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Your Ref: D18/27135

21 September 2018

The Honourable Paul Green, MLC  
Committee Chair  
Portfolio Committee No. 6 – Planning and Environment  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Green

Thank you for your letter of 13 August 2018 requesting details about the Special Entertainment Precinct in the Fortitude Valley, including information on the music-noise and planning development laws that support the precinct.

I am pleased to hear that you have been liaising with Mr Frank Henry, Program Delivery Manager and Pollution Control, Natural Environment, Water and Sustainability, City Planning and Sustainability about this matter. As requested, a detailed explanation of the Fortitude Valley Special Entertainment Area (the precinct) and its music-noise laws and planning laws are contained in Appendix A as part of this letter.

If you have any further enquiries regarding this matter, please contact

I trust this information is of assistance to you, and thank you for taking the time to contact Council.

Yours sincerely

Colin Jensen  
**CHIEF EXECUTIVE OFFICER**

Ref: CO18058-2018

Att: Appendix A - Explanation of Fortitude Valley Special Entertainment Area



## **Appendix A – Explanation of Fortitude Valley Special Entertainment Area**

### **Background**

The Fortitude Valley (the Valley) borders the Brisbane Central Business District to the north-east. It is Brisbane's most popular and vibrant entertainment hub. The Valley is well known nationally for its thriving live music, nightclub and arts scenes.

The Valley is also home to a wide range of other uses including restaurants, cafes, retail and commercial businesses and, more recently, residential development. All these uses contribute to the Valley's diverse mixed-use community.

Since the mid-1990's, inner city urban renewal has attracted many new residents to the Valley, which raised concerns about the potential impact of residential development on the future of live music and nightclubs in the Valley. The main point of conflict related to the volume of amplified music emitted by nightclubs, bars, pubs and live music venues.

Brisbane City Council created the Fortitude Valley Special Entertainment Area (the precinct) on 1 July 2006.

The reasons for establishing the precinct were to:

- ensure the long-term future of the live music scene, within and around the Valley, and the vibrancy of the Valley without exposing residents to unreasonable levels of amplified music noise
- ensure a balance between the expectations of music venues, nightclubs, residents, developers and businesses
- ensure existing venues are protected from unreasonable impacts associated with encroaching residential development
- ensure new residential development incorporates a high level of noise insulation.

### **What is the Fortitude Valley Special Entertainment Area and how does it work?**

In simple terms, the Fortitude Valley Special Entertainment Area (the precinct) is an overlay or geographical area designated in Brisbane City Council's planning scheme, called *Brisbane City Plan 2014*, which:

- exempts music venues from the noise requirements of the Queensland Government's *Liquor Regulation 2002* (the Regulation) and replaces them with the noise requirements of Council's *Amplified Music Venues Local Law 2006* (the Local Law)
- identifies the location where specific noise insulation requirements apply to new residential development
- protects existing venues within the precinct from encroaching development and makes it possible for new music venues to open with limited restriction.

The precinct is illustrated in Figure 1.

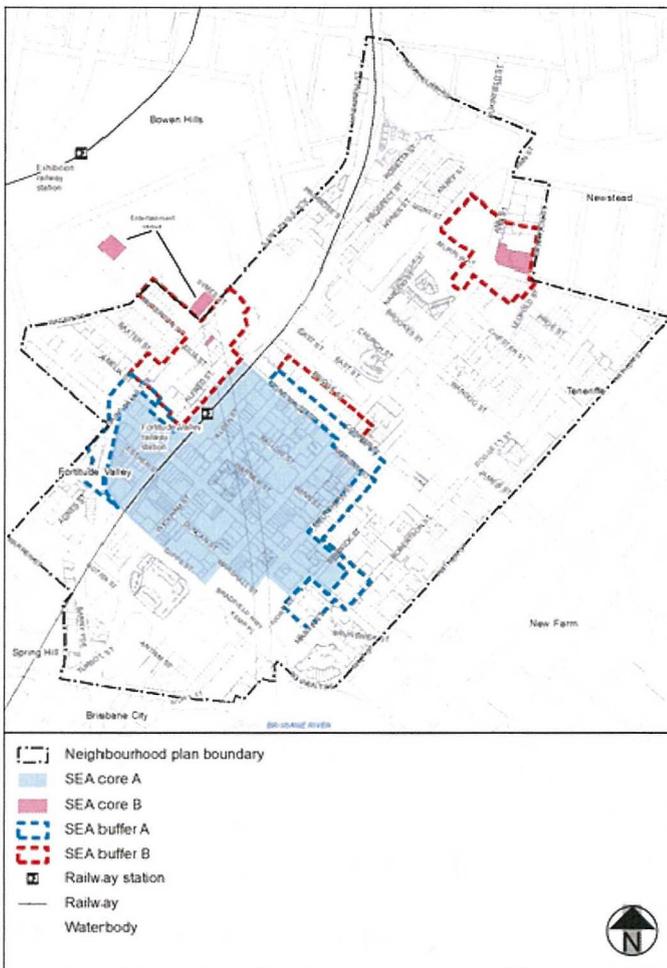


Figure 1: Fortitude Valley Special Entertainment Areas

The Fortitude Valley Special Entertainment Area (the precinct) consists of a 'core' and a 'buffer' and consists of two precinct areas, A and B.

Special Entertainment Area core A includes the central heart of the Valley as illustrated in blue in Figure 1. This is where most of the entertainment venues are located. Special Entertainment Area core B consists of three individual venues: The Tivoli, Jubilee Hotel and Waterloo Hotel, as illustrated in pink in Figure 1. These three outlying venues were included as part of the precinct due to their importance to the Valley's live music scene. A functioning and sustainable live music scene requires a range of venue types that cater for emerging local acts, establish local acts, national touring acts and international performers.

The two different precinct areas, A and B, were created as it allows different performance criteria to be specified in each area for music noise emission levels for venues and noise insulation requirements for development. Special Entertainment Area core A is intended to have 24-hour vibrancy, while Special Entertainment Area core B is located on the fringe of the Valley, closer to residential areas, and is intended to have vibrancy before midnight.

The purpose of the 'buffer' (e.g. Special Entertainment Area buffer A) is to ensure new residential development adjacent to the 'core' of the precinct incorporates the same level of noise insulation as is required within the 'core'. This is because music noise from within the 'core' does not stop at the boundary of the precinct 'core'.

In summary, the precinct-specific amplified music noise law administered by Council (i.e. the Local Law) only applies to venues located within the 'core' and does not apply to venues located within the 'buffer'. Amplified music noise from venues located within the 'buffer' and located beyond the 'buffer' are regulated under the Regulation by the Office of Liquor and Gaming Regulation (OLGR). The precinct-specific noise insulation requirements for new residential development (i.e. as specified in the *Brisbane City Plan 2014*) apply to new development located within the 'core' and within the 'buffer'.

The key learning points of the entertainment precinct approach are as follows:

- It uses planning laws to specify upfront the land use intention of a geographical area regarding entertainment uses and the obligation of residential development to incorporate noise insulation
- It is specifically designed to protect current and future music venues from encroachment by residential development
- It provides a mechanism whereby music venues can be exempt from the noise requirements of the Regulation and instead be governed by more fit-for-purpose noise laws, specific to the precinct
- A special entertainment area (precinct) can be designated over a single venue, a group of venues or a line of venues along a street and a big conglomeration of venues is not needed in order to use a planning instrument like a special entertainment area (precinct).

### **Agent of change**

The agent of change principle has been adopted by various governments in recent years to save their inner-city live music scenes from the impacts of urban renewal and residential development. Council reviewed the agent of change approach in 2003, and decided not to adopt it as it would not achieve our objective to ensure the long-term future of the live music scene within and around the Valley and the vibrancy of the Valley.

Council decided to use planning instruments to designate special entertainment areas (precincts) as it puts the onus on residential development to incorporate a high amount of noise insulation, regardless of whether there is a venue existing or not. This approach enables new venues to open-up, even if the old venues close-down or are bought out by developers. Agent of change on the other hand, can result in the gradual reduction of music venues, although a new residential development must consider the existing music venue, it will also then restrict the opening of new venues. Agent of change is a more simplistic, quick fix approach that may not be beneficial in the long term.

Designating entertainment areas or precincts in planning schemes is a more refined approach that has long term benefits but requires the hard decisions to be made up front.

### **In summary:**

#### **Agent of Change**

- Gives preference to residential development or music venues depending on who was there first
- Protects existing venues from land use conflict but restricts new venues
- Places noise control obligations on new venues (particularly for grass roots/emerging artists) that are likely to be unnecessarily onerous. Nearly all music venues are leased spaces and there is little incentive for a venue operator to invest in substantial noise control, when they are a tenant
- As entertainment venues close down, the area may transition to a residential type neighbourhood and the vibrant character may be lost and night time economy reduces.

#### **Designated Entertainment Precincts**

- Sets amenity expectations up-front, identifies the principle land use intent of an area as being for music-based entertainment and vibrancy
- Are business friendly and provide certainty

- Protect existing venues from land use conflict and enable new venues to open without onerous constraint
- Enable fit-for-purpose noise laws to apply and exempt State-wide noise laws that are not fit-for-purpose
- Maintain the desired vibrancy character and land use intent of an area.

### **Noise laws that apply within the precinct**

Music venues where alcohol is consumed are licensed by OLGR, under the *Liquor Act 2002* and the Regulation.

Noise limits for music venues are prescribed by the Regulation. In simple terms, a venue must not exceed 10 decibels above the background noise level when measured at the closest affected residence (or business) before 10pm, and 8 decibels (in each octave frequency band) after 10pm. The actual noise level a venue can make will vary from venue to venue depending on how close the venue is to a residence, the construction standard of the venue, the time of day or night the venue operates and the background noise level in the vicinity. This approach works effectively in static neighbourhood situations but creates some difficulties in urban redevelopment/mixed use development scenarios such as the Valley.

The outcome of the Regulation approach to dealing with noise is that as new residential buildings are constructed in the Valley, the noise limits for existing venues become stricter, (because the noise limits for a venue depend upon how close they are to residences). This means there is no certainty for venue operators, as noise limits for music venues is a moving goal post. It also means the cost of noise attenuation is borne by the existing venue instead of the new development.

To address the above issues, Council designated Special Entertainment Areas within *Brisbane City Plan 2014* to provide an exemption from the noise provisions of the Regulation. This was done in consultation with multiple departments of the Queensland Government.

Amplified music noise levels in the precinct are now regulated by Council under the Local Law, which allows venues to emit music noise levels that are relevant and specific to the Valley's circumstances. This also means that responsibility for regulating amplified music noise from venues in the core area of the precinct has been transferred from OLGR to Council. Music venues in the 'buffer' of the precinct are still regulated by OLGR under the Regulation.

In simple terms, the Local Law allows music venues to emit a certain level of noise at their boundary regardless of how close the nearest residence is. This approach means the noise levels for a venue are no longer variable based on the distance of the venue to the nearest residence, as is the case under the Regulation. This provides greater certainty for venue operators and protects existing venues in the precinct from encroaching development.

The Local Law requires music venues in the 'core' of the precinct to have an Amplified Music Venue Permit. Council specifies the noise emission limits that apply to a venue on the Amplified Music Venues Permit. The noise limits of the Local Law are illustrated in Table 1 below.

In practice, maximum indoor noise limits are often specified on the permit for a venue. The internal noise levels are based on the ability of the venue to achieve the outdoor noise limits listed in Table 1. Internal noise levels are set in the permit to make it easier to measure the music noise without interference from traffic and other venues, etc.

In simple terms, the Local Law allows a venue in the 'core' of Precinct A to emit 90 decibels at the exterior boundary of the venue before midnight (1am on Friday and Saturday) and 80 decibels after this time. A venue in the 'core' of Precinct B can emit 88 decibels at the exterior boundary of the venue before 11:30pm (midnight on Friday and Saturday) and 65 decibels after this time.

Table 1: Amplified music noise levels of the Amplified Music Venues Local Law 2006

Venue Location	Day and Time	Amplified music noise level 1 <sup>a</sup>	Amplified music noise level 2 <sup>b</sup>
Special Entertainment Precinct Core Area A	10am to midnight on a Sunday, Monday, Tuesday, Wednesday and Thursday.	LC <sub>eqT</sub> 90dB	LL <sub>eqT</sub> 45dB in any one-third octave band between and including 31.5Hz and 125Hz. LA <sub>eqT</sub> 33dB
	10am Friday to 1am Saturday. 10 am Saturday to 1am Sunday.		
	All other times.	LC <sub>eqT</sub> 80dB and LL <sub>eqT</sub> 73dB in any one-third octave band between and including 31.5Hz and 125Hz.	LL <sub>eqT</sub> 43dB in any one-third octave band between and including 31.5Hz and 125Hz. LA <sub>eqT</sub> 30dB
Special Entertainment Precinct Core Area B	10am to midnight Friday and Saturday.	LC <sub>eqT</sub> 88dB	LL <sub>eqT</sub> 45dB in any one-third octave band between and including 31.5Hz and 125Hz. LA <sub>eqT</sub> 33dB
	10am to 11:30pm on a Sunday, Monday, Tuesday, Wednesday and Thursday.		
	All other times.	LC <sub>eqT</sub> 65dB and LL <sub>eqT</sub> 55dB in any one-third octave band between and including 31.5Hz and 125Hz	LL <sub>eqT</sub> 43dB in any one-third octave band between and including 31.5Hz and 125Hz. LA <sub>eqT</sub> 30dB

### Planning laws that apply within the precinct

New residential development in the 'core' and 'buffer' of the precinct is required to comply with the Performance outcomes for noise insulation specified in the Fortitude Valley neighbourhood plan, which is a part of the *Brisbane City Plan 2014*.

The Performance outcome for new residential development in the precinct, relating to amplified music noise from another building, is outlined below. Note that it requires development to protect occupants from existing and future amplified music noise and not just existing uses. Also, note that different Performance outcome criteria apply for precinct A and precinct B and a lower level of noise insulation is required for backpacker accommodation. The noise criteria in the Performance outcome are low frequency noise levels in the 63Hz one-third octave band because Council research identified this to be the critical frequency regarding amplified music noise.

Importantly, the Performance outcome requires a "minimum reduction in sound pressure level between the exterior of the building and the bedroom or living room." This is different from the traditional noise planning approach of specifying an internal noise criterion, for example using *Australian Standard 2107: Acoustics - Recommended design sound levels and reverberation times for building interiors* (AS2107). Council decided to specify the noise reduction performance of the building façade rather than specify internal noise levels as its Performance outcome, as it provides greater certainty and finality and it is easier to determine compliance. There are many uncontrollable variables that influence the actual internal noise level in a building which limit the effectiveness of specifying an internal noise level as a criterion in a planning context. There are also technical difficulties with measuring low frequency noise in a room, which complicates compliance assessment. Stating the building facade noise reduction performance is much simpler and easier to apply for planning purposes. In addition, the internal noise criteria stated in AS2107 are A-weighted values, which are not relevant for low frequency noise and amplified music.

#### **Performance outcome 24 of the Fortitude Valley neighbourhood plan**

*Development ensures:*

- (a) bedrooms and living rooms are designed, located and constructed to protect occupants from existing or future amplified music noise that may arise from premises outside the building*
- (b) a building is designed and constructed to achieve a minimum reduction in sound pressure level between the exterior of the building and the bedroom or living room, of:*
  - i) LLeq,T 25dB at 63Hz where in special entertainment area core area A or buffer area A*
  - ii) LLeq,T 20dB at 63Hz where in special entertainment area core area B or buffer area B*
  - iii) LLeq,T 18dB at 63Hz for short term accommodation where a backpackers in a special entertainment area core area or buffer area*

Note: LLeq,T is the linear weighted, equivalent continuous sound pressure level for measurement time T.

The building facade noise reduction levels stated in the Performance outcome (e.g. 25dB at 63Hz) were derived by Council using onsite research in Fortitude Valley, and were chosen specifically to align with the objectives sought for the precinct.

The Performance outcome for new residential development in the precinct, relating to amplified music noise from a venue within the same building as the residential development, is outlined below. Note that it takes a different approach to the previous Performance outcome. Designing performance criteria for amplified music noise transmitted through shared walls, floors and ceilings presented several difficulties. Council decided to specify internal noise level criteria for this context.

The internal noise levels stated in the below Performance outcome (e.g. LLeq,T 43dB) are low frequency noise levels and were derived by Council using onsite research in the Valley, and were chosen specifically to align with the objectives sought for the precinct.

## **Performance outcome 25 of the Fortitude Valley neighbourhood plan**

*Development located in the same building as, or that has a wall, within 5m of a club, hotel, indoor sport and recreation, nightclub entertainment facility or food and drink outlet (restaurant) ensures:*

- (a) bedrooms and living rooms are located, designed and constructed to protect occupants from amplified music noise being transmitted through a wall, floor or ceiling*
- (b) the building is designed and constructed to achieve an amplified music noise level of:*
  - i) not greater than LLeq,T 43dB in any one third octave band between and including 31.5Hz to 125Hz in a bedroom*
  - ii) not greater than LLeq,T 45dB in any one third octave band between and including 31.5Hz to 125Hz in a living room*
  - iii) not greater than LLeq,T 45dB in any one third octave band between and including 31.5Hz to 125Hz in a bedroom or living room for short term accommodation where a backpackers.*

In addition to the Performance outcomes for noise insulation outlined above, the Fortitude Valley neighbourhood plan also includes the following purpose statements that communicate the land use intent and amenity expectations in the precinct.

“Entertainment activities are focused within the Special entertainment area cores and provide for and encourage a variety of live music, nightclub entertainment facilities and other music venues into Fortitude Valley.”

“Noise attenuation to reduce the intrusion of amplified music from both existing and future venues is required in all new residential development, and noise attenuation requirements must be satisfied when designing new entertainment venues. In special entertainment areas, residents will expect ambient noise levels to be relatively higher both inside and outside of residences, due to their proximity to entertainment venues.”

“Entertainment uses (including clubs and live music venues) are focused within the special entertainment area core. Short-term accommodation is encouraged in this area, where all residential uses are designed to mitigate higher levels of ambient noise.”

### **Is Brisbane City Council considering expanding the entertainment precinct?**

Council recently commenced the process of amending the boundary of the precinct to include The Triffid music venue, due to its importance to Brisbane’s live music scene.

### **Economic benefit to Brisbane of the precinct**

An investigation of the economic value of the precinct and its benefit to Brisbane’s night time economy (NTE) was conducted in 2017.

The authors of *The Australian Night Time Economy 2009-2014* report were commissioned to review the relative values of NTE hotspots in Brisbane and the roles these hotspots play in the wider Brisbane economy.

The research found that Brisbane’s NTE is growing faster than the rest of Brisbane’s economy in terms of sales revenue, employment and number of businesses. In recent years Brisbane’s NTE sales revenue, employment, and number of businesses grew by 8%, 4% and 7% respectively. The research also found that Brisbane’s core NTE is a significant proportion of Brisbane’s total economy. Brisbane’s core NTE contributes \$7.26 billion sales revenue, 66,000 jobs and 2,600 businesses.

Of the NTE hotspots investigated, Fortitude Valley has experienced the greatest growth, with a 7% increase in establishments, 5% increase in employment and 9% increase in sales revenue. This equates to \$254 million in annual sales revenue, 2,600 jobs and 286 businesses. Most of this is within the Valley Special Entertainment Area.

The activities within the NTE were defined using the *Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006*. Core NTE activities are divided into the three subsectors of Drink, Entertainment and Food establishments, covering those activities that predominantly operate during the evening and night time (6pm to midnight and beyond).

#### **Benefit to Brisbane's live music scene**

The number of entertainment and music venues in the precinct has increased by 40% since the precinct commenced in 2006. The precinct currently contains over 50 nightclubs, bars and venues. Twenty of these venues regularly program live music. This is one of the highest concentrations of live music venues in Australia. There has also been a growth in music venues in other areas of Brisbane.