PORTFOLIO COMMITTEE NO. 6 – PLANNING AND ENVIRONMENT
INQUIRY INTO THE MUSIC AND ARTS ECONOMY IN NEW SOUTH WALES

Post-hearing responses by Jon Perring

Correction of an error of fact in my evidence

In my CV in my opening statement I referred to holding the office of Vice-President. The office is actually Vice-Chair.

Where I said in my opening statement, "42,000,000 years" this should have been "42,000 years".

In the question "Who convenes the Victorian Live Music Roundtable? Who is in charge of it? "from the Chair, I incorrectly stated that Cate Carr from the VCGLR was the Live Music Round Table chair. She is in fact the former chair. The current Live Music Round Table Chair is Jane Crawley from Creative Victoria.

Supplementary Question

What are the Victorian government requirements for security for venues? We received some evidence that there is a rough rule of thumb of 1/100, but with a written security plan a venue can vary such arrangements. What are the requirements? Where are they contained? How flexible are they?

Response

Most Victorian liquor licenses of either On-premises (late-night) or Hotel (late-night) type, that trade beyond 1am and have a patron capacity greater than 200, are required to provide crowd controllers. Typically, at a ratio of 2 for the first 100 and 1 per every 100 patrons after that.

The typical historical conditions read as follows:

"When live or recorded amplified music other than background music is provided:

- The licensee shall install and maintain a surveillance recording system able to clearly identify individuals, which shows time and date and provides continuous images of all entrances and exits, bars and entertainment/dance floor areas. The surveillance recording system must operate from 30 minutes before the start of the entertainment being provided, until 30 minutes after closure. A copy of the recorded images must be available upon request for immediate viewing or removal by the Victoria Police, or a person authorised in writing by the Victorian Commission for Gambling and Liquor Regulation, or otherwise retained for at least one month. The position of the cameras will be to the satisfaction of the Licensing Inspector.
- Signs, as described below, are to be displayed in all areas subject to camera surveillance. Such signs shall read:
- "For the safety and security of patrons and staff this area is under electronic surveillance".
- Crowd controllers, licensed under the Private Security Act 2004, are to be employed at a ratio of 2 crowd controllers for the first 100 patrons and 1 crowd controller for each additional 100 patrons or part thereof. One crowd controller is to be present outside the premises to monitor patrons arriving at and departing from the premises. Crowd controllers are to be present from 30 minutes before the start of the entertainment being provided, until 30 minutes after closure.

However, licensed live music venues are treated as a special case because they are considered to be a lower risk and as such, have the flexibility that allows experienced operators to submit a management plan that allows the venue to balance the application of crowd controller staffing resources to times and shows when management feel is appropriate and are needed. This is usually Friday and Saturday nights. However, it's not unusual for a venue to get a sold-out show on Monday or Tuesday nights for a band on tour. Different genres need to be treated differently. For example, young punk audiences can be boisterous but singer-songwriter audiences are polite and passive. Venue management understands these audience characteristics at a granular level.

Experienced venue operators need this flexibility to deploy security personnel when and where required and are better placed than regulators to do so.

There is a process for licensed venues to apply for to be treated as Live Music Venues.

This document from the VCGL best describes the current matrix for applying security conditions on Live Music Venues.

https://www.vcglr.vic.gov.au/sites/default/files/Liquor_licensing_fact_sheet_-_Licence_conditions_for_live_music_venues.pdf

To this day the Music Industry does not support the generic use of the presence of music as the key factor to mandate the application of high-risk conditions on liquor licenses. That is, by the phrase "When live or recorded amplified music other than background music is provided:"

Clearly, this is contradictory with the idea that Live Music Venues are treated as low risk. Furthermore, the presence of televised sport such as boxing or other adversarial codes (Rugby, AFL, Soccer) that encourage tribalism, regularly feature on-field acts of assault and are known to see brawling amongst supporters, do not trigger the same high-risk conditions.

Dialogue with the VCGLR and the Music Industry continues around this subject.

Notwithstanding the policy contradictions, licensed live music venues have practical and satisfactory statutory mechanisms to balance the crowd controller staff resources in a bespoke manner to a venue's operational requirements. Viewed in the context of the police statistics referred to elsewhere in my evidence, the needs of both regulators and live music venue operators are satisfied. In other words, it ain't pretty or perfect but it works.

As an example, the following is the link to the Tote Hotel's Liquor license which was the first example of a license treated as a special case because it is an established live music venue.

https://liquor.vcglr.vic.gov.au/alarm_internet/alarm_internet.ASP?WCI=index_action&WCU

Search Permanent Licenses

Premises Name=Tote Hotel

Further information to answers given in evidence.

Australia Council Statistics

http://www.australiacouncil.gov.au/research/connecting-australians-states-territories/

See "Creative participation", "Listening to recorded music – trends" and "Live attendance".

Melbourne Live Music Census 2017 Report

https://www.musicvictoria.com.au/assets/2018/MLMC-2017-Report-compressed.pdf

Documentary in Sydney's Music Scene

I referenced the "Turn it Up ! Finding Sydney's Sound" documentary in my Evidence. Details are as follows

http://www.turnitupsydney.com/

https://vimeo.com/261399979

Contracts

Nathan Richman

Samantha Holder

Police Statistics

In Figure 12: Percentage change in recorded offences, by type of location, 2012/13 to 2013/14

Crimes against the Person in Licensed Premises fell by 18.5% or 1,297 events (Figure 11). Mostly assaults.

http://www.police.vic.gov.au/content.asp?Document_ID=782

It is worth reviewing these figures over a number of years to contextualise the performance of Victoria liquor licensing policy over multiple years. Sorry, I don't have the time to do the necessary data manipulation and presentation.

Report Title discussed in my evidence.

Name of the report I authored for Creative Victoria and the Live Music Round Table is "A review into the efficacy of Section 52.43 - Live Music Entertainment Noise of the Victoria Planning Provisions, known colloquially as the "Agent of Change" clause." It is dated August 2018.

Further Points on Live Music Policy.

I would like to expand on points I made in my evidence in regard to possible policy to be considered in creating a regulatory environment that encourages Live Music in NSW and allow it to flourish.

I am sure that the committee has had a lot of evidence as to why lockouts damage and destroy Live Music Venues. As such I won't dwell on this subject although I should clearly state I believe, in my experience, them to be ineffective and destructive. In general licensing policy should not target Cultural Activity but should focus on risk such as licensed premises operational risk factors around scale, hours of operation, operational history, etc. It is vital that all policy should always be evidence-based. I refer the committee to the above Victorian Police statistics which, referenced by me elsewhere, would indicate that a vibrant live music culture does not ferment violence and crime.

1. **As-of-Right Use for Live Music.**

As-of-Right Use is critical in establishing Live Music Spaces. In Victoria, the vast majority of Live Music Venues have been established in as-of-right uses. Typically, this is within Hotel, Taverns (Bars) and Restaurants uses. The establishment of these existing approximately 550 venues has been within these land uses. There have been only a small number of venues that have been established through permissions granted through the Victorian planning system. These being Howler in Brunswick (6 years ago), Bar Open in Fitzroy (21 years ago) and possibly Birds Basement in the CBD. It's possible that there may be others I'm unaware of, however, not many.

I would encourage the NSW to create a specific land-use category for Small Music Venues and/or a Small Arts Venues in addition that cultural activity (music theatre, comedy, performance, etc) is as-of-right within all existing planning and liquor license categories.

Proposed Live Music Venue Definition

A building, part thereof or outdoor space, where music or sound is played by musicians in an interactive manner, generating either original music or an interpretation of other's compositions through the process of performance. This can include the use of samples or DJ'ing performed in an interactive manner.

Includes the categories of: rehearsal space and any venue used for the performance of music.

Includes the category of Arts and Cultural Use.

Could be included in any number of land-uses within Place of Assembly or Food and Drink Premises.

Proposed Small Arts Venue

The whole or part of a building of not more than 2 storeys in which:

(a) arts and cultural uses are conducted; and

(b) the floor area used does not exceed 500 sqm; and

(c) liquor is sold for consumption on the premises.

A Small Arts Venue may include food for consumption on the premises; sale of cultural and artistic outputs; and may charge admission and lease or licence studio space for the purpose of producing cultural output or service provision.

Includes: the existing categories of Food and drink premises, bar, café, etc; rehearsal space, recording studio and any venue used for the performance of music, office and retail premises; and the proposed categories of Live Music Venue, and Arts and Cultural Use.

Note: These dimensions correlate with the Victoria BCA Building Interim Regulations

2017:122 which define Small Live Music Venue in the following terms:

"Small live music venue means the whole or the only part of a Class 6 building that has a rise in storeys of no more than 2—

(a) in which live music entertainment is provided to the public; and

(b) that has a floor area not greater than 500 m2".

NSW may need to extend the Victoria BCA definition into the NSW planning system to include all arts and cultural uses and thereby accommodate the increasing hybridity of creative expression. A smaller arts venue that correlated with the dimensions of the BCA variation to the Premises Standards (200 sqm per floor in a building of up to 3 storeys) would put this use into very low-risk building and as-of-right planning permission.

These definitions may overlap with other uses that would require other permits such as Development Applications to serve liquor and, Liquor Licenses.

The important principle is that cultural activity is not inhibited by the necessity for Government permissions.

Compatibility with the UN Declaration of Human Rights.

Following is the case for as-of-right designations for all Arts and Cultural Uses including Small Arts Venues and Live Music Venues in NSW Government's responsibility under the UN Declaration of Human Rights. I believe it important to include these considerations.

To achieve this the NSW planning system should ensure that arts and cultural uses are as-of-right wherever possible.

The UN Declaration of Human Rights reads as follows:

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Put simply, the NSW planning system can ensure that arts and cultural uses are consistent with Article 27 of the UN Declaration of Human Rights, of which Australia is a signatory, by ensuring that artistic and cultural land uses are as-of-right at least in capital city, activity centre, comprehensive development, mixed-use, commercial and industrial zones.

If citizens wish to participate in their culture, be it in the form of playing music or creating art, enjoying and sharing it with their community, as is their right, they should be allowed without the necessity to engage in the expense, time and effort required by planning application processes. These processes often prevent artistic and cultural endeavours due to: high requirements imposed by the planning system and the Building Code of Australia; access to the required expertise; and financial resources necessary to successfully apply and navigate through the regulatory maze.

Access to culture is crucial in forming and maintaining identity. As artistic and cultural practices can often only be undertaken if appropriate space is available, it is incumbent on the planning system to not impede arts and cultural uses. It follows that arts and cultural spaces are crucial assets in the maintenance of community.

Further to the above, we draw attention to Article 11.1 of the United Nations Declaration of the Rights of Indigenous Peoples (Australian Government announced official support in 2009) which adds further weight to as-of-right status being given to arts and cultural uses. Indigenous culture does not exist just in the past and it is important that contemporary engagement in indigenous culture is dependant upon access to space for practice.

Article 11

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

For further reference see:

> *Submission to the Victorian Land Use Terms Review dated 3rd April 2018 and prepared by Jon Perring from Fair Go 4 Live Music (FG4LM), Helen Marcou from Bakehouse Studios/Save Live Australia's Music (SLAM), John Wardle from the National Live Music Office, and Dr Kate Shaw from the School of Geography, University of Melbourne,*

https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/1615/2273/2824/land_use_terms_sub_final.pdf

2. **The Agent of Change principle, the Victorian experience.**

   Section 52.43 of the Victorian planning provisions were introduced in law Victorian planning law in 2014. At the heart of it is the Agent of Change principle. It is perhaps best articulated when originally defined in the in Victorian Government's Live Music Taskforce final report Principle 5, from 2004.

"Settlement trends over recent years have seen new residential development concentrating in and around activity centres, bringing residents closer to established entertainment precincts and live music venues. Inner urban neighbourhoods are becoming more 'mixed use' in character. This tends to increase the basis for conflict about music noise. This settlement and land use trend is provided for in Government policy and is expected to continue.

For both venue operators and residents, recognition should be accorded to the expectations generated by existing land uses.

For the resident, this implies a continued protection of amenity in the event of a change in venue operation or the development of a new venue. For the venue operator, this implies that where a venue is currently compliant with relevant noise attenuation standards and its operation does not change, new residential or other noise sensitive development should not lead to new compliance costs.

The onus of responsibility for the cost of noise management (which may include attenuation measures) should fall upon the agent of change.

In all cases of land use change, anticipation of issues of noise detriment, and implementation of predicted solutions at the planning and design stage are preferable to the adoption of measures to resolve an actual noise disturbance."

There is a debate in national music policy circles about whether the Victorian Agent of Change policy (s52.43 of the VPP and Planning Practice Note 81) approach is better or worse in its protection of Live Music than its alternate policy: The Brisbane City Council's Live Music Precinct Policy. The adversarial context of this debate is based on an implausible premise that the policies are somehow interchangeable. Both policies evolved separately in response to their regulatory contexts and were implemented by different levels of Government, state and local government respectively.

The weakness of the Agent of Change clause, as currently implemented, is in identifying both what a live Music Venue is and where they are located. Having the party responsible for paying for costly attenuation solutions, responsible for the identifying Live Music Venues, is a conflict of interest that has practically resulted in the active avoidance of the Agent of Change policy by developers.

It's like asking the fox to be responsible for the chook house fence.

The Brisbane City Council's Live Music Precinct based policy (Brisbane City Plan 2014 – 9. Guide for the noise impact assessment planning scheme policy. Appendix B - Residential design in the Fortitude Valley Special entertainment area) is an alternate standardised way of applying acoustic attenuation solutions to residential buildings located in proximity to clusters of live music venues whilst also managing live music sound emissions. The policy effectively constrains live music into designated entertainment areas. This policy is philosophically similar to the UK's local government control "Planning Policy Guidance 24: Planning and Noise" but a live music focused distilled version of it.

The downside of this approach is that this actively discourages live music activity outside of these areas and risks ghettoisation of the art form. The Brisbane City Council's Live Music Precinct based policy is a control developed by local Government, so any system adopted in NSW must function in The City of Sydney, Byron Bay or in Wagga Wagga. State land-use policy is applied not by one council, but by many: Small, large, experienced, inexperienced, urban and regional. It is critical that Live Music Venues are well defined and identified, so all local councils can effectively implement the policy

The advantage that a precinct-based approach has is that it can capture residential developments that require acoustic protection through the mandated application of policy. This means that acoustic attenuation is considered at the beginning of the building design process, which can avoid costly engineering interventions later in the planning process that can compromise the financial viability of a development. Post design planning permit conditions can't fix a flawed design.

A precinct-based policy trigger avoids the current Victorian situation where Live Music Venues must continually intervene as objectors in proximate planning application processes for residential developments. The

cost burden per objection on Live Music Venues in Victoria has been considered in both time and money. Cost estimates garnered through interviews I have conducted revealed the following:

Howler	300-400 hours	$70,000 based on settling VCAT case.
If matter went to VCAT,		estimated to be $150,000-$200,000
Backhouse Studios	Weeks	$60,000-90,000
		(on top of good Neighbours Grants)
Collingwood Arts Precinct	600 hours	Several hundred thousand dollars.
The Tote Hotel	60-70 hours	Approximately $10,000

A Live Music Venue can possibly absorb a single planning intervention but because of the momentum of land development in Victoria, this ongoing unpredictable financial liability threatens the viability of Live Music Venues and represents a serious strategic risk to the sector itself.

Any consideration around shared community responsibility of protecting residential land-use from music sound emissions in NSW must ensure that the policy is robustly applied to known, well defined and documented live music venues either by location or precinct, so as to avoid the manipulation of the planning system by vested financial interests.

However, in the context of live music activity in greater Melbourne and regional Victoria areas over an extended period, this as-of-right land-use activity has historically moved around and between local council areas. As an example, contemporary live music was well entrenched in St Kilda in the 80's but has slowly migrated to Fitzroy and is now growing in both High St, Northcote and Sydney Rd Brunswick within licensed premises that offer as-of right-use.

Melbourne is a very large city and it is naive to think that live music could be contained to just one or even several areas. It would be analogous to saying that parks or recreational sports grounds should only be located in one or a few precincts. The Victoria Agent of Change policy serves the dynamic nature of cultural live music land-use statewide well.

Definition and Identification of Live Music Venues.

A common theme that emerged through interviews I recently conducted with council planners, Live Music Venue operators and acoustic engineers was the problem of identifying proximate Live Music Venues to a development and understanding what a Live Music Venue is when a planning application is being assessed by a Council. The confusion around definition is not so much a problem when the venue is a dedicated use and high profile but around the edges of the definition when it is an 'as-of-right' use, not necessarily a referenced use in council records. However, even when a Live Music Venue is well known and, in some cases, has a relationship with Council through their arts and culture programs, the planning process has failed to identify or acknowledge the Live Music Venue uses.

The definition of a Live Music Venue in s52.43 of the VPP means:

> *"a food and drink premises, nightclub, function centre or residential hotel that includes live music entertainment, a rehearsal studio or, any other venue used for the performance of music and specified in clause 2.0 of the schedule to this clause, subject to any specified condition or limitation."*

This definition is wide and in broad terms, includes any land use where music is played or performed. As such, there is a difficulty in identifying all the location of Live Music Venues and in particular Live Music Venues that are of cultural importance. The total number the Agent of Change clause Live Music Venue definition covers is likely to possibly be in the tens of thousands in Victoria if the broadest interpretation is adopted.

Whilst Melbourne Live Music Venues, where performance (musicianship) is the focus, is 553 in number according to the Melbourne Live Music Census Report 2017 (p6).

The Melbourne Live Music Census Report 2017 defines a Live Music Venue as:

> a venue that has a *"minimum of two advertised presentations by 'featured' performers on a weekly basis"* and defines Live Music Performance as *"a creative presentation of music by a featured performer in the presence of an audience gathered in a public space designated for the performance where appropriate technology is utilised to communicate that performance to those in attendance'. A 'featured' performer (musician/band/DJ) is one who is specifically named in advertising/promotion. "*

This definition excludes 'open mic' nights, 'club/party nights with DJs' (p28) where the performer is not identified. In other words where foreground amplified music is used only for economic, not cultural purposes primarily.

https://www.musicvictoria.com.au/assets/2018/MLMC-2017-Report-compressed.pdf

The land-use definition for Live Music Venue is critical to the success of any proposed policy considered in NSW.

For instance, a hypothetical example from Victorian planning law.

> *If a Tavern with a Late-night On-premises liquor license trades to 5am and plays amplified music for the purposes of dancing using a play-list, is this a Nightclub and therefore a Live Music Venue? Tavern is not included in the Live Music Venue definition but the use would be captured through nesting by the Food and Drink premises use definition. The point being that the definition requires unpacking, research and really should just be immediately obvious.*

The existing VPP Live Music Venue definition in s52.433 gives no guidance as to the relevance of 'frequency of operation'. So, is a restaurant that has live music played by musicians occasionally and DJs for functions infrequently, a Live Music Venue within a planning context? There are valid arguments to support both interpretations.

In s52.43, the 'Purpose' states:

"To recognise that live music is an important part of the State's culture and economy."

Yet there is no guidance as to the weighting of economic use and cultural use. In the interview process, planners and acoustic engineers both highlighted that guidance would be useful.

As can be seen in the Live Music Venue definition used in the Melbourne Live Music Survey 2017, the music industry sees that performance and frequency of gigs is central to the cultural relevance and therefore the importance of a Live Music Venue.

A broader contextual policy should be considered around cultural use. It's is a deficiency of the Victoria State Planning Policy Framework as it does not address the importance of cultural land-use. It only mentions 'culture' twice: once in the context of the activity in the City of Melbourne and the other in the specific context of 'alpine histories of aboriginal culture'. Music is only mentioned in reference to noise (SEPP N-2). Considering the important role Melbourne's extensive and diverse live music plays in the cultural life of Victorians.

A tight definition of a Live Music Venue in terms of cultural activity and the economic use of music, would aid in the identification and documentation of Live Music Venue locations, and assist in delivering better planning outcomes. Recent Victorian high profile planning applications that have not identified Live Music Venues and council planning departments have failed to identify these oversights in the planning application assessments.

Howler is Live Music Venue in located Brunswick in Melbourne. It is under 10 years old and was established as a new use in an industrial area next to a train line. A planning application submitted to Moreland Council for 8-14 Michael St, Brunswick referred to Howler, the adjacent Live Music Venue, as a "former wool store".

A planning application for multi-storey apartments located at 23-33 Johnston St, Collingwood was submitted with no reference to s52.43 of the VPP. The acoustic report (29th Nov 2016, p3) incorrectly claimed that:

> *"Using applicable tests, it was found that Victorian Planning Provision 52.43 and Yarra Planning Scheme 22.05 are not triggered by the Subject Development Proposal, therefore no additional treatment to the development application is required to address these planning provisions*."

In all these examples, local government planning assessments have failed to apply the Agent of Change clause. In some cases, it has come into play because of the intervention in the planning process by Live Music Venue operators. What is common about these examples is that the initial identification of proximate Live Music Venues has either been ignored by the council or deliberately ignored by the developers planning and acoustic consultants. In these cases and others, the council planning officers supported the application and recommended the issuing of a planning permit.

The motivation for developers to downplay their responsibilities is doubtless economic. The failure of councils to apply the Agent of Change clause is likely to be a combination of: a lack of available resources or insufficient knowledge to identify Live Music Venues, the council planner's knowledge of acoustics being insufficient for the task of assessing acoustic assessment and, their interpretation of the clause itself. Planning Note 81 (p8) is unambiguous and requires that an acoustic report be submitted by the planning applicant *"to the satisfaction of the responsible authority and identify all potential noise sources and noise attenuation work required to address any noise issues to comply with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2"*.

Resources need to be in place that identify iconic and dedicated Live Music Venues to see policy success in NSW. Reliable data sources exist but may need some manipulation to achieve policy alignment. These resources would be used by planning and acoustic consultants and also local councils in identifying Live Music Venues.

The Live Music Office has built in association with the South Australian Government through the Music Development Office (MDO) and the Australian Music Radio Airplay Project (Amrap), the Live Music Map. It is an interactive map that can locate Music related uses down to a one km radius of a specific address. The

Categories are:

- Music Venue
- Radio
- Recording & Rehearsal
- Music Education Centre
- Production & Backline
- Agents & Promoter
- Music Organisations

This is an excellent tool. Australian Performing Rights Association (APRA) licensed venues are given the opportunity to be included or opt out of the Live Music Map on the Live Music Office website as their applications/renewals are processed. The APRA Communications team update the additions, and any opt-outs as they are submitted through the APRA licensing processes.

This tool should be considered the easiest and best current method to locate live music-related uses in proximity to a development site and is an excellent place to start.

http://livemusicoffice.com.au/livemusicmap/

Responsibility for the accurate identification of Live Music Venues will still lie with both with the planning applicant (developer) and local government. Council planning departments lack the necessary resources and expertise to adequately assess the development site for potential noise sources, and the resultant necessary noise attenuation works required to comply music noise guidelines and regulations. As a minimum, a peer review of the acoustic report should be required by a suitably qualified and accredited acoustic consultant. This is

currently the practice of some Victoria councils in complex cases, but all NSW councils should consider this as best practice in any proposed future NSW policy.

If the peer review of the acoustic report does not concur, then officer support for the development application should not be forthcoming.

Since the Agent of Change policy has been legislated, a number of Victoria residential developments have had to grapple with the Agent of Change policy to protect its future residents from existing live music venue sound emissions. Some of these affected Victoria venues include Bakehouse Studios, Open Studio, The Reverence Hotel, The Gasometer Hotel, Audrey Studios, The Tote Hotel, The Collingwood Arts Precinct (including Circus Oz and The Melba Spiegeltent) and Howler.

Several of these planning applications have proceeded to VCAT to be determined. The relevant VCAT matters are:

- Mylonas v Darebin CC [2016] *VCAT* 1583
- 466-482 Smith Street Collingwood Pty Ltd v Yarra CC [2015] VCAT 643 (12 May 2015)
- ARA Builders and Developers Pty Ltd v Moreland CC [2014] VCAT 1306 (17 October 2014)
- Gurner 23-33 Johnston Street Pty Ltd v Yarra CC [2018] VCAT 794 (23 May 2018)

Finally, It is worth noting that at the point of writing, none of the Victorian residential developments that have received planning approval that has had to address the Agent of Change Policy (s52.43 of the VPP) has become occupied. So, my comments are limited to planning processes and do not relate to the lived experience of any residents that should be protected in law by the Victorian Agent of Change policy.

Building Demolition

Any NSW planning policy consideration needs to take into account the role existing buildings scheduled to be demolished that shield local residents from music noise. The onus on the agent of change should include the requirement to resolve unintended music noise impacts on nearby residences if a developer demolishes an existing building which was acting as an acoustic buffer. Such a trigger should relate to an increase in noise complaints from the Live Music Venues neighbours received by the responsible authority.

4. Other Policy issues worth a mention.

Mechanisms to alert real-estate buyers to the nature of the neighbourhood soundscape.

In Victoria, many apartments are sold ‘off the plan’, buyers are often surprised to learn that they are proximate to a Live Music Venue after they have moved in. The residential consumer should be informed if they are considering living in an area characterised by the night time economy. I suggest that the committee looks at implementing a legal mechanism to include in a ‘Contract of Sale’, a document that describes the nature of the neighbourhood soundscape so as to alert the potential buyer to the reality of local amenity.

Planning referrals.

There is doubtless a mechanism within NSW planning law to automatically notify stakeholder’s of particular types of development applications. This mechanism should be deployed to automatically inform proximate Live Music Venues but also the appropriate industry body (Music NSW or the Live Music Office).

Acoustic Surveillance.

In Victoria, during some of the planning applications and VCAT consultation processes, acoustic consultants engaged by the planning applicant (residential developers) have carried out covert acoustic surveillance activities to monitor Live Music Venue compliance to the Victorian Music Noise regulations (SEPP N-2). This is the responsibility of local councils, the EPA, the VCGLR or Victoria Police to determine compliance.

The purposes of these covert assessments have not for the purposes of better building design, the engineering of acoustic attenuation solutions or the wellbeing of other neighbourhood residents but to gain leverage in negotiations between planning applicant and objector, so as to shift the burden of attenuation costs away from the planning applicant: a property developer. This is counter to the principle of the agent of change. This practice is both ethically and legally dubious and goes to the heart of the independents of the acoustic

engineering consultant, their role in the planning process and, their ability to give evidence at VCAT. This is because it changes their relationship with their client. If they are conducting covert SEPP N-2 compliance assessments, they are no longer providing independent advice. They are acting as agents of the developers and as such, taint the purpose of their expert opinion. This should be actively avoided in NSW and specifically addressed by legislators.

Managing Music Noise.

In NSW music noise is considered 'offensive' (POEO Act) if it is audible within a habitable room. In order to established orderly planning, concepts such as 'inaudibility' and offensive' will need to be replaced by defined acceptable levels of music noise articulated in Decibels, otherwise design criteria for soundproofing solutions cannot be robustly established and therefore any policy attributing responsibility for applying soundproofing solutions to venues and residential developments cannot be effectively done. This is a large discussion in its self but fundamental to any policy development. Soundproofing which requires engineering needs to work with physical units of measurements and defined, measurable properties of materials. It cannot work with value judgements.

https://www.acoustics.asn.au/journal/2010/2010_38_1_Tonin.pdf

In Victoria, Music Noise is managed by SEPP N-2. The Victoria Agent of Change policy allows for the flexibility of sound attenuations solutions to protect the sensitive use to be installed on either or both the emitter (Live Music Venue) and sensitive use (a residence), the entire sound transmission path must be taken into account in any music noise sound assessment. The Agent of Change clause acknowledges this by mandating that the measurement point is required to be conducted inside for the case of indoor venues when referencing SEPP N-2. However, SEPP N-2 is designed to use background sound measurements and music sound measurements that are taken outside. There is a fundamental conflict between the planning and enforcement uses of SEPP N-2. This problem is well known and is currently being addressed in the process to amend SEPP N-2 by the EPA. This process has been underway for about 6 years with no end in sight. NSW would do well to avoid regulation that is managed and maintained over several government departments.

Currently, for the purposes of enforcement in Victoria, SEPP N-2 measurements are taken outside. This then excludes any soundproofing intended to protect the sensitive use within habitable rooms (sleep) in the sound assessment. If the sound measurement is taken inside, then there is a question of what background levels are used and how. NSW should avoid this regulatory distance. The sound measurement point needs to be specified inside the habitable room when assessing compliance in design, planning and enforcement contexts. The entire sound transmission path must be taken into account and therefore any soundproofing is accounted for whether it is installed on the Live Music Venue or the residence.

There is an advantage in using standardised background levels, particularly if the existing background sound levels are already higher than average. This is because if the levels drop over time, the required soundproofing on the residence will not become inadequate and there will be no need for retrofitting in the future. Historically, background sound has dropped by approximate 2db(A) between 1978 and 2007.

Traffic noise is likely to continue to decrease in the environment over time because of a number of factors:

- The electrification of vehicles with the effect of reducing the number of internal combustion engines in use.
- Improvement in vehicle design.
- Government policy designed to reduce traffic congestion and density in the inner city such as: a congestion tax, parking restrictions and controls, road tunnels, provision of improved public transport options, car sharing, etc.

See EPA Noise Surveys 20017. Figure 2: Average noise level for each hour on weekdays for 1978 and 2007 (page 5).

https://www.epa.vic.gov.au/~/media/Publications/1169.pdf

By the use of specified base levels, such as either specified in Schedule B3 2© of SEPP N-2 or potentially updated by the EPA, the inside background levels can then be calculated and accounted for in SEPP N-2

assessments. This also would enable the use of internal sound measurements and eliminate any compliance shift over time.

Furthermore, background sound typical reduces later in the night. There is a difference of 3db(A) between 1am and 3am. If the Live Music Venue liquor licence trading time is taken into account in the soundscape assessment used to set the design criteria for the sound attenuation solution, the background sound levels used can be accurately calibrated accordingly. This is particularly important if a residential development is proximate to a late trading nightclub.

The other way of approaching managing music noise is for NSW to adopt a sound emissions-based policy approach in the NSW planning system similar to that mandated in the Brisbane City Council's Live Music Precinct Policy. Within defined precinct areas where the night-time exists, acceptable Live Music Venues sound emissions are mandated as is the corresponding acoustic protection required by residential uses. Outside of these areas, an Agent of Change/ SEPP N-2 policy approach could apply requiring a bespoke sound attenuation solution. This would require a residential building design based on specific acoustical site assessment.

The Fortitude Valley Entertainment Precinct Design Standards are summarised as follows:

A. Indicative glazing to achieve a noise reduction of LLeq,T 25dB at 63Hz. Assumes that proximate Live Music Venue are not emitting more than 88dB @ 63Hz at 1m from all parts of the Building

Double glazing design

- 12.38mm laminated glass, 200mm air gap, 10.76mm laminated glass
- 10.38mm laminated glass, 400mm air gap, 6.76mm laminated glass

Enclosed balcony design (Wintergarden)

- 6mm laminated glass, 1000mm air gap, 6.76mm laminated glass

B. Indicative glazing to achieve a noise reduction of LLeq,T 20dB at 63Hz.Assumes that proximate Live Music Venue are not emitting more than 86dB @ 63Hz at 1m from all parts of the Building

Double glazing design

- 10.38mm laminated glass, 200mm air gap, 8.38mm laminated glass

Enclosed balcony design (Wintergarden)

- 6.38mm laminated glass, 1000mm air gap, 6.38mm laminated glass

C. Indicative glazing to achieve a noise reduction of LLeq,T 18dB at 63Hz for short-term accommodation. Assumes that proximate Live Music Venue are not emitting more than 86dB @ 63Hz at 1m from all parts of the Building

Double glazing design

- 8.38mm laminated glass, 200mm air gap, 8.38mm laminated glass
- 12.38mm laminated glass, 12mm air gap, 12.38mm laminated glass

"All operable glazing systems are to include acoustically rated seals and a closing mechanism that is acoustically effective. While these systems are calculated to achieve the required noise reduction, the performance of the systems is indicative only and details should be confirmed on a case-by-case basis. Manufacturers' test data should be obtained if possible, though if manufacturers' test data is not available, the acoustic assessment should include a description of the methodology used to forecast the performance of the glazing system. All operable glazing systems are to include acoustically rated seals and a closing mechanism that is acoustically effective. While these systems are calculated to achieve the required noise reduction, the performance of the systems is indicative only and details should be confirmed on a case-by-case basis. Manufacturers' test data should be obtained if possible, though if manufacturers' test data is not available, the acoustic assessment should include a description of the methodology used to forecast the performance of the glazing system". (page16)

It would be helpful that the glazing solutions be reflected in the National Construction Code to establish a minimum construction standard for acoustic protection.

The case for including Acoustic Glazing standards with the NCC/BCA

A case could be put for updating the Building Code of Australia, to include default residential buildings glazing standards for defined live music precincts based on The City of Brisbane's "Indicative glazing solutions" contained in: Brisbane City Plan 2014 – 9. Guide for the noise impact assessment planning scheme policy. Appendix B - Residential design in the Fortitude Valley Special entertainment area.

The inclusion of these standards within the BCA would only be of value if there was a move to utilize a precinct as a method of apply acoustic protection to residential uses by applying standardised building standards. Planning policy mechanisms could then mandate the application of these glazing standards by default.

The purpose would be to assist the design of new residential development that needs to account for potentially higher levels of noise exposure than experienced in purely residential zones. This would reduce the workload on council planning officers, reduce the need for Live Music Venues to continually engage in the objection process of planning applications, give certainty to property developers and assist in standardising the residential design process within live music precincts. As the rules would be known upfront, the process of site assessment by property developers when scoping potential development sites, would be streamlined, resulting in more appropriate land usage for potential development sites.

By moving away from bespoke acoustic attenuation solutions, there would be cost savings for all parties involved in the planning process: councils, Live Music Venues, property developers and ultimately a flow on to residential real-estate consumers. As the acoustic design would be part of the initial building design brief, costly redesign and retrofitted sound attenuation solutions could be avoided.

5. References

1. s52.43 of the Victorian Planning Provisions. Live Music and Entertainment Noise

http://planningschemes.dpcd.vic.gov.au/schemes/vpps/52_43.pdf

2. Live Music and Entertainment Noise. Planning Practice Note 81. May 2016.

https://www.planning.vic.gov.au/__data/assets/pdf_file/0024/13479/PPN81-Live-Music-and-Entertainment-Noise_September-2015.pdf

3. SEPP N-2

https://www.epa.vic.gov.au/~/media/Publications/S43.pdf

4. Brisbane City Plan 2014 – 9. Guide for the noise impact assessment planning scheme policy. Appendix B - Residential design in the Fortitude Valley Special entertainment area.

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5. EPA Noise Surveys 2017.

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6. Melbourne Live Music Census 2017. Prepared by Dobe Newton and Rosa Coyal-Hayward.

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8. Submission to the Victorian Land Use Terms Review dated 3rd April 2018 and prepared by Jon Perring from Fair Go 4 Live Music (FG4LM), Helen Marcou from Bakehouse Studios/Save Live Australia's Music (SLAM), John Wardle from the National Live Music Office, and Dr Kate Shaw from the School of Geography, University of Melbourne,

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9. Letter from Martin Foley ALP to Patrick Donovan Music Victoria dated 6th November 2014.

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