

Draft Submission on the Construction Noise Guideline

April 2021

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 input into draft Construction Noise Guideline. LGNSW notes that the document is primarily written for use by the Environment Protection Authority (EPA) as the primary environmental regulator but can also be used by consent authorities such as councils in conditioning or regulating developments.

This submission is a draft submission awaiting review and endorsement by LGNSW's Board, and any amendments will be forwarded in due course.

Background

Local Government has key responsibilities as consent authorities for local development, as active land managers, through strategic planning and in influencing future development and planning decisions.

The (then) Department of Environment and Climate Change issued the *Interim Construction Noise Guideline* in 2009. The draft Guideline contains much of the same content but has been restructured and some additional detail added, for example on community engagement, definition of terms and on the use of the Guideline.

Response

Councils also tend to be the first port of call for residents who are experiencing noise impacts, regardless of whether 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 from construction.

In particular, the *Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020* allowing extended days for construction work has reinforced the need to consider and properly manage noise impacts on the community. The NSW Government recently extended the prescribed period for the temporary planning measures until 31 March 2022.

There is an opportunity to further improve this draft document by providing a designated section for “emergency work”. Councils are often contacted by the community about emergency work, which is completed by contractors during emergency night time upgrades. While this activity may not specifically relate to ‘construction’ in the sense of development, it still creates the same type of noise that is covered by this draft guideline. Consequently, it is recommended that Section 2.2.3 be expanded to include more information about the vital role emergency works play and more direction on the appropriate complaints handling process.

Recommendation 1: Expand Section 2.2.3 on emergency works, including guidance on the complaints handling process.

In 2018 the Upper House Portfolio Committee report into [Music and the Arts Economy in NSW](#) noted that “the current dispute resolution system for noise complaints is deeply flawed and

unpragmatic”, with “too many regulatory bodies in the mix” (p156). The Committee recommended the NSW Government give consideration to establishing a one stop shop for noise regulation. Although this recommendation related to managing noise from licensed venues, the challenges identified by the Committee also apply to construction noise and especially emergency works.

Residents are often not aware of the organisation that is undertaking emergency works, let alone who would be the appropriate regulatory authority, so residents often contact Council instead of contacting the relevant authority / organisation directly. In order to provide further clarity about who is responsible for managing these emergency works, it is suggested that improved identification signage and contact details be provided for all emergency works.

Recommendation 2: Require emergency works to provide improved identification signage and contact details that are readily accessible to residents/ businesses.

In broad terms the proposed approach to align the level of assessment required for construction work projects with the risk of noise impact is supported. The EPA has also sought feedback on the proposed use of ‘industry management procedures’ for common / routine activities where the proponent is also the determining authority under Part 5 of the EP&A Act.

The guideline encourages public authorities to develop and use industry management procedures to lessen the burden of detailed assessment every time routine work is scheduled. These procedures would outline how the public authority will manage noise impacts from routine maintenance and construction work on public infrastructure. The guideline notes that the EPA will still regulate and monitor compliance even if an industry management procedure is being used. While LGNSW appreciates the need and benefit of streamlining procedures, it is important that they are well-designed and effective.

Recommendation 3: The EPA review industry management procedures before they are widely used, to confirm appropriate methods and measures have been used.

A concern of councils in relation to the Interim Guideline has been a lack of guidance for proponents on consulting with the local community regarding construction noise. Section 7 of the draft guideline provides useful information on pre-approval community consultation approaches, including the use of community consultation plans which was lacking in the Interim Guideline.

However the guideline is focused on major infrastructure / development, rather than the vast majority of local development (eg typical multi storey residential building located immediately adjoining other residencies) where community engagement before or after the issue of a consent is unlikely to take place. It would assist local government, developers and the community if standard development conditions were developed, which were suitable and proportionate to the scale and type of local development.

Recommendation 4: That EPA work with DPIE, in consultation with councils, to develop standard development conditions for construction noise that reflect the scale and type of local development.

The guideline has limited information on practical strategies to deal with noise from these developments during construction, particularly given that the development consent would have been issued some time before that. There is no ability for Councils to impose additional

conditions on the consent or require consultation or community engagement part-way into the construction work.

Recommendation 5: Provide additional information on practical strategies for consent authorities in dealing with construction noise post-approval.

Councils cannot impose conditions on complying development, however the NSW Government is increasingly redesigning State Environmental Planning Policies (SEPPs) to identify more and more development as complying. These SEPPs need to include provisions to require compliance with this guideline as condition or pre-condition, including preparation and compliance with noise management plans.

Recommendation 6: In SEPPs that identify complying development, the EPA work with DPIE to include provisions requiring compliance or consistency with the Guideline, particularly preparation and compliance with noise management plans.

Section 5.3.1 provides technical notes to the application of noise management levels for airborne noise at residences. Point 3 of those notes states that predicted noise levels are determined at the property boundary most exposed to construction noise at a height of 1.5m above ground level, whereas Section 5.5 refers to indoor measurements.

Recommendation 7: The Guideline needs to be clear what point of measurement applies for residential settings.

Section 5.3 also notes the management level for airborne noise at residences during standard hours to be considered noise affected is the Rating Background Level (RBL) + 10dB. Some councils consider this to be unrealistic for many development types and should be reviewed to ensure it is appropriate.

Recommendation 8: Review the noise management level for airborne noise at residences to ensure it is appropriate.

Section 5 notes situations where construction noise levels are predicted to be above the recommended noise management levels and discusses supplementary mitigation options and actions. The guideline states:

“The noise affected and highly noise affected management levels (outside the recommended standard hours) seek to limit noise impacts as far as practicable. This does not mean no noise impacts will occur. Rather, the noise management levels represent a threshold for consideration of supplementary mitigation to protect the community from noise outside the recommended standard hours.” (pg 22)

The guideline goes on to suggest mitigation methods, such as offering alternative accommodation to residents. The guideline also notes that where alternative accommodation is not accepted by residents, residual noise impacts may occur even after all feasible and reasonable mitigation. This seems to imply that all construction works will be approved providing the proponent has made an effort to mitigate noise. The guideline is missing detail on what steps can be taken where the affected community or the consent authority consider that measures proposed to mitigate impacts are insufficient or inappropriate.

Recommendation 9: The guideline clarify whether there is a point at which the consent authority can reject the proposed works, and if so, provide guidance on how to determine that threshold and what actions the consent authority has available to them.

Section 5.7 discusses sleep disturbance at residences, outlining the factors that may be important in assessing the extent of impact. LGNSW suggests that this should include consideration of the nature of the noise eg sharp high-pitched noise vs lower frequency ongoing noise. This could also be cross-referenced to Section 5.8 which discusses adjustments for special audible characteristics.

Recommendation 10: The Guideline include consideration of the nature of the noise in its list of factors relevant to assessing extent of impact.

Section 5.8 provides examples of special audible characteristics, stating that a single 5dB penalty should be added to the predicted quantitative assessment. However the section ends with *“It is not necessary to determine special audible characteristics through a quantitative method if it is likely that certain equipment or activities will be perceived as particularly annoying or disturbing.”*

Recommendation 11: The words “it is sufficient to add the penalty” be added to the end of Section 5.8 in order to minimise confusion.

Conclusion

LGNSW appreciates the opportunity to comment on the draft Construction Noise Guideline, which includes a number of improvements from the Interim Guideline. This submission provides recommendations that we consider will improve the usefulness of the Guideline to councils in regulating construction noise in the local community. These are:

Recommendation 1: Expand Section 2.2.3 on emergency works, including guidance on the complaints handling process.

Recommendation 2: Require emergency works to provide improved identification signage and contact details that are readily accessible to residents/ businesses.

Recommendation 3: The EPA review industry management procedures before they are widely used, to confirm appropriate methods and measures have been used.

Recommendation 4: That EPA work with DPIE, in consultation with councils, to develop standard development conditions for construction noise that reflect the scale and type of local development.

Recommendation 5: Provide additional information on practical strategies for consent authorities in dealing with construction noise post-approval.

Recommendation 6: In SEPPs that identify complying development, the EPA work with DPIE to include provisions requiring compliance or consistency with the Guideline, particularly preparation and compliance with noise management plans.

Recommendation 7: The Guideline needs to be clear what point of measurement applies for residential settings.

Recommendation 8: Review the noise management level for airborne noise at residences to ensure it is appropriate.

Recommendation 9: The guideline clarify whether there is a point at which the consent authority can reject the proposed works, and if so, provide guidance on how to determine that threshold and what actions the consent authority has available to them.

Recommendation 10: The Guideline include consideration of the nature of the noise in its list of factors relevant to assessing extent of impact.

Recommendation 11: The words “it is sufficient to add the penalty” be added to the end of Section 5.8 in order to minimise confusion.

For further information, please contact Susy Cenedese, Strategy Manager Environment, on susy.cenedese@lgnsw.org.au or 02 9242 4080.