

# Submission on the draft Noise Guide for Local Government

September 2021

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## Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to provide comment on the draft Noise Guide for Local Government, which is an update to the existing Guide (2013).

## Background

Local Government has regulatory responsibilities as the Appropriate Regulatory Authority (ARA) for noise from non-scheduled activities. Local Government also has key responsibilities as the consent authority for local development, as active land managers, through strategic planning and in influencing future development and planning decisions – all of which can influence the way that noise affects people and the environment.

Councils tend to be the first port of call for residents who are experiencing noise impacts, regardless of whether or not they are the appropriate regulatory authority. Councils therefore seek consistent and clear guidance that can be used by consent authorities, industry and the community to guide the management of noise impacts.

## Response

### Document Structure

Overall the document is comprehensive and a useful tool for local government staff to assist them manage noise impacts in the community, and we welcome the considerable effort taken to update the document.

Non-regulatory approaches to managing noise are preferable to the time and effort of regulatory approaches, and we recommend the references to non-regulatory options in the earlier part of the document be strengthened. Non-regulatory approaches are covered in Section 8 and mentioned in Section 2 case studies, however it would be better to include reference to non-regulatory measures in Section 1 of the document.

It would be helpful if more examples of feasible and reasonable noise management measures were included, potentially as an appendix, which may be relevant across a range of noise generating activities.

Councils have identified that the Guide refers to fact sheets and tables that are difficult to locate or unclear as they are not labelled as fact sheets.

**Recommendation 1:** That the structure of the Noise Guide for Local Government be amended to:

- Strengthen references in Part 1 of the document to non-regulatory approaches being preferable to regulatory measures for resolving noise issues.
- Include more examples of feasible and reasonable noise management measures;
- More clearly identify and cross-reference fact sheets and tables to make them easier to find. For example include a page number for the tables.

## Part 1 – Managing noise from different sources

### Table 1 - Responsibilities for managing noise in NSW, by noise source

Table 1 provides a summary of who is responsible for regulating noise from a specific source or circumstance and an overview of the regulatory options available to manage the noise. The table includes ‘aircraft’ as a noise source, which the *Protection of the Environment (Operations) Act 1997* (POEO Act) defines as including ‘a remotely piloted aircraft, unmanned aircraft system or a drone’. Drones are becoming much more widely used and likely to be the subject of noise complaints. Similarly, helipads on residential properties are becoming more commonplace. It would be useful if the Table clarified that aircraft is a broad term that includes helicopters and drones, and that Table 1 specifically covers the examples of drone noise and helipads on residential property.

**Recommendation 2:** That the Noise Guide for Local Government specifically outline the regulatory responsibilities and options for managing noise from drones and helipads.

### Section 1.4 - Managing noise from neighbourhood noise sources

This section outlines the regulatory tools and pathways available to council officers for managing neighbourhood noise, depicted at Figure 4. A valuable step that some councils use but which is not reflected in the diagram is to issue a warning letter to the person causing the noise. While warning letters are not technically part of the regulatory framework (unless in relation to ‘time of use’ provisions), they are effective at informing and educating those making the noise about the issue and its effects, and the consequences of non-compliance. The warning letter approach will often resolve complaints without the need for further action by council.

**Recommendation 3:** That Figure 4 include reference to non-regulatory approaches, such as issuing a warning letter and/or other communication with those making the noise.

### Section 2

This section is described as a ‘ready reckoner’ for councils related noise issues, working through specific noise issues and including case studies and options for managing noise. While the structure is useful, and we do see the merits of having standalone sections to read, there is repetition of content across the noise topics. It may be sufficient to include certain information once and hyperlink to it as necessary. This may shorten the overall document and make information easier to find.

**Recommendation 4:** That the Noise Guide for Local Government make even more use of hyperlinks and cross-referencing to minimise repetition of content.

### Section 2.3 - Music Venues

Noise management of music venues has become increasingly complex as particular urban centres continue to densify and both councils and the NSW Government work towards greater activation of the creative and night time economies. LGNSW acknowledges that both the occupier of the venue and neighbouring residents have rights under legislation that must be considered in any enforcement action taken by council or the relevant state agency.

### *Enforcement against operators emitting noise within their development consent*

It is LGNSW's view that the Draft Guide does not provide sufficient guidance for council officers in managing circumstances where a music venue receives a noise complaint, but the venue in question is operating wholly within its existing development consent.

The case study provided in Section 2.3.4 (p. 56) provides an example based on noise generated from a business which clearly violates the provisions of its development consent. Councils often experience circumstances in which noise complaints are received from residents or other stakeholders for noise generated by a venue that is explicitly approved under the development consent.

It is critically important for the Guide to provide guidance that explicitly stipulates what action can be taken where venues are, following investigation, deemed to be complying with their development consent.

Crucially, as demonstrated in the case study, where the council officer has “*determine[d] that the consent does not include objective noise limits but does include a general requirement that the venue’s operation “may not result in the generation of offensive noise”*”, compliance activities were commenced. General development consent conditions regarding “offensive noise”, such as the provided example, are commonplace where it is difficult to provide specific decibel (dB) levels for the particular activity.

Where an activity has been occurring at a venue for an extended period of time without complaint, it becomes incumbent on the council officer to make a determination as to whether an activity that has occurred without incident is now deemed “offensive noise” and should be subject to potential enforcement actions.

Additionally, it is unclear on the basis of the guidance provided whether noise generated and wholly permitted within an existing development consent and conducted without issue over an extended period of time can be considered “offensive noise” under the *POEO Act 1997* (which provides the basis for council officers to take action against an operator), as new residents move into a local area or the built form of a locality changes or densifies. This is an important clarification to make in the Guide as it fundamentally alters how councils can act in these circumstances and their approach to complaint management.

**Recommendation 5:** That the Noise Guide for Local Government provide explicit guidance and/or case studies for council officers to apply in circumstances where:

- noise complaints are received against a music venue operating wholly within its development consent, and/or
- where the activity has occurred over a long period of time without complaint.

The guidance should consider whether a determination of “offensive noise” can be made on an existing activity that has been conducted without issue over a sustained period of time.

### *Omission of guidance on operation of Special Entertainment Precincts*

Following the passing of the *Liquor Amendment (24-hour Economy) Act 2020*, 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, by amending their local environmental plan (LEP) to identify the special entertainment precinct (s 202 of the LG Act).

The purpose of a “special entertainment precinct” is to define an area in which:

- 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*.

As provided in [the fact sheet](#) issued by the Department of Planning, Industry and Environment for councils detailing the changes to planning instruments brought about by the commencement of the Act, “*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.*”

The Draft Noise Guide for Local Government does not provide any guidance on how the Guide is intended to interact (if at all) with the operation of a special entertainment precinct. LGNSW is aware of a number of councils currently in the process of identifying potential special entertainment precincts with their local areas.

It is recommended that the Office of Local Government urgently issue these guidelines to accelerate the identification and declaration of special entertainment precincts across New South Wales.

**Recommendation 6:** That the Office of Local Government urgently issue guidelines relating to special entertainment precincts. The guidelines should demonstrate how the Noise Guide for Local Government is intended to interact with special entertainment precinct guidelines and applied by councils.

## Section 2.4 - Outdoor entertainment activities

### *Event policy guidance*

The guidance material acknowledges in the case study provided in Section 2.4.4 that the council used in the example (similar to many councils across New South Wales) does not have a specific policy regarding the management of events.

It is recommended that the relevant NSW Government agency explore options to provide guidance for the development of best-practice event policies to better determine local event parameters that can minimise potential impacts on residents and provide practical advice on minimising noise and other environmental health issues associated with events.

**Recommendation 7:** That the relevant NSW Government agency explore options for providing guidance for developing best-practice event policies for events where councils are the responsible consent and compliance authority.

### *Proactive steps to minimising noise complaints from outdoor events*

Additionally, the Guide does not provide any explicit material that could assist councils in proactively minimising potential noise complaints from outdoor events that they hold or approve as the consent authority.

While there are limitations to the notification requirements for events, providing publicly available information to nearby residents and other sensitive receivers as well as minimising

the most “offensive” (loud, bass frequency, high number of patrons) event programming to the middle of the day, amongst other measures, are useful ways in which to proactively minimise potential noise complaints.

**Recommendation 8:** The Noise Guide for Local Government Guide include specific reference to proactive steps that could be employed to minimise noise complaints before they occur, such as event organisers notifying the public and also promoting events to residents who are likely to be affected by noise emitted from the event.

### *Managing After-Hours Noise*

The NSW Police are often called to attend noise complaints after hours and may invest considerable time in resolving the conflict. Similarly, council officers may also be investigating the complaint not realising the Police have also been called. While there is often good interaction between local Police and council staff, the Guide could suggest development of notification or information-sharing protocols on after-hours noise complaints. This approach could also facilitate an agreed approach to the matter, which would take into consideration the perspectives of both Police and council. Ultimately it has potential to reduce duplication, reduce resourcing and enable more consistent regulation.

**Recommendation 9:** The Noise Guide for Local Government consider the use of notification or information-sharing protocols between NSW Police and councils regarding after-hours noise complaints.

### Section 2.8 - Garbage Collection

In relation to the case study for garbage collection from a supermarket, we note an added complexity in that the Environmental Planning and Assessment (COVID-19 Development – Extended Operation) Order 2020 allows for retail premises such as supermarkets, pharmacies and corner stores to operate 24 hours per day and allows for waste removal at these premises at any time. While this Order is currently in place to 31 March 2022, we note there are moves from some sectors for it to become status quo. This case study may need to be updated and/or have a sub-section to discuss the regulatory and non-regulatory options available under the current order.

The case study would also benefit from suggesting a review of DA conditions as delivery times, frequency and other noise activities are often covered in supermarket consents. This could be an alternate way to deal with the problem if a premise operates outside its DA conditions.

Note that the reference to clause 95 of the *Protection of the Environment Operations (Noise Control) Regulation 2017* should be changed to Section 95 of the POEO Act 1997.

**Recommendation 10:** The case study for garbage collection include reference to reviewing development approval conditions and also contemplate the COVID-19 rules for deliveries / collections.

## **Part 2 – Legal framework**

Section 4.1 outlines how the POEO Act deals with noise, and at the end notes that “*the POEO Act does not prohibit the emission of offensive noise generally*”. It would helpful for councils and other readers to understand the reason for this and how and why POEO can

therefore be used to fine or prosecute offensive noise. Additional content that succinctly explains under the legal basis for regulating offensive noise would be helpful.

Table 1 of the Guide refers several times to an 'offensive noise test' however this is not cross-referenced but appears in Section 4.2.1 at Table 5: 'Factors to be considered for assessing offensive noise'.

**Recommendation 11:** That references to the 'offensive noise test' be cross-referenced or hyperlinked to the information at Table 5.

#### Section 3.1.4 - Investigation provisions and powers

This section notes that the POEO Act provides authorised officers with the power to enter, search and turn off or disable building and motor vehicle alarms. It would be helpful to add a note advising that a warrant is required to enter residential premises to use the above power.

Given the potential for drones to aid with regulatory activities, it would also be useful to include information outlining whether this is appropriate, under what circumstances and any special considerations in their use.

It would also be helpful if this section outlined the types of evidence that may appropriate to collect in relation to demonstrating 'offensive noise'. This could potentially be added as an additional column to Table 5, or as an additional list under the same section.

**Recommendation 12:** That Section 3.1.4 include information on:

- the need for a warrant to enter residential premises to use relevant investigation powers.
- whether and in what circumstances drones may be used for evidence gathering.
- The types of evidence that may be appropriate to collect in order to demonstrate 'offensive noise'.

#### Section 4.2.4 - Noise abatement directions

Councils seek clarification on whether procedural fairness considerations apply to noise abatement directions as these directions have no right of appeal. Is there a requirement to issue a draft direction or a warning? We note that noise abatement directions are usually used to deal with immediate and temporary noise issues such as loud music, and therefore needing to issue a draft direction may stifle the usefulness of this as a tool for managing noise.

**Recommendation 13:** That Section 4.2.4 clarify whether procedural fairness considerations apply to noise abatement directions.

#### Section 5 – Managing noise through land use planning

We welcome this section acknowledging from the outset that implementing noise control strategies during the planning process is the most effective way to minimise noise impacts on communities. However including this statement and a greater emphasis on the merits of addressing noise at the planning stage in the Overview or Section 1.1 would ensure that message is front and centre. Assessing noise impacts at the development assessment /approvals stage can also result in better outcomes than managing noise conflicts through the regulatory process.



This section provides useful information on the various planning instruments. As council planning officers are often dealing with a plethora of issues in relation to any one application, a list of standard noise impact conditions or guidance on writing noise-related conditions would be of great assistance.

**Recommendation 14:** That the key message that implementing noise control strategies during the planning process is the most effective way to minimise noise impacts be included more strongly in the Overview or Section 1.1.

**Recommendation 15:** That Section 5 include standard noise impact conditions or guidance on writing noise-related conditions.

### Encroaching development

The Guide mentions but does not provide further detail regarding approaches to dealing with encroaching development, such as where there is existing development that is operating within its DA conditions but generating noise that could be deemed as offensive by a new development proposed nearby. A proponent for an encroaching development (eg residential) may argue that they are not obliged to incorporate noise attenuation measures into their proposal, as the obligation is on the existing land use not to generate noise levels greater than 5dB above background and not generate offensive noise.

**Recommendation 16:** That the Guide include a case study dealing with encroaching development and existing use rights.

## **Part 3 – Technical and Supporting Information**

### Section 8: Non-Regulatory Approaches

As outlined earlier in this submission, we recommend a greater emphasis on non-regulatory approaches be included early in the document e.g. Section 1. We note that the case studies in Section 2 consistently suggest non-regulatory approaches be considered before taking regulatory action. Councils consider that applying a non-regulatory approach can help promote communication between neighbours and can avoid the generation of further complaints.

## **Conclusion**

LGNSW appreciates the opportunity to comment on the draft Noise Guide for Local Government which is a foundational document for councils. The revised draft is an improvement and the inclusion of worked examples for a range of scenarios and the updated legal framework is particularly welcome. This submission provides recommendations that we consider will improve the usefulness of the Guide to councils in regulating noise in the local community.

## Summary of Recommendations

**Recommendation 1:** That the structure of the Noise Guide for Local Government be amended to:

- Strengthen references in Part 1 of the document to non-regulatory approaches being preferable to regulatory measures for resolving noise issues.
- Include more examples of feasible and reasonable noise management measures;
- More clearly identify and cross-reference fact sheets and tables to make them easier to find. For example include a page number for the tables.

**Recommendation 2:** That the Noise Guide for Local Government specifically outline the regulatory responsibilities and options for managing noise from drones and helipads.

**Recommendation 3:** That Figure 4 include reference to non-regulatory approaches, such as issuing a warning letter and/or other communication with those making the noise.

**Recommendation 4:** That the Noise Guide for Local Government make even more use of hyperlinks and cross-referencing to minimise repetition of content.

**Recommendation 5:** That the Noise Guide for Local Government provide explicit guidance and/or case studies for council officers to apply in circumstances where:

- c) noise complaints are received against a music venue operating wholly within its development consent, and/or
- d) where the activity has occurred over a long period of time without complaint.

The guidance should consider whether a determination of “offensive noise” can be made on an existing activity that has been conducted without issue over a sustained period of time.

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**Recommendation 11:** That references to the ‘offensive noise test’ be cross-referenced or hyperlinked to the information at Table 5.

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- The types of evidence that may be appropriate to collect in order to demonstrate 'offensive noise'.

**Recommendation 13:** That Section 4.2.4 clarify whether procedural fairness considerations apply to noise abatement directions.

**Recommendation 14:** That the key message that implementing noise control strategies during the planning process is the most effective way to minimise noise impacts be included more strongly in the Overview or Section 1.1

**Recommendation 15:** That Section 5 include standard noise impact conditions or guidance on writing noise-related conditions.

**Recommendation 16:** That the Guide include a case study dealing with encroaching development and existing use rights.

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