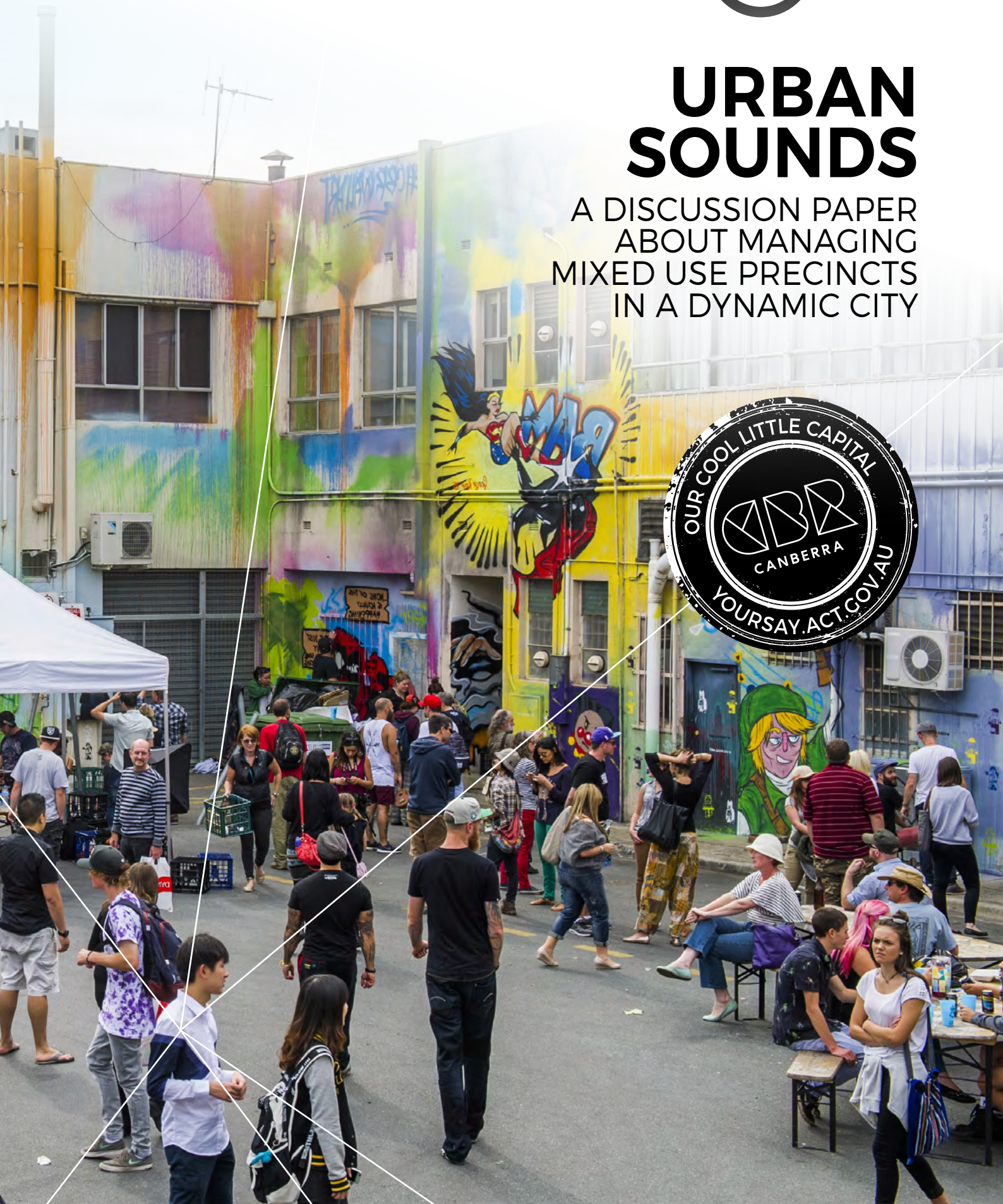


URBAN SOUNDS

A DISCUSSION PAPER
ABOUT MANAGING
MIXED USE PRECINCTS
IN A DYNAMIC CITY



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INTRODUCTION

The ACT Government wants Canberra to continue to grow into a dynamic city which offers people places to live, work, visit and play. Enhancing the existing planning framework to support a wide variety of uses in our city is integral to achieving Chief Minister Andrew Barr’s aim of Canberra being the “Coolest little capital in the world”.

Entertainment spaces are an important part of Canberra’s culture and economy. Furthermore, Time to Talk Canberra 2030 consultations in 2010 showed that more Canberrans want to live—and are already living—in areas that offer entertainment as well as residential accommodation.

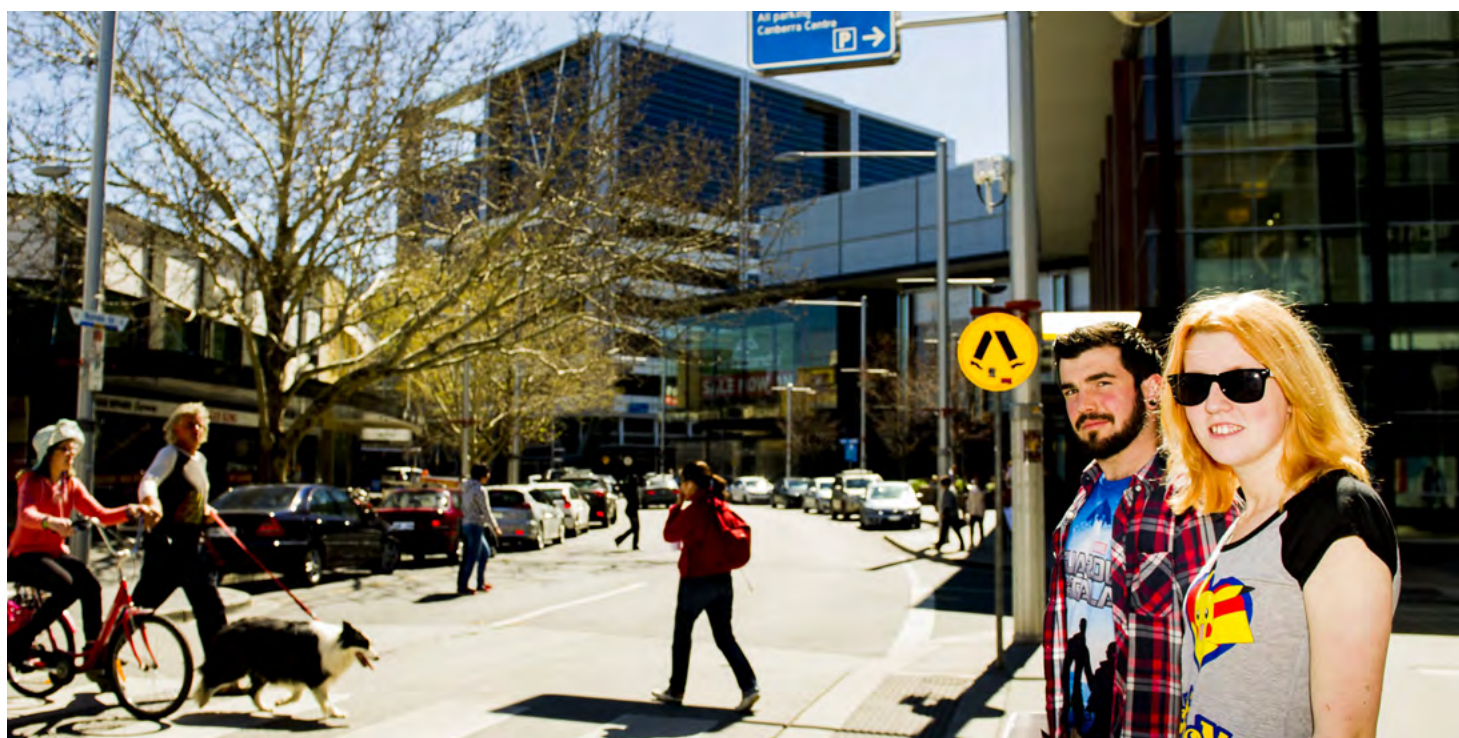
Urban renewal is a core priority for the ACT Government, vital to ensuring Canberra continues to grow and develop as a dynamic city. Renewing mixed-use areas will provide more entertainment opportunities for the community and bring more people into mixed-use areas. As we continue to invest in high quality urban renewal we must find a balance between activating spaces and ensuring the community gets a range of mixed-use experiences. Successful urban renewal and an enhanced framework for managing live events will ensure mixed-use areas cater for residents, businesses and visitors.

To cater for our community’s changing lifestyles and the increasing interest in a variety of entertainment opportunities the ACT Government is considering what improvements can be made to the planning framework to enable more efficient and effective regulation. Community views are important to develop a framework that is acceptable to everyone and we encourage you to have your say.

This discussion paper aims to consider the planning framework for everyday noise from restaurants, licensed premises, music venues and one-off events in mixed-use areas. Mixed-use areas are where residences are located together with businesses, entertainment venues and services.

This paper looks at how the ACT planning and regulatory framework can support a range of activities such as events and music in mixed-use areas, where there is potential for conflict between venues and residents. It will be important to maintain a balance between the needs of different users.

Feedback on this discussion paper and further research will inform changes to the planning framework.





EXISTING FRAMEWORK

The ACT already has a range of regulatory tools available to manage issues such as noise generated by restaurants, licensed premises, music venues and one-off events in mixed-use areas. Some of these tools are designed to control the generation of noise, while others are designed to reduce the impacts of noise.

DEVELOPMENT APPLICATION (DA) PROCESS

Noise generating developments, such as licensed restaurants and bars, are generally permitted within mixed-use precincts subject to a DA assessment process under the *Planning and Development Act 2007* (PD Act).

The Territory Plan is the ACT's key statutory planning document that provides the policy framework for the administration of land use and planning in the ACT. It specifies what can and cannot happen on each block of land; for example, it allows for a mix of uses in commercial zones; such as multi-unit housing and hotels, indoor entertainment facilities, restaurants, drink establishments and shops.

As part of a DA process, proposed developments which may generate potentially noisy uses are required to develop and comply with a noise management plan endorsed by the Environment Protection Authority (EPA). This plan details methods that will be employed to meet the noise zone standards for the particular land use zone.

A noise management plan often includes several methods for reducing noise, such as limiting noise from amplified music, architectural treatments such as double glazing and air locks, and operational limits such as times of occupation of outdoor areas and ensuring windows and doors are closed after certain times.

Development proposals for residential buildings in commercial zones are also required to consider noise from external sources. Dwellings are required to be designed and constructed to Australian Standards and can require a noise management plan.



REQUIREMENTS OF THE CROWN LEASE

When a person or business wants to vary a Crown lease to add a new potentially noisy use, such as a restaurant, their application is assessed for noise as part of the lease variation DA process. For example, a proposal to add a drink establishment to a lease in a commercial mixed-use area would be assessed for potential noise impacts; conditions would be imposed as required.

The requirement to comply with a noise management plan can also be built into a Crown lease. For example, an application could be approved subject to the Crown lease including a requirement that the lessee implement noise attenuation measures in accordance with a noise management plan if a restaurant is opened.

ORDER OF OCCUPANCY (AGENCIES OF CHANGE)

The Territory Plan and DA process requires all the most recent development in an area to comply with the noise standard applicable to the land use zone.

This approach places the onus for managing noise on both existing and new developments. For example, if a new entertainment venue wanted to set up next to a residential development the venue would need to comply with the noise use standard for that land use zone and ensure appropriate noise management measures are in place to protect residents. Conversely, if an apartment block was developed next to an existing music venue, the onus for managing noise would fall on the apartment block but the existing venue must comply with the noise standard for the land use zone.

This process has a similar outcome to other jurisdictions that have implemented an order of occupancy or agent of change principle. For example, the Victorian Government introduced an agent of change principle in late 2014 placing the responsibility on new developments in mixed-use areas to address noise impacts to ensure noise meets the reasonable expectations of the existing users of the area.

The ACT already has, in effect, an order of occupancy principle through noise standards for the different land use zones in the Territory Plan and the requirements for noise management plans and attenuation to meet Australian standards at the DA stage.

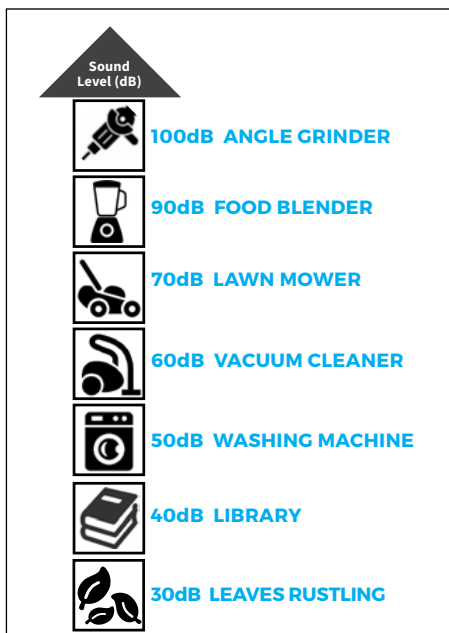
LIQUOR LICENCES

Liquor permits for events and liquor licences for licensed premises (such as bars and restaurants) can include conditions that aim to minimise harm associated with noise likely to emanate from the event or the venue. This places a regulatory burden on venues and events organisers which can be a disincentive to events going ahead.

In making a decision whether or not to grant a liquor licence, the licensing authority must consider noise from licensed premises and permitted premises, which cannot be excessive. Risk-assessment management plans, which are required for liquor licences, must outline how noise from the premise will be mitigated.

NOISE ABATEMENT DIRECTION BY ACT POLICING

ACT Policing has powers under the *Crimes Act 1900* to direct the occupier of a premise or any person to cease making offensive levels of noise. Police officers may also seize anything suspected of being used to make the noise. Individuals or corporations who do not comply with the direction can be charged or fined.

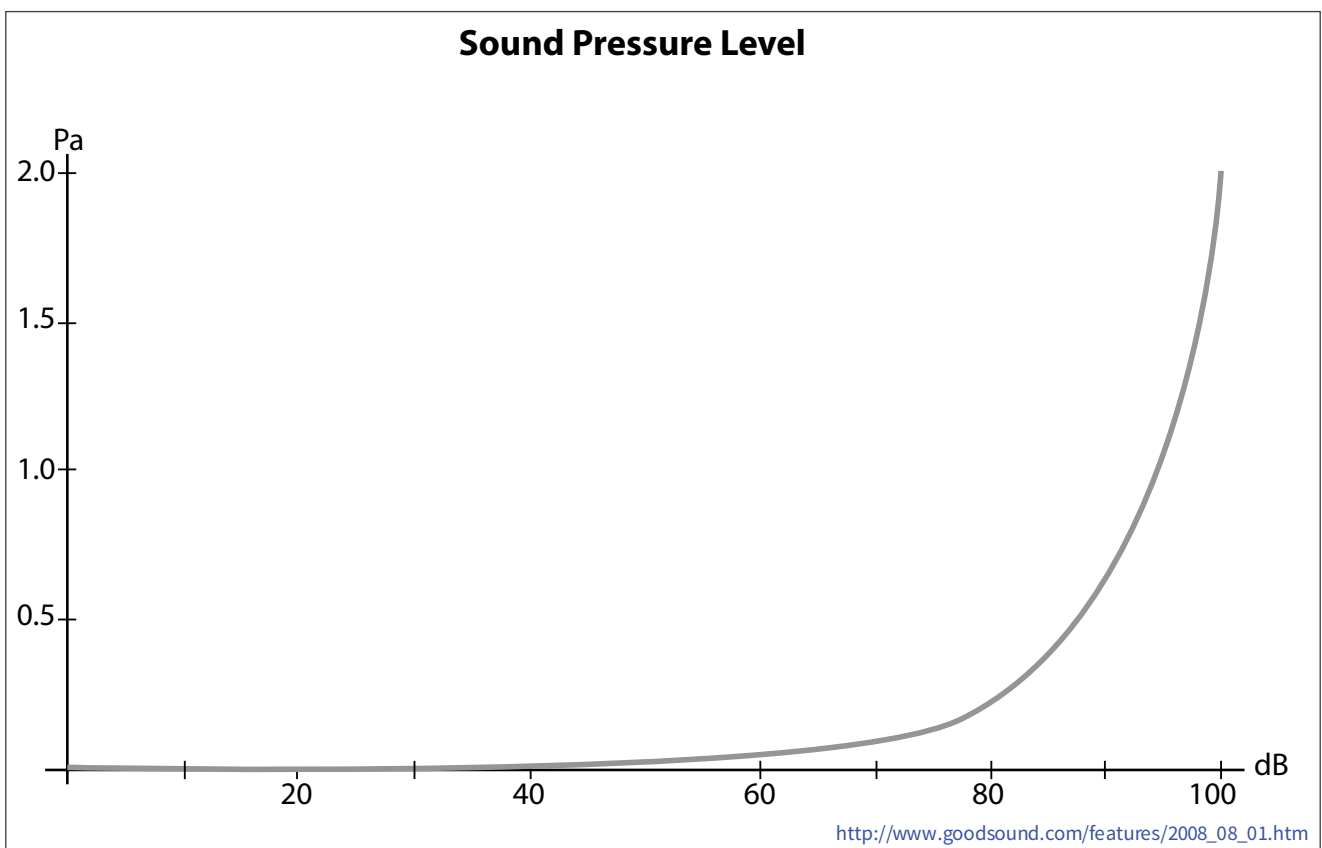


NOISE STANDARDS

The Environment Protection Regulation 2005 sets out noise standards for the different land use zones within the ACT, with the highest levels in city and town centres and the most stringent levels in residential areas. Enforcement action can be taken if noise standards are breached. Noise zones, an effective tool for recognising the different needs of areas such as mixed-use areas, are being adopted in other jurisdictions.

Under the *Environment Protection Act 1997* (EP Act) a person must not cause an environmental nuisance (which includes excessive noise) and must take steps that are practicable and reasonable to prevent environmental nuisance. The EP Act does not regulate noise made by traffic or by a person using only their body to generate the noise (for example, patrons talking or shouting once they leave an establishment). These types of noise are regulated through the liquor licence.

The following graph shows the logarithmic nature of decibels of sound pressure





OPTIONS

A range of options for enhancing the planning framework are detailed below. Community feedback and further analysis will determine whether all or some of these options are progressed. The list of options below is not all-inclusive and members of the public are encouraged to provide additional ideas for consideration.

SPECIAL ENTERTAINMENT PRECINCTS

OPTION 1: ESTABLISH SPECIAL PRECINCTS IN CENTRAL LOCATIONS THAT CATER FOR ACTIVITIES AND EVENTS WITH HIGHER NOISE LEVELS

Some Australian jurisdictions have created special entertainment precincts that provide a place-based framework for accommodating noise, such as live music, in inner-city settings.

A special entertainment precinct plan could allow higher noise standards complemented by stricter noise attenuation requirements for new developments. Such a plan could also be supported by a communication strategy to ensure residents and businesses understand the plan, including their rights and responsibilities.

The ACT already has clear noise zones or precincts with higher noise levels allowed in city, town, group and local centres with the corresponding requirements for noise management plans and stricter attenuation requirements for residential development. However, the Territory Plan could be amended to include entertainment precincts in commercial areas such as certain areas of town centres (for example, Garema Place); group centres that do not yet have a high density of residential development (such as Manuka and Kingston); and adjacent to existing events infrastructure (for example Gorman and Ainslie Arts Centres and Manuka Oval) to require new developments to have better noise attenuation measures as part of the DA process. There would be cost implications to future developers as a result of stricter development standards.

Setting up special precincts does not mean that other areas should be the subject of stricter controls than currently exist.

An important consideration in special entertainment precincts is noise from street cleaning. Consideration would need to be given to appropriate times for this activities as it will generate noise. In other jurisdictions cleaning is done in low use times (e.g. 4am to 6am). The impact of this activity on residents would need to be taken into consideration.

Establishing special entertainment precincts would likely require other changes to be implemented as well, hence, this option would be implemented in conjunction with a range of other options.

EXAMPLE 1

SPECIAL ENTERTAINMENT PRECINCT

Brisbane's Fortitude Valley is an important entertainment hub for the city. Given the wide range of live music events held in the valley, there has been a conflict between residents, businesses and the entertainment industry because of the noise generated by live music.

To address these noise issues, the Brisbane City Council released the Council's Valley Music Harmony Plan in 2004. Amongst other things, this plan has resulted in the creation of a special entertainment precinct. Within this precinct the onus has been placed on new developments to ensure noise management and attenuation measures are put in place. It also requires greater communication with potential residents to ensure they understand the noise levels in the valley before they make a decision to live there.

For further information on the Brisbane City Council's Valley Music Harmony Plan visit:

<http://www.brisbane.qld.gov.au/planning-building/planning-guidelines-tools/other-plans-projects/valley-special-entertainment-precinct/valley-music-harmony-plan>.

Existing centres and potential special entertainment precincts

★ Potential new special entertainment precincts

EXISTING NOISE STANDARDS

● 60dB(A) Day*
50dB(A) Night**

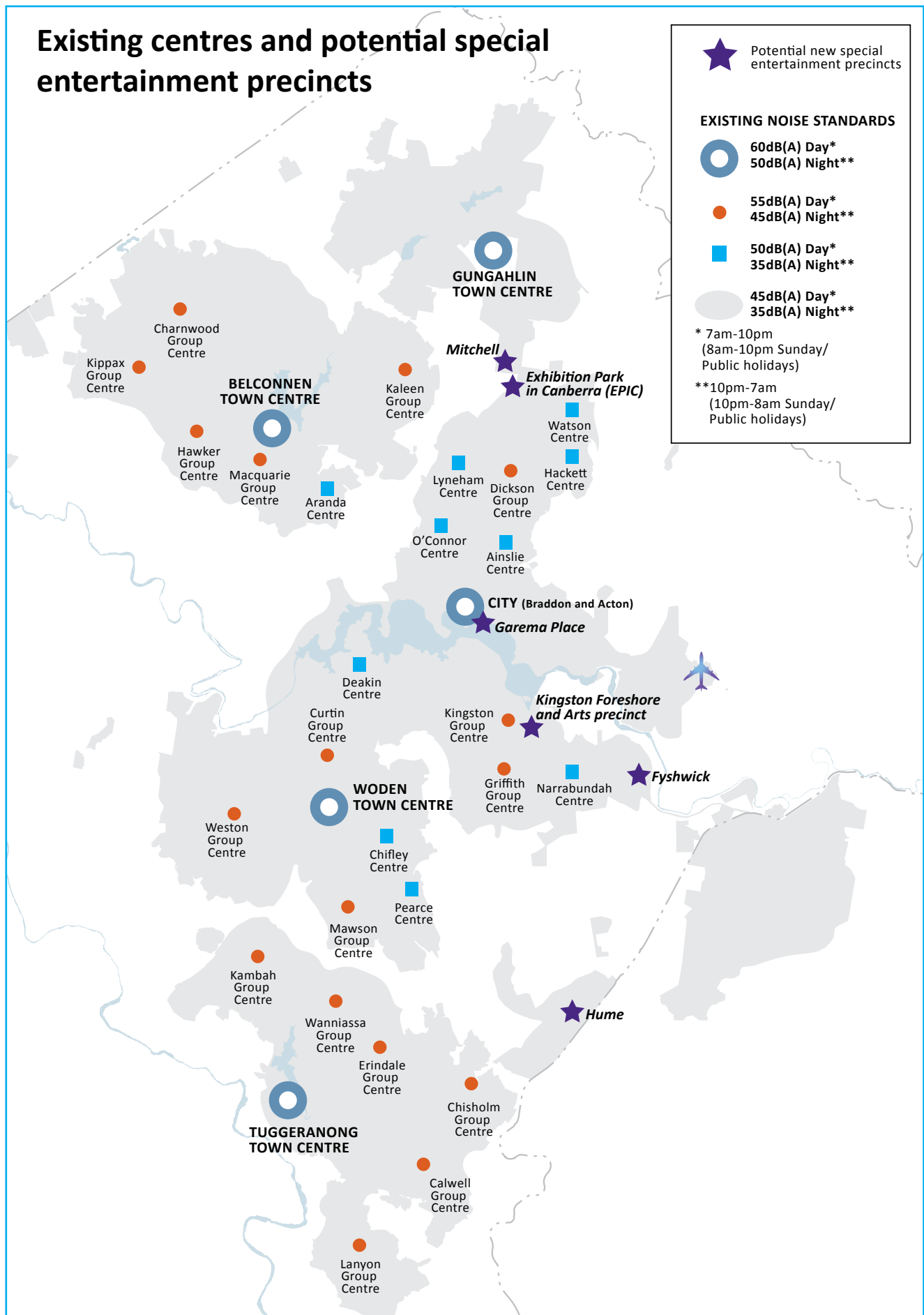
● 55dB(A) Day*
45dB(A) Night**

■ 50dB(A) Day*
35dB(A) Night**

● 45dB(A) Day*
35dB(A) Night**

* 7am-10pm
(8am-10pm Sunday/
Public holidays)

** 10pm-7am
(10pm-8am Sunday/
Public holidays)



MAKING EXCLUSIVE ENTERTAINMENT PRECINCTS/HUBS

OPTION 2: ESTABLISH ENTERTAINMENT ONLY PRECINCTS/HUBS THAT PROMOTE AND FACILITATE EVENTS AND ENTERTAINMENT.

An exclusive entertainment precinct could exclude residential accommodation and ‘quiet’ services such as libraries. More relaxed rules in this area would provide an incentive for businesses to hold activities and events and establish entertainment venues. This would help the city promote vibrant precincts and nurture the night-time economy.

Consideration could be given to whether this would work in areas such as Garema Place.

EXAMPLE 2

A master plan which is currently being prepared for Belconnen proposes to remove ‘residential uses’ from the services area to promote the area for activities including entertainment and events.

ARCHITECTURAL TREATMENTS

OPTION 3: STRENGTHEN EXISTING DEVELOPMENT CONTROLS TO INCREASE NOISE ATTENUATION REQUIREMENTS FOR RESIDENTIAL AND COMMERCIAL BUILDINGS.

Strengthening existing development controls to contain stricter requirements for noise proofing could reduce the noise impacts of entertainment places. These controls could be limited to new mixed-use areas. This could include architectural treatments—such as double glazing, acoustic requirements for external doors, insulated metal framing, or design elements such as setbacks, sealed windows or ‘winter garden’ balconies that can be closed—to attenuate noise for residential accommodation and premises providing ‘quiet’ services such as libraries.

Mitigating noise at residential premises and premises providing ‘quiet’ services can be effective. However, it would require windows, doors and vents to be sealed, which may not be appealing to residents at all times. Once opened, the noise mitigation benefits are lost. There would be costs associated with extra glazing, sealing and insulation; with some of these measures partially ineffective for low frequency noise associated with contemporary music.

Development controls could also be strengthened for commercial premises, such as acoustic upgrading of windows. However, there are economic costs for developers to implement acoustic upgrading particularly if controls were to apply to existing developments. Consideration would also need to be given to how noise mitigation measures could be applied to older buildings and heritage listed buildings.

REGULATE ORDER OF OCCUPANCY PRINCIPLES

OPTION 4: ORDER OF OCCUPANCY PRINCIPLES ARE NOT EXPLICITLY CONSIDERED UNDER CURRENT ACT LEGISLATION, HOWEVER, THE PRINCIPLES ARE APPLIED THROUGH TERRITORY PLAN CODES AND THE DEVELOPMENT ASSESSMENT PROCESS.

In other jurisdictions order of occupancy principles are embedded in legislation. A similar approach could be taken in the ACT, where powers could be provided under the Liquor Act 2010 for the Commissioner to consider order of occupancy principles when investigating complaints.

If order of occupancy principles are to be applied effectively through legislation they need to be supported by adequate architectural treatments and sound attenuation measures. Stronger requirements could be incorporated into the development application process in the Planning and Development Act 2007.

These concepts could be trialled through a pilot program in a few selected mixed use developments, to assess the effectiveness of these measures before regulatory reform is progressed.

DA COMPLIANCE AND ENFORCEMENT FRAMEWORK

OPTION 5: DEVELOP A TARGETED COMPLIANCE AND ENFORCEMENT FRAMEWORK TO ENSURE COMPLIANCE WITH CONDITIONS OF APPROVAL RELATING TO NOISE MANAGEMENT.

There is potential for new developments to (intentionally or accidentally) fail to comply with conditions of approval for noise mitigation. A more targeted compliance and enforcement framework could assist with this.

A requirement for a building certifier to check compliance with DA conditions during construction could also be built into conditions of approval.

AMEND NOISE STANDARDS

OPTION 6: AMEND NOISE STANDARDS WITHIN SOME COMMERCIAL ZONES TO ENABLE MORE ACTIVITIES AND EVENTS.

The Environment Protection Regulation 2005 already specifies noise standards for the different land use zones in the ACT. The highest noise levels are permitted in city and town centres, with the lowest noise levels permitted in residential areas. Consideration could be given to amending the noise standards in certain commercial zones to allow a greater range of activities and events to occur. Consideration could also be given to extending the hours that higher noise levels are permitted.

This would have the benefit of enabling more live music events; however, the impacts of such a change on existing residents and businesses would need to be considered. This may necessitate modifications to existing properties to deal with the increased noise levels, which would have cost implications for existing residents and businesses.

Noise standards do not take into account noise generated by people, for example, in outdoor cafes or events. Consideration may need to be given to how noise generated by people in outdoor areas can be managed.

MAKING INFORMATION AVAILABLE ABOUT NOISE

OPTION 7: PUBLISH INFORMATION SHEETS AND CHECKLISTS MAKING POTENTIAL BUYERS AND COMMERCIAL OPERATORS AWARE OF THE INCREASED NOISE PERMITTED IN MIXED-USE AREAS.

A cost effective option for businesses, residents and government could be to develop more communication materials in respect of noise for commercial zones in the ACT. This could include information sheets and checklists that make prospective buyers aware of likely noise impacts and emphasise that increased noise can be expected in urban areas such as the inner city. This is the approach taken in other jurisdictions, including Victoria.

EXAMPLE 3

DUE DILIGENCE CHECKLISTS FOR BUYING PROPERTY IN VICTORIA

Consumer Affairs Victoria has published a checklist that makes prospective buyers aware of likely noise impacts. Commencing in 2014, anyone selling a property in Victoria must provide a due diligence checklist to all potential buyers of residential properties which includes a notice about increased noise that should be expected in urban areas such as the inner city.

A similar requirement for information to be provided by real estate agents in the ACT would ensure buyers considering properties in commercial zones would use caution if they were concerned about noise issues. It would ensure more informed decision making by prospective buyers.

The ACT Government's real estate guide for buyers and sellers does not mention noise and is not required to be disclosed on sale of a property. This document could be updated, or alternative guidance documents developed, to help communicate messages to prospective buyers.

Similarly, an information sheet for licensed premises, which includes information on noise management, could assist venue operators to understand how to manage noise in mixed-use areas.

For further information on the Consumer Affairs Victoria due diligence checklist visit:

<https://www.consumer.vic.gov.au/duediligencechecklist>



REGULATORY REFORM TO REQUIRE INFORMATION TO BE PROVIDED TO POTENTIAL BUYERS

OPTION 8: CONSIDER REFORM TO REQUIRE INFORMATION TO BE PROVIDED TO BUYERS ABOUT NOISE BEFORE PURCHASE OF A PROPERTY.

The *Civil Law (Sale of Residential Property) Act 2003* (CL Act) sets rules that must apply to all real estate transactions, including disclosure requirements and the kind of information that must be provided with a contract of sale.

Provisions could be considered to require information in relation to noise to be provided with the conveyance documentation for commercial zones (such as a fact sheet on noise standards and noise management plan requirements). To be effective, the conveyance documentation could be accompanied by mandatory disclosure by real estate agents in relation to noise for properties in commercial zones.

The contract of sale itself could also be amended to notify potential buyers to the different noise standards in commercial zones and for potential buyers to acknowledge these differing standards.

This option would impose some costs on government and potentially on real estate agents, but would be cost effective for businesses and residents. Before making any changes to the CL Act, the implications for stakeholders and costs of imposing new requirements would need consideration.

EXAMPLE 4

ENSURING BUYERS ARE INFORMED IN WESTERN AUSTRALIA

In Western Australia notifications on land title can be proposed by the local council as a condition of development approval in mixed-use areas to inform prospective residents of the likelihood of higher noise levels in the locality. This response recognises that a prospective resident's response to noise levels at their property is influenced by their expectations before purchasing. A similar approach could be beneficial in the ACT.

IMPROVE COORDINATION WITH THE NATIONAL CAPITAL AUTHORITY (NCA)

OPTION 9: WORK WITH THE NCA TO DEVELOP STANDARD PROCEDURES FOR NOISE MANAGEMENT PLANS ACROSS ALL MIXED-USE AREAS, INCLUDING DESIGNATED AREAS.

Coordination with the NCA could be strengthened to ensure noise management plans are required uniformly across the ACT for mixed use precincts. A process for seeking advice from the EPA and endorsement of a noise management plan could be formalised for all mixed-use areas on designated land. This would assist with strategic planning for future mixed-use areas, such as the City to Lake project and for major events in the Parliamentary Triangle.

STRENGTHENING LIQUOR LICENSING

OPTION 10: STRENGTHEN LIQUOR LICENCES FOR POTENTIALLY NOISY PREMISES.

The liquor licensing process could be strengthened in respect of noise. For example, robust policies and guidelines could be developed to ensure that consistent and mandatory noise management measures are required as part of a liquor licence for any potentially noisy premise. This may have cost implications for licensed premises.

The liquor licensing process can only manage noise in relation to licensed premises and not all noise generating developments are licensed. Consultation with stakeholders, including the Liquor Advisory Board, would be required for any proposed changes to the liquor licensing process.

Changes to liquor permit requirements could also be made to ensure noise management measures are considered.

ACTIVE FRONTAGES

OPTION 11: REVIEW THE TERRITORY PLAN TO ACHIEVE A MORE STRATEGIC APPROACH TO LOCATING ACTIVE FRONTAGES.

The Territory Plan currently mandates active frontages in certain locations in the ACT. These are frontages which face onto core pedestrian areas, where the intention is to ensure interaction between the ground floors of buildings and the outdoor space. The plan could be reviewed to ensure active frontages are only mandated in areas where they are likely to achieve the best results in improving the interaction between spaces. Potential flexibility could be introduced to enable surrounding areas to have active frontages, without the requirement being mandatory. This could also involve requirements for buildings in active frontage areas to incorporate noise mitigation elements to allow a change to noisier uses.

Active frontages could be mandated in specific locations within mixed-use areas where the community wants lively public spaces that cater for businesses and residences while also supporting events and entertainment. Discretion could also be applied to certain areas to include or exclude active frontages on a case by case basis.



SUMMARY OF OPTIONS

Option	Advantages	Disadvantages
Option 1: Establish special precincts in central locations that cater for activities and events with higher noise levels.	Provide a place-based framework for accommodating noise, such as live music, in inner city settings.	Increased noise attenuation measures required as part of the DA process would have cost implications for developers.
Option 2: Establish entertainment only precincts/hubs that promote and facilitate events and entertainment.	Creates an exclusive hub for events and entertainment.	Constrains residential options and potential housing choice by excluding residential uses from certain precincts.
Option 3: Strengthen existing development controls to increase noise attenuation requirements for residential and commercial buildings.	Improved noise attenuation for residential accommodation.	Costs associated with extra glazing, sealing and insulation.
Option 4: Include order of occupancy principles in ACT legislation	Would provide a framework for the Commissioner to consider order of occupancy when investigating noise complaints.	Could require stronger noise attenuation measures to be applied to developments. This may have cost implications for premises.
Option 5: Develop a targeted compliance and enforcement framework to ensure compliance with conditions of approval relating to noise management.	Reduced number of developments failing to comply with noise mitigation approval conditions.	More inspections would mean increased government costs.
Option 6: Amend noise standards within some commercial zones to enable more activities and events.	Would allow a wider variety of events and activities to occur.	Could have negative impacts on existing residents and businesses. May necessitate modifications to existing properties to deal with the changed noise levels, with cost implications. Doesn't address noise generated by people in outdoor areas or events.
Option 7: Publish information sheets and checklists making potential buyers and commercial operators aware of the increased noise permitted in mixed use areas.	Prospective buyers would be aware of likely noise impacts before they purchase. Licensed premise operators would understand how to manage noise more effectively.	This information may not be provided to or used by buyers and commercial operators.
Option 8: Consider reform to require information to be provided to buyers about noise before purchase of a property.	Buyers would be properly informed about the noise environment before they purchase a property.	This could have costs for government and real estate agents.
Option 9: Work with the NCA to develop standard procedures for noise management plans across all mixed use areas, including designated areas.	Noise management plans required uniformly across the ACT for mixed use precincts.	None.
Option 10: Strengthen liquor licences for potentially noisy premises.	Consistent and mandatory noise management measures required in liquor licences.	This may have cost implications for licensed premises.
Option 11: Review the Territory Plan to achieve a more strategic approach to locating active frontages.	More strategically defined areas to facilitate activity and events. More balanced outcomes.	Defining specific areas for active frontages could limit some other opportunities for activities and events.

HOW TO BE INVOLVED

This discussion paper provides a range of options to enhance the planning framework. You are encouraged to have your say on ways to enhance the planning framework to help Canberra continue to grow into a dynamic city, where people can live, work, play and visit. You are encouraged to provide comments on the options in this paper and any additional ideas you may have.

Which option (s) do you think will achieve the best outcomes for managing the needs of different community members in mixed use areas?

What areas of Canberra would you like to see established as special entertainment precincts?

Do you have any additional ideas for enhancing the planning framework to support the development of events and activities in mixed use areas of Canberra?

YOU CAN COMMENT

Visit: www.yoursay.act.gov.au

Email: EPDImpact@act.gov.au

Mail: Urban Sounds
Impact Team
Environment and Planning Directorate
GPO Box 158, Canberra ACT 2601

Comments submitted in response to the discussion paper are considered public and may be reproduced by the ACT Government unless requested otherwise.

NEXT STEPS

Your input will help us consider which options to progress to enhance the planning framework.

CONTACT INFORMATION

For any queries about public consultation or the development of the strategy, please contact:

Email: EPDImpact@act.gov.au

Phone: 6207 0316

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