

Environment Protection Amendment Regulation 2024 (No 1)

Subordinate law SL2024–17

made under the

Environment Protection Act 1997, section 166 (Regulation-making power)

EXPLANATORY STATEMENT

OVERVIEW

This explanatory statement relates to the *Environment Protection Amendment Regulation 2024 (No 1)* (the Amendment Regulation). It has been prepared to assist the reader of the Amendment Regulation. It does not form part of the Amendment Regulation and has not been endorsed by the Assembly.

This statement must be read in conjunction with the *Environment Protection Act 1997* (the Act), the *Environment Protection Regulation 2005* (EP Regulation), and the Amendment Regulation. It is not, and is not meant to be, a comprehensive description of the Amendment Regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the court.

Background

The ACT Government has a vision for Canberra as a city where the night brings exciting opportunities for all Canberrans and visitors to connect, explore culture, work, and have fun. This vision is for a city after dark that is safe, easy to get around and accessible – where there is plenty to see and do, which is visible or easily found. A key part of this vision is for the talents and creativity of businesses, artists, and entrepreneurs to be readily showcased, valued, and supported.

Canberra's city centre is the pre-eminent nightlife and music destination in the ACT and an identified hub of our night-time economy (NTE). The city centre plays a significant role in supporting Canberra's live music and entertainment ecosystem, contributing to Canberra's character, economic and cultural identity, and attractiveness for residents and tourists. In recognition of this, in November 2023, the ACT Government established the City Centre Entertainment Precinct (CCEP) through the new territory plan. This fulfilled a commitment of the Parliamentary and Governing Agreement (PAGA) of the 10th Legislative Assembly to amend the

territory plan to create Entertainment Precincts, starting with a city entertainment precinct.

The territory plan identifies the CCEP as a hub of Canberra's NTE and aims to provide an iconic Canberra nightlife destination in a convenient and accessible location, with clear expectations around amenity for residents and protection of operations for entertainment venues. The City Plan identifies a priority direction for the CCEP to consolidate the nightlife character in the city centre to enable the continued growth of the night-time and visitor economy. Live music and entertainment businesses in the CCEP are a critical part of Canberra's NTE ecosystem and the character of Canberra's city centre. Live music and entertainment businesses are also integral to providing opportunities for local artists and are critical for developing Canberra's arts and live music industry, as well as Canberra's cultural identity in line with strategy three of the *Canberra: Australia's Art Capital: A Statement of Ambition for the Arts 2021-2026*.

Noise is a key planning consideration in entertainment precincts. Live and amplified music within entertainment precincts typically include low frequency, bass-heavy beats which travel farther than higher frequency noises. Low frequency noise also penetrates building facades more readily than high frequency noises, which can impact building occupants. Environmental noise, including noise from amplified music, is regulated under the EP Regulation, made under the Act. The ACT is divided into noise zones, each with its own noise standard for specified days in the week and hours in the day. While noise zones and noise standards are specified in the EP Regulation, the boundaries of noise zones are based on zoning set in the territory plan.

The CCEP core and frame is identified in the Inner North and City District Policy [Figure 14] of the territory plan and shown at *Figure 1* below. The CCEP core is an area within the CCEP supporting a clustering of higher noise emitting entertainment venues away from any currently constructed residential and commercial accommodation. The frame makes up the remainder of the CCEP. The CCEP frame contains a variety of venues which contribute to the entertainment scene, with existing residential and commercial accommodation developments within and adjacent to the CCEP frame. The CCEP frame supports entertainment uses while acting as a transition zone between the core and the areas adjacent to the CCEP.



Figure 1: City Centre Entertainment Precinct Core and Frame Map

Establishing appropriate noise standards for the CCEP core and frame will ensure the long-term sustainability of the CCEP. Without these, new and existing residents and other noise sensitive occupants in the CCEP could be impacted, live entertainment and music threatened, and existing venues and businesses potentially lost.

Accordingly, the ACT Government is amending the EP Regulation to introduce appropriate noise standards for the CCEP. This will support and protect existing businesses, encourage new businesses to establish in the precinct and grow the CCEP as the nightlife destination in Canberra. This will also minimise and better manage the risk of harm to human health from noise.

By supporting the CCEP through fit for purpose noise standards, the Government aims to grow and diversify Canberra's NTE, implement its vision for Canberra to be an arts destination, and for it to be an attractive place for people to live, visit, and work.

Overview of the Amendment Regulation

City centre entertainment precinct

This Amendment Regulation amends the EP Regulation to introduce appropriate noise standards for entertainment noise emitted in the CCEP.

The Amendment Regulation introduces noise zones and associated noise standards for both the CCEP core (zone B3) and CCEP frame (zone B4).

The new noise standards for the CCEP core and frame establish specific noise settings for entertainment noise emitted from a place other than a dwelling. Amendment Regulation clause 9 refers the definition of dwellings to *the Planning (General) Regulation 2023*, section 6.

Examples of entertainment noise include amplified music and live acoustic music.

These settings are new and are intended to protect and nurture entertainment venues and uses in the CCEP.

- the most permissive noise standards are for the CCEP core (zone B3); and
- noise standards for the CCEP frame (zone B4) are less permissive than the core but more permissive than the surrounding areas of the city centre.

The new noise standards for the CCEP core and frame introduce specific decibel measure (known as dB(C)) to reflect the low frequency noise usually associated with amplified music.

The Amendment Regulation further provides that for any other regulated noise emissions in the CCEP, such as construction noise, plant and equipment or music being played from a residential dwelling, there is effectively no change to current settings. These noise emissions will be regulated in accordance with standards that are equivalent to existing noise standards for these emissions in this area (that is, the standards for zone B1 or B2).

Other amendments

As well as providing new noise standards for the CCEP core and frame, the amendment regulation:

- amends the current noise standard for zone F by:
 - introducing commercial zone 3 (CZ3 – Services) to zone F of the EP Regulation to preserve existing noise standards applying to industrial zone 1 (IZ1) land that was changed to the CZ3 land use type following Territory Plan Variation 377 at Dairy Road, Fyshwick; and
 - removing land from CZ5 that falls in zone FA.
- introduces a new noise zone FA to apply noise standards for land in a commercial zone CZ5 that adjoins both the CCEP and zone G that was previously land in noise zone F.
- clarifies the circumstance where ‘a person is affected by noise’ under the EP Regulation; and

- amends the definition of city centre to align to the territory plan.

CONSULTATION ON THE PROPOSED APPROACH

The ACT Government released the *Noise in Entertainment Precincts Discussion Paper* (the Discussion Paper) and survey to seek feedback from the community about noise settings and noise standards in the CCEP, amongst other areas, to inform development of the Regulatory Impact Statement (RIS) and amendments to the EP Regulation. The survey received 414 responses from a range of stakeholders including community members, musicians, artists and entertainers, residents, business owners and property owners. An additional seven written responses were received.

Overall, there was a positive response to amending the noise standards in the entertainment precincts to boost the vibrancy of the NTE within the CCEP. The consultation found that the majority of respondents (89 per cent) supported increasing noise standards in the CCEP, with most of those respondents supporting the highest level of noise increases in the CCEP. Almost all stakeholders who identified as musicians, artists, entertainers, business owners, community members supported the increased. While most stakeholders identifying as residents (73 per cent) supported noise increases, stakeholders who identified as owner occupiers were the least supportive of noise level increases (32 per cent). Many respondents also supported including Thursday in weekend noise standards.

A detailed consultation report is available at [Attachment A](#) to the RIS.

Additional consultations

The ACT Government has undertaken significant consultation in relation to the future of the city centre, the proposed CCEP, noise levels for the CCEP and night-time economy, including the:

- Urban Sounds and Entertainment Consultation (2019); and
- Consultation on the Draft City Plan and City Centre Urban Design Guide (2023).

Feedback from these consultations indicated that Canberrans are supportive of increased noise and vibrancy in the CCEP and that they want more entertainment options in the city centre, including live music and other entertainment, and believe that noise regulations should be changed in the CCEP to support the night-time economy.

Consultation was undertaken on a minor plan amendment to the territory plan (MA2024-e) prepared in accordance with section 84(2)(d) of the *Planning Act 2023*. No comments were received during the consultation. The amendment became effective on 6 August 2024 and updated Figure 14 in the Inner North and City District Policy to show the boundaries of the core and frame areas within the CCEP.

COSTS AND BENEFITS

The amendments will introduce appropriate noise standards for the CCEP.

As amending the noise standards is likely to have an appreciable cost to certain stakeholders, a RIS has been prepared.

Key stakeholders that may be impacted by the amendments include owners and employees of noise emitting businesses within the CCEP, owners and employees of noise receiving businesses, residents living in the CCEP and on its boundary, property investors within the CCEP and on its boundary, artists and industry workers, patrons of live entertainment, and the ACT Government in its capacity as noise regulator.

Detailed analysis of potential costs and benefits is presented in the associated RIS.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The *Environment Protection Amendment Regulation 2024 (No 1)* engages the following rights:

- a. Section 12 - Privacy and reputation (*limited*).

Rights limited

Section 12 - Privacy and reputation

1. Nature of the right and the limitation (s28(a) and (c))

The right to privacy and reputation under section 12 of the *Human Rights Act 2004* (HR Act) states that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily, and not to have his or her reputation unlawfully attacked.

The right encompasses the idea that individuals should have a separate area of autonomous development, interaction and liberty, free from excessive government intervention and unsolicited intrusion by other individuals. Included in the protections under section 12 is the protection of the family home and/or place of residence from trespass, harassment, nuisance, searches or surveillance.

The Amendment Regulation provides noise standards for two new noise zones in the city centre. The new zones are:

- the CCEP core (zone B3); and
- the CCEP frame (zone B4).

The new noise zones for the CCEP introduce more permissive noise standards for entertainment noise. The RIS considers the impacts of more permissive standards

on residents living in existing buildings within, or on the boundary, of the CCEP frame. The RIS notes that more permissive noise standards may have privacy and amenity impacts for these residents. The amendments could impact on a person's ability to enjoy their home by increasing the threshold of permissible noise in the city centre. The amendments could also impact the internal comfort level and amenity of their premises as residents choose to keep windows or balcony doors closed in response to the external noise environment.

2. Legitimate purpose (s28(b))

The right to privacy and reputation protects against arbitrary and unlawful interference with privacy, family, home or correspondence and this right may be subject to reasonable and justifiable limits.

The purpose of the amendment is to support the implementation of a vibrant entertainment precinct in the city which prioritises and supports existing and future nightlife character and activities, including live music. Entertainment precincts give greater certainty to a broad range of people and stakeholders in the community, including patrons, businesses owners and employees, residents, and building owners. Updating noise standards will invigorate nightlife now and into the future and will support the ACT Government's objectives outlined in the City Plan.

3. Rational connection between the limitation and the purpose (s28(d))

The creation of an entertainment precinct in the city centre (as implemented through the planning reforms) brings with it a reasonable expectation that entertainment noise will be associated with this area. It is also reasonable to expect that in order to develop this area as an entertainment precinct, noise settings need to be established a level that protects existing live music and entertainment businesses and venues and nurtures the establishment of new ones. This is particularly important as densification increases and the likelihood of residential uses increases in the CCEP and the surrounding areas. Maintaining the status quo for noise settings would not support these aims and objectives for Canberra's night-time economy and the CCEP.

4. Proportionality (s28(e))

The Amendment Regulation will ensure that permissible noise levels reflect the reasonable expectations of a city with a vibrant nightlife, striking a balance between enjoyment of the night-time economy with enjoyment of a place of residence. The impact on the right to privacy and reputation is expected to be minimal and any limitations are proportionate.

As set out above, consultation with the community indicated that the majority of stakeholders were supportive of the changes, including 73 per cent of residents.

The extent to which existing residents are impacted by the changes in the noise standards for this area is dependent on a number of issues including an individual's sensitivity and tolerance to noise, the siting of their residence in relation to the source of entertainment noise, their attitude to and expectations regarding noise

emissions that are associated with central city living and the degree to which the building which they inhabit is attenuated to external noise levels.

While only 32 per cent of owner occupiers were supportive of the changes, there would be no appreciable changes to the noise environment impacting residents, including owner occupiers, living in or on the boundary of the CCEP.

The new noise thresholds reflect findings from recordings taken outside popular venues in March and June 2023, which indicated that the current noise levels are well above current standards. Data collected about the number of amplified noise complaints for the CCEP are lower than surrounding areas. For example, between 1 July 2019 and 28 April 2024, there were 145 noise complaints made in relation to noise generated in the CCEP, as compared to 729 noise complaints for Braddon over the same period.

Furthermore, there are avenues for noise complaints and a free Conflict Resolution Service available on the Access Canberra Noise Portal. Additionally, a new specialist position within the Environment Protection Authority (EPA) will work proactively with businesses and key stakeholders to support implementation of the new noise standards, with the aim of resolving issues and complaints before they occur. These mechanisms are important safeguards against any limitations on an individual's right to enjoyment of their home without undue nuisance due to noise pollution.

CLAUSE NOTES

Clause 1 – Name of Regulation

This clause names the regulation the *Environment Protection Amendment Regulation 2024 (No 1)*.

Clause 2 – Commencement

This clause specifies the commencement date of this regulation.

The Amendment Regulation will commence on the day after its notification day.

Clause 3 – Legislation amended

This clause specifies the Amendment Regulation amends the *Environment Protection Regulation 2005*.

Clause 4 – Section 21, definition of *affected person*

This clause omits the definition of *affected person* from the definitions section for Part 3.

The term *affected person* is now included in section 22 (3) to clarify its relationship to the definition of *affected place* in Part 3 (refer to Clause 5).

Clause 5 – Section 22 (3)

Subsection 22 (1) defines *affected place*. For noise being emitted from a place in the ACT, an *affected place* means a place (other than a road or road related area), whether inside or outside the ACT, where a person is **affected by noise** (*emphasis added*).

Clause 5 of the Amendment Regulation provides further clarification regarding where a person at a place (the *first place*) is affected by noise emitted from another place in the ACT (*emitted noise*). Clause 5 substitutes new section 22 (3) to clarify that the person is affected by noise if:

- (i) the person is an occupier of the first place (an *affected person*); and
 - a. *occupier* is now defined in new subsection 22 (4) (see below).
- (ii) the person complains about the emitted noise to an unauthorised officer; and
- (iii) the noise level at the first place exceeds the noise standard for that place because of the emitted noise.

Clause 5 of the Amendment Regulation also introduces the definition of an *occupier* into Section 22. The definition of *occupier* which was previously contained within the now omitted definition of *affected person* in Section 21.

New subsection 22 (4) provides that an *occupier* of a place is a person who is lawfully at a place on either unleased land, or public land under section 153 of the *Crown Lands Act 1989* (NSW).

Clause 6 – Section 24 (1)

The Amendment Regulation creates two new noise zones for the CCEP (see Clauses 10 and 13):

- noise zone B3 for the CCEP core; and
- noise zone B4 for the CCEP frame.

Clause 6 of the Amendment Regulation establishes new noise standards for the CCEP core and frame noise zones. The CCEP noise standards differ depending on the type of noise emitted:

- entertainment noise from a place other than a dwelling (referred to in this Explanatory Statement as *entertainment noise*);
- in any other case in which noise is emitted from a place in the CCEP (referred to in this Explanatory Statement as *any other noise*).

Section 24 (1) (c) (i) provides that the noise standard for entertainment noise in the CCEP is set out in schedule 2, Table 2.2AA to the EP Regulation (see Clause 17). The standards for entertainment noise are more permissive than current standards. This change is to support the aims and objectives of this area as the preeminent location in Canberra for live music, entertainment and the night-time economy.

- Clause 9 provides definitions for entertainment noise and dwelling.

Any other noise emitted from a place within the CCEP core and frame is now considered through subsections 24 (1) (c) (ii). This section provides that:

- if any other noise is emitted from a place in the Central National Area (City Hill Precinct), then zone B2 noise standards apply as if the place was on zone B2 land, and
- if any other noise is emitted from a place in the CCEP core or frame that is not in the Central National Area, zone B1 the noise standards apply as if they were on zone B1 land.

The effect of subsections 24 (1) (c) (ii) (A) and (B) is to ensure that any other noise (such as construction noise, plant and equipment or amplified music played from a residential dwelling) continues to be regulated in accordance with same standards that are currently apply to these emissions (that is, those for zones B1 and B2).

The new noise standards for the CCEP Core and Frame are summarised in Tables 1 and 2 below.

Table 1. CCEP core (noise zone B3) noise standards:

	Entertainment Noise		Any Other Noise	
	Sunday - Wednesday and Public Holidays 10 am - 11 pm Thursday - Saturday 10 am - 1 am	All other times	Monday - Thursday 7 am - 10 pm Friday and Saturday 7 am - 12 am Sunday and Public Holidays 8 am - 10 pm	All other times
dB(A)	75	60	60	50
dB(C)	90	75	N/A	N/A

Table 2. CCEP frame (noise zone B4) noise standards:

	Entertainment Noise		Any Other Noise			
			(City Hill Precinct)		(All other Areas of Frame)	
	Sunday- Wednesday and Public Holidays 10 am - 11 pm Thursday - Saturday 10 am - 1 am	All other times	Monday - Saturday 7 am - 10 pm Sunday and Public Holidays 8 am - 10 pm	All other times	Monday - Thursday 7 am - 10 pm Friday and Saturday 7 am - 12 am Sunday and Public Holidays 8 am - 10 pm	All other times
dB(A)	65	55	60	50	60	50
dB(C)	80	70	N/A	N/A	N/A	N/A

Clause 7 – Section 24 (2) (a) and (b)

This clause replaces the measurement unit dB(A) with the measurement unit dB. This broadens the decibel measurement unit to allow for noise standards to be measured in dB(A) and dB(C) measurement units. This amendment to include dB(C) enables assessment of the low frequency noise usually associated with amplified music and night-time economies.

Clause 8 – Section 24 (2) (c)

This clause omits the measurement unit dB(A) and is replaced with the measurement unit dB. This broadens the decibel measurement unit to allow for noise standards to be measured in dB(A) and dB(C) measurement units. This amendment to include dB(C) enables assessment of the low frequency noise usually associated with amplified music and night-time economies.

Clause 9 – New section 24 (3)

This clause inserts a new subsection in Section 24 for definitions for terms that are relevant to the new noise standards for entertainment noise in the CCEP. These are:

- *Central National Area (City Hill Precinct)*, as this is relevant to the noise standards that will apply to any other noise emissions from a place in this area;
- *Dwelling*, as the new noise standards for entertainment noise emissions in the CCEP do not apply to entertainment noise from a dwelling; and
- *Entertainment noise*, meaning noise generated for entertainment purposes, with examples of amplified music and live acoustic music provided. The *Note* for this definition makes clear that noise does not extend to noise made by a person using only the person's body.

Clause 10 – Schedule 2, section 2.1, new definitions

This clause inserts new definitions in section 2.1 of schedule 2. It defines:

- *CCEP core* to mean an area identified as the core area within the city centre entertainment precinct in the territory plan;
- *CCEP frame* to mean the area identified as the frame area within the city centre entertainment precinct in the territory plan.

The boundaries of the CCEP core and frame are depicted in Figure 1 in this Explanatory Statement.

Clause 11 – Schedule 2, section 2.1, definition of *city centre*

This clause substitutes the definition of *city centre* to clarify its meaning as the area identified as the city in the territory plan.

Clause 12 – Schedule 2, section 2.1, new definition of *commercial CZ3 zone*

This clause inserts new definitions in section 2.1 of schedule 2. It defines:

- *commercial CZ3 zone* to mean an area designated as a commercial CZ3 (Services Zone) zone in the territory plan.

This definition has been included to support updates relating to Territory Plan Variation 377 in Fyshwick (see also clause 14). This is not a night-time economy related reform.

Clause 13 – Schedule 2, table 2.1, items 2 and 3

This clause reflects the introduction of zones B3 and B4 as referenced in clause 6. Table 2.1 adds items 3A and 3B to provide zone B3 as land in the CCEP core and zone B4 as land in the CCEP frame.

To align with the creation of new zones for the CCEP core and frame, clause 13 also amends items 2 and 3 to exclude land in the CCEP from zone B1 and zone B2.

- As noted for clause 6, the noise standards for the CCEP core and frame refer to the noise standards for B1 and B2 but only for any other noise, not for entertainment noise. This ensures that any other noise emissions in the CCEP are regulated according to the B1 and B2 standards.

Clause 14 – Schedule 2, table 2.1, item 8

This clause substitutes sections of table 2.1 in schedule 2 to support the operationalisation of zone F and the introduction of zone FA. This includes:

- the inclusion of commercial CZ5 zone and commercial CZ3 zone into Item 8, Column 3 (zone F), except where the CZ5 land is in the new zone FA (see also clause 12); and

- the insertion of a new zone FA that preserves the existing noise standards to land (other than land in the city centre, town centres and group centres) in a commercial CZ5 zone that is adjoining both the CCEP frame and zone G land.

Without the creation of the new Zone FA, the existing zone F land would be the same as the next highest adjoining noise standard, now being the CCEP frame. Zone FA ensures that the noise settings for the CCEP frame do not extend the boundary of the CCEP frame.

Clause 15 – Schedule 2, table 2.2 heading

This clause substitutes the table heading “Noise zones other than zones B1 and C1” with “Noise zones other than zones B1, B3, B4 and C1”. This amendment makes it clear that the noise standards that apply to the CCEP core and frame noise zones are prescribed elsewhere.

Clause 16 – Schedule 2, table 2.2, new item 6A

The clause states the noise standard for zone FA is 60dB(A) (Column 3) and 50dB(A) in (Column 4). This amendment ensures that existing zone F noise standards for land commercial CZ5 land adjacent to the CCEP are preserved through zone FA.

Clause 17 – Schedule 2, new table 2.2AA

This clause inserts a new table 2.2AA to introduce noise standards for noise zones B3 and B4 that apply to entertainment noise in the CCEP. Columns 5 and 6 now provide noise standards for dB(C) in addition to the existing dB(A) standards.

This table now provides that for entertainment noise in zones B3 and B4, the following noise standards will apply.

CCEP core (zone B3):

- Sunday to Wednesday and Public Holiday, 10 am – 11 pm, and Thursday to Saturday, 10 am – 1 am: 75 dB(A) 90 dB(C).
- All other times: 60 dB(A) 75 dB(C).

CCEP frame (zone B4):

- Sunday to Wednesday and Public Holiday 10 am – 11 pm, and Thursday to Saturday 10 am – 1 am: 65 dB(A) 80 dB(C).
- All other times: 55 dB(A) 70 dB(C).

Clause 18 – Dictionary, definition of *affected person*

This clause omits the definition of *affected person* from the EP Regulation dictionary to align with clauses 4 and 5.

Clause 19 – Dictionary, new definitions

This clause inserts the following definitions into the EP Regulation dictionary:

- *CCEP core*;
- *CCEP frame*;
- *city centre entertainment precinct*; and
- *commercial CZ3 zone*.