appropriateness of blanket 11pm closure; b) increasing sound limits in certain circumstances c) relativising sound limits to the environment; and d) providing for the capacity to exempt the requirement of costly sound measurement where it can be demonstrated to be unnecessary.*

## 9.13 ACT Arts Policy

The new ACT Arts Policy is a welcome development, as it is supporting the artsACT Strategic Plan, which describes an excellent program of activities to support the policy. Cabinet's endorsement of the policy has been an important step forward.

It has been noted in sector consultation, however, that the new policy and plan are light on ways to support artistic enterprise development, audience development and small business support. Every individual artist is also a small business operator, and in many cases that includes teaching work. The assistance for skill development in this area specific to the arts are very limited in the ACT. There are some great enterprise development supports available, such as the CBR Innovation Network, but more could be done to help artists access this support, such as packaging CBR Innovation programs for artists, and business mentoring. It has been the case that no dedicated marketing support for the arts has been available since the de-funding of Canberra Arts Marketing, despite a commitment by the Government to do so.

At this time there has also been no commitment to date about ongoing consultation with the arts sector. MusicACT has previously made representations to the Minister for the Arts offering to host the ACT Music Forum, as described in the Youth Music Sector Forward Plan, but this is yet to be actioned. Without a formally constituted advisory group for the Minister, there is little formal opportunity to have input into arts policy between periodic reviews. Arts service organisations are well placed to facilitate this process and funding set aside for this that does not compete with funding for arts creation and presentation. Such organisations also provide vital links to professional development opportunities and sector knowledge from other states.

Consideration needs to be given to the future of the overall arts funding envelope, which has not expanded in many years. We recognise the ongoing pressure on the budget may make an increase in the short term very difficult, but a commitment should be made to future increases based on a broad discussion about what we, as a community, want for the arts in Canberra.

We welcome the elements in the policy and plan that recognise the need for a serious conversation with artform practitioners about how best to develop each artform.

MusicACT strongly endorses the Access Canberra initiative and welcomes the commitments made by the Government that the scheme will generate data for practice improvement in ACT Government directorates. Arts producers and promoters are seldom recognised for their vital contribution and the best assistance that can be provided is continuous improvement in the regulatory environment and recognition in the directorates of the importance of arts entrepreneurs.

### Ways that artsACT can better support the live music sector

- Recognise that many arts organisations require small business support, and to facilitate access to this. (MusicACT priority)
- Support and provide resources for an ongoing ACT Music Industry Forum.
- Work closely with other government agencies to support grass roots and independent arts.
- To work closely with other government agencies to coordinate red tape reduction and regulatory reform.
- Work with EventsACT and the music sector to ensure strategically coordinated support for the development of the ACT music scene.
- Publicly funded events to identify local ACT and external artists as well as artist employment data to ensure transparency and that musicians are paid.

- Ensure low-cost access to suitable venues for independent musicians and bands, small to medium sector arts organisations and community programs.
- Align cultural programs with regional neighbours to support broader arts opportunities in the ACT and NSW.
- Recognise independent arts events that provide creative opportunities and increase visitation with funding and marketing support, and through Tourism ACT.

#### *Recommendations*

20. *artsACT to support and resource an ongoing ACT Music Forum to support the development of the music sector in the ACT.*

## **9.14 Music Industry Development**

Across Australia, state and territory governments recognise the value in having a state/territory music industry peak body that provides Industry support, funding guidance and auspicing of grants. All jurisdictions have music industry advocacy and service organisations, and of these all are core funded by the state or territory government except the ACT. There is a compelling case for this kind of service to be funded for the music sector in the ACT, as has been the case in the past, and as has provided great success for craft and writing.

As noted in our submission to the Arts review above, we believe that it is vital that such funding be separate from funding for creative projects. MusicACT has not thus far submitted a proposal for key arts funding from artsACT but has been advised that service organisations are not considered a high priority in the arts budget at this time. We consider this position to omit many needs of the arts community.

It is important to note that much of the music sector, particularly the popular live music scene, is generally unable to access funding from the ACT arts funds, which has historically seen most of its funding go to the classical and community music sectors. Therefore, we propose that funding for music industry development also be allocated from the economic development, business focused portfolios.

We note that the recently released ACT Arts Policy notes the need for artform sector development planning, and that the artsACT Strategic Plan calls for a scoping of needs. We submit that this document represents a thorough initial scoping of those needs, and makes a strong case for funding and recognition in arts priorities, both in terms of the level of activity evident, and the complexity of issues that have to be resolved for the music sector to grow.

We propose, therefore, that consideration be given to a core funding allocation for live music sector development from the ACT Government. This should be sufficient to enable an office to be established with a full time staff member at the Ainslie Arts Centre. We recognise that the organisation to undertake this role may not be MusicACT in its current form, but submit that our organisation has the expertise to undertake it if this is requested the Government.

MusicACT is currently in receipt of a small amount of funding from the APRA/AMCOS and has been given advice that further funding can be accessed to establish a fuller program of member services. Combined with membership fees and building on our strong track record in obtaining corporate sponsorship, we are well placed to quickly develop to an organisation that can facilitate the evolution of Canberra's exciting live music culture.

The establishment of the St Paul Creative Centre in Adelaide as well as new funding in Victoria for contemporary music is producing revitalized thinking and structures around clustering music organisations. There is a great opportunity to build on the developments to the Ainslie Arts Centre to establish a genuine music hub – like the *St Pauls Creative Centre* in Adelaide – providing hot desks and shared administrative services, music business advice and support, access to legal and insurance services, advice on music teaching, formal training, and marketing and business development training. MusicACT already has strong networks into all parts of the music sector that can be leveraged to create a new culture of shared resources and expertise.

An outcome of the July 2014 MusicACT /Live Music Office Forum with the Live Music Office and Sounds Australia was recognizing the benefits of bringing the music sector expertise to the ACT rather than individual musicians and cultural entrepreneurs having to continually spend their limited incomes to travel to attend industry forums and workshops. MusicACT is an established member of the *Australian Music Industry Network (AMIN)*, which brings together and represent its members, the state and territory music industry associations, to create a strong network that provides a national platform for the representation of, and the delivery of projects for the benefit of the contemporary music industry in Australia.

For example, AMIN has recently secured agreements from both Virgin Australia and Qantas for significant discounts on airfare and baggage for members of AMIN organisations, including MusicACT.

MusicACT has plans to also invite the Association of Artist Managers (AAM) to regularly visit the ACT to guide local artists and industry with workshops, sector and skills development opportunities, and invite the AMIN National members to the ACT for a contemporary music forum.

We hope that this document is sufficient evidence of the quality of the policy thinking and advocacy ability of MusicACT with support from its community and our national networks.

#### *Recommendations*

21. *artsACT to work with music and other cultural organisations to develop policy to support enterprise development through business and marketing skills development in the small to medium music and cultural events sector in the ACT.*
22. *That funding for a peak music body and other arts industry service organisations include a contribution from business development as well as through arts funding. Like the Music Development Office in South Australia, this will reflect the two components needed for music sector development.*

## **9.15 Access To Venues**

Access to venues has been a ubiquitous issue for the music community. Also referenced in the Loxton Review and Live Community Events review, access to affordable and appropriate venues are crucial to maintaining a healthy live music scene.

Canberra's venues lack diversity and capacity with an associated over demand for good venues. Local, national and international promoters want to host more concerts in the ACT but fail to find appropriate venues. Potential venue operators know this but struggle to find suitable properties to confidently provide for demand. Current planning doesn't protect investment into music venues by virtue of allowing new residential development to shut down existing venues, without the need to insulate against the inevitable sounds of a city centre or mixed-use precinct.

Strategies such as closing early or turning down music at 'bedtime' disincentivises investment into venues and make Canberra look parochial. It's what Transit Bar has had to accept, but they are still well frequented because of the lack of venue supply.

A large shed venue akin to Princes Wharf in Hobart would solve a lot of Canberra problems. Markets such as Hustle and Scout, events like the ACT Music Awards and Fashfest, conferences and concerts would all be able to use a large, contemporary shed with decent infrastructure. This is effectively a request for a blank canvass for events – not a dry space like a convention centre.

- There is no doubt that the shortage of such venues has contributed to a decrease of medium level national and international live music acts, such as would for many years regularly include the ANU Bar or Tilleys on their touring circuit. This has had a flow on effect in a similar decrease in major acts that would regularly tour to the Convention Centre or Bruce Stadium, as national industry promoters have no visibility of Canberra's local music culture.
- The highly resourceful Canberra Musicians Club continues to make wonderful use of repurposed venues such as Smiths Alternative and the Polish Club. Despite this, they continue to be hampered by regulatory problems that should be addressed by a client-facing whole of government service.
- New hospitality hubs that could host live music such as the Kingston Foreshore remain hampered by regulatory issues.
- Classical Music organisations and community bands have special needs. While many organisations have good homes for offices and rehearsal, venues such as the Fitters Workshop unfortunately are under utilized due to cost, and there remains no professional standard medium size recital hall.
- Ainslie Arts Centre, and Gorman House may not be ideal contemporary music spaces due to regulatory issues. Other ACT Government facilities such as Corroboree Park have similar problems or are simply not in desirable locations.

#### *Recommendations:*

23. *Align the Arts Hubs Master Plan to ensure that the music community has affordable access to all publicly owned venues.*
24. *Support the availability of a 300-400 seat recital hall for classical music, and a 200-400 capacity venue for contemporary music.*

## 9.16 ACT Music Awards

The first two years of the Music ACT Annual Music Awards were hugely successful and have earned a great reputation in the community. Aside from providing recognition locally, we believe the ACT Music Awards - as with similar awards around Australia through our partner AMIN organisations - are a vital tool to promote Canberra's musical culture, artistically as well as in terms of economic development and to promote visitation.

We have previously advised the Government with regret, however, that we have been unable to secure sufficient resources to run the Music Awards in 2014, and without support the Music Awards will not be able to continue. The second Awards broke even and the third was on schedule to grow with government funding, but we were turned down by Events ACT and told that we would need to approach the Chief Minister for any prospect of support in 2015.

This is despite considerable success in gaining private sector sponsorship. The effort of establishing the MAMAs has also led to significant burnout among our volunteers and, as it stands, we are facing the prospect of having to announce that the Awards will not continue.

This would be a huge backward step for Canberra's cultural development and therefore we request that the ACT Government consider becoming a sponsor of the awards with a rebranding to become the #CBR Music Awards. An annual investment of \$40,000 for three years would allow this not-for-profit to build a strong foundation for the awards into the future. Investment in industry development such as is suggested in this report should see the awards become self-sustaining after this initial period.

### *Recommendation*

25. *That the Government provide seed funding of \$40,000 per year for three years to support a rebranded CBR Music Awards to better support the development of the music sector in the ACT.*



Los Chavos by Martin Ollman



ACT Music Awards by Martin Ollman



## APPENDIX A – REVIEW AND CONSULTATIONS

### 1. Standing Committee On Planning, Public Works And Territory And Municipal Services Inquiry Into Live Community Events

In 2009 an inquiry was held in the ACT into issues affecting live music venues and events. This inquiry investigated important regulatory provisions and made recommendations for changes to better support live music in the ACT.

- [Terms of Reference \(1\)](#)
- [Submissions \(75\)](#)
- [Transcripts \(Hansard\)](#)

The Standing Committee on Planning, Public Works and Territory and Municipal Services tabled an Interim Report on 10 December 2009 and a Final Report on 26 August 2010.

- *The Committee recommends that the description of ACT land areas in Schedule 2 (table 2.1) of the Environment Protection Regulation 2005 specify which Territory Plan zones fall under a particular noise zone, where applicable.*
- *The Committee recommends that the ACT Government review the noise standards in the Environment Protection Regulation 2005 to provide more flexibility for small and medium venues to run live events. The review should consider:*
  - (1) *Distinguishing between outdoor and indoor entertainment;*
  - (2) *Allowing a higher noise standard on Friday and Saturday nights in Zone B, at least until midnight; and*
  - (3) *Allowing higher noise standard for New Year's Eve until 1.00am on 1 January.*
- *The Committee recommends that the Liquor Act 1975 enable the Commissioner to consider Order of Occupancy principles when investigating complaints in relation to a licensee.*
- *The Committee recommends that the ACT Government investigate the best ways to ensure that people moving into residential areas where live entertainment is provided are made aware of Order of Occupancy principles.*
- *The Committee recommends that the ACT Planning and Land Authority include the concept of Reverse Sensitivity as an overarching Objective in the relevant Development Codes and Precinct Codes of the Territory Plan.*
- *The Committee recommends that private businesses and commercial developments be encouraged to provide bill posting facilities.*
- *The Committee recommends that the interdepartmental committee (IDC) further investigate the availability of community venues for live events in the ACT and consider how the ACT Government can better support this need.*
- *The Committee recommends that the ACT Government review the regulations that impact on live community events and ensure that the regulatory requirements for venues reflect the different types of music and entertainment that may be provided.*
- *The Committee recommends that the ACT Government consider improved sound attenuation measures for existing community facilities.*

Minister for the Arts, Ms Joy Burch MLA, presented the Government Response to both the Interim Report and Final Report to Assembly on 16 August 2011.

- [Government response - Interim report](#)
- [Government Response - Final](#)

### 2. March 2010 Loxton Review Of The Arts In Canberra

Undertaken to provide a broad and independent review of the Arts in Canberra, the Loxton Report was released in August 2010. Containing 118 recommendations, key findings of relevance to the music sector include:

- *It is difficult to survive as a full-time professional artist in Canberra, especially as a young or emerging artist.*
- *Some areas of the arts appear to be better funded than others.*

- *Arts facilities and venues are in high demand and are valued*
- *The balance and blending of funding needs to change, with more for professional artists, especially emerging artists*
- *There is rigour in Government processes, but they are also often complex, slow, inflexible and unresponsive to the needs of the arts*
- *There should be a greater awareness and connection of the arts to education, community, social, and economic development*
- *Arts budgets and resources are too tight, and there is an urgent need for new priorities and change*

The importance of the live music scene in the context of arts innovation and economic development was recognised;

*Live music and other areas of arts activity, when working constructively and creatively with the hospitality industry and with Government, can encourage the growth of Canberra's night-time economy.*

Recommendations included;

- *CMD should drive and support improved communication and better coordinated whole-of-Government responses to the arts to be led by artsACT.*
- *A full audit of arts and cultural facilities in the ACT is needed across all agencies to develop a consolidated list of community, amateur and professional venues and facilities including the number, location, nature, repairs and maintenance issues, ownership and rental arrangements.*
- *Review all rents for arts organisations and access to arts studios and facilities to ensure clarity and consistency, reflecting Government arts goals and priorities.*
- *Extended and more affordable access to Llewellyn Hall*
- *There needs to be greater awareness and coordination, including from artsACT, of arts initiatives across agencies.*
- *There needs to be a clearer recognition and promotion by all stakeholders of the strong connections between the arts, creativity, innovation and economic development.*
- *Current funding for the arts in the ACT is 'gridlocked'.*
- *Government should move away from the notion of 'Key' Arts Organisations.*
- *A hub for communications and marketing of the arts should also be established.*

### **3. Review Of The Arts In Canberra: The Implementation Of The Loxton Report**

In 2011 The ACT Government agreed to 72 of the recommendations, including:

- The creation of Arts Hubs
- Artists-in-Residence Program
- Improving Access to the Arts
- ACT Arts Fund
- ACT Arts Policy Framework
- artsACT should strengthen its focus on policy, research, data collection and communication
- Business and Arts Relationships
- Strategic Arts Policy Advice to the Minister

### **4. March 2010 Contemporary Music Inter-Departmental Committee (IDC)**

Findings from the 2010 Contemporary Music Inter-Departmental Committee (IDC) are not currently publicly available.

## 5. April 2011 ACT Planning and Land Authority (ACTPLA) Night Time Discussion Paper

Following on from a 2009 survey by the ACT Planning and Land Authority (ACTPLA) found that Civic, Manuka, Dickson, and Kingston were major hubs of hospitality industry venues and that Town Centre's Weston and Braddon also contained significant numbers of venues, this 2011 report identified the ACT entertainment industry as comprising:

- Cinemas.
- Popular live music and theatre venues – Including large events.
- High culture venues.
- Gambling venues.
- Professional sports venues.

S 4.1 Planning for live music from the Night Time Discussion Paper recognises that:

*Live music is a key dimension to the cultural life of any city and a large number of popular and high culture music venues already exist across Canberra. These venues, their shows and their audiences play a very important role in contributing to the vibrancy of commercial centres after dark.*

The associated response to these findings was:

*From a planning perspective, ACTPLA will consider the accommodation of live music within the review of Territory Plan policies for commercial zones.*

## 6. Transforming Canberra's City Centre

By the Property Council and Canberra CBD Limited, this report has a focus on retail and office building stock with a comparative analysis of the Melbourne postcode 3000 initiative.

Possible actions (recommendations) from this report include:

- Tailored guidelines to provide information for building owners on how to upgrade or convert an existing building.
- Engage a planning consultant to provide technical support to assist in navigating the challenges associated with building codes, planning controls and community engagement.
- Targeted financial incentives for particular use types.
- Targeted planning or other concessions.
- Tailored guidelines and market analysis to support and promote the community and market's understanding of the converted use.

The Next steps chapter identifies financial, regulatory and technical solutions to encourage the adaptive reuse of existing buildings as well as new development in Canberra.

## 7. April 2015 ACT Noise Zone Review

Prepared in April 2015 by the Acoustics and Vibration Unit of the University of New South Wales, Canberra, on request from ACT Environment Protection Authority (EPA), the purpose of this study was to investigate current noise standards between local, group and town centres and adjacent residential areas.

*The requirements for dealing with external noise have been strengthened following the introduction by ACT Government of the Multi Unit Housing Development Code [ACT, 2014]. These requirements for compliance with the design noise levels for areas of occupancy in AS/NZS 2107 [Standards Australia, 2000] and in AS 3671 [Standards Australia, 1989] has meant that the design of the building facades and the performance of the glazing must take the external noise levels into consideration.*

## APPENDIX B REGULATORY FRAMEWORK AND AGENCIES

### Liquor Licensing

In the ACT, The Office of Regulatory Services is responsible for issuing liquor licenses and permits and performs regulatory functions under the Liquor Act 2010.

Department Website [www.ors.act.gov.au](http://www.ors.act.gov.au)  
Legislation [Liquor Act 2010](#)  
[Liquor Regulation 2010](#)

### Planning

Both the ACT Planning and Land Authority (ACTPLA - ACT Government) and the National Capital Authority (NCA - Commonwealth Government) are responsible for Planning in the ACT.

#### ACT Planning and Land Authority

Department Website [www.planning.act.gov.au](http://www.planning.act.gov.au)  
Legislation [Planning and Development Act 2007](#)  
Territory plan [www.planning.act.gov.au/tools\\_resources/legislation\\_plans\\_registers/plans/territory\\_plan](http://www.planning.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan)

#### Planning Strategy

[www.planning.act.gov.au/tools\\_resources/legislation\\_plans\\_registers/plans/planning\\_strategy](http://www.planning.act.gov.au/tools_resources/legislation_plans_registers/plans/planning_strategy)

#### National Capital Authority

Department Website [www.nationalcapital.gov.au](http://www.nationalcapital.gov.au)  
Legislation [Australian Capital Territory \(Planning And Land Management\) Act 1988](#)

#### Land Development Authority

Department Website [www.lda.act.gov.au/en](http://www.lda.act.gov.au/en)

#### Environment Protection Authority

Department Website [www.environment.act.gov.au/environment/environment\\_protection\\_authority](http://www.environment.act.gov.au/environment/environment_protection_authority)  
Legislation [Environment Protection Act 1997](#)  
[Environment Protection Regulation 2005](#)  
[Magistrates Court \(Environment Protection Infringement Notices\) Regulation 2005](#)  
[Environment Protection \(Fees\) Determination](#)  
[Environment Protection \(Noise Measurement Manual\)](#)  
Environment Protection [nvNoise](#)  
Authority Policies [Outdoor Concert Noise](#)

### Events ACT

Events ACT is established to be the lead agency for the development and delivery of major events in Canberra.

Department Website [www.events.act.gov.au/funding](http://www.events.act.gov.au/funding)



## Access Canberra

Established in December 2014, Access Canberra is tasked with being a 'one-stop shop' to cut red tape and connect ACT residents to government services.

Department Website [www.accesscanberra.act.gov.au](http://www.accesscanberra.act.gov.au)

## artsACT

The ACT Government's arts agency.

The ACT Arts Policy was recently released.

Department Website [www.arts.act.gov.au](http://www.arts.act.gov.au)

# APPENDIX C - ACT LIVE MUSIC REGULATION ROUNDTABLE DRAFT TERMS OF REFERENCE

## Purpose and Role

The purpose of the ACT Live Music Regulation Roundtable is to coordinate agencies and develop better regulation for live music and performance in the ACT.

The role of the ACT Live Music Regulation Roundtable is to:

- Discuss significant issues in relation to ACT regulation that affect creative industries.
- Consider best practice standards, guidelines or other references that would benefit the creative sector.
- Develop a cross government approach to successfully implement regulatory reforms and to evaluate implementation and operation.
- Put forward proposals or recommendations to Government on potential improvements to Government regulation as it relates to live music and performance; and
- Provide feedback to Government on associated issues.

## Scope

The scope of the ACT Live Music Regulation Roundtable discussions will be limited to matters of ACT regulation, such as liquor licensing, environmental protection and amenity, planning and built environment issues which affect performance and venues, as well as to issues identified by the Territory Government and members as relevant to industry.

## Membership

The ACT Live Music Regulation Roundtable to be chaired by the ACT Chief Minister's Office or delegate.

Membership of the ACT Live Music Regulation Roundtable to comprise executive or senior manager representatives from:

- ACT Chief Ministers Office
- ACTPLA Planning and Land Authority within the ACT Environment and Sustainable Development Directorate
- EPA ACT Environment Protection Authority
- ESA Emergency Services Authority
- ESDD ACT Environment and Sustainable Development Directorate
- LDA Land Development Authority
- NCA National Capital Authority
- TAMS ACT Territory and Municipal Services Directorate
- artsACT
- Australian Hotels Association (ACT)
- Live Music Office
- Music ACT
- APRA AMCOS

Additionally venue licensees, creative industry practitioners and relevant experts may be invited to attend by the chair.

Any member may request that a delegate of their choosing attend a meeting or give a presentation at a meeting.

Should a permanent member be unable to attend a meeting, they may make a request to send an appropriate proxy.

Members are required to declare any pecuniary or non-pecuniary interests that may relate to their participation in The ACT Live Music Regulation Roundtable including possible conflicts of interest. A member who has a pecuniary interest in a matter being considered at a meeting must disclose the existence and nature of the interest. A member having disclosed a pecuniary interest must not be present when the matter is being considered, discussed or voted on.

## **Governance and Accountability**

The ACT Live Music Regulation Roundtable will have no formal reporting structure. The ACT Live Music Regulation Roundtable may prepare reports or recommendations to be presented to the ACT Government for consideration.

## **Meeting Administration, Attendance and Protocol**

ACT Department of the Chief Minister will provide administrative support including;

- (a) Compiling and circulating agenda and relevant documents to all members.
- (b) Taking and distributing minutes which include attendance, declaration of interest and meeting resolutions.
- (c) Coordinating other meeting arrangements including accessibility of meeting procedure and materials.

Members and Chairperson can suggest additional agenda items provided that those items do not contravene with the objectives stated in these Terms of Reference and if time allows.

## **Review**

These Terms of Reference will be reviewed as needed.

## **Fees and Expenses**

Members whose participation in the ACT Live Music Regulation Roundtable cannot be considered an extension of their paid employment or professional position will be paid \$200 per meeting attended.

## **Conduct**

Members must act lawfully, professionally, with honour and integrity.

Information accessed, discussed, received, used in Roundtable meetings is confidential unless the Roundtable resolves otherwise. The ACT Chief Ministers Office, by approval of the Chair, may terminate a Roundtable member's term for breaching the confidentiality rules. In line with principles of good governance, the Roundtable will at all times strive to be participatory, consensus oriented, respectful, accountable, responsive, effective and efficient.

## APPENDIX D – REGULATION REFERENCES

### Apartment Design Guide - Noise and pollution

In July 2015 new rules were introduced to promote better apartment design across NSW through the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65).

SEPP 65 now allows councils to appoint design review panels, which can advise on whether an apartment development meets the design principles and, if not, make recommendations on ways to comply. These provisions include seals preventing noise transfer through gaps as well as double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens).

<http://www.planning.nsw.gov.au/en-AU/Policy-and-Legislation/Housing/Better-Apartments>

*Properties located near major roads, rail lines and beneath flight paths can be subject to noise and poor air quality. Similarly, hostile and noisy environments such as industrial areas, substations or sports stadiums can have impacts on residential amenity. Careful design solutions can help to improve quality of life in affected apartments by minimising potential noise and pollution impacts.*

*This section addresses design responses on sites that are affected by significant noise and pollution sources. Section 4S Acoustic Privacy deals with more typical residential developments that do not face these challenges.*

4T-1 The siting and layout of buildings minimise the impacts of external noise and pollution.

Acceptable solutions:

1. A number of the following design solutions are used:
  - residential uses are located perpendicular to the noise sources and where possible buffered by other uses.
  - non-residential buildings are positioned parallel to the noise source to provide a continuous building shielding residential uses and communal open spaces.
  - non-residential uses are located at lower levels vertically separating the residential component from the noise source.
  - where solar access is in the opposite direction to the noise or pollution source, habitable rooms are located away from these and storage areas, circulation areas, non-habitable rooms and kitchens provide a buffer to the noise or pollution source.
  - where solar access is in the same direction as the noise or pollution source, apartments are dual aspect with shallow building depths.
  - landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry.

4T-2 Noise transmission is mitigated by appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials.

Acceptable solutions:

1. A number of the following design solutions are used:
  - number and size of openings facing noise sources are limited.
  - seals prevent noise transfer through gaps.
  - double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens).
  - materials with mass and/or sound insulation or absorption properties e.g. balcony balustrades, external screens and soffits.



#### 4.2.3.11 Acoustic privacy

1. A Noise Impact Assessment prepared by a suitably qualified acoustic consultant may be required when submitting a development application *for commercial and retail uses which may affect the acoustic privacy of the adjacent residential use*.
2. Where necessary, a residential development is to include acoustic measures *to reduce the impact of noise from existing or planned external sources (for example busy roads, adjoining industries, live music venues and public parks and plazas in which people may congregate or host live music or events)*.
3. *Development is to incorporate measures that reduce the entry of noise from external sources into dwellings.*
4. *Where possible, the attenuation of noise at its source is preferred. Where this option is adopted, the applicant will need to demonstrate that the measures to be undertaken:*
  - (a) have the consent of relevant parties associated with that noise source; and
  - (b) last for the life of the development proposal.
7. The repeatable maximum LAeq (1 hour) for residential buildings and serviced apartments must not exceed the following levels:
  - (a) for closed windows and doors:
    - (i) 35dB for bedrooms (10pm-7am); and
    - (ii) 45dB for main living areas (24 hours).
  - (b) for open windows and doors:
    - (i) 45dB for bedrooms (10pm-7am); and
    - (ii) 55dB for main living areas (24 hours).
8. Where natural ventilation of a room cannot be achieved, the repeatable maximum LAeq (1hour) level in a dwelling when doors and windows are shut and air conditioning is operating must not exceed:
  - (a) 38dB for bedrooms (10pm-7am); and
  - (b) 48dB for main living areas (24 hours).
9. These levels are to include the combined measured level of noise from both external sources and the ventilation system operating normally.
10. To limit the transmission of noise to and between dwellings, all floors are to have a weighted standardised impact sound level (L'nT,w) less than or equal to 55 where the floor separates a habitable room and another habitable room, bathroom, toilet, laundry, kitchen, plant room, stairway, public corridor, hallway and the like.
11. The overall design and layout of dwellings, where appropriate, is to include:
  - (a) a limit on window size and number where oriented towards an intrusive noise source;
  - (b) seals at entry doors to reduce noise transmission from common corridors or outside the building;
  - (c) minimisation of the number of shared walls with other dwelling units;
  - (d) storage, circulation areas, and non habitable rooms to buffer noise from external sources;
  - (e) double or acoustic glazing; and
  - (f) operable acoustic screens to balconies.

## Assembly Building definition under the NCC

The national Assembly Building definition reads as follows – *note (c)(i)*

Assembly building means a building where people may assemble for—

- (a) civic, theatrical, social, political or religious purposes including a library, theatre, public hall or place of worship; or
- (b) educational purposes in a school, early childhood centre, preschool, or the like; or
- (c) entertainment, recreational or sporting purposes including—
  - (i) **a discotheque, nightclub or a bar area of a hotel or motel providing live entertainment or containing a dance floor; or**
  - (ii) a cinema; or
  - (iii) a sports stadium, sporting or other club; or
- (d) transit purposes including a bus station, railway station, airport or ferry terminal.

The NSW Variation does not have the previous (c)(i) reference.

Assembly building means a building where people may assemble for—

- (a) civic, theatrical, social, political or religious purposes including a library, theatre, public hall or place of worship; or
- (b) educational purposes in a school, early childhood centre, preschool, or the like; or
- (c) entertainment, recreational or sporting purposes including—
  - (i) a cinema; or
  - (ii) a sports stadium, sporting or other club; or
  - (iii) transit purposes including a bus station, railway station, airport or ferry terminal.

On 29 October 2014 the Building Amendment (Live Music) Regulations 2014 were introduced to amend the Building Regulations 2006 in relation to the classification of small live music venues under the Building Code of Australia in the state of Victoria.

The intent of this amendment is to exempt primary purpose live music venues that are at or under 500msq and with a vertical travel of two floors or less from being assessed as a BCA class 9b assembly building for compliance.

# MARRICKVILLE COUNCIL ZONE IN2 LIGHT INDUSTRIAL AND ZONE B7 BUSINESS PARK FOR CREATIVE INDUSTRIES

Marrickville Council's Local Environment Plan 2011 recognises that the Marrickville area is the centre of Sydney's independent arts scene and is home to many artists, studios, commercial art galleries, artist-run initiatives, theatres and festivals.

The LEP includes a 'B7 Business Park' zone that has the objective of providing for creative industries such as the arts, technology, production and design sectors. It is an employment zone that permits limited residential development in conjunction with employment uses at the ground floor.

[www.legislation.nsw.gov.au/maintop/view/inforce/epi+645+2011+cd+0+N](http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+645+2011+cd+0+N)

The 'IN2 Light Industrial' zone will allow for certain creative industries which take the form of business premises or office premises in the arts, technology, production and design sectors.

The creative industries provided for include:

- audio-visual, media and digital media
- advertising
- craft, visual arts and Indigenous arts
- design
- film and television
- music
- publishing
- performing arts
- cultural heritage institutions

*Marrickville Council is currently investigating how to turn the fascinatingly gritty area known as Marrickville/Sydenham Industrial Lands into a thriving, 24-hour destination that live music venues and traditional and creative industries call home – a 'creative industry hub' servicing the whole of Sydney.*

## 6.12 Business and office premises in certain zones

1. The objective of this clause is to promote certain types of business and office premises in Zone IN2 Light Industrial and Zone B7 Business Park.
2. This clause applies to land in the following zones:
  - (a) Zone IN2 Light Industrial,
  - (b) Zone B7 Business Park.
3. Development consent must not be granted to development for the purpose of business premises or office premises on land to which this clause applies unless the consent authority is satisfied that the development will be used for a creative purpose such as media, advertising, fine arts and craft, design, film and television, music, publishing, performing arts, cultural heritage institutions or other related purposes.

## Current State and Territory Music Policies, November 2015

State / Territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Contemporary / Live Music Strategic Plan	Yes	-	-	-	Yes	-	Yes	-
Music Industry Council	-	-	-	-	Yes	-	Yes	Yes
Co-Regulation Roundtable	-	-	-	-	Yes	-	Yes	-
Music Development Office	-	-	-	-	Yes	-	Yes	-
Funded State Music Organisation	-	Yes	Yes	Yes	Yes	-	Yes	Yes
Live Music Census	-	-	-	-	Yes	-	Yes	-
Capital City Live Music Plan	-	Sydney	-	Brisbane/ Fortitude Valley	Adelaide	-	Melbourne	-
Local Govt Live Music Plan	-	Wollongong	-	Sunshine Coast/ Nambour	Norwood Payneham & St Peters	-	Yarra	-
	-	Leichhardt	-	-	-	-	Ballarat	-
	-	Marrickville	-	-	-	-	Mornington Shire	-



