



Submission to

LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL  
TERRITORY

Standing Committee on Planning,  
Public Works and Territory and  
Municipal Services

by

***Who's Ya Daddy Pty Ltd***

## **Inquiry into Live Community Events**



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# **ACT GOVERNMENT INQUIRY INTO LIVE COMMUNITY EVENTS**

## ***SUBMISSION ON BEHALF OF WHO'S YA DADDY PTY LTD (WYD)***

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## **What does live music mean to WYD?**

Live music is the life-blood of WYD. It is the sole source of our income and provides us with the opportunity to share our music with the most important part of our act - our audience. Live music enables us to test new tunes, new methods, new approaches and new members, but most importantly, it is our way of staying in touch with the community. Without live music, we would become irrelevant; we would be robbed of the communal link that informs our repertoire and deprived of contact with our fans. Through live music, we are able to connect with our audience and nourish our musical soul.

And we are not alone. WYD believes that all musicians share the same reliance upon live music. Moreover, we believe in the raw talent of musicians that reside in our nation's capital and the potential for live music to prosper under the right circumstances. However, Canberra faces a massive challenge as it suffers from being seen as no more than the centre of governance the Australian public service – there is not enough recognition of Canberra's reputation for cultural expression. Furthermore, Canberra does not have the luxury of larger cities where there is a strong variety of live music venues with a population to support it. Audiences can be fickle and we understand that Canberran musicians face distinct challenges in obtaining a sustainable livelihood in a town that does not (yet) have the required critical mass to easily support live music.

In most cases, the destiny of musicians in Canberra is tied to the success of live music venues. Therefore, it is critical that music venues operate in a supportive environment which allows local cultural expression through arts and music – and the success of these venues creates a positive impact upon the success of musicians that it hosts. What is needed is the creation of an environment that is conducive to venues of all sizes (especially small and medium) because these are the platforms that maintain the expressional link between the musician and their audience – and the financial sustenance to continue plying the musical trade. One of the prerequisites of a continuing strength in this artistic community is the “ability to practice and present live performances, especially live music in commercial venues on a regular basis” (ACT Democrats). In order to achieve this, we believe that the ACT Government has a pivotal role to play. There seems no better way of supporting live music and events in our community than to cater for regular commercial events of small, medium and large scale. This would best serve the live music scene with more thought and investment in a strategy that coordinates the efforts of both the ACT government and live music stakeholders in Canberra.

One of the more complex challenges faced by government is the balance between the interests of residents and live music venues, especially in areas that are known as traditional entertainment areas such as Civic, the larger Town Centres such as Gungahlin, Belconnen, Tuggeranong and Woden, Old Canberra Inn, Gold Creek Homestead, EPIC, Canberra Stadium, AIS Arena, Manuka and Kingston commercial centres. Although live music venue owners have a vested interest in maintaining their entertainment options and cultures, Canberra is growing and with growth comes increased requirements for more residential properties in areas just like these. When these two interest groups ‘meet’ it becomes an obvious challenge to the ACT Government to manage any unwanted level of interaction especially that which is defined as ‘noise’ under legislation. This submission provides recommendations about how the government should address these interactions.

However, this conflict must not consume the complete attention of the ACT Government as there are a variety of other pressing and important issues that must also be addressed. Broad level consultation should take place in order to determine the interests of stakeholders impacted by proposed changes; regulatory or otherwise. The ACT Government is encouraged to approach all stakeholders, from the hospitality and music industries, government, residency groups, the development industry, venue owners and the community in an attempt to truly understand just how wide and deep the problem really is; and perhaps to also find the solution within this community. Although the creation of this inquiry is amicable, it is not enough to expect that all the various stakeholders will step forward – and the risk is that the outcomes become skewed towards the few that bother to step forward but do not always represent the wider interests of the majority of stakeholders. The ACT Government must proactively pursue all stakeholders and work closely with them to understand their interests and suggestions for improving live music in Canberra.

It is within this context that WYD submits its recommendations in relation to the “Inquiry into Live Community Events”.

## **WYD Recommendations**

WYD provides the following recommendations to the Standing Committee on Planning, Public Works and Territory and Municipal Services (the Committee) in relation to this review:

- Recommendation 1. Improve planning and regulations in relation to live music in the ACT.**
- Recommendation 2. Implement initiatives that improve the financial prosperity of live music in the ACT.**
- Recommendation 3. Review ACT noise standards with a view of making amendments that strike a fairer balance between residents and venue owners in mixed zones.**
- Recommendation 4. Improve Occupational Health and Safety at live music venues.**
- Recommendation 5. Review all regulations to identify more ways to ensure that the interests of minors in the music industry are protected.**
- Recommendation 6. Review all regulations to identify more ways to monitor the behaviour of music agents and managers.**
- Recommendation 7. Investigate ways that marketing facilities may be improved or made more available.**

More information regarding these recommendations is provided in Appendix 1 to this submission. A description of WYD can be found in Appendix 2 and Appendices 3 and 4 respectively provide a summary of both the recommendations of the 2009 Interim Report and its underlying principles.

Our recommendations are made in light of the 2009 Interim Report produced by the Committee, the various submissions made into the inquiry, the Cultural Ministers Council Working Group 'Best Practice Guide for the Development of a Legislative and Regulatory Environment Supporting Live Music and Entertainment' and also deep consultation with many live music venue owners and musicians in the ACT.

Ultimately, WYD believes that this submission presents a thorough examination of the overall issues faced by live music in the ACT and we believe that if only some of the recommendations we have suggested were implemented, that this would provide a significant boost to the prosperity of live music in Canberra.

We thank the ACT Government for providing WYD with the opportunity to submit its recommendations and we offer our continual support towards this noteworthy cause.

Kind regards,

***Who's Ya Daddy Pty Ltd***

## **APPENDIX 1 – WYD Recommendations**

WYD's seven (7) recommendations are made on the following basis:

<b>Recommendation 1: Improve planning and regulations in relation to live music in the ACT.</b>
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a) **Improved Town Planning**

The ACT Government should:

- implement good practice planning and approvals processes that are simple and easy to follow and include a tiered or flexible response to assess performance requirements for different types of venues depending on the size and intent;
- provide adequate information on current relevant planning and local government processes and regulations should be made available in a range of formats to applicants due to the complexities of planning application processes and the need for certainty to facilitate sustainability;
- identify naturally occurring or pre-existing night economies or areas where there are live music and entertainment hubs, and investigate what may be appropriate to encourage performance opportunities;
- introduce measures that are designed to manage issues related to entertainment venues and late night trading of licensed premises in the form of precincts and zoning under liquor and local government legislation and development control plans (e.g. Fortitude Valley, Brisbane QLD); and
- Conduct regular review of such arrangements with significant community input in order to ensure that these distinctions remain accurate and appropriate under the circumstances.

b) **Improved Regulation**

The ACT Government should:

- implement regulations that differentiate between high and low impact uses and activities and their associated levels of risk to ensure that restrictions and compliance requirements are proportionate to each category;
- implement standards of compliance that are proportionate to the relevant impacts and risks associated with a musical activity and do not unnecessarily render grass roots musical performance and less commercial activity unviable;
- facilitate the provision of information on building legislation with clear directions on how their venues will be assessed in regards to the relationship between various types of consent and building compliance;
- Consider partial compliance under regulations for specific venues and alterations to those venues given that full compliance can be technically difficult to achieve. Policies developed within building legislation frameworks should be flexible in how they assess existing buildings when alterations are made or a change of use is initiated;
- consider introducing a dedicated information helpline to assist with compliance issues for entertainment venues; and
- Consider arts representation on any working group that is established to look at reform of regulation and planning that may have an effect on the live music sector.

**i) Environment Protection Regulation**

The ACT government should:

- Facilitate the provision of adequate and accessible information regarding environmental protection. It is important to ensure that live music industry businesses are able to operate whilst reducing the effects of noise. Therefore, clear information resources on environmental protection should be readily available to the live music industry;
- consider regulatory measures that ensure a proportionate response to the relevant impacts and risks associated with activities and venues (including noise standards and OH&S requirements); and
- Consider publishing a dedicated live music and entertainment noise guide to encourage best practice in live music venues.

**ii) Liquor Licensing**

The ACT government should:

- Amend ACT liquor licence legislation to acknowledge that the live music sector may be associated with the provision of alcohol. It should also help to ensure that the live music and entertainment industry are considered in licensing matters;
- consider creating a reference to live music in the aims or objects of ACT liquor licence legislation in recognition of the value of the live music industry, on the basis that the aims or objects must be considered in deciding any matter that goes before a licensing authority;
- require that applicants for a liquor licence specify whether they intend to host live music and entertainment in the premises when they apply for, or transfer licences or when they seek to vary trading hours;
- facilitate the provision of adequate and useful information resources on licensing requirements for entertainment venues who wish to apply for or renew liquor licences; and
- Review the costs and fees associated with liquor licensing to ensure that they do not effectively prohibit the ability of venues to host live music, particularly in the case of small-scale premises. It is important to ensure that fees closely reflect the actual costs of licensing administration. Liquor licensing fees should also be affordable to encourage the establishment of small-scale premises hosting live music.

WYD believes that the implementation of these recommendations would lead to improved coordination of live music entertainment as part of the fabric of town planning in the ACT.

**Recommendation 2: Implement initiatives that improve the financial prosperity of live music in the ACT.**

Live entertainment can contribute to the viability of venues such as restaurants, cafes, pubs, clubs and hotels. Many venues choose to provide live music because it was important to their customers. Live music can also be a way to attract repeat clientele. Providing live entertainment can be a profitable relationship for a venue where the entertainment fills 'a void' in the activities of their current home by conducting activities at a time the venue would otherwise be very quiet.

The choice not to provide live entertainment often comes down to profit margins and the risk of noise complaints and associated fines or operating limits being imposed by the Environmental regulations. Only those owners willing to take the risk and who are committed to live music maintain that entertainment. This is particularly critical for smaller venues given that they are more likely to feel the impact of such limits and yet are crucial to the development of start-up bands and providing the opportunity to play in front of an audience and hone their talent.

Therefore, the ACT Government should:

- 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. (Interim Report R5);
- Further investigate the availability of community venues for live events in the ACT and consider how the ACT Government can better support this need. (Interim Report R9);
- consider more funding mechanisms (possible from gambling revenue) to encourage support for the arts, including funding for
  - live music venue owners (and prospective owners);
  - musicians; and
  - agents and managers; and
- Facilitate the creation of an ACT Live Music Network (perhaps managed via a dedicated webpage resource) for entertainment industry agents, managers, venues and performers to more effectively develop the network in the ACT.

WYD believes that the implementation of these recommendations would lead to increased financial prosperity of live music in the ACT.

**Recommendation 3: Review ACT noise standards with a view of making amendments that strike a fairer balance between residents and venue owners in mixed zones.**

To a limited degree, the current ACT noise standards reflect the different level of amenity that can be expected in the city centre, town centres, group centres, local centres and residential areas. However, there is scope for additional flexibility to assist venues to provide live entertainment at times demanded by patrons.

**a) Dealing with noise complaints**

- In the event of a noise complaint, any venue owner breaching legislation should be subject to the full extent of the legal consequences.
- Conversely, if the venue owner is legally compliant with all noise requirements, then the residents' premises must be subject to a compliance review and they should only be allowed to make complaints when their building complies with the legal standards required in that zone.
- If they do not, then the owners of such premises should be required to make sound proofing renovations and, if required, perhaps the ACT government could assist perhaps by way of subsidy.
- Finally, if both resident and venue owner are compliant, then the ACT government must take into account judicial principles such as Order of Occupancy and Reverse Sensitivity to produce a fair outcome (see Appendix 3 below for an explanation of these principles).
- In this particular context, if a venue owner was there first, and especially when the residential occupant knew about the venue before the moved in, then it would be extremely "unfair" to penalise the venue owner.

**b) Accepting a lower amenity in commercial/mixed zones**

- Ultimately, people residing or working in commercial centres must accept that they cannot expect the same level of amenity as property in residential zones, particularly as residential and higher-density development increases in commercial centres.
- Ambient noise in commercial centres goes beyond entertainment facilities and includes traffic, the noise of patrons arriving or leaving venues, delivery trucks, garbage trucks, etc.
- However, as noted in the Interim Report, even when residents are aware of the ambient noise levels and all possible uses of neighbouring commercial leases, no level of awareness could stop residents' right to lobby for change. In such cases, it is necessary to include Order of Occupancy considerations in complaints assessments and to strengthen the concept of reverse sensitivity.

**c) Preventing conflict in the first place**

- In retrospect, more needs to be done to ensure that residential premises in such zones comply with appropriate sound attenuation standards that will prevent such conflicts in the first place. Ultimately, the tension between residents and venue owners in mixed zones is well described by the observations of musicologist Jean-Jacques Nattiez who once noted that "the border between music and noise is always culturally defined; in short, there is rarely a consensus.... By all accounts there is no single and intercultural universal concept defining what music might be, except that it is 'sound through time'." The ACT government need to make a choice whether to define the zone according to the culture it aims to cultivate and in zones where musical vitality is crucial, the choice must always be in favour of live music.



Therefore, the ACT Government should:

- implement as more balanced assessment of noise complaints as recommended by WYD above;
- Cross-reference the Territory Plan zones in Schedule 2 (table 2.1) of the Environment Protection Regulation 2005 to assist developers, residents, venue owners and operators and live music or event performers to understand the noise restrictions in any particular Territory Plan zone. (Interim Report R1);
- Review the noise standards in the Environment Protection Regulation 2005 with the aim of providing more flexibility for small and medium venues to run live events. This review should consider:
  - distinguishing between outdoor and indoor entertainment;
  - allowing a higher noise standard on Friday and Saturday nights in Zone B, at least until midnight; and
  - Allowing higher noise standard for New Year's Eve until 1.00am on 1 January and other ACT public holidays during the year. (Interim Report R2);
- amend that regulations ensure that all new residential buildings near existing and proposed live music and entertainment venues should have to meet the same sound insulation standards for all walls, ceilings, doors and windows as live music venues as a pre-requisite to a valid noise compliant;
- the ACT Government consider providing funding for improved sound attenuation measures for existing live music venues, community facilities and residential buildings like. (Interim Report R8). This should also account for heat insulation given that increased noise insulation goes hand-in-hand with increased heat insulation;
- ensure that the ACT Planning and Land Authority include the concept of Reverse Sensitivity and Order of Occupancy as overarching Objectives in the relevant Development Codes and Precinct Codes of the Territory Plan and that residents in commercial and mixed zones are made aware of these principles (Interim Report R4 & 5);
- Ensure a standard of noise attenuation that is required to be met by developers that would reduce/minimise/prevent the likelihood of complaints in the first place. The Territory Plan Development Code and Precinct Code provisions should require more assessment of the balance between residential amenity and the provision of live entertainment and other activities within neighbourhoods; and
- ensure a requirement is imposed upon developers to notify future residents moving into a commercial or mixed use are made aware of the different amenity level that should be expected in that zone.

WYD believes that the implementation of these recommendations would lead to a clearer determination process for dealing with noise complaints and a significant drop in the number of such complaints in the ACT.

#### **Recommendation 4: Improve Occupational Health and Safety at live music venues**

Those in the live music industry have a general duty of care to ensure that risks arising from hazards encountered in the work undertaken are eliminated or controlled. Ensuring the health and safety of persons at work is a shared responsibility between production companies, event managers, the venue and their workers and contractors. Therefore, all organisations involved in live music should have implemented well documented and easily available OH&S policies and procedures that aim to protect health and safety.

##### **a) Tailored OH&S Standards for live music**

- OH&S standards should include consultations and risk assessments that aim to identify specific hazards that are common in live music venues including use of electrical equipment including instruments and lighting, falls from heights, manual handling, slips and trips, and noise.
- As musicians, entertainers, agents and managers can be very vulnerable to fluctuations in work opportunities, it is also important to ensure that positive and transparent work arrangements promote ethical and high quality dealings between all parties.
- OH&S principles should already feature in the development and layout of any premises hosting live music. The Territory Plan Development Codes and Precinct Codes does go to some degree to address landscaping and lighting requirements but further thought must go into this regulation to encompass all aspects of live music implications.

##### **b) In-house security**

- Another safety concern relates to the provision of licensed, regulated in-house security at entertainment venues and events. This is a crucial function both its improvement in safety and helping to minimise patron noise when entering or leaving a venue or event. Such a function could cooperate with a more visible community police presence and police shop-fronts in areas such as Civic and Town Centres. Even without in-house security, an increased police presence would lead to a more open, safer and well lit urban environment to help reduce crime and promote an environment of physical security.

##### **c) Improved public transport**

- In order for patrons to safely attend venues, they also need to know that they can travel home in safety. This is a major concern in Canberra, even to the extent that increased transportation options would go a long way to increasing the number of patrons that would fund live music events.

Therefore, the ACT Government should:

- consider amending current OH&S legislation to incorporate specific considerations in relation to live music
- consider providing live music venues with support in obtaining in-house security options, especially smaller venues that are often unable to afford such services
- increase police presence at live music venues in support of increase in-house security
- Investigate the provision of late night public transport options including the expansion of existing ACTION/Deanes and Night-Ride style services.

WYD believes that the implementation of these recommendations would not only lead to a reduced number of accidents and injuries but also increase the number of guests at live music events in the ACT.

**Recommendation 5: Review all regulations to identify more ways to ensure that the interests of minors in the music industry are protected**

As noted in the Interim Report, section 156 of the *ACT Liquor Act 1975* allows persons under 18 years old to enter or remain in a bar-room on licensed premises in the care of a responsible adult. In practice, this would allow for live performers under the age of 18 to perform in licensed venues in the ACT if they are accompanied by an adult, such as a parent or guardian.

The provision of live music activities in the ACT is also a viable and important form of expression to minors as well as to adults. Music is an integral part of the lives of young people and the ability to form, rehearse and perform in live groups is often an important mechanism for teaching young people the benefits of teamwork. Many such young people are not interested in experiencing such teamwork principles in the more common domains of sporting teams and music provides a unique outlet for them to express themselves that is both exciting and personable to their lives.

The ability for minors to work alongside established professionals in licensed premises under appropriate conditions is consonant with Article 31 of the UN Convention on the Rights of the Child. The ability to perform, under appropriate conditions, can assist minors to simultaneously commence an apprenticeship, expand their profile and earn an income. However, the Liquor Act should be reviewed in order to ensure the safe and responsible involvement of young musicians, with a view of protecting children working in the entertainment industry from exploitation or abuse, and prevent inappropriate and unreasonable demands being placed on them. Furthermore, the Liquor Act may not be the only legislation required to be reviewed and perhaps the ACT Government should review all legislation that might ensure this particular outcome, especially in light of the significance of protecting minors in the music industry

WYD believes that the implementation of these recommendations would ensure that the interests of minors performing in the live music industry are protected in the ACT.

**Recommendation 6: Review all regulations to identify more ways to monitor the behaviour of music agents and managers**

In line with protecting the interests of musicians, there should also be a review as to the degree of regulation that should apply to music agents and managers in the industry. These parties create what could perhaps be considered as a fiduciary responsibility to musicians and there is certainly a heavy reliance upon agents and managers in the industry. In this regard, the livelihood of musicians relies heavily upon its representation and regulation should ensure clear performance standards for music agents and managers and mechanisms for effective enforcement. Consideration should be given to ensuring that relevant performance standards are developed in partnership with industry. Such measures could reduce the risks that agents and managers charge performers excessive fees, pay late or not at all, or otherwise act inappropriately.

WYD believes that the implementation of these recommendations would increase transparency and accountability of music agents and managers, leading to fairer outcomes and a greater likelihood for the success of musicians in the ACT.

**Recommendation 7: Investigate ways that marketing facilities may be improved or made more available**

Many bands, music groups and performers have limited funds with which to promote their events. Many live performers undertake their own advertising and venues do not generally do a lot of promotion for themselves or their performers.

Advertising using posters remains one of the most common forms of promotion for live music and events. Many submissions to the inquiry reinforce the benefits of enabling legal bill posting as a low-cost way for live performers to promote their acts as well as assisting a performer to establish a 'brand' and a following.

If music venues choose to provide bill posting silos or facilities, the responsibility for the maintenance, repair, cleaning and removal of inappropriate material from bollards would most likely fall to the building owner or lessee. Therefore, there remains a risk that the poster facility will not be maintained and cleared regularly, adding to the visual pollution of commercial centres. Ultimately, the up-keep involved can act as a deterrent to even providing one in the first place.

If large commercial developments were to provide community poster bollards, maintenance and cleaning responsibility could be negotiated between the commercial development and the ACT Department of Territory and Municipal Services. The ACT should investigate whether this could be a viable option

Furthermore, the ACT should also consider providing more publicly available bill posting facilities for the same purpose. What is evident is that this should also take into account the specific location of these facilities and public consultation would provide a strong indication of the best locations in the ACT.

WYD believes that the implementation of these recommendations would increase the amount awareness of music acts leading to increased attendance and increased prosperity of live music in the ACT.

## **APPENDIX 2 – “Who’s Ya Daddy and what does he do?”**

Who’s Ya Daddy Pty Ltd (WYD) is a new, Canberra-based music production company that offers a range of services including:

### **1. PERFORMANCE** – we provide a range of performance services including:

- **WYD Party Band:** playing all styles of music from all eras with a clear focus on the music of now and tomorrow. Central to the band’s show is a non-stop approach to performance. Put simply, a Who’s Ya Daddy show is like experiencing a live DJ, the band seamlessly moves between songs getting people on the dance floor and keeping them there. We play a wide variety of musical styles and can provide subtle background music all the way through to high energy Top 40 and just about everything in between. Featuring a full rhythm section, classic 3 piece horn section and the amazing versatility of vocalists Tony Dellamarta and Maka Kama - the band provides a full, rich sound rarely heard in today’s ensembles.
- **WYD Big Band:** playing a variety of styles including concert, swing, jazz and dance, the WYD Big Band provides an extraordinary musical experience for the pleasure of its audience. The band will dazzle you with famous hits by Big Band enthusiasts such as Glenn Miller, Frank Sinatra and Michael Buble and is also developing a strong original repertoire.
- **WYD Jazz Band:** playing a variety of jazz standards and originals, the WYD Jazz Band will have you moving to a tight groove or enjoying food that always tastes better with a hint of jazz! The band features amazing solo artists who, together, create wonderful jazz chemistry.
- **WYD A Capella Band:** currently comprising bass, tenor, alto and lead members, the WYD A Cappella Band recently debuted at the National Convention Centre disguised as the waiters and surprising over 500 guests! The band performed tight originals such as “In the Still of the Night” and an original rendition of Unchained Melody before setting the mood with “9000 Days” and performing grace before dinner with the “Irish Blessing”. There is high demand for this group as it continues to develop its repertoire and please its audience with dulcet and subtle harmonies
- **WYD Solo Performance Artists:** the company also features a range of reputable solo artists from Canberra including Niels Rosendahl (Saxophone), Anthony Dellamarta (Tenor), Damien Foley (Guitar) and Maka Kama (Tenor).

### **2. PRODUCTION (in development)** – WYD provides recording and production services to musicians seeking to record their works.

### **3. PUBLISHING (in development)** – WYD provides publishing services to musicians seeking to sell their works. This also includes the provision of charts that have been legally produced for the purposes of performance. This includes:

- publishing sheet music or licensing others to publish it;
- working with artists and record companies to record the copyright material that it owns or controls;
- working with other users of music, such as film and television producers and advertisers, either to commission new works from its writers or use existing works by those writers;
- collecting fees and royalties earned by the commissioning and exploitation of music;
- promoting the creative reputation of the writers so that the market for their work is enhanced;
- protecting the work from demeaning or unauthorised use;
- providing administration support involved in maintaining and protecting the copyrights;
- pitching songs to record companies, film and television production companies and advertising agencies;
- helping writers get record deals and funding demos;
- helping writers get good management and general career advice;
- Participating in industry associations such as APRA, AMCOS and AMPAL through which they negotiate rates for the use of their works with users (e.g. ARIA, Free TV Australia, CRA and websites).

WYD is also developing a schools program utilising the teaching experience and capability of our members for the benefit of up-and-coming musicians considering a career in music.

WYD is committed to providing the highest quality entertainment to our clients and ensure that your function is an event to remember. With a repertoire growing towards over 1000 songs, WYD is sure to provide a soundtrack that entertains a broad cross section of patrons.

### **APPENDIX 3 – SUMMARY: ACT GOVERNMENT INQUIRY INTO LIVE COMMUNITY EVENTS**

In February 2009, the ACT Legislative Assembly referred an “Inquiry into Live Community Events” (the Inquiry) to the Standing Committee on Planning, Public Works and Territory and Municipal Services (the Committee). The Inquiry was given the following terms of reference:

- a) a review of order of occupancy legislation;
- b) options to encourage or require large commercial developments in group or town centres to provide community bollards for the promotion of events via bill posters; and
- c) An examination of how building codes for residential and business development in commercial zones could be amended to ensure sound insulation and physical security are appropriate to co-location with live cultural events.

Furthermore, according to an interim report released by the Committee in December 2009, the Committee is also considering the following additional issues:

- d) noise standards in the Environment Protection Regulation 2005 to provide more flexibility for small and medium venues to run live events;
- e) the inclusion of the concept of “Reverse Sensitivity” as an overarching objective in the relevant Development Codes and Precinct Codes of the Territory Plan as part of the operating principles of the ACT Planning and Land Authority;
- f) the impact of ACT Government regulations on live community events and ensuring that the regulatory requirements for venues reflect the different types of music and entertainment that may be provided;
- g) sound attenuation measures/requirements for existing community facilities and how this might change with amended regulations;
- h) The availability of community venues for live events in the ACT and consider how the ACT Government can better support this need.

This interim report makes the following Interim Recommendations:

<b>INTERIM RECOMMENDATIONS</b>	<b>RELEVANT TERM OF REFERENCE</b>	<b>BASIS</b>
<p><b>R1:</b> The Committee recommends that the description of ACT land areas in Schedule 2 of the Environment Protection Regulation 2005 specify which Territory Plan zones fall under a particular noise zone, where applicable.</p>	<p>c)</p>	<ul style="list-style-type: none"> <li>• The Committee notes that the variety of permitted uses in each zone increases the likelihood that conflicting uses will be developed in close proximity to each other.</li> <li>• The Committee also notes that the descriptions of ACT land in column 3, Schedule 2 (table 2.1) of the Environment Protection Regulation 2005 (Appendix B) are somewhat ambiguous as they do not correspond directly to Territory Plan zones.</li> <li>• Therefore, cross referencing the Territory Plan zones in Schedule 2 (table 2.1) of the Environment Protection Regulation 2005 would assist developers, residents, venue owners and operators and live music or event performers to understand the noise restrictions in any particular Territory Plan zone.</li> </ul>
<p><b>R2:</b> 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:</p> <ul style="list-style-type: none"> <li>• Distinguishing</li> </ul>	<p>d)</p>	<ul style="list-style-type: none"> <li>• The Committee heard that the noise limits, particularly for small venues wanting to host outdoor live events, are prohibitive as there is no option for an exemption or event authorisation. As noted above, outdoor venues that hold fewer than 2,000 people cannot get an exemption from the noise standards.</li> <li>• Venues that would like to offer live entertainment to their patrons in summer are limited by the noise standards. Those same venues are unlikely to offer outdoor live music inside because the patrons are outside in summer and inside can be cramped and too warm.</li> <li>• Venues that would like to offer live entertainment to their</li> </ul>

INTERIM RECOMMENDATIONS	RELEVANT TERM OF REFERENCE	BASIS
<p>between outdoor and indoor entertainment;</p> <ul style="list-style-type: none"> <li>• Allowing a higher noise standard on Friday and Saturday nights in Zone B, at least until midnight; and</li> <li>• Allowing higher noise standard for New Year's Eve until 1.00am on 1 January.</li> </ul>		<p>patrons in summer are limited by the noise standards. Those same venues are unlikely to offer outdoor live music inside because the patrons are outside in summer and inside can be cramped and too warm.</p> <ul style="list-style-type: none"> <li>• Therefore, the Committee believes that the ACT Government should revise the noise standards in the Environment Protection Regulation 2005 to provide more flexibility for small and medium venues to run live events. Noise standards should distinguish between outdoor and indoor entertainment. The Committee believes that it is also reasonable to allow a higher noise standard on Friday and Saturday nights in Zone B [(land in the city centre and town centres; land in the Central National Area (City)], at least until midnight to encourage more live events.</li> </ul>
<p><b>R3:</b> 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.</p>	a)	<ul style="list-style-type: none"> <li>• The majority of witnesses and submissions to this inquiry support the concept of order of occupancy in some form but many emphasised the need for any order of occupancy requirement to be accompanied by adequate rules around building sound attenuation;</li> <li>• The Committee believes that including Order of Occupancy principles in the ACT's liquor licensing complaints review mechanism is a fair and suitable way to consider disputes between live event venues and local residents. The Commissioner for Fair Trading (the relevant authority) in the ACT should be able to consider order of occupancy principles when investigating complaints against licensed premises.</li> </ul>
<p><b>R4:</b> The Committee recommends that the ACT Government investigates the best ways to ensure that people moving into residential areas where live entertainment is provided are made aware of Order of Occupancy principles.</p>	a)	<ul style="list-style-type: none"> <li>• The Committee believes that the Government should investigate the best way to ensure that people moving into neighbourhoods where live entertainment is provided are aware of order of occupancy principles. This may include measures such as declarations in property documentation along the lines required for easements.</li> </ul>
<p><b>R5:</b> 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.</p>	e)	<ul style="list-style-type: none"> <li>• The Committee acknowledges that the Territory Plan Development Codes and Precinct Codes do, to some extent, embrace the concept of reverse sensitivity where the onus is on the incoming developer to take responsibility for attenuating noise. The requirements that are in place 'seek to minimise the potential for residents to want to advocate or lobby for those things to be changed'. However, APRA stressed to the Committee that principles such as reverse sensitivity and order of occupancy must be clearly written into planning regulations rather than implied or they '...may as well not exist'.</li> <li>• The Committee believes that the concept of reverse sensitivity could be strengthened in the ACT by including the concept as an overarching Objective in the relevant development codes, such as the City Centre Precinct Code, including related rules and criteria for specific commercial zones.</li> </ul>



INTERIM RECOMMENDATIONS	RELEVANT TERM OF REFERENCE	BASIS
		<ul style="list-style-type: none"> <li>The Committee was advised by the Chief Planning Executive of ACTPLA that the ACT is also in a unique position because leases in ACT commercial centres typically have multiple uses. A 'person who has purchased the lease believes they have an entitlement to exercise all of those uses, one or two of those uses, and they can change them through the life of their lease.'</li> <li>The Committee heard that the multipurpose or 'broadband' leases do not provide an automatic entitlement for a lessee to use all of those permitted uses. They still require a Development Application to examine the potential implications of any changes to the approved use if a lessee wants to access those other allowable uses in the lease.</li> <li>The concept of reverse sensitivity supports this requirement, as the onus would be on new developments to manage the effect of the ambient environment within their development, including noise levels.</li> </ul>
<p><b>R6:</b> The Committee recommends that private businesses and commercial developments be encouraged to provide bill posting facilities.</p>	<p>b)</p>	<ul style="list-style-type: none"> <li>The Committee notes that many bands, music groups and performers have limited funds with which to promote their events.</li> <li>The Committee heard that many live performers undertake their own advertising, like the CBS who use as much free advertising as possible. Venues do not generally do a lot of promotion for themselves or their performers<sup>79</sup> and Memorandums of Understanding are often established between venues and entertainers, requiring the entertainers to promote their event and the venues.</li> <li>Advertising using posters remains one of the most common forms of promotion for live music and events. Many submissions to the Committee reinforced the benefits of enabling legal bill posting as a low-cost way for live performers to promote their acts as well as assisting a performer to establish a 'brand' and a following</li> <li>If commercial developments choose to provide bill posting silos or facilities, the responsibility for the maintenance, repair, cleaning and removal of inappropriate material from bollards would most likely fall to the building owner or lessee. Lease conditions usually include a requirement for tenants to, keep the premises clean and tidy and free from rubbish and other unsightly matter which the Committee considers would most likely capture any bill posting facilities. Despite this, there remains a risk that the poster facility will not be maintained and cleared regularly, adding to the visual pollution of commercial centres.</li> <li>The Committee acknowledges that, if large commercial developments were to provide community poster bollards, maintenance and cleaning responsibility could be negotiated between the commercial development and the Department of Territory and Municipal Services. However, the burden of maintaining many additional bill posting sites may also be excessive to add to the existing TAMS poster clearing work.</li> <li>The Committee support action to encourage more commercial developments and private businesses to provide bill posting and community notice board facilities if they feel it is appropriate and manageable for their business.</li> </ul>

INTERIM RECOMMENDATIONS	RELEVANT TERM OF REFERENCE	BASIS
<p><b>R7:</b> 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.</p>	f)	<ul style="list-style-type: none"> <li>• The Committee considered a variety of other regulatory approaches highlighting the creation of entertainment precincts where the ambient noise levels are accepted as being relatively higher than other areas and new residential and entertainment developments in the Core Area must be designed with appropriate noise attenuation measures.</li> <li>• The Committee heard that the Planning Institute of Australia (ACT) supported the concept of ‘Entertainment Precinct’ identification, such as in Fortitude Valley in Brisbane, but only on a broad scale that identifies the city or commercial centre as a whole</li> <li>• In the ACT this would mean defining a precinct as all commercial zones, or the city centre as a whole, not just thCZ5 or CZ3 zones or a few streets within the city centre. However, entertainment precincts that are too narrowly defined risk creating a segregation of uses, where the entertainment ‘block’ may become the only lively part of the city centre whilst other areas become dead spots.</li> </ul>
<p><b>R8:</b> The Committee recommends that the ACT Government consider improved sound attenuation measures for existing community facilities.</p>	g)	<ul style="list-style-type: none"> <li>• The Committee was advised that sufficient community venues are needed for live music and events to ensure they remain ‘an integral part of our culture and continue to contribute to the maintenance of a vibrant, culturally diverse community’.</li> <li>• The Committee notes that new community halls and similar facilities could be designed with the possibility in mind that they may be used as live event facilities. With adequate sound attenuation, they could be more versatile facilities.</li> <li>• In addition to new halls, older community facilities, such as Corroboree Park Community Hall and youth centres, could be upgraded to have more adequate sound attenuation.</li> </ul>
<p><b>R9:</b> 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.</p>	h)	<ul style="list-style-type: none"> <li>• The Committee was advised that sufficient community venues are needed for live music and events to ensure they remain ‘an integral part of our culture and continue to contribute to the maintenance of a vibrant, culturally diverse community’.</li> <li>• The CBS felt that community venues in the ACT were lacking and they generally had to look for commercial venues, who often do not want to work with a community organisation.</li> <li>• APRA highlighted to the Committee that events held in community venues such as halls do not seem to attract the same level of complaints from event organisers about regulatory difficulties, potentially because they are more likely to be one-off events.</li> <li>• The Committee notes that the opportunity for a ‘live music economy’ requires more spaces to be available and suited, to live performances.</li> <li>• The Committee also heard that consideration needs to be given to youth centres and venues that are accessible to under 18’s to perform to friends and peers, when reviewing the current regulatory arrangements. The Committee was advised that it is often difficult to hold an under 18’s event at a licensed premises.</li> </ul>

## **APPENDIX 4 – FURTHER INFORMATION (derived from the Interim Report)**

### **1. Noise Regulations**

Environmental noise in the ACT, such as live concert noise is regulated by the Environment Protection Act 1997, which is administered by the ACT Environment Protection Authority (EPA). Noise zones and noise standards for the ACT are set out in Schedule Two of the Environmental Protection Regulation 2005 (the Regulation) at Appendix B. The noise standards 'vary according to the land use zone in which the activity is located' and the 'limits must not be exceeded at the boundary of the land from which the noise is originating'.

Additionally, the Planning and Development Act 2007 and the Territory Plan made under that Act are relevant to understanding noise restrictions and development zoning in the ACT. These are administered by the ACT Planning and Land Authority (ACTPLA).

The following table summarises the permissible noise limits in the ACT:

<b>Location</b>	<b>7am–10pm (8am–10pm Sunday &amp; Public Holidays)</b>	<b>10pm–7am (10pm–8am Sunday &amp; Public Holidays)</b>
Civic centre and other major town centres (Belconnen, Gungahlin, Woden and Tuggeranong)	60 dB(A)	50dB(A)
Group centres such as Dickson and Kingston	55 dB(A)	45dB(A)
Smaller local centres such as Griffith and Lyneham	50dB(A)	35dB(A)
Residential Areas	45dB(A)	35dB(A)

The ACT noise standards acknowledge the different levels of ambient noise in different parts of the Territory, for example, Civic centre and other town centres have a higher noise limit than residential areas. The limits are also measured at the boundary of the land from which the noise is originating, rather than at a residence. Higher limits also apply between 7am and 10pm (8am – 10pm on Sunday's and public holidays) compared to the night time noise limits.

#### ***Co-location of residential developments and live music venues***

With regard to the co-location of residential developments and live music and entertainment venues, the Noise EPP outlines the requirements for 'Special Zoning' where different noise standards apply to land zoned in the Territory Plan as "Community Facilities," "Services" or "Leisure and Accommodation". In these cases the standard is taken to be the same as the highest standard of any adjoining noise zone.

#### ***Boundaries between zones***

Similarly, allowances are made for land which is at the boundary between two or more different noise zones. Noise standards at the boundary are an average of the noise standards for the noise zones rounded up to the nearest dB (A)

### ***Guidelines determining where to locate a broad range of community and recreational facilities***

The Territory Plan has a "Community and Recreation Facilities Location Guidelines General Code" to assist in making decisions about where to locate a broad range of community and recreational facilities. It takes into account the need for adequate noise separation when considering relationships to other land uses and specifies in most cases the need for a buffer from residential areas if it is likely to be a noisy facility. This would be of relevance to community spaces, such as scout and community halls, used for live events.

The Territory plan sets out applicable land use zones in the ACT which determine what kind of development is allowed on a particular block. The Territory Plan Zones fall into categories including Residential, Commercial and Community Facility.

Under the Territory Plan,

- the following commercial zones:
  - CZ1 [Core],
  - CZ2 [Business] (with some specific exemptions),
  - CZ3 [Services],
  - CZ4 [Local Centre] and
  - CZ5 [Mixed Use]all allow for residential use.
- In CZ6 zones [Leisure and Accommodation] residential development is not generally allowed but it is allowed on some specific blocks and sections.
- In terms of potential entertainment venues, CZ1, CZ2 and CZ3 zones permit development of clubs, drink establishments, indoor entertainment facilities, places of assembly and restaurants.
- CZ4 zones allow for indoor entertainment facilities and restaurants (although in Bruce Local Centre drink establishments are also permitted).
- CZ5 zones allow for indoor entertainment facilities, places of assembly and restaurants. Hotels and motels are also permitted. A number of specific areas have additional development that may be approved subject to assessment which, in some cases, include clubs and drink establishments. In terms of residential development, CZ5 zones specifically allow multi-unit housing, and serviced apartments in addition to general residential use.
- CZ6 zones allow for drink establishments, indoor entertainment facilities, places of assembly and restaurants.

## **2. Noise Offences**

The Environment Protection Regulation 2005 also outlines noise offences in the ACT. It is an offence if a person makes noise in the ACT louder than the noise standard and the noise causes environmental harm in an 'affected place' (a place where a person is affected by the noise)<sup>24</sup>, such as playing a musical instrument or using portable loud speakers.

Under the regulation, a person is only considered to be affected by noise if the noise exceeds the standard for the affected place and if the person complains about the noise to an 'authorised officer' (an Environment Protection Officer).

### ***Penalties***

The EPA can issue infringement notices with on the spot fines under the Magistrates Court (Environment Protection Infringement Notices) Regulation 2005 as well as issuing Environment Protection Orders, however, the EPA anticipates using environment protection orders as a second or third resort - if approaches based on cooperation, education, and in appropriate cases, formal warning, have failed.

In the 2007-08 financial year, there were 158 noise complaints relating to amplified music noise. Nine infringement notices were issued relating to excessive noise and two Environment Protection Orders were issued for breaches of the noise zone standard. The majority of noise complaints originated in the Belconnen, Canberra Central, Gungahlin and Tuggeranong districts.

### **3. Outdoor events**

Under the Outdoor Concert Noise Environment Protection Policy the Environmental Protection Authority can grant environmental authorisations for outdoor concert venues.

Authorisations can be granted to Bruce Stadium and Exhibition Park in Canberra for unlimited periods.

The EPA still limits the noise produced by those venues with authorisations and will not authorise an event that is likely to produce noise which exceeds 65 dB (A) at the compliance location for 15 minutes or longer.

Where noise is permitted to exceed the zone noise standards, authorised outdoor concerts are required to finish by 11 pm except on New Year's Eve which must finish by 12.30am on 1 January. Venues that conduct multiple large events may also hold only a limited number of events per year, spread throughout the year, and only with substantial prior notice to affected residents (at least 8 weeks' notice for residents near large outdoor concert venues). For smaller events or other venues 'where there are only a relatively small number of affected occupiers' [e.g. nearby residents], the authorisation can allow the venue to provide direct notice to those likely to be affected.

#### ***Venues capable of holding MORE than 2,000 persons***

The policy also outlines the requirements for authorisations for other venues. Applications for authorisations to conduct single outdoor concert events will be considered for other public venues capable of holding more than 2,000 persons. These environmental authorisations, which will permit single outdoor concert events, will contain conditions consistent with this Policy.

#### ***Venues capable of holding LESS than 2,000 persons***

Outdoor concert venues capable of holding fewer than 2,000 people do not require an environmental authorisation but must comply with zone noise standards under the Environment Protection Act 1997.

### **4. Liquor Licensing**

Some provisions of liquor licensing legislation in the ACT have a bearing on the operation of licensed venues that may host live events and music.

#### ***Applying for a liquor license***

In applying for a liquor license under the Liquor Licensing Act 1975, applicants are required to comply with standards relating to premises in order to be granted a licence, including:

(b) whether the premises in relation to which the licence is sought are fit and proper premises for the purpose of the licence;

(c) whether the conditions of the Crown lease over the premises are appropriate conditions for the purpose of the licence applied for.

The Liquor Act 1975 also includes provisions for occupational discipline where certain conditions are not met by a licensee. Three grounds for occupational discipline in relation to a licensee may be relevant to the co-location of entertainment venues and residential developments where:

... (c) the licensee has allowed the licensed premises to be used in a way that causes undue disturbance or inconvenience to people occupying premises in the neighbourhood;

(d) the licensed premises do not comply with the licensing standards manual;

... (g) a loss of amenity has arisen in the vicinity of the licensed premises that are attributable to the premises and about which there has been a complaint.

#### ***Occupational Discipline***

Where a person believes there are reasonable grounds for occupational discipline, such as loss of amenity, they may complain in writing to the Commissioner for Fair Trading as the Commissioner has

responsibility for the day-to-day administration of licensing and enforcement provisions of the Liquor Act 1975.

The Commissioner will investigate complaints and, if satisfied that reasonable grounds for occupational discipline exist, such as a breach of the Act, the Commissioner may apply to the ACT Civil and Administrative Tribunal for an occupational discipline order in relation to the licensee.

### ***Young Performers***

Section 156 of the ACT Liquor Act 1975 allows persons under 18 years old to enter or remain in a bar-room on licensed premises in the care of a responsible adult. In practice, this would allow for live performers under the age of 18 to perform in licensed venues in the ACT if they are accompanied by an adult, such as a parent or guardian.

## **5. Order of Occupancy**

There is currently no Order of Occupancy consideration in ACT legislation.

Order of occupancy is the concept of taking prior occupancy between licensed premises and a complainant, either residential or commercial, into account when dealing with complaints about disturbance, such as noise complaints.

Order of occupancy legislation sets the ground rules for both residential and entertainment developments. It accounts for 'who was there first' and aims to prevent long-standing live entertainment venues being forced to cease live events because of noise complaints from new residential developments.

These provisions are designed to give protection to established venues from unreasonable expectations of potential new residents as to the type of amenity that can be expected in the neighbourhood.

Similarly, it aims to protect established residential areas from potential noise impacts from new entertainment venues.

In general, order of occupancy considerations put the onus 'on the party who has made the recent move, either by introducing music, or moving in next door'.<sup>41</sup> It may also consider prior use principles where the activity is indexed to the use of a premises such as a hotel for example, which whilst it may not host live entertainment all the time, has been a fixture in the local area, and there is a reasonable expectation that live entertainment is an activity you would normally associate with a consent for this type of land use.

The consideration is designed to give context to complaints and to establish if the complaint is fair, the type of complaint and number of complaints that may be reasonable to stop activity such as live events.

## **6. Obligation of Developers to comply with sound attenuation standards**

### ***The Building Code of Australia***

The Building Code of Australia (BCA) has no relevance as it deals with internal noise attenuation between tenancies within a building rather than external sound attenuation.

The BCA has no jurisdiction or authority in relation to land use planning and zones and therefore the relationship of activities to one another

The Building Codes Board made a decision in 2008 that external noise attenuation in regard to the proximity of different land uses was not a role for the BCA. If they wished, each jurisdiction would be able to set their own policies on the issue through their respective planning processes.

## ***Territory Plan - Development Codes and Precinct Codes***

In the ACT, there are currently some requirements for developers to take responsibility for sound attenuation at the development application stage.

- ACTPLA considers the proximity of adjacent land uses and associated issues such as noise, traffic, privacy when assessing development applications:
- The Territory Plan includes Development Codes and Precinct Codes that are intended to provide additional planning, design and environmental controls to support the Territory Plan zone and precinct objectives and the assessable uses in development tables. ACTPLA uses the codes to assess development applications. The controls in each code are expressed as either rules, which are generally definitive and quantitative, or as qualitative criteria.
- Under ACTPLA, there are some cases where new commercial developments also have conditions attached to the development approval requiring them to include noise attenuation, to ensure that existing uses in close proximity are not adversely affected by a new occupant. The conditions are designed so that the business can operate effectively within the noise limits set by the EPA.

### **a) Commercial**

All commercial Development Codes and Precinct Codes under the Territory Plan require that: A Noise Management Plan, prepared by an accredited acoustic specialist who is a member of the Australian Acoustical Society, endorsed by Environment Protection is provided for the following uses:

- club
- drink establishment
- hotel
- industry (except light industry)
- indoor entertainment facility
- restaurant

The Noise Management Plan details the design, siting and construction methods, which will be used to minimise the impact of noise on neighbours.

Kingston Group Centre also has additional noise attenuation requirements for Kingston Section 22 Blocks 21, 25-33: where additional Restaurant, Hotel or Motel uses are applied for, a noise management plan is prepared by an accredited acoustic specialist and endorsed by the relevant authority. The noise management plan details the design, siting and construction methods, which will be used to minimise the impact of noise on neighbours in accordance with the noise standards prescribed in the relevant environmental legislation and the hours of operation relevant to the appropriate noise standards.

### **b) Residential**

The Residential Zones Multi Unit Housing Development Code also includes a number of requirements relating to amenity for multi unit housing, including noise and acoustic privacy.

Multi unit residential developments in RZ4 and RZ5 zones (as they apply in Belconnen, Bruce, Hawker, Narrabundah, Woden District and Tuggeranong District) and in all commercial zones must be designed and constructed to comply with Australian Standards AS/NZS 3671 Acoustics – Road traffic noise intrusion, building siting and construction and AS/NZS 2107 Acoustics – Recommended design sound levels and reverberation terms for building interiors. They must also comply with the ACT Environment Protection Regulations and ACT Draft Noise Management Guideline 1996.

The siting and design of apartment buildings also needs to provide acoustic privacy and protect the privacy of neighbours.

The code provides rules and criteria for mixed use developments, such as where residential apartments are built on top of commercial space. Criteria C230, for example, require that: Apartments near other uses are designed with regard to the potential noise from those activities by locating noise-sensitive sleeping and living areas and private open spaces away from the noise source and by incorporating appropriate noise reduction measures in the construction of the buildings.

The code also allows for other sound attenuation, such as the use of courtyard walls and fences forward of the building line 'where they provide an acoustic barrier to traffic noise whilst maintaining opportunities for casual surveillance of public places.

### **c) Inner North and Gungahlin**

The Residential Zones Multi Unit Housing Development Code also contains specific provisions for acoustic privacy for multi unit housing in the RZ3 – Urban and RZ4 – Medium Density Zones in Inner North Canberra and the Gungahlin District. Buildings must be constructed in accordance with Australian Standard 3671: Acoustics – Road Traffic Noise Intrusion, Building Siting and Construction. If that standard cannot be met, the criterion requires that: the design and siting of buildings minimises noise penetration into dwellings exposed to offsite noise. Separation distances or acoustic barriers are provided to achieve acoustic privacy between dwellings.

Development applications for multi unit housing are assessed against these code requirements.

### ***Consultation with Environment Protection Authority***

The Planning and Development Act 2007 also requires that development applications in the Impact Track be referred to the EPA for consultation. In light of feedback from the EPA, ACTPLA may place additional conditions on a developer to include improved noise attenuation. For example, in a residential building proposed for a commercial setting ACTPLA may require additional noise attenuation 'to lessen the likelihood of future residents complaining'.

Similarly, if a commercial building beside an existing residential development wanted to change their business use under their lease, such as from a shop to a drink establishment, ACTPLA approval is required and the onus would be on the drink establishment to put the necessary noise attenuation in their facility to safeguard the residents from likely additional noise.

## **7. Reverse Sensitivity**

The Committee heard that the concept of 'first occupant rights' in New Zealand is called reverse sensitivity, and relates to the effect of new developments on existing activities. It recognises that the existing activities set the ambient environment, be it noise, smell, traffic and that new developments must 'bear the cost of ensuring the existing environment is unaffected by your development' and protect existing users from complaints by new developments.

In the ACT, reverse sensitivity would be considered at the development application stage for new developments but are not currently clearly written into planning regulations.