



Planning

Bringing back the music

Making it easier for restaurants, pubs,
clubs and cafés to have live entertainment



Planning For Entertainment Guidelines

October 2009

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1. Introduction

1.1 Background

Many types of pubs, bars, restaurants and clubs provide different forms of entertainment for their patrons. Nowadays entertainment can encompass a wide range of experiences, playing pool, participating in bingo or other competitions, watching televised sport, listening to background music, dancing to recorded or live music, watching a band, watching a comedian or poet, and more. The provision of entertainment is integral to the activities carried out at these premises. The planning system has now been changed to reflect this.

Over the years, a complex set of planning and building regulations had evolved and have been applied to premises providing entertainment for their patrons. These regulations included the former *Place of Public Entertainment* licensing system. Changes have now been introduced to untangle and simplify the approval process associated with these premises.

These guidelines explain how the current planning regime addresses premises in which different forms of entertainment are provided for the benefit of their patrons. They acknowledge that the planning framework now reflects modern practices in which entertainment is often an integral part of the activities provided at premises for the benefit of the public.

1.2 The changes to the Regulatory Framework

A new framework has been established by the following changes:

- (1) Amendment of *State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007* (the POPE SEPP) to remove references to “places of public entertainment” and the requirement for development consent for the use of a building as a place of public entertainment.
- (2) Amendments to the Standard Instrument – Principal Local Environmental Plan (the Standard Instrument):
 - deleting the definition of “nightclub”; and
 - changing definitions for “pub”, “restaurant” and “registered club”.
- (3) Amendment to the Environmental Planning and Assessment Regulation 2000 (the EP&A Regulation) deleting references to “places of public entertainment”, the introduction of a definition of “entertainment venue” and making related consequential changes.

- (4) Commencing amendments to the *Environmental Planning and Assessment Act 1979* (the EP&A Act) passed by the NSW Parliament in 2008 introducing reviewable conditions relating to entertainment venues, function centres, restaurants, pubs and registered clubs.

These pubs, bars, restaurants and club premises are now regulated under the planning system in a similar manner to any other uses, including offices or shops. The aim is to ensure that the impacts associated with these types of development are managed in an appropriate manner. The principal issues associated with licensed venues and venues providing entertainment are public safety of patrons and safeguarding the amenity of local communities where the premises are located.

The regulation of these types of premises under the EP&A Act is also supported by:

- the introduction of the *Liquor Act 2007* (the Liquor Act); and
- amendments to section 68 of the *Local Government Act 1993* (the LG Act) to remove the requirement for a place of public entertainment licence which commenced in 26 October 2007.

Issues are raised from time to time about the impacts of the management of licensed premises which may or may not include entertainment. These issues often arise from the behaviours of the patrons at these premises or coming or going to these premises. Substantial powers exist under the Liquor Act to address these issues and should be used for this purpose.

1.3 The Regulators

Local consent authorities (usually councils) assess and determine development applications for premises such as pubs, bars, restaurants and clubs. These venues may include the provision of entertainment. They must also consider *building safety* and the *protection of public amenity* when carrying out those assessments and approving these venues. The consent authority is principally responsible for ensuring that venue operators and owners comply with any conditions of the development consents though any person can take action to enforce such a condition.

Under the provisions of the EP&A Act, the councils also have powers to order the fire safety of premises to be kept up to standard.

Councils also have powers under the Protection of the *Environment Operations Act 1997* in relation to the control of noise. As a consequence, councils can force venue operators to control unacceptable noise emanating from their premises.

NSW Office of Liquor, Gaming and Racing is responsible for receiving and processing applications for new liquor licences and for variations to existing licences. The Office also receives submissions on these applications from stakeholders, including councils and residents. Applications are determined by the **Casino, Liquor and Gaming Control Authority**.

Director-General of Communities NSW has enforcement powers under the Liquor Act, in particular to deal with complaints by police, councils, or residents about undue disturbance to the neighbourhood associated with licensed premises and the behaviour of patrons. These complaints can result in a range of licence conditions, including limits on noise and entertainment, provision of security, and a reduction in trading hours. The Director-General also has other enforcement powers to deal with intoxication and anti-social behaviour, prevent irresponsible serving and consumption practices and improve the management and operation of licensed premises.

NSW Police have powers under a number of Acts including the Liquor Act and the EP&A Act to act if approvals are not being complied with or if there is noisy or unruly behaviour.

2. The New Planning Framework

The new system introduces the following changes:

- (a) removes the term “place of public entertainment” from the EP&A Act, EP&A Regulation, POPE SEPP and the Standard Instrument.
- (b) introduces a new term “entertainment venue”, which applies to a building being used as a cinema, theatre, concert hall or an indoor sports stadium. This definition replaces the previous definition of “places of public entertainment” and provide the link between the EP&A Regulation and the *Building Code of Australia* (BCA) so that the provisions within the NSW Variations in the BCA now only apply to entertainment venues (typically with fixed seating) instead of that broader range of uses that were regulated as places of public entertainment.
- (c) confirms that providing entertainment is part of the normal activities of a restaurant, pub, bar or registered clubs.



Key Features of the New System

- Premises no longer require separate development consent for the use of a building as a place of public entertainment or POPE licence under section 68 of the LG Act. Providing ‘entertainment’, of itself, does not require any development consent.
- The section of the LG Act relating to approval of places of public entertainment was removed on 26 October 2007 when POPE Licensing was abolished. The two year transitional period lapsed on 26 October 2009. As a result from 26 October 2009 any conditions attached to those POPE licences no longer apply.

- (d) enables renewable conditions relating to hours of operation and maximum capacity to be imposed on development consents for cinemas, theatres, concert halls, indoor sports stadiums, function centres, restaurants, pubs and registered clubs.

2.1 Change of definitions

In the past, premises that provided public entertainment needed specific development consent and or a POPE licence to do so. The definitions in the Standard Instrument have been revised to acknowledge that entertainment can occur as an integral part of restaurant, pub, bar and registered club, and where entertainment is provided at these venues, this use does not require a separate consent. The new definitions include:

pub means licensed premises under the *Liquor Act 2007* the principal purpose of which is the sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

restaurant means a building or place the principal purpose of which is the provision of food or beverages to people for consumption on the premises, whether or not takeaway meals and beverages or entertainment are also provided.

registered club means a club in respect of which a certificate of registration under the *Registered Clubs Act 1976* is in force whether or not entertainment is provided at the club.

2.2 Consequential changes to other Environmental Planning Instruments

Many local environmental plans include references to “places of public entertainment” and “nightclubs” in the zoning table or in particular development standards. These plans need to be revised to reflect the new planning regime. The Department will work with councils to ensure that suitable amendments are introduced to LEPs (including deemed LEPs) to reflect the changes in the definitions and other provisions.

3. Development Consent

In the past, premises that provided public entertainment needed a specific development consent and a POPE licence to do so. However the amendments to the LG Act, the POPE SEPP and the revised definitions in the Standard Instrument, change this approach.

The new definitions acknowledge that entertainment can occur as an integral part of the use of pubs, restaurants, registered clubs, or the like and where it does, this use does not in itself require a separate consent. In the same way, with a cinema, theatre or concert hall, it is taken that entertainment is an integral component of these premises.

With the construction of a new building or the alteration or addition to an existing venue, development consent would normally be required. In addition, consent may also be required for the conversion of a building from, say, a shop to a bar. However, in some circumstances, proposals that would otherwise require development consent may be carried out as exempt development, without the need for an approval under the planning system or a complying development certificate issued by either a council or an accredited certifier.



Key Features of the New System

- An existing venue (such as a pub, restaurant, registered club and the like) may now provide entertainment without the need for an additional development consent.

3.1 When Consent is not required

The new definitions of pubs, restaurants and registered clubs acknowledge that entertainment can occur as an integral part of those uses. Consequently the provision of entertainment in these premises does not give rise to a need for any additional development consent. It does not trigger a need for development consent as long as the principal purpose of the use of the premises remains the same. In these circumstances, the provision of entertainment is considered to be ancillary to the main purpose of the use of the premises and hence no change of use can have occurred.

Entertainment in pubs, bars, cafés and restaurants

The principal purpose of pubs, bars, cafés and restaurants is to sell food and drinks to individuals who enter and consume the food and drinks on the premises. It is a common practice for these types of businesses to provide some form of entertainment while their patrons eat, drink and socialise. There may be recorded or live music, comedians, poetry readings, television screens, or other entertainment for the enjoyment of their customers.

The provision of these types of incidental entertainment does not change the principal purpose of the pub, bar, café or restaurant premises – the premises continue to be used for the principal purpose of eating and drinking. This entertainment does not require further development consent as long as the premises continue to be used primarily purpose of the venue.

Examples—No Consent Required for the Use of Premises for Entertainment

Existing pub, registered club, café, bar or restaurant

- The use of a section of the floorspace for pool or snooker tables.
- The provision of live music by musicians.
- The viewing of television screens.
- The use of a minor section of the whole premises for dancing.

3.2 When Consent is Required

The environmental planning instruments (local environmental plans and State environmental planning policies) specify what types of development cannot be carried out without a requirement for development consent. In most cases, it will be the Council’s local environmental plan which sets out these requirements.

In general terms, there are three main types of proposal that may require development consent:

- 1) **The erection of new buildings:** whether a cinema, theatre, concert hall, indoor sports stadium, function centre, restaurant, pub, registered club or the like.
- 2) **Alterations and additions to existing buildings:** Major external alterations are likely to require development consent. Some external alterations and many internal alterations may be carried out as either:
 - exempt and complying development (see Section 3.3); or
 - by modification of an existing consent (if there is one).

Where there is no existing consent, a new development application may be required.

A modification to an existing consent may also be required to change the operation of existing premises such as varying the existing hours of operation or increasing the number of patrons. If these changes are significant or if there is no existing consent, a new development consent may be required.

- 3) **Change of building use/building classification:** development consent or a complying development certificate may sometimes be required by an environmental planning instrument when a change of building use occurs from one class of building in the *Building Code of Australia* (BCA) to a different class of building. In this respect references to relevant information on classes in the BCA are set out in Table 1 following.

Note: The EP&A Act defines: *change of building use* means a change of use of a building from a use that the *Building Code of Australia* recognises as appropriate to one class of building to a use that the *Building Code of Australia* recognises as appropriate to a different class of building.

Table 1: Relevant Classes in the Building Code of Australia:

Building Class	Type of building
Class 6	A shop or other building for the supply of goods or services to the public, including: pubs, bars, cafés and restaurants.
Class 9b	A public assembly building typically including: theatres, cinemas, halls, churches, schools, nightclubs, sporting complexes and transport buildings. <i>Entertainment venue</i> is particular to the NSW variation to the BCA and is a cinema, theatre, concert hall or indoor sports stadium.

Key Issue—Premises Changing Character

Many pubs, bars, cafés and restaurants across the State provide some form of entertainment for their customers as part of the venue – often to attract patrons to the venue. In terms of facilities to enable this entertainment to occur, there may be a stage or elevated area for the live performers, pool tables, a dance floor or a large video screen for viewing sports events or simply TVs to view the races. These are commonly provided as part of pub, bar, café and restaurant facilities.

In this regard, it may be helpful to note that, in accordance with the BCA, a bar is used for the sale of retail goods (drinks) direct to the public. Its principal purpose is to sell drinks to individuals who come into the bar and consume the drinks on the premises in this respect. It is no different to a coffee shop or restaurant. It is a common practice for bars, coffee shops and restaurants to provide recorded or live music for the entertainment of their customers while they are drinking and eating.

A nightclub on the other hand by classification in accordance with the BCA, is an assembly building where the public assemble for entertainment or recreational purposes. There is no definition of nightclub in NSW legislation.

The principal purpose of the public using a nightclub is to be entertained or be involved in entertainment whether or not a cover charge or entrance fee is charged. The entertainment may involve larger numbers of people than in a bar and the BCA provisions specifically provide for the appropriate building standards to safeguard against the risks associated with these larger numbers using the building. The area per person required for a bar (other

than the standing area) is more than a dance floor therefore more persons can be accommodated on a dance floor than the same area in a bar.

If the provision of a dance floor and music for dancing is the principal use of the premises, it is more likely to be categorised as a “hall” rather than a pub, bar, café or restaurant and may be interpreted as being classified as a 9b building under the BCA.

It is possible that activities carried out at some pubs, bars, cafés or restaurants could lead to them being categorised as 9b building uses. In some such instances a relevant environmental planning instrument may require development consent or a complying development certificate for a change of use from class 6 to class 9b. The decision as to whether the use has changed to a sufficient degree to become a different one is a matter that must be determined on a case by case basis, considering the specific facts of the matter. When considering such matters the declared intentions of the owner of the premises can be of assistance.

However, given that venues may be used for multiple purposes over the course of the day, week, or life of the venue, the new planning system recognises these changes. Accordingly, the focus is now on planning assessment of public safety and mitigation of impacts.

3.3 Exempt and complying development

Where development consent is required it may be possible to carry out the development as either exempt or complying development under the provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or the relevant councils local environmental plan or development control plan.

Exempt Development

Exempt development is development of minimal environmental impact that can be carried out without the requirement for development consent. Exempt development includes minor internal and external building alterations.

Complying Development

Complying development is development identified in an environmental planning instrument that can be addressed by specified predetermined standards. Complying development is carried out in accordance with a complying development certificate issued by either a council or an accredited (private certifier).

Examples—Change of Use

- Where a restaurant is to provide live or recorded music for the entertainment of its patrons while eating, there is no change of use and consent is not required if there are no building works required.
- Where there is a building which is being converted into a registered club—say from retail premises or a pub to a club—an environmental planning instrument may require development consent if a change in building classification in the BCA will occur.
- Where a small bar is to provide live or recorded music for the entertainment of its patrons while drinking and remains ancillary to the small bar use, there is no change of use and consent is not required if there are no building works required.
- Where a pub makes one room available on an occasional basis for the provision of live or recorded music there is generally no change of use for that part of the building.

Exempt and Complying Codes SEPP

- Exempt development for commercial premises, which includes pubs and restaurants, includes the following development types: access ramps, bollards, automatic teller machines, minor internal and external building alterations, and changes to wording of existing signage (replacement of existing business identification signs).
- Complying development for commercial premises, which includes pubs and restaurants, includes internal building alterations, and certain minor external building alterations as well as certain change of building use.

4. Development Applications

4.1 Development application

Where development consent is required and the development cannot be carried out as either exempt or complying development, for example the erection of a new building or a major alteration to an existing development or change of use, a development application must be lodged with the relevant consent authority (usually the council). The consent authority must undertake a thorough merit based assessment of the proposed development under section 79C of the EP&A Act.

The key issues that typically need to be considered when preparing a development application for the development types referred to in this Guideline relate to safety of patrons, management of noise, smoking areas, patron transport issues and interface with surrounding land uses and the contribution to the social amenity of the area or region. Section 4.3 outlines typical issues. However each development application will be different, so there may be additional matters to be considered. Similarly not all of the issues identified will apply to every application. Nonetheless, the matters identified in this Guideline are key issues that applicants should address in their application and that council are likely to need to consider in the assessment process.

Applicants and their representatives should also refer to Schedule 1 of the EP&A Regulation for further details of the information that should be submitted with a development application.

Demonstrating that the key issues have been considered, and nominating how these likely impacts are proposed to be avoided or managed, in a proactive way will help the applicant show to the council and neighbours what is proposed and potentially help allay concerns about how the premises will be managed. If inadequate information is provided, it will delay the assessment process and is likely to affect the confidence of the council and local community regarding the likely future performance of the venue.

In some instances, for example where there are likely to be cumulative impacts from the facility being

located in a precinct with other similar venues, it may assist the consideration of an application if an Operational Plan of Management has been prepared to support the proposal. However this will not always be necessary as it is important that only sufficient information is requested by the consent authority for it to be able to assess the impacts of the proposal. Councils should only seek sufficient information from an applicant to enable the impacts to be assessed.

4.2 Relationship to Provisions of the Liquor Act 2007

When carrying out its assessment the consent authority should be aware that controls also exist under the Liquor Act to regulate the management of licensed premises. That Act requires certain applications for liquor licences for new premises to be supported by community impact statements and the Casino, Liquor and Gaming Control Authority cannot grant a licence unless it is satisfied that the overall social impact will not be detrimental to the well being of the local or broader community.

Procedures also exist under the Liquor Act for the management of licensed premises through the imposition of conditions on liquor licences. Conditions—including controls relating to trading hours, noise levels, provision of security, management plans and patron numbers—can be imposed at the time of granting a licence, or at a subsequent time where issues relating to the consumption of alcohol and operation of licensed premises arise. Conditions can also result from the consideration of disturbance complaints which can be made by councils, police or residents. Directions can be issued to improve the management of a venue and disciplinary complaints may be made which can lead to substantial penalties, suspension or the cancellation of licences.

4.3 Typical matters to be considered

Key matters that are recommended to be considered by a consent authority when assessing an application for premises in which entertainment is to be carried out are outlined in the following table.

Note to Councils:

This list of matters for consideration should be tailored to reflect the scale and nature of the proposal.

1 Character and context of the area

- Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?
- Is the location and context of the premises, including proximity to residential and other sensitive land uses or to other similar premises acceptable?
- Is the location and context of the premises likely to contribute to the recreational, cultural or tourism attributes of the area.

2 Local amenity

- Does the proposed use have the potential to have a significant adverse impact on the amenity of neighbouring properties and the surrounding area?
 - Are the potential impacts likely to be generated by patrons coming to and going from the premises (noise, litter, aggressive behaviour, vehicles and general disturbance), particularly on any nearby residential premises and public streets late at night. What management regime is proposed to minimise adverse impacts, particularly on any residential areas.
 - Are the potential impacts likely to be noise generated at the venue itself (by patron, public address system or loud music—recorded or live) particularly affecting nearby residential premises. What management regime is proposed to minimise adverse impacts on any residential areas.
- Does the proposed use have the potential to have a significant positive impact on the character of the surrounding area?

3 Hours of operation

- Have the proposed opening hours been nominated? Are the proposed hours of operation consistent with
 - any provisions of a development control plan or similar policy document in place for the locality in which the premises and/or activities are proposed?
 - any hours that would apply under the Liquor Act?
- Would it be appropriate to limit the hours of operation for the premises as a whole, or for individual activities within the premises, in order to minimise the potential for unacceptable impact on neighbouring and surrounding premises, particularly in residential areas?
- Would it be appropriate to include core operating hours, and extended operating hours under a reviewable condition in order to allow the ongoing monitoring of the impact and acceptability of these extended hours?

4 Number of patrons

- What are the proposed patron numbers for the premises as a whole, and for individual components or activities within the premises?
- Are the proposed patron numbers consistent with:
 - any relevant provisions in the *Building Code of Australia*?
 - any controls that would apply under the Liquor Act?
- Is any proposal to limit the proposed patron numbers, both for the overall premises, and for any individual components or activities within the premises—being a greater limitation than the capacity that may be possible under the relevant provisions of the *Building Code of Australia*—justifiable? Is this due to safety of patrons, or off-site noise impacts arising from a high number of people frequenting, entering and leaving the premises?
- Would it be appropriate to include core patron numbers and extended patron numbers with the latter commencing as a nominated trial period, or under a reviewable condition, in order to allow the ongoing assessment of the impact and acceptability of these extended numbers?

5 Building safety

- Does the building meet the requirements of the *Building Code of Australia*?

6 Management of the premises

- Is the nature, scale, size or capacity of the proposed use, including the individual components or activities, such that an Operational Plan of Management is required to inform consideration of the development application?
- Issues that Operational Plans of Management can helpfully address are outlined at Schedule 1. Generally an Operational Plan of Management should include details of:
 - Security management measures—on-site and off-site
 - Crowd control measures and procedures
 - Noise management protocols
 - Waste management
 - Complaints handling procedures, recording and follow up actions
- A development consent should not normally contain a condition of consent requiring an operational plan of management. However an operational plan of management is usually helpful in providing detailed information to assist with determining a proposal.

4.4 Conditions of Consent

Conditions should only be applied to development consents if the development would not be approved without them. They should address important issues of public amenity, design and building safety associated with the proposal. Issues associated with the day to day running of a licensed premise are more appropriately addressed by conditions on a liquor license.

A development consent for licensed premises may typically contain conditions of consent for specific matters such as hours of operation, maximum capacity, noise mitigation. It should not cover matters that will be covered in a liquor license, for example, conditions that relate to the responsible service of alcohol, requirements to have security guards and requirements to have closed circuit televisions operating.

As noted earlier development consents should not contain conditions of consent requiring general compliance with operational plans of management. However such documents may be helpful in providing background information to assist with determining a proposal.

A development consent for a building or venue should not be time limited and require a new development consent or renewal in a specified number of years, unless exceptional circumstances apply. Whilst reviewable conditions can be applied to extensions to hours of operation and maximum capacity upon their review, these will normally be either granted permanently or rejected.

a) Prescribed Conditions – Capacity

Clause 98C of the Act has been amended to prescribe a condition of development consent in the EP&A Regulations for entertainment venues, function centres, pubs, restaurants and registered clubs. The prescribed condition is that a sign must be displayed in a prominent position in the premises that specifies the maximum number of persons, as specified in the development consent, that are permitted in the premises. This applies to existing and new development consents granted.

b) Reviewable Conditions

The *Environmental Planning and Assessment Amendment Act 2008* introduced new provisions for reviewable conditions relating to maximum capacity and hours of operation that can be applied to development consents for cinemas, theatres, concert halls, indoor sports stadiums, function

centres, pubs, registered clubs and restaurants. These conditions enable a consent authority to approve a development application to permit an increase in the hours of operation, or maximum number of persons permitted at premises, over those contained in the standard conditions of consent that are granted on the basis that these increases will be reviewed at a time specified in the grant of consent.

Section 80A

(10B) Review of extended hours of operation and number of persons permitted

A development consent that is granted subject to a reviewable condition may be granted subject to a further condition that the consent authority may review that condition at any time or at intervals specified by the consent and that the reviewable condition may be changed on any such review.

(10C) The regulations may make provision for or with respect to the kinds of development that may be subject to a further condition referred to in subsection (10B), the matters that must be included in such a condition and the procedures for a review under such a condition.

(10D) A decision by a consent authority to change a reviewable condition on a review is taken to be a determination of a development consent for the purposes of this Act.

(10E) For the purposes of subsections (10B)–(10D), a reviewable condition means any of the following:

- (a) a condition that permits extended hours of operation (in addition to other specified hours of operation),
- (b) a condition that increases the maximum number of persons permitted in a building (in addition to the maximum number otherwise permitted).

Consequently a consent authority can use reviewable conditions to approve proposals where it is uncertain about the impacts of the proposed development on, for example, adjoining land uses. By using reviewable conditions the consent authority can retain a close degree of control over the **hours of operation** and/ or **maximum number of persons**. The authority would have the power to reduce the hours or capacity granted to a lower level following a review, if this proves appropriate. Conversely, operators could apply for an extension of hours or numbers if it was demonstrated that the impacts are generally acceptable to the community.

When a reviewable condition is imposed, the relevant consent must include a statement that specifies:

- (a) the consent is subject to a reviewable condition;
- (b) the purpose of the condition;
- (c) when, or at what intervals, the reviews are to be carried out; and
- (d) the information that will be required to support an application to continue beyond the reviewable period.

When a consent authority is to undertake a review, it is good practice to:

- (1) Give the operator of the premises, the subject to the review condition, not less than 90 days written notice that a review is to be carried out under the condition and request that the operator submits whatever supporting information it considers would be helpful in making its determination of that review;
- (2) Notify such other persons as it thinks fit of the review; and
- (3) Take into account any submissions made by a person that are received within 14 days after notice is given to the person of a review.

A decision to change a reviewable condition on a development consent is taken to be a determination of a development consent and is subject to the notification and appeal provisions under the EP&A Act in relation to such a determination.

Reviewable conditions should only be used by consent authorities in special circumstances. They should not be imposed unless there is sufficient uncertainty regarding the potential impacts of the proposed hours of operation or capacity of a venue. In most cases, it should be possible to arrive at an agreed approach in the first instance. The views of the applicant should be taken into account before any reviewable conditions are imposed.

In cases where reviewable conditions have not been used, facility owners can apply to the council to modify the conditions of consent to change the hours of operation or the capacity of a venue.

Examples—Reviewable Conditions

New Hotel—Hours

- A development application for a new pub is lodged with a council, proposing opening hours of 10.00 am to 3.00 am the next day, 7 days per week. The council may make the decision to approve core operating hours of 10.00 am to 12.00 midnight, 7 days per week, with the extended hours between 12.00 midnight and 3.00 am being a separate *reviewable condition*, including the details of the review criteria and review process.

Expanding capacity of a pub

- A hotel has an existing development consent that includes a condition limiting the number of people on the premises to 300, notwithstanding that the size and construction of the venue would allow up to 500 people, based on BCA compliance (number and size of exits etc). The condition limiting the capacity to 300 was originally imposed in order to try and limit the likely amenity impacts on the neighbourhood.

The venue operators make an application to the council to increase the maximum number of people in the building to 500, as they know that they can safely meet the BCA fire safety requirements and they feel, through implementing appropriate measures to better manage the premises, that the premises can operate without causing unreasonable amenity impacts on the neighbourhood.

The council, based on the merit assessment of the application, accepts that the numbers of people could be increased, but in doing so, gives consent to the increase subject to a *reviewable condition*, with the core number remaining at 300. The *reviewable condition* is subject to review criteria and review process, included as part of the consent.

c) **Standard Conditions—Entertainment Venues**

The EP&A Regulation has been amended to alter certain provisions in Schedule 3A which formerly contained certain prescribed conditions of development consent for places of public entertainment and now applies to entertainment venues.

5. Other Regulatory Systems

5.1 The Liquor Act 2007

New liquor laws came into effect in New South Wales on 1 July 2008. The new laws provide greater flexibility for licensees, more choice for patrons and greater protection for local communities from alcohol related issues. The new liquor licensing process is an administrative one overseen by the NSW Office of Liquor, Gaming and Racing. Decisions on applications are made by an independent body - the Casino, Liquor and Gaming Control Authority.

The new liquor laws include:

- New liquor licensing options for small bars, restaurants and live music venues.
- Increased access to licensing decisions for local councils and residents.
- A complaint system allowing communities to take quick action against licensed venues causing disturbances.

Liquor Act 2007—Management of Premises

The Liquor Act has monitoring and enforcement provisions to regulate alcohol service and consumption, neighbourhood disturbance, alcohol-related crime and anti-social behaviour and poorly managed licensed premises. It sets out a framework for the making and consideration of disturbance and disciplinary complaints, and allows for the imposition of conditions on licences, monetary penalties and the suspension or cancellation of a licence.

It is not appropriate to seek to use the planning framework to regulate the management of licensed premises where that is more appropriately dealt with under the Liquor Act.

- New offences to reduce anti-social behaviour.
- Expanded enforcement powers to impose conditions on liquor licences, declare lockouts/curfews and ban irresponsible liquor products and promotions at individual licensed premises.
- Less cost and complexity for liquor licensees and applicants.

Many of the issues associated with entertainment venues are associated with behaviour as a result of consumption of alcohol. Recent changes to the Liquor Act greatly strengthen the ability of regulatory authorities to take action to avoid or manage these impacts more effectively.

5.2 Managing noise from venues

a) Licensed facilities

The Casino, Liquor and Gaming Control Authority issues liquor licences. The Authority may place environmental noise conditions on a licence. These conditions typically include limits on noise emission, and a requirement that the noise from licensed premises should not be heard inside any home between midnight and 7 am on any night. Many liquor licences are subject to these types of noise control conditions.

Noise and disturbance complaints made under the Liquor Act are determined by the Director-General of Communities NSW. The Director-General in resolving a disturbance complaint can take action including:

- issuing a warning to the licensee, or
- imposing temporary or permanent conditions on the liquor licence

The types of conditions that can be imposed on a liquor licence include:

- Noise emission restrictions
- Trading restrictions including lockouts/curfews
- Restrictions on the sale/supply of liquor
- Requiring security, or additional security patrols, in and around a venue
- Requiring a licensee to participate in a local liquor accord.

The Director-General can also utilise other regulatory tools to address concerns about noise and neighbourhood impact. This can include negotiating a workable solution between a licensed venue and councils/residents, the imposition or variation of licence conditions, and issuing directions to the licensee and/or staff about the management and conduct of the venue. Councils can approach the Director-General where they wish to have issues with licensed venues addressed through these regulatory powers.

Councils and NSW Police can also monitor the noise impact of premises (including licensed premises) and issue Orders in relation to offensive noise, as outlined below.

b) Non-licensed facilities

The DECC handles noise from premises that hold an Environment Protection Licence and activities carried out by a State authority. Activities that require a licence are listed in Schedule 1 of the *Protection of the Environment Operations Act 1997* (the POEO Act) and typically include large-scale industrial operations and outdoor concerts held on lands specified in section 67 of the *Protection of the Environment Operations (General) Regulation 1998*. These include:

- Royal Botanic Gardens,
- Domain,
- Centennial Park,
- Moore Park,
- Parramatta Stadium,
- Sydney Cricket and Sports Ground,
- Homebush Bay,
- Sydney Harbour foreshores,
- Opera House and
- Darling Harbour.

c) All facilities

The *Protection of the Environment Operations (Noise Control) Regulation 2008* specifies the times when noise should not be heard in neighbouring homes. Under the POEO Act councils, police officers or the Land and Environment Court can serve various notices on people requiring them to control offensive noise and advising them what noise levels are acceptable.

- A **prevention notice** contains conditions on ways of preventing or stopping noise, and is issued under section 96 of the POEO Act.
- A **noise control notice** sets an acceptable noise level for a specific item of noisy equipment, and is issued under section 264 of the POEO Act. The notice can require the noisy activities to be restricted to certain times of the day or certain days. If the notice is not complied with, the council can issue a fine or can prosecute. People who receive a notice can appeal against it.
- A **noise abatement direction** may be issued at any time of the day or night and can remain in force for up to 28 days from the time it was issued. Noise abatement directions cannot be appealed against. The police have special powers that allow them to seize equipment used to make noise (e.g. a sound system in contravention of a noise abatement direction).
- A **noise abatement order** allows a resident to take action independently of the local council or other regulator and seek a noise abatement order under section 268 of the POEO Act.

SCHEDULE 1

OPERATIONAL PLANS OF MANAGEMENT

An Operational Plan of Management may be required depending on the scale of the premises and the extent of impacts that may be generated. The Plan can help provide for the ongoing management of the facility in a manner which will minimise the impacts on the surrounding community and provide safety to patrons. The Plan can helpfully address the following issues, however the list is not intended to be comprehensive. There may be other issues that a Plan will need to address and in many instances not all of the following matters will need to be considered.

Site and Locality Details

A description of the principal use of the premises as well as any secondary/ancillary uses (eg. retail liquor sales, entertainment areas, outside trading areas, gaming areas etc). This may be in the form of a floor and/or site plan that indicates the use of all areas within the building or site.

Organisational Overview

An overview of the organisation in the form of a brief statement that provides details about the company/ licensee/proprietor that includes information regarding any Liquor Licenses and development consents for the premises.

Hours of Operation

Details of the approved hours of operation, both in any development consent and associated with any Liquor Licence.

Noise mitigation or management

- (a) The identification of all likely noise and vibration sources associated with the operation of the premises.
- (b) A general description of the nature/type of entertainment (eg. live music band, comedy, theatre, mix of forms).
- (c) Details of how management will address complaints relating to noise, and any noise control strategies that will be implemented to minimise the potential for complaints (eg. liaison with neighbours and local police, maintaining a complaint register etc).

Staffing

Details of the number of staff available during nominated hours to manage different parts of the premises and their duties. To include how additional staff will be made available during nominated busy periods. Sited where police or other emergency people can see the contact number of management staff if there is need to contact them.

Security and Safety

- a) A description of any arrangements made for the provision of security staff (including if required by the consent). This is to include (but is not limited to) the following:
 - any recommendations from Local Licensing Police regarding appropriate security provision and a statement outlining the extent of compliance with police recommendations;
 - the number of security personnel as required by the consent or other requirements;
- b) Details of signage that is to be erected providing advice to patrons to maintain quiet and order when leaving and entering the premises;
- c) Details of any complaints associated with the operation of the premises must be recorded in a Complaints Register which includes:
 - Complaint date and time;
 - Name, contact and address details of person(s) making the complaint;
 - Nature of complaint;
 - Name of staff on duty; and
 - Action taken by premises to resolve the complaint.

NOTE—Many licensed venues are required by the liquor laws or their liquor licence to maintain an incident register in which details of complaints should be recorded. This requirement should be taken into account in developing a Plan of Management.

- d) Measures that will be taken to ensure that the behaviour of staff and patrons when entering and leaving the premises will minimise disturbance to the surrounding neighbourhood.

Cleaning Program

Details of how the premises, and in particular, any public domain will be kept clean and free of food or container spillages at all times.

Waste Disposal

Details of proposed storage and disposal systems.

Cigarette Butt Management

Outdoor areas may be exposed to wind. Ash trays that avoid wind blown ash or cigarette butts to be blown may be required in any permitted smoking areas.

General Amenity

- a) Details of all measures that will be taken to ensure that amenity impacts that may result from the operation of the premises are minimised. This should identify (where relevant) any measures taken to ensure that the operation of the premises will not materially affect the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise;
- b) Details of all actions that will be taken to respond to complaints made about the operation of the premises (eg. consultations with residents, discussions with council officers, liaison with Police, public access to Plans of Management, review of Plan of Management etc.);
- c) Any other measures that will be undertaken to ensure that amenity impacts that may arise from the operation of the premises are addressed.

Notice of Operating Conditions

A notice could be attached immediately inside the main door of the premises setting out:

- a) Maximum capacity of the venue—in whole premises or parts of it
- b) Operating hours
- c) Contact details of the Manager



Where to find out more?

NSW Department of Planning Information Centre

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