



Merri-bek
City Council

Better Protection of Live Music Venues in Victoria

Officer feedback



Introduction

Thank you for the opportunity to provide feedback on Consultation draft 2 of proposed changes to the live music provisions in the Victoria Planning Provisions.

The comments provided are officer-level comments only. Insufficient time was made available to enable Council to consider the proposal. This feedback therefore does not represent an endorsed position of Council.

Feedback

Officers note that the current proposed changes to the Victorian Planning Provisions (VPPs) represent the third major round of statewide planning scheme changes relating to live music in a short space of time. While these changes have a consistent objective of protecting existing live music venues and encouraging new ones, care is required to ensure that planning controls remain facilitative and proportionate, and do not have unintentional consequences as a result of overlapping regulatory requirements.

Draft 2 of proposed changes to the live music provisions

Live music is very important to the economic, cultural and social outcomes of Melbourne and Victoria. Within Merri-bek, Music Victoria identifies Brunswick and Coburg as a strategically important live music precincts.

Policy context

The Municipal Planning Strategy of the Merri-bek Planning Scheme supports creative industries, entrepreneurs and associated activities, including education and training, live music venues, performances, studios and coworking spaces, in Activity Centres, the Brunswick Design District and Core Industrial and Employment Areas as shown on the Strategic Framework Plans Economic Development and Activity Centres. (Clause 02.03-6).

The proposed changes to state content in the PPF are an improvement on existing state policy. The move away from having this content under an 'Amenity, Safety and Human Health' heading and the creation of a 'Cultural Places' heading is a positive change.

The proposed PPF objective to encourage, create and protect opportunities for the enjoyment of live music is supported, as it is facilitative in nature. However, the proposed policy guidelines, which are relied upon by permit applicants and Responsible Authorities, could be more directive to provide clearer and more practical guidance in decision-making.

Some planning schemes, including the Merri-bek Planning Scheme, have local content which sits underneath the existing 13.07-3S. As 13.07-3S is proposed to be deleted, associated local content also needs to be migrated to sit below the proposed Clause 11.04-2S.

Live Music Overlay and Clause 53.06

Although planning reform plays a role, a broader and more coordinated approach is required to effectively support and sustain live music. It is understood that the challenges facing live music are multi-faceted, with factors such as the cost of insurance also having a big impact on venue viability. The Government is encouraged to explore measures such as live music financial subsidies in parallel with planning reform.

It is understood that applying a Live Music Overlay (LMO) would remove the operation of Clause 53.06 for residential uses, while Clause 53.06 would continue to apply to applications involving live music venues. A key distinction is that the LMO applies requirements only to new residential uses, not to new venues, which officers consider a positive shift in principle. However, a similar outcome could be achieved more simply by amending the application of Clause 53.06-1 to live music venues. The ability to reintroduce permit considerations for new venues through the LMO schedule risks undermining this intent and appears inconsistent with the objectives of Clause 13.07-3S.

A further consideration is the expanded spatial application of the LMO. Unlike Clause 53.06, which applies within a tightly defined radius, the LMO envisages much broader areas. This would significantly increase the number of residential developments required to prepare acoustic reports, typically costing \$10,000–\$20,000 and often subject to peer review. In practice, this introduces an additional layer of cost and complexity and risks discouraging housing delivery.

The Music Victoria’s annual Music Census indicates that most live music clusters are in activity centres and surrounds. These same locations are (or soon will be) subject to the Built Form Overlay (BFO), Housing Choice and Transport Zone, and recent reforms to Clauses 55, 57 and 58, all of which seek to accelerate housing delivery. Applying the LMO in these areas would be difficult to reconcile with the Housing Statement and *Plan for Victoria*. This is consistent with the City of Port Phillip’s experience in attempting to progress a live music precinct in St Kilda.

This raises some fundamental questions for the Department of Transport and Planning and the Minister for Planning (DTP) being:

1. How does the LMO operate in inner and middle ring Activity Centres, in a way that supports accelerated housing delivery; and
2. How do Councils legitimately use Clause 53.06, within a deem to comply framework intended to accelerate housing delivery. For example, Clause 55.05-6 (Noise impacts), does not invite consideration of live music noise.

In addition, there is limited clarity regarding the strategic work required to support the preparation of an LMO schedule. In the absence of an up-to-date Practice Note, councils face uncertainty regarding the content and purpose of cultural, social and economic statements of significance, the objectives intended to accompany them, and how these elements are expected to meaningfully inform permit decision-making beyond the existing operation of Clause 53.06. Specifically, how do they *implement measures to ensure live music entertainment venues can co-exist with nearby noise sensitive residential uses and other noise sensitive uses* in a manner not achieved by 53.06 and its schedule?

Finally, many live music “clusters” identified by communities and the Music Census are geographically dispersed and highly dynamic. For example, Brunswick has approximately 20 venues spread across the regionally significant industrial area and the Sydney Road and Lygon Street corridors, an area almost twice the size of the Hoddle Grid and three to four times the size of the St Kilda precinct, with around a third as many venues. It is also important to recognise that these clusters are constantly evolving. Venues frequently open, close, relocate, or cease operations for extended periods before reopening – for example the Spotted Mallard/Brunswick Ballroom in Brunswick. This fluidity may make it difficult to define and maintain the appropriate extent of an LMO, and likely to require frequent review – and risks underestimating the evolving nature of the live music and arts ecosystem.

Broader commentary on existing requirements

There have been significant changes to planning schemes in Victoria over the past 12 years aimed at facilitating and protecting live music venues.

Amendment VC120 – Agent of change

Amendment VC120, introduced in 2014, implemented the ‘agent of change’ principle to address the issue of new apartments being built close to established music venues. The problem it sought to address was new dwellings were bringing existing venues into non-compliance with EPA music noise regulations and resulting in noise complaints from new residents. This requirement is now longstanding and is generally operating well.

In the Victorian planning context, the planning scheme should be understood as one component of a broader policy, regulatory and licensing framework that supports live music as an economic and cultural activity. While planning controls can require noise attenuation for new sensitive uses, noise emissions from existing and proposed live music venues are regulated under the *Environment Protection Act 2017* and associated Environment Protection Regulations and noise assessment

protocols. The Environment Protection Authority is the primary agency responsible for administering and enforcing these requirements.

Amendment VC183 – COVID-19 response

Amendment VC183, introduced in 2020 and sought to support Victoria's live music venues which faced great challenges because of the impact of Covid19 social distancing restrictions. Empirical evidence suggests changes to the planning scheme had limited effectiveness in addressing the economic hardship facing the live music industry.

This highlights the limitations of relying on planning controls to respond to industry wide challenges, where alternative mechanisms, such as targeted financial assistance or direct subsidy, may be more effective in supporting industry viability.

A positive aspect of this reform was the introduction of requirements for noise attenuation to residential uses within 50 metres of a live music entertainment venue. Merri-bek's experience though, is that noise complaints about live music are not uncommonly received from residents living more than 50 metres from a live music venue.

Amendment VC183 also introduced requirements and decision guidelines which apply to an application for use or development associated with a live music entertainment venue. Merri-bek City Council officers' experience is that this VPP change has discouraged new small venues and recording and rehearsal studios from establishing and has resulted in a significant reduction in patron numbers and hours of operation for larger venues through Council and VCAT decision-making. In this regard, the effectiveness of the VC183 reforms in encouraging new venues appears to be limited, and the issues identified are not substantively addressed in the changes currently proposed.

This amendment further introduced the concept of live music precincts into the PPF. Specifically, 13.07-3S contains a strategy to identify areas where there are high concentrations of licensed premises or clusters of live music venues. There is no accompanying Practice Note guidance about what constitutes a high concentration or cluster, or the purpose of doing this.

Merri-bek City Council undertook strategic work to investigate where in Merri-bek there are live music venue concentrations or clusters and how the schedule to Clause 53.06 could be used to encourage new venues in these areas. This work identified limitations in the available planning tools, with a risk that their application could result in unintended and undesirable outcomes.

The desirability of agglomerating live music venues is questioned in locations which have large populations of existing residents. For example, there is a cluster of live music venues in a 450m radius around the Brunswick Town Hall. From SA1 Census data there are almost 1,000 existing residents and almost no sites located more than 50 metres from a music venue. Council receives many noise complaints about venues in this vicinity and the wisdom of prioritising new venues in a location where there are existing issues, would likely be met with resistance. Until recently, the VPPs discourage agglomeration of licensed premises through consideration of cumulative impact. Identification of live music clusters, which more enabling considerations apply, presents potential challenges.

Conclusion

The proposed changes to the Planning Policy Framework are broadly enabling of live music and represent an improvement on existing State policy. These kinds of improvements are valued by the Merri-bek community. However, the Live Music Overlay and the continued operation of Clause 53.06 function primarily as restrictive tools, and it remains unclear how the LMO could be applied in a way that both supports live music objectives and aligns with State housing policy.

Some concern is also raised in respect to the challenges associated with the implementation of the LMO via individual amendments to planning schemes including the associated resource and cost considerations for Councils. As experienced following Amendment VC183, the proposed changes risk creating expectations that the Live Music Overlay will be applied to established live music areas, despite uncertainty as to whether the overlay can deliver outcomes consistent with those

expectations. This may result in councils undertaking complex and costly strategic work in the absence of clear guidance, with potentially limited benefit.

Further refinement and guidance are therefore required to ensure the proposed tools are proportionate, targeted and capable of supporting live music without unintended impacts on housing delivery.

Contact:

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