

The Hon Paul Green MLC
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Green

RE: INQUIRY INTO THE LIVE MUSIC AND ARTS ECONOMY IN NEW SOUTH WALES

Thank you for the opportunity to respond once again with further information on the role the City of Sydney plays in supporting the music and arts economy in New South Wales.

The additional questions asked by the Inquiry indicate that you are engaging with the question of how current regulations might act to restrict entertainment opportunities in both licensed and unlicensed premises. It is heartening to see the Inquiry turning its focus to this important question, and with this in mind, I would like to draw your attention to two points which may serve to provide context.

Firstly, drawing from experiences at the City of Sydney, it is evident that many of the conditions of consent which might restrict entertainment or performance may be legacies of older NSW Government policies.

Some of these issues have been resolved for licensed venues, but may continue to be in force for unlicensed premises. For instance, many existing development approvals continue to hold conditions from older NSW Government policies, such as the Place of Public Entertainment licensing system or the now defunct Theatres and Public Halls Act. Whilst these policies no longer exist, the conditions they imposed on individual development consents – such as specific prohibitions on entertainment - remain in force.

In order for these individual, premises-specific conditions to be lifted, applicants must request that local councils remove them through the development approval process. It is not possible for local governments to ignore such conditions, even when they appear illogical or outdated.

The second, common issue which can limit entertainment and performance are requirements around Changes of Use to consents, known as 'triggers', arising from the Environmental Planning and Assessment Act and Environmental Planning and Assessment Regulations. Changes of Use to consents are required even in incidents where environmental, fire, building and land use impacts are negligible.

The NSW Government could consider an approach such as adopted in Victoria, which exempted certain venues under 500m² from triggering the need for building and planning approval to host live performance, which could be achieved in NSW through vehicles such as the State Environmental Planning Policy: Exempt or Complying Development Codes, or by expanding the discretionary provisions within the Environmental Planning and Assessment Regulations.

Researching impediments to the provision of cultural and creative space has been a major area of focus for the City's strategic planning and cultural policy teams, and our original submission to the Inquiry provides detail on potential reforms which could go some way towards improving conditions for entertainment.

I hope the answers supplied here are of use in the work of the Inquiry. The City of Sydney remains supportive of your focus on the music and creative economy and appreciative of your time and interest.

Yours sincerely,

Councillor Jess Scully

28 September 2018

Questions on Notice to Committee No. 6 Planning and Environment: The Music and Arts Economy in NSW

City of Sydney
Town Hall House
456 Kent Street
Sydney NSW 2000

City of Sydney Response

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The following document contains the City of Sydney's response to the second set of Questions on Notice provided to the City on September 4th 2018 by Committee No. 6 Planning and Environment: The Music and Arts Economy in NSW.

It is noted that many of the questions revisit the City's original submission to the Committee, with reference to planning reform for the cultural sector, the outcomes of the *Open and Creative City Discussion Paper*, and the management of environmental impacts such as sound from music venues. As such, this response should be read in conjunction with the original submission, which provides more detail on many of the associated themes.

As the original submission notes, many of the regulatory issues faced by the cultural sector cannot be dealt with at the local government level. This is particularly true for cultural enterprises impacted by the Liquor Act 2007 and the Protection of the Environment Operations Act 1997, in relation to liquor licencing and the control of noise respectively. Similarly, the City's role as a development consent authority is prescribed entirely by state law, that being the Environmental Planning and Assessment Act 1979.

It should also be noted that comparable information has been provided to both the NSW Government's Cultural Infrastructure Program Management Office and the Night Time Economy Taskforce, both of whom may be able to provide a more up to date briefing on the progress of reforms with respect to the music and arts economy in NSW.

Question on Notice One

Acknowledging that the City of Sydney is currently consulting on changes to conditions for venues that may exempt low impact entertainment, could you provide information on the current state of development application conditions that relate to the provision of entertainment:

The City has consulted on regulatory reform to better support cultural activity, including exhibitions, gallery openings, performances and community events. These may include entertainment, but are not specific to entertainment venues. As per the City's previous submissions, it is important to understand cultural activity occurs in a number of different locations, and is not confined to bars, clubs and licensed premises.

As a result of its consultation, the City is considering changes to its planning controls to better manage noise from entertainment venues, provide guidance for cultural activities more broadly, and, where appropriate, exempt small sale cultural uses and late opening shops from the need for development approval for aspects of their operation.

Subject to the adoption of these changes within Sydney Local Environmental Plan and Development Control Plan, it is anticipated that updated standard conditions will be developed and applied to development consents. These conditions will only be able to be applied to consents issued following the introduction of these changed policies and controls.

The City has no power to unilaterally amend development consents once they have been issued and therefore any updated conditions will only be able to be applied to venues if and when an application is made to amend the development consent. It is noted that this differs from the powers to amend licensing conditions which is available to the regulator under the Liquor Act 2007.

The City's current standard conditions relating to entertainment are attached (see Appendix A). These, and other conditions, may form part of a development consent depending on the nature of the land use proposed and the issues arising from the application. However, it should be noted that each application is considered on its merits on a case by case basis, so the same conditions may not be applied to all consents and modifications are made to the terms of the conditions in appropriate circumstances.

As noted previously, the City's approach to development applications responds to the legislative obligations placed upon consent authorities by the NSW Government.

The application of development conditions is subject to section 4.17 of the Environmental Planning and Assessment Act 1979, and Part 6 of the Environmental Planning and Assessment Regulations 2000.

Within the Environmental Planning and Assessment Regulation 2000, clause 98C specifies 'Conditions relating to entertainment venues,' and refers to Schedule 3A to establish prescribed conditions of development consent for the use of a building as an entertainment venue.

The definition of 'Entertainment Venue' is contained within the NSW Government's Standard Instrument – Principal Local Environmental Plan, and is therefore automatically incorporated into the City's Sydney Local Environmental Plan.

In some cases, the NSW Government's Standard Instrument expressly allows entertainment to take place in non-entertainment facilities without triggering the requirement for further development approvals. However, at the current time such

provisions are limited to pubs, restaurants or cafes, and do not make provision for more general, non-licensed premises to host cultural activity.

Question on Notice Two

How many licenced venues in the City of Sydney, by license type, have ‘no entertainment’ or ‘no live music’ conditions on their development applications?

As the City noted in its previous response, liquor licensing conditions are the responsibility of the NSW Government. As such, the City does not keep records on liquor licences, nor does it categorise premises on the basis of types of liquor licence held. It is possible that Liquor and Gaming NSW may be able to provide useful data on conditions related to entertainment within liquor licenses.

Under the Environmental Planning and Assessment Act 1979, development consents run with the land and each premises may have several applicable development consents, potentially running concurrently. Those consents may date back to the middle of last century. There are potentially many thousands of development consents which would need to be identified and reviewed to answer the question above. As a result of this, the City is unable to provide the information requested.

With respect to the application of ‘no entertainment’ clauses within development consents, the City assesses development applications on a case by case basis. Whilst the City does have a template of standard conditions it applies to entertainment venues, it does not, as a general rule, impose conditions expressly forbidding either entertainment or live music.

Where such conditions exist, they are usually the result of historical consents containing clauses drawn from the NSW Government’s former Place of Public Entertainment system. Whilst this system was repealed in 2009, it was not retrospective.

In handling pre-2009 conditions restricting entertainment, the City follows the NSW Government’s Planning Circular PS 09-028, ‘Planning for Entertainment’ issued on 26 October 2009. This specifies that existing “conditions on a venue’s liquor license and development consent will remain in force”, with the NSW Office of Liquor, Gaming and Racing and local government agencies to “consider proposals” for changes to existing conditions on a case by case basis.

As such, where a venue has an outdated condition prohibiting entertainment, it can seek to modify its consents but the City cannot otherwise revoke the condition.

Question on Notice Three

What other conditions on the development conditions of licensed venues in the City of Sydney might relate to entertainment? Please provide examples.

See Appendix A for the City’s Standard Conditions related to entertainment. As above, please note that for the purposes of assessing each new development application, and for the purposes of assessing applications for amendments to conditions on existing consents, the merits of the application and the appropriate conditions to be applied are considered on a case by case basis.

Question on Notice Four

Please list the venues, by license type, and the conditions relating to entertainment.

As the City noted previously, liquor licensing conditions are the responsibility of the NSW Government and this information should be sought from Liquor and Gaming NSW. For the reasons outlined at Question on Notice Three above the City is unable to provide this information in relation to development consent conditions.

Question on Notice Five

How many commercial properties in the City of Sydney that are not licenced premises, would have conditions on their development application relating to entertainment?

The City does not as a general rule impose entertainment conditions on applications unrelated to entertainment, although this may have occurred on an occasional basis due to the specific circumstances of some applications.

The provisions for Change of Use and ancillary use within the Environmental Planning and Assessment Act 1979 and Regulations 2000 make very limited provision for 'entertainment' in commercial properties more generally.

In most cases, unlicensed premises operating as commercial, business or industrial uses will be required to seek an additional consent for entertainment or, indeed, any cultural activity as per Part 5 of the Regulations. The City's research has found that this will, in most cases, trigger the need for the consent authority to consider other factors, such as building compliance.

These issues, and the lack of provision for small scale cultural uses, have been raised and detailed extensively in the City's original submission.

As above, the NSW Government's Planning Circular PS 09-028, 'Planning for Entertainment', removed the need for development consent for pubs, registered clubs and other venues seeking to host "live, or any other form, of entertainment that is part of the venue's main business."

The NSW Government may wish to consider a similar regulatory relaxation for non-licensed premises. The City has provided suggestions for such reforms in its original submission to the Inquiry, with reference to (C) 'Policies that Support the Establishment and Sustainability of Permanent and Temporary Venue Spaces for Music and the Arts' and (D) 'Policy and Legislation in Other Jurisdictions, and Options in New South Wales including Red Tape Reduction and Funding Options.'

How many commercial properties relating to the music industry, for example record and music stores in the City of Sydney, would have conditions on their development application that relate to entertainment?

The City does not generally apply conditions relating to entertainment to retail premises, such as record and music stores, and as such does not have access to this information.

Question on Notice Seven

When will the City of Sydney complete the process relating to the changes to its laws?

It is noted that as a local government authority the City of Sydney does not and cannot make laws of any kind. What is currently under consideration by the City are changes to the applicable environmental planning instrument for the local government area, the Sydney Local Environmental Plan 2012, and the supporting policy document, the Sydney Development Control Plan 2012. In order to amend the Sydney Local Environmental Plan 2012 the City of Sydney requires the support of the Greater Sydney Commission and/or the Department of Planning.

Drawing from the *Open and Creative City Discussion Paper*, the City is aiming to exhibit draft amendments to the Sydney Local Environmental Plan 2012 to Council and the Central Sydney Planning Committee in early 2019. If the Council and the Central Sydney Planning Committee endorses those changes they will be submitted to the Greater Sydney Commission and/or the Department of Planning with a request that the City of Sydney be given permission to place those amendments on public exhibition and will also request that it be given delegation under the Environmental Planning and Assessment Act 1979 to make the amendments to the Sydney Local Environmental Plan 2012. Any amendments ultimately require the sign off of the Office of the Parliamentary Counsel.

The process is not one ultimately controlled by the City of Sydney as a result of the legislative scheme established by the Environmental Planning and Assessment Act 1979 and therefore timeframes are difficult to provide.

Question on Notice Eight

What is the process following that?

As noted above, should the City of Sydney Council and the Central Sydney Planning Committee adopt the proposed planning controls, the City will seek a Gateway Determination from the Greater Sydney Commission and Department of Planning and Environment. It is anticipated that at that time delegation to make the amendments will be sought.

If the Gateway Determination is granted, the proposed changes will then be placed on public exhibition.

Following exhibition, Council and the Central Sydney Planning Committee will consider any submissions received and may approve the planning controls with or without changes.

Assuming that the City has been granted delegation to make the amendments to the plan, once approved by the Council and the Central Sydney Planning Committee, the City will make a request to Parliamentary Counsel to formally draft the planning controls.

Question on Notice Nine

Is State Government concurrence required for these measures?

Yes, as outlined in the answers to Questions on Notice Eight and Nine above.

Question on Notice Ten

Evidence to the inquiry has indicated that in addition to the councils, there are six state organisations with regulatory or enforcement powers relating to noise. Does the City of Sydney have a view about the best way to simplify this process, and more effectively strike the right balance between venues and residents?

As per the City's original submission, the City believes an opportunity exists to review and streamline the current legislative framework around the management of noise and amenity concerns. The City continues to welcome further engagement with the NSW Government, but is unable to provide advice on the management of state government agencies.

Appendix A: City of Sydney Standard Conditions: Entertainment

Note: The standard conditions outlined below are adapted and applied on a case by case basis, following review of development applications by the City's planning, environmental health and building compliance staff.

(1) ENTERTAINMENT VENUE - GENERAL OPERATIONAL CONDITIONS

- (a) The Entertainment Venue Schedule must be displayed in a conspicuous position within the approved entertainment area at all times.
- (b) A copy of the current development consent with the latest hours of operation shall be kept in the premises and shall be produced upon demand for inspection to any member of the Police Service, Council Officer or Special Investigator.
- (c) The approved signage indicating the capacity of the entertainment area(s) shall be maintained at all times.
- (d) The essential fire safety measures shall be maintained in accordance with clause 182 of the *Environmental Planning and Assessment Regulation 2000*.
- (e) A doorman is to be located at each level of the premises on which public entertainment is conducted to count and regulate the number of persons located on that level in accordance with the conditions of this consent. In addition the Licensee or Manager of the premises is to conduct a head count of the entire premises every [insert] hours.
- (f) The Licensee or Manager on duty shall ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. In this regard the management shall be responsible for the control of noise, loitering and litter generated by patrons of the premises and shall ensure that people leave the premises and area in an orderly manner.
- (g) Unobstructed access shall be provided and maintained to all exits at all times.
- (h) Compliance shall be given to the Plan of Management prepared by [insert] and dated by [insert].

(2) ENTERTAINMENT VENUE - PLAN OF MANAGEMENT

The applicant shall provide a Plan of Management for the operations of the premises. The purpose of this Plan is to establish performance criteria for various aspects of the operations of the premises having regard to the relevant matters under the *Environmental Planning and Assessment Act 1979* and the *Liquor Act, 2007*. The Plan of Management shall address;

- (a) Hours of operation;
- (b) Amenity of neighbourhood;
- (c) Noise;
- (d) Behaviour of patrons and responsible service of alcohol;
- (e) Deliveries and waste removal and management;
- (f) Maintenance;
- (g) Removal of liquor in open containers;
- (h) House policy;
- (i) Staff;
- (j) Security Management Plan;
- (k) Capacity of premises;
- (l) Use of levels and courtyards.

(3) ENTERTAINMENT VENUE – USE

Any use of the premises (or a part of the premises) as an Entertainment Venue must not commence until such time development consent has been granted by Council.

(4) SECURITY - RESTAURANTS, LARGE HOTELS, THEATRES, CONFERENCE ROOMS AND EXHIBITION HALLS

Management shall ensure an appropriate number of security staff (in accordance with the premises Security Management Plan or, if no such plan is required, approved industry standards) are employed to regulate and control patrons whenever the premise is used for specific public functions or group events.

(5) CESSATION OF SERVICE

The premises may be open for business only between the operating hours in condition [number] above. The operator must cease providing [food/alcohol/entertainment] at the premises [insert time] before the required closing time.

(6) CONDITIONS OF OPERATION SIGNAGE

A notice must be displayed at or near every entrance by which patrons may enter the premises, and in such a manner and position that a patron entering the premises would reasonably be expected to see its contents. The notice is required to state the following:

- (a) The development approved hours of operation of the premises. Where appropriate specify hours of operation for each floor/area of the premises.

- (b) Any development approved trial hours of operation of the premises, and their expiry date. Where appropriate specify trial hours of operation for each floor/area of the premises.
- (c) Any development approved hours of operation of the footway associated with the premises.
- (d) Any development approved trial hours of operation of the footway, and their expiry date.
- (e) The maximum number of persons (including staff, patrons and performers) permitted in the premises at any one time. Where appropriate specify maximum number of persons for each floor/area of the premises at any one time. The capacity for each area shall not exceed the maximum numbers at any given time.
- (f) This notice must be in legible letters and figures:
 - (i) at least 50mm high; and
 - (ii) on contrasting background
- (g) Any such sign must be in a form approved by Council

(7) COPIES OF CONSENTS AND MANAGEMENT PLANS

A full and current copy of all current development consents for the operation of the licensed premises, and [where applicable] the Plan of Management and the Security Management Plan must be kept on-site and made available to Police or Council Officers, or Special Investigator upon request.

(8) GLASS CRUSHER

All glass bottles and other glass waste must be reduced to glass shards (by way of a glass crusher located inside the premises) prior to the removal of such waste from the premises.

(9) HOURS OF OPERATION - MINOR DEVELOPMENT

The hours of operation are restricted to between [insert open time] and [insert close time] Monday to Sunday.

(10) HOURS OF OPERATION - SENSITIVE USES

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between [insert open time] and [insert close time] Monday to Sunday.
- (b) Notwithstanding (a) above, the use may operate between [insert appropriate additional hours] for a trial period of [insert trial period] from the date of [Choose from the following options CHOICE: this consent|issue of the Occupation Certificate|issue of the approved variation of the Liquor License]. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial

hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au

- (c) A further application may be lodged to continue the operating hours outlined in (b) above not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

(11) HOURS OF OPERATION – REVIEWABLE CONDITION

The hours of operation for the premises are regulated by a reviewable condition as follows:

- (a) The hours of operation must be restricted to between [hours] and [hours] the following day Mondays to Sundays inclusive.

Reviewable extended hours

- (b) Notwithstanding (a) above, the use may trade between [hours] and [hours], subject to review.
- (c) The extended hours may be reviewed by Council at any time during the trial period. Such a review will occur in the event that a breach of [specify operational conditions which may trigger a review including non-compliance with noise conditions, plan of management etc.] has occurred and has not been satisfactorily resolved following a written request from Council.
- (d) The operator of the premises will be given [14 days] written notice that a review of this condition will take place, and in that time may submit to Council any information they wish to be considered to support the continuation of the extended trading hours. Council's review will be notified in accordance with *Schedule 1 of the Sydney Development Control Plan 2012* and will consider any submissions received following public notification and/or exhibition.
- (e) The purpose of this condition is to monitor the amenity impacts of the operation of the premises between [relevant hours] the following day.
- (f) Following the initial review, further reviews may be undertaken at Council's discretion providing that at least [14 days] notice is provided to the operator.
- (g) A further application may be lodged to continue the trading hours outlined in (b) above before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received, submissions received following notification of the review and any views expressed by the Police.

(12) INCIDENTS – RECORDING AND NOTIFICATION

The manager/licensee must ensure that all incidents involving staff members (including security personnel) are recorded in the incident register maintained on site, including incidents involving physical contact between staff and patrons, physical restraint of patrons and/or the ejection of patrons from the premises.

(13) KARAOKE - IDENTIFICATION OF DUTY MANAGER

The premises shall publicly display in the reception area a notice board indicating clearly the Owner or Manager on duty with a photograph of the manager not less than 100mm square with their name in clear bold print underneath, not less than 10mm high in clear bold print. Above the photograph should be displayed the words "Manager on Duty" in clear bold print, not less than 20mm high. As the Duty Managers change, the notice board must be changed and kept up to date at all times.

(14) KARAOKE - NO B.Y.O.

The licensee/management shall not permit Bring Your Own (B.Y.O.) alcohol onto the premises. Signage shall be displayed at each entry/exit point and reception area of the premises indicating "NO ALCOHOL IS TO BE BROUGHT ONTO THE PREMISES BY PATRONS" or words to that effect. The wording of this sign shall be not less than 50mm high in clear bold print.

(15) LICENSED PREMISES – PRIMARY PURPOSE

The primary purpose of the premises is as a [CHOICE: restaurant|café] with the kitchen to be open and substantial food service to be available to patrons at all times during the approved hours of operation. The sale and supply of liquor shall cease when the kitchen ceases to operate. All patrons are to have an allocated seat and the number and location of tables and chairs provided for seated dining must be in accordance with the approved floor plan at all times.

(16) MAXIMUM CAPACITY – REVIEWABLE CONDITION

- (a) The maximum occupancy capacity (including staff, patrons and performers) is restricted to [number] persons. [Where relevant include a breakdown of maximum patron capacity for each floor/area of the premises].

Reviewable additional capacity

- (b) Notwithstanding (a) above, the use may operate with a maximum occupancy capacity of up to [reviewable maximum] persons, subject to review.
- (c) The additional patron capacity may be reviewed by Council at any time during the trial period. Such a review will occur in the event that a breach of [specify operational conditions which may trigger a review including non-compliance with noise conditions, plan of management etc] has occurred and has not been satisfactorily resolved following a written request from Council.

- (d) The operator of the premises will be given [14 days] written notice that a review of this condition will take place, and in that time may submit to Council any information they wish to be considered to support the continuation of the additional patron capacity. Council's review will be notified in accordance with Sydney Development Control Plan 2012 and will consider any submissions received following public notification and/or exhibition.
- (e) The purpose of this condition is to monitor the amenity impacts of the operation of the premises with the additional patrons permitted in the premises.

(17) MAXIMUM CAPACITY OF PERSONS

- (a) The maximum number of persons (including staff, patrons and performers) permitted in the premises at any one time is [number] persons.
- (b) [Where appropriate specify maximum number of persons for each floor of premises at any one time]. The capacity for each area shall not exceed the maximum numbers at any given time.
- (c) The manager/licensee is responsible for ensuring the number of persons in the premises does not exceed that specified above.
- (d) A sign in letters not less than 25mm in height must be fixed at the main entry point to the premises alongside the Licensee's name stating the maximum number of persons, as specified in the development consent, that are permitted in the building. Details are to be provided to the satisfaction of the Principal Certifier prior to issue of a Construction Certificate.

Note: Clause 98D of the *Environmental Planning and Assessment Regulation 2000* requires a sign specifying maximum number of persons permitted in the building to be displayed in a prominent position for the following types of premises:

- (i) entertainment venue,
- (ii) function centre,
- (iii) pub,
- (iv) registered club,
- (v) restaurant.

(18) NEIGHBOURHOOD AMENITY

- (a) Signs must be placed in clearly visible positions within the [CHOICE: hotel|café|restaurant|licensed premises] requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area. The signage shall be in bold letters not less than 25mm in height on a contrasting background.

- (b) The management/licensee must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.

(19) NO SPEAKERS OR MUSIC OUTSIDE

Speakers and/or noise amplification equipment must not be installed and music must not be played in any of the outdoor areas associated with the premises including the public domain. Speakers located within the premises must not be placed so as to direct the playing of music towards the outdoor areas associated with the premises.

(20) NO SPRUICKING NOISE

No persons (such as those commonly known as spruickers) or recordings or other devices which have the effect of spruicking are to be located on Council owned property. Furthermore, the sound level of any spruicking generated within privately owned land must not be audible on any adjacent property with a shared boundary.

(21) NOISE FROM GLASS REMOVAL

Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied / transferred inside of the building on the premises and removed in containers.

(22) PLAN OF MANAGEMENT

The use must always be operated / managed in accordance with the Plan of Management, prepared by [insert name/company] signed and dated [insert date] that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

(23) POM TO BE SUBMITTED AND APPROVED - CATEGORY B PREMISES ONLY

- (a) The Plan of Management (POM) checklist accompanying this Development Application has not been approved by this consent. [Planner: Only use (a) if a Plan of Management was submitted with the DA, otherwise delete]
- (b) A Plan of Management checklist must be prepared to address all operational and management procedures to be employed, to ensure that the premises can operate without disturbance to the surrounding locality. The plan must address the whole of the [insert premises] operations and reflect the matters contained in the Schedule 3 of the Sydney Development Control Plan 2012.
- (c) The plan must include but not be restricted to; compliance with all other operational conditions of this consent; hours of operation; noise; security management; and handling complaints.
- (d) The plan must be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued.

(24) QUEUING

No persons are to be permitted to drink or queue outside the premises at any time. Security officers are to ensure that there is no queue for the premises and take all reasonable steps to ensure compliance with this condition.

(25) REMOVAL OF GLASS

Patrons must be prevented from removing glasses, opened cans, bottles or alcohol from the premises (except from any approved bottle shop area) or approved outdoor dining area included in the boundaries of the licensed premises.

(26) SECURITY AND QUEUING – CATEGORY A LICENSED PREMISES

- (a) Security guards are to be provided at the premises on [days] from [time] at a minimum ratio of 1 security staff member to 100 patrons or part thereof.
- (b) [Any additional security requirements on weekends]
- (c) Security personnel shall remain at the premises for at least 30 minutes after closing and shall assist in ensuring that patrons leave quietly.
- (d) [Scanning with metal detector if appropriate].
- (e) All licensed security officers whilst employed at the premises are to wear clearly identifiable security attire at all times, with the word "SECURITY" clearly identifiable in bold print at least 100mm high, on the front and back.
- (f) Management staff at the venue shall ensure that a clear footway width of [x metres] is maintained at all times along all footpaths immediately adjoining the premises. Patrons waiting to enter the premises shall queue along the immediate frontage of the premises. The queue must not obstruct any fire exit of any building or entrance to any other premises.
- (g) When more than one security guard is on duty, security officers and management shall communicate by hand held radios at all times.

(27) SECURITY AND QUEUING – CATEGORY B LICENSED PREMISES

Security is to be provided at any time and in any manner specified in the Plan of Management prepared by [insert name/ company], signed and dated [insert date] that has been approved by Council.

The manager/licensee shall ensure that a clear footway width of [x metres] is maintained at all times along all footpaths immediately adjoining the premises. Patrons waiting to enter the premises shall queue along the immediate frontage of the premises. The queue must not obstruct any fire exit of any building or entrance to any other premises.

(28) SURVEILLANCE CAMERAS

- (a) CCTV surveillance cameras shall be strategically installed, operated and maintained throughout the premises with particular coverage to:
 - (i) principal entrance/s and exits;
 - (ii) all areas within the premise occupied by the public (excluding toilets);
 - (iii) staircases in multilevel premises; and
 - (iv) the area within a 10m radius external to the public entrance(s) to the premise.
- (b) Suitable and clearly visible signage shall be displayed at the principal entrance(s) to the premise and in a prominent position on each floor accessible to the public, in lettering not less than 50mm in height with the words "Closed Circuit Television in use on these premises".
- (c) All CCTV recording equipment and cameras shall be of high grade digital quality capable of establishing the population and identification of patrons, offenders and incidents within the depth of field view of the cameras. In this respect each surveillance camera shall be capable of recording a minimum rate of 10 frames per second and at high resolution.
- (d) CCTV recording discs or hard drive recordings shall be retained for 28 days before being re-used, destroyed or deleted. Time and date shall be auto recorded on the disc or hard drive. The CCTV recording equipment shall be capable of reproducing a CD, DVD, USB or other appropriate digital copy of recorded footage on demand of Council or Police Officers either immediately or within 12 hours of the request being made. Copy discs must be handed to Council, Police Officer or Special Inspectors as required.
- (e) All CCTV recording devices and cameras shall be checked daily to ensure the equipment is operating correctly. The Licensee shall record this daily checking activity in the security/incident register book that meets the standards required by the Licensing Police and Council. If it is discovered at any time that the equipment is not in full operating order all reasonable steps must be taken to repair the system as soon as practicable. Where the system will not be functioning in full operating order for a period of longer than 24 hours the manager/licensee is to notify the relevant Local Area Commander of the NSW Police.
- (f) All CCTV recording devices and cameras shall be operated at all times when the premises are open to the public and, where premises do not operate 24 hours a day, continuously for at least 1 hour prior to opening and closing times of the premises.
- (g) The CCTV recording device shall be secured within the premises and only be accessible to senior management personnel so as to maintain the integrity of the recorded footage. When the premises is operating there must be at least one staff member present at the

premises who is authorised to access the CCTV system and able to immediately review recordings and produce copies.

- (h) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.

(29) TEMPORARY USES

- (a) The period during which the use is approved to operate is restricted to [insert time frame]. The use must cease after that time. A further development application may be lodged before the end of that period for Council's consideration of the continuation of the use.
- (b) Council's consideration of this further application will take into account the compliance of the use by reference to matters including, but not limited to, the following: conditions of consent; number and nature of substantiated complaints regarding the operation of the premises; and any views expressed by the NSW Police Service.

(30) VISION PANELS TO KARAOKE ROOMS

Clear and unobstructed glass panels must be provided and maintained in or immediately next to the door of each karaoke room to permit supervision by the licensee/management and staff. The glass panels shall be no less than 250mm in width and 250mm in height. They are to be located no less than 1.4 metres and no more than 1.6 metres from the floor and so located as to enable vision of the entire room.

(31) ACOUSTIC DESIGN

- (a) The proposed alterations must not affect the existing acoustic integrity of the building in relation to the control of noise emissions from the premises.
- (b) No additional equipment may be installed or changes made to the acoustic design unless certified by a suitably qualified acoustic consultant* that the equipment will not increase noise emissions from building.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

(32) ADDITIONAL NOISE CONDITIONS FOR LICENSED PREMISES OR ENTERTAINMENT VENUES

A suitably qualified acoustic consultant must be engaged by the proponent before the entertainment commences and details of that appointment must be submitted to Council's Health & Building Unit.

During the first 60 days of entertainment being provided at the premises, the consultant must complete the following work in accordance with the given conditions.

- (a) The acoustic consultant must:

- (i) Measure and verify that the noise emanating from the premises complies with the noise criteria in the “Noise Use – Licensed Premises and Entertainment Venues” condition; and
 - (ii) If necessary, make recommendations to ensure that the noise emanating from the premises complies with the noise criteria in “Noise Use – Licensed Premises and Entertainment Venues” condition.
- (b) The noise measurements and any recommendations must:
- (i) Be undertaken without the knowledge of the applicant, manager or operator of the premises; and
 - (ii) Be taken on at least three different occasions on three different days of the week (excluding Monday, Tuesday and Wednesday) from 11.00pm until the end of the entertainment or the close of business, whichever occurs first; and
 - (iii) Be submitted in writing to the satisfaction of Council’s Health & Building Compliance unit within 5 weeks of the testing.
- (c) If the acoustic consultant recommends that additional treatment or works be undertaken under as per (a) and (b) above, a plan of action to affect those recommendations must be:
- (i) Submitted to the satisfaction of Council’s Health & Building Unit in writing alongside other particulars in (b)(ii) above; and
 - (ii) Be implemented to the acoustic consultant’s and the Council’s satisfaction by the proponent within two (2) months from the date referenced in written agreement from the Area Manager, Health & Building. A follow up assessment and written report in accordance with parts (a), (b) and (c) of this condition will be required to verify that the subsequent controls are in affect and working.
- (d) If the acoustic consultant’s recommendations are not implemented in accordance with this condition, the premises must not be used for entertainment in a manner that does not comply with noise control approval conditions until such time as the recommendations are implemented and verified.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

(33) COMMON PROPERTY MUSIC PRACTICE ROOM - ACOUSTIC REQUIREMENTS

The Music Practice Room (music room) must remain common property and be provided and maintained for the use of all residents and achieve the following acoustic requirements:

- (a) [Planner – include where a music room wall forms an adjoining construction to another separate dwelling], The [Planner to specify wall/s] must have an airborne sound insulation rating equal to or greater than RW + Ctr of 58.
- (b) [Planner – include where the ceiling of a music room forms the part of an adjoining floor/ceiling construction to a separate dwelling]. The ceiling must have an airborne sound insulation rating equal to or greater than RW + Ctr of 58. In this instance, to prevent flanking paths for noise, the walls and ceiling must meet the deemed to satisfy provisions F5.5 (e) and F5.5 (f) of the Volume One (Class 2-9) of the National Construction Code.
- (c) Music Room door systems (door, frame & seal) must achieve an airborne sound insulation rating of Rw 45, and windows (combined glass frame and seal) must achieve an Rw 40. Windows to the façade of a building must be of minimum necessary dimensions, per the requirements of the Building Code of Australia. Access doors must be to common property accessible by all building occupants.
- (d) The floor is to be carpeted.

(34) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO CONSTRUCTION AND OR OCCUPATION CERTIFICATES

- (a) All performance parameters, requirements, engineering assumptions and recommendations contained in the acoustic report prepared by [EHO to enter name of Consultant], dated [insert], ref [EHO to enter Consultant's Report reference and revision number], titled [EHO to enter Consultant's Report title], Council Ref [EHO to enter Report TRIM Ref] must be implemented as part of the detailed design assessment and implemented into the design drawings prior to the commencement of the use of the premises in accordance with the requirements of (b) and (c) below and to the satisfaction of the Principal Certifier.
- (b) Prior to the issue of a Construction Certificate, the construction drawings and construction methodology must be assessed and certified by a suitably qualified acoustic consultant* (see definition below) to be in accordance with the requirements of the DA acoustic report set out below. Specifically, the consultant will prepare a written Acoustic Certification Report with reference to drawings, to the satisfaction of the [EHO or Planner to insert Principal Certifier or other specified authority] which addresses the following requirements:
 - (i) [EHO & Planner to disseminate the DA report into subsequent assessment requirements to their satisfaction. Mindful of cl.161 of the Environmental Planning & Assessment Regulation 2000, the Division of City Planning, Development & Transport may act as the Principal Certifier as it wishes].
- (c) Prior to the issue of an Occupation Certificate, a suitable qualified acoustic consultant is to provide a written Acoustic Verification Report to the satisfaction of the [EHO or Planner to insert Principal Certifier or other authority as given in (b) above] that the

development complies with the requirements set out in the Report and in (a) and (b) above.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

(35) NOISE - CONCERTS AND SPECIAL EVENTS

- (a) The temporary event must not result in the transmission of “offensive noise” as defined in the *Protection of the Environment Operations Act 1997* at any affected receiver. Noise emissions associated with event bump in bump out must comply with the City of Sydney Construction Noise Code of Practice.
- (b) Noise emissions associated with the event operation must comply with the following criteria:
 - (i) [EHO to give noise control criteria]
- (c) All recommendations contained in the acoustic report prepared by [insert], dated [insert], must be implemented prior to and during the event including the following: [insert relevant particulars from Acoustic Report Recommendations and use recommendations (under paragraph(b) – e.g. Prior to the event.)].
- (d) Appropriate attended noise monitoring shall be undertaken by a suitably qualified acoustical consultant* throughout the event. The acoustic consultant shall verify noise emanating from the event, at the nearest residential boundary, does not exceed the noise criteria detailed in the “Noise Control” condition.
- (e) An acoustic report detailing the results of monitoring undertaken should be submitted to the Council’s Health Compliance within 7 days after the event.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member. The Consultant must not have track record of unsuccessfully managing events and festivals. With respect to (i), in selecting a consultant, the proponent may wish to consider previous relevant experience of the consultant.

(36) NOISE - ENTERTAINMENT VENUES

- (a) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.

- (b) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
- (c) Notwithstanding compliance with (a) and (b) above, noise from the use when assessed as an $L_{A10, 15 \text{ minute}}$ enters any residential use through an internal to internal transmission path is not to exceed the existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use between the hours of 7am and 12midnight. Where the $L_{A10, 15 \text{ minute}}$ noise level is below the threshold of hearing, Tf at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 : 2003- Normal Equal-Loudness-Level Contours then the value of Tf corresponding to that Octave Band Centre Frequency shall be used instead.
- (d) Notwithstanding compliance with (a), (b) and (c) above, the noise from the use must not be audible within any habitable room in any residential use between the hours of 12.00 midnight and 7.00am.
- (e) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises.

Note: The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use is as per the definition in the Australian Standard AS1055-1997 Acoustics – Description and measurement of environmental noise. The background noise level $L_{A90, 15 \text{ minute}}$ is to be determined in the absence of noise emitted by the use and be representative of the noise sensitive receiver. Background noise monitoring must be carried out in accordance with the long-term methodology in Fact Sheet B of the NPfl unless otherwise agreed by the City's Area Planning Manager.

(37) NOISE LIMITERS

Use of the all amplification equipment must comply with the following:

- (a) At a minimum, all amplification equipment used at the event must be controlled by a Root Mean Square (RMS) noise limiter, set by a suitably qualified acoustic consultant* in accordance with the manufactures specification to ensure that resultant amplified sound complies with the Council's licensed premises noise criteria. The equipment must be tamper proof and only operable by the acoustic consultant.
- (b) The noise limiter must be factory or laboratory calibrated by an accredited instrumentation calibration service provider at the time of installation. The limiter must be checked by an acoustic consultant with a piston phone calibrator at the time of installation and on three subsequent occasions during the first 60 days of monitoring. The checks must correlate with the close of business as per the requirements of Part (b)ii), Additional Noise Conditions for Licensed

Premises and not be undertaken before any external noise compliance checks. The proprietor is not to be made aware on what date the calibration checks are to be conducted and will provide the consultant access to the limiter.

- (c) A piston phone check of the noise limiter shall be completed by the consultant every twelve months, the result reported to council and a copy kept on the premises available at all times.
- (d) Field calibration check results (times and levels), serial numbers and laboratory calibration parameters of all other instrumentation and calibrators used in the process of setting and calibrating the noise limiter shall be reported.
- (e) $L_{Aeq, 1 \text{ minute}}$ 1/1 octave band (31.5Hz to 8kHz centre frequencies inclusive) measurement results internal and external of hand held sound level meters used to assist in setting the noise limiter shall be reported to the satisfaction of council.

Additionally, a white noise signal must be played through the noise amplification system in order to set the maximum permissible broadband level of the noise limiter. The results are to be reported.

- (f) Finally, where necessary and where complex signal processing equipment is used to limit noise, the maximum A-Weighted LAF Sound Pressure Levels which are not to be exceeded in any 1/1 octave band 31.5Hz – 16kHz inclusive, within each of the rooms with noise amplification equipment are to be specified such that the noise control approval conditions cannot be exceeded must be reported.
- (g) All noise amplification equipment must be controlled by the noise limitation device as detailed in (a) above.
- (h) Access to noise limiter settings must be restricted to the Licensee or manager of the premises. The limiter settings/calibration levels must be available to Council officers upon request.
- (i) The Acoustic consultant must submit Certificate of Compliance to the Council to certify that the limiters are installed and calibrated to satisfy of Council's noise criteria for the licensed venues.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.