

Liquor Amendment (Night-time Economy) Act 2020 changes to planning instruments

The [Liquor Amendment \(Night-time Economy\) Act 2020](#) (**Liquor Amendment Act**) seeks to encourage a vibrant and diverse nightlife where live music and entertainment thrives.

Current consent and licence conditions can unnecessarily limit music and performance, including restrictions on the genre of music that may be played or performed, the number of musicians on stage, or the types of instruments used.

The key objectives of the Liquor Amendment Act are to:

- replace the declared premises and minors sanctions schemes and the three strikes disciplinary system with an integrated demerit points and incentives scheme;
- provide for cumulative impact assessments; and
- regulate same day deliveries of liquor.

The Liquor Amendment Act will make several changes to planning legislation that may affect council processes and procedures. These changes will support councils' ongoing work to develop a vibrant, safe and modern night-time economy across NSW.

Introducing low impact entertainment as exempt development

The Liquor Amendment Act will introduce new exempt development provisions in the Codes SEPP (Part 2, Division 1, Subdivision 15AB). This subdivision sets out the exempt development standards for low impact performance of live music or arts, which only applies in non-residential zones.

The development standards include the development being restricted to indoors, must not contravene any existing development consent conditions or the *Protection of the Environment Operations Act 1997* and cannot be used primarily for adult entertainment.

Introduction of special entertainment precincts

A new part has been inserted into Chapter 8 of the *Local Government Act 1993* (**LG Act**) allowing councils to establish a special entertainment precinct within their local government areas (**LGA**), by amending its local environmental plan (**LEP**) to identify the special entertainment precinct.

A special entertainment precinct is a defined area where:

- amplified music that is played in the area is regulated by, or under a law, other than the *Liquor Act 2007*; and
- requirements about noise attenuation apply to certain types of development in the area; and
- dedicated live music and performance venues are authorised to trade for an additional 30 minutes under s 12A of the *Liquor Act 2007*.

There are a number of requirements for councils if they decide to create a special entertainment precinct including:

- preparing a plan for regulating noise from amplified music from premises in the special entertainment precinct and publish it on the council's website; and
- notifying residents and people moving into the area about the special entertainment precinct including, for example, by a notice published on its website or a notation on planning certificates for land in the precinct.

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Information for consent authorities

The Minister for Local Government will also have powers to develop and publish guidelines on the establishment, operation, revocation or suspension of special entertainment precincts. Councils will be required to act in accordance with any such guidelines.

Changes to facilitate small live music or arts venues

An amendment to the *Environment Planning and Assessment Act 1979 (EP&A Act)* will change the definition of the Building Code of Australia to include variations made via the regulations. The EP&A Regulation has also been amended to include a reference to small live music and arts venues as a development type, including some limiting development standards.

At this stage, there is no exempt or complying development pathway available for a change of use to a small music and arts venue as no approval pathways or development standards have been included in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*.

However, as part of the Department's upcoming work program, options to introduce a complying development pathway for this change of use will be investigated. This will involve consultation on the development of appropriate development standards that protect the safety of occupants and neighbourhood amenity.

Consent authorities can remove or modify conditions of consent relating to playing or performing music on licenced premises

The Liquor Amendment Act amended the EP&A Act to give councils the ability to remove or modify conditions of consent about playing and performing of music on licenced premises within their local government area, by publishing a notice of the intended change on the council's website.

Publication of the proposal to modify consents must also be accompanied by a detailed explanation of the impacts and the opportunity for public submissions and requires the council to consider any submissions received. These provisions are located in Schedule 8 of the EP&A Act.

To support this, new provisions have been added to the Standard Instrument (Local Environmental Plans) Order 2006, and non-standard LEPs to ensure certain requirements will apply in all LGAs.

All relevant LEPs have a new objective in clause 1.2 to raise the protection and promotion of the use and development of land for arts and cultural activity, including music and other performance arts.

A non-discretionary development standard for licenced premises that relates to live music and performance has also been introduced (clause 5.20), so a consent authority cannot refuse development consent for licenced premises in respect of the following matters:

- the playing or performance of music;
- whether dancing occurs;
- the presence or use of a dance floor or another area ordinarily used for dancing;
- the direction in which a stage for players or performers faces;
- the decorations to be used including for example, mirror balls or lighting used by players or performers.

Consent authorities will be unable to refuse consent based on noise caused by the playing or performance of music if they are satisfied the noise can be managed and minimised to an acceptable level.

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