



City of Ryde

OFFENSIVE NOISE MANAGEMENT
POLICY
2008-2011

ADOPTED: 2 DECEMBER 2008

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1.0 INTRODUCTION

The City of Ryde has responsibilities for managing environmental noise from a wide range of neighbourhood noise sources, including:

- construction work
- non-scheduled industrial premises
- commercial premises
- domestic air conditioners
- pool pumps
- power tools
- musical instruments and sound equipment
- intruder alarms
- motor vehicles on premises
- animals and birds.

This policy explains the approach that the City of Ryde will take in relation to managing offensive noise in the City of Ryde.

Offensive noise is defined as noise:

(a) that, by reason of its strength, nature, duration, character or quality, or the time at which it is emitted, or any other circumstances:

(i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or

(ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or

(b) that is of a strength, nature, duration, character or quality prescribed by the regulations or that is emitted at a time, or in other circumstances, prescribed by the regulations.

Offensive noise can occur at any time of the day, regardless of any times of use specified in the regulations.

The City of Ryde acknowledges that it has an obligation under Section 8 of the Local Government Act 1993 to ensure that the exercise of its regulatory power is carried out consistently and without bias.

The policy will be followed in all but extenuating circumstances, and applies to all Health and Building staff, Rangers and contractors where Ryde City Council has regulatory responsibility under NSW legislation.

This policy was adopted by the City of Ryde on 2 December 2008.

2.0 PURPOSE OF POLICY

The purpose of the policy is:

- To confirm that the City of Ryde has an educational approach to minor and initial offensive noise incidents and a minimum tolerance approach to serious and continual offensive noise incidents.
- To provide consistency in enforcement matters of environmental noise control, and to ensure transparency, procedural fairness and natural justice.

Note: In the event of any inconsistency between this policy and Council's Enforcement Policy, the requirements of the Enforcement Policy will prevail to the extent of that inconsistency.

3.0 POLICY OBJECTIVES

The objectives of this policy are to:

- Educate the residents within the City of Ryde, Councillors and staff of the strategies used by City of Ryde to prevent noise impacts.
- Specify procedures for after hours noise incidents.
- Specify requirements for noise impact assessment reports.
- Inform the community of Council's complaint management procedures.
- Inform the community of Council's noise management approach and powers to deal with noise problems.
- Provide guidance for Council staff on the use of regulatory and enforcement options.

4.0 CITY OF RYDE VALUES

The City of Ryde Values will apply to all actions taken under this policy.

Council's Values are:

- Professionalism
- Teamwork
- Leadership
- Ethics
- Pride
- Recognition

This Policy aligns with the values and principles of the City of Ryde along with the requirements of any relevant legislation.

5.0 PREVENTING NOISE IMPACTS BY LAND-USE PLANNING

Council considers potential noise impacts when developing new planning instruments or policies, and assessing development applications.

Where a proposal will create significant noise or a new noise-sensitive development is proposed near an existing noise source (eg. near a major road or rail corridor), Council may require the applicant to submit a noise impact assessment report.

Council may also include conditions on development consents to control or mitigate noise impacts.

In particular, all development consents for demolition or construction work include a condition restricting the hours of work to:

- 7.00am to 7.00pm Monday to Friday; and
- 8.00am to 4.00pm on Saturday.

No demolition or construction work is permitted on Sundays or Public Holidays.

6.0 NOISE IMPACT ASSESSMENT REPORTS

Noise impact assessment reports must be prepared by a suitably qualified acoustical consultant and include the following details:

- a description of the project and surrounding locality
- details of all potential noise sources
- existing acoustic environment (including background noise levels)
- details of the instrumentation and methodology used for noise measurements
- a plan showing the locations of all noise sources, measurement positions and affected receivers
- relevant guidelines or policies
- project-specific noise goals
- details of the measures proposed to control or mitigate noise
- predicted noise levels
- an assessment of the noise impact
- recommendations and conclusions.

7.0 COMPLAINT MANAGEMENT

When a customer service request is received, Council will endeavour to act on the request as quickly as possible.

Where possible, an authorised officer will visit the site and assess to the noise to determine whether the complaint is reasonable.

7.1 Responding to Complaints of Offensive Noise Incidents

Complaints will be investigated and actioned in accordance with priority. Action should be instigated within the principles nominated in the Risk Response Model of the Enforcement Policy. Generally, response will be:

- a) **Urgent matters** are a priority and will be actioned on the day of complaint. The severity of the noise incidents may be such that they may result in the interference with sleep of a resident or the amenity of a property. Examples include: Unauthorised construction activity at night.
- b) **Significant nuisance matters** an immediate response is required. Examples include use of heavy machinery or power tools in residential areas and construction work on a Sunday or Public Holiday.
- c) **General compliance issues** within 3 working days. The severity of such incidents is such that there is no immediate potential for physical or psychological harm to persons, property or the environment. However there is potential for adverse amenity impacts. Examples include: after hours construction not in accordance with the development consent.
- d) **General nuisance matters** actioned within 10 days. Examples include minor alleged noise incidents that do not have an immediate adverse impact. Examples include inappropriate operating times for pool pumps and air conditioners.

Environmental Health and Building staff will respond to all complaints or notifications relating to alleged offensive noise incidents in keeping with Council's Values and Principles within 5 working days of receipt. Complainants will be advised of the progress and outcome of all investigations.

7.2 Investigating Noise Incidents

All complaints and matters regarding environmental noise will be investigated unless:

- the matter has already been resolved; or
- a private Principal Certifying Authority (PCA) is responsible for monitoring compliance with the development consent and the matter relates to compliance with approved drawings. To assist customers, Council will always refer them to the PCA in the first instance to remedy a complaint

(Council will liaise with the PCA and investigate matters outside the scope of the property boundaries, matters that are life threatening or may cause property damage or where there is likely to be significant local nuisance impacts); or

- the Council has no jurisdiction (such as a WorkCover matter), or
- the activity alleged to be unlawful is in fact determined to be lawful without an investigation required (eg. Exempt Development); or
- the complaint is frivolous, vexatious or trivial in nature.
- If a decision was made not to further investigate the complaint, the decision will be recorded along with clear reasons why it was not investigated and the complainant will be advised in writing of the reason for the decision.

Note: All conversations and observations will be documented and recorded.

7.3 Enforcement Responses

The following factors will be considered when making a decision as to the type of enforcement action that is applied:

- the seriousness of the harm or potential harm caused by the noise incident;
- the level of malice or culpability of the noise
- whether there has been a previous noise incident;
- the likelihood of the offence continuing or being repeated;
- any mitigating or aggravating circumstances;
- the standard of evidence that has been collected;
- the length of time since the alleged offence;
- whether the consequences of any conviction would be unduly harsh or oppressive;
- whether court orders are required to prevent a recurrence of the offence;
- the prevalence of the alleged offence and the need for deterrence, both specifically and generally:
- the cost of the proposed response option compared to the benefits of that option; and
- the likely public perception of the offence and the manner with which it is dealt.

However, the overriding consideration in taking enforcement action will always be the public interest.

7.4 Enforcement Action

Enforcement action includes:

- Education and warnings
- Notices, directions and orders
- Penalty infringement notices
- Legal proceedings

Most offensive noise incidents can be resolved with education and a verbal or written warning. This approach will be adopted for all “first offence” noise incidents. Subsequent or continual noise incidents will be approached with minimal tolerance.

8.0 AFTER-HOURS COMPLAINTS

After-hours calls are diverted to an after-hours call service. The call service operator records the details of the complaint and forwards an e-mail to Council’s Customer Service Centre. An SMS message can also be sent to an after-hours duty officer for action where appropriate.

Matters requiring urgent action would include:

- noise that is likely to be harmful
- construction noise
- after hours business operations (home business, industrial, commercial and retail)
- noise causing widespread community annoyance
- noise causing significant night-time sleep disturbance.

Council rangers are rostered on duty between 8am and 5pm on weekends and public holidays and can respond to urgent noise complaints during those times. They can also contact Environmental Health staff for advice or assistance if required. For **substantiated serious noise incidents** (apart from anti-social behaviour, eg. parties), Council Rangers can respond after 5pm.

The enforcement approach for after-hours offensive noise incidents is as follows:

Daytime (Weekends and Public Holidays):

Daytime (after-hours) complaints on weekends and public holidays will be referred to the Duty Ranger who will carry out an initial investigation. These complaints are generally for construction work or businesses operating outside the hours of their development consent. The Duty Ranger will

interview the persons involved and collect evidence (photos, etc.) and issue warning letters for the Environmental Health Officers or the Building Compliance Officers to follow up.

In the event of construction noise (and business operations) associated with **work occurring outside hours approved** under the Development Consent, the Rangers will have the authority to issue a written warning for the first offence. For the next offence a Penalty Infringement Notice will be issued for non-compliance with conditions of consent.

In the event of construction (and business operations) **noise associated with unapproved development**, the Rangers will have the authority to issue a written warning for the first offence. For the next offence a Penalty Infringement Notice will be issued for failure to obtain development consent.

In the event of construction (and business operations) **noise which appears to be exceeding the limits specified** in the development consent, the Rangers will be authorised to issue a written warning and then will liaise with the Environmental Health Officers to monitor the site to determine if the noise levels have been exceeded.

Night-time:

For anti-social noise such as parties, complainants will be advised to contact the Police. Police have powers to issue noise abatement directions and are the main agency for dealing with neighbourhood noise problems when Council officers are not available or safety is a concern (eg. late-night parties).

In the event of construction noise (and business operations) associated with **work occurring outside hours approved** under the Development Consent, the Rangers will have the authority to issue a written warning for the first offence. For the next offence a Penalty Infringement Notice will be issued for non-compliance with conditions of consent.

In the event of construction (and business operations) **noise associated with unapproved development**, the Rangers will have the authority to issue a written warning for the first offence. For the next offence a Penalty Infringement Notice will be issued for failure to obtain development consent.

In the event of construction (and business operations) **noise which appears to be exceeding the limits specified** in the development consent, the Rangers will be authorised to issue a written warning and then will liaise with the Environmental Health Officers to monitor the site to determine if the noise levels have been exceeded.

Non-urgent matters will be referred to the Environmental Health and Building Service Unit on the next working day for investigation and appropriate action.

9.0 NOISE ASSESSMENT

9.1 General

A noise assessment usually involves an authorised officer listening to the noise and verifying factors such as:

- the location of the noise source
- the audibility of the noise at certain locations
- the time and duration of the noise
- the characteristics of the noise
- the reported impact of the noise.

A noise assessment may also involve measuring the level of the noise and its characteristics.

9.2 Assessing Offensive Noise:

To determine whether noise is offensive, the authorised officer should listen to the noise or obtain signed statements from witnesses regarding the impact of the noise.

The following factors should be considered when deciding whether the noise is offensive:

- Is the noise loud?
- Is the noise well above the background noise level?
- Does the noise include any annoying characteristics such as tonality, impulsiveness or intermittency?
- Does the noise occur at times when unreasonable interference with comfort or repose is likely (eg. during the evening or at night)?
- How often does the noise occur (eg. hourly, daily, monthly)?
- Is the volume, duration or character of the noise typical of the activity in question?
- Is the noise likely to affect normal daily activities (eg. conversation, reading, studying, watching television or sleep)?
- Is the noise typical of activities conducted in the area?
- How many people are affected?

Also, where the authorised officer relies on a statement, the person giving the statement should be told that they may need to give evidence in court.

10.0 COUNCIL POWERS TO DEAL WITH NOISE PROBLEMS

Council has a range of powers to deal with noise problems. These powers are summarised as follows:

10.1 Protection of the Environment Operations Act 1997

Noise control notices:

Council can issue a noise control notice to prohibit the emission of noise above a specified level from a specified article or activity.

For example, Council may use a noise control notice to limit the level of noise that may be emitted by an air conditioner or refrigeration motor.

The notice commences on the day specified in the notice or, if an appeal is lodged against the notice, when the Court confirms the notice.

Noise abatement directions:

A noise abatement direction is a directive to cease the emission of offensive noise. The direction can be given verbally or in writing and remains in force for up to 28 days.

Noise abatement directions are commonly used to control noise from activities such as late-night parties, where a quick response is required.

Prevention notices:

Council can issue prevention notices to control activities that are being carried on in an environmentally unsatisfactory manner.

An activity is being carried on in an environmentally unsatisfactory manner if:

- it is not carried on by such practicable means as may be necessary to prevent, control or minimise the emission of any noise, or
- it is not carried on in accordance with good environmental practice.

A prevention notice must specify the action to be taken to remedy the problem. Examples of the types of actions that could be specified in a prevention notice include:

- installing, repairing, altering, replacing, maintaining or operating control equipment or other plant (eg. installing an acoustic enclosure around a noisy pool pump)
- modifying or carrying out work on plant (eg. fitting improved silencers to noisy equipment)
- ceasing to use plant or altering the way that plant is used (eg. keeping doors and windows closed when using power tools)

- ceasing to carry on or not commencing to carry on an activity (eg. spruiking)
- carrying on an activity in a particular manner (eg. not dropping materials during loading and unloading operations)
- carrying on an activity only during particular times (eg. restricting waste collection services to between 7.00am and 10.00pm)

10.2 POEO (Noise Control) Regulation 2008

The *Protection of the Environment Operations (Noise Control) Regulation 2008* ('the Noise Regulation') restricts the times that certain articles can be used on residential premises if the noise can be heard inside a habitable room of a neighbouring residence.

Table A: Time restrictions on use of articles

Type of Noise	Times when restrictions apply
Power tools and swimming pool pumps	Before 8am or after 8pm on Sundays and public holidays Before 7am or after 8pm on any other day
Musical instruments and sound equipment	Before 8am or after midnight on any Friday, Saturday or day immediately before a public holiday Before 8am or after 10pm on any other day
Air conditioners and heat pump water heaters	Before 8am or after 10pm on weekends and public holidays Before 7am or after 10pm on any other day

Under the Noise Regulation it is an offence to contravene the restrictions after a warning has been given by an authorised officer. The warning must be given within seven days of the noise occurring and remains in force for 28 days.

If an article is used during the restricted times within 28 days of a warning being given, and the noise is audible inside a habitable room of a neighbouring residence, an offence has been committed.

10.3 Environmental Planning & Assessment Act 1979

Where development consent is required under Section 76A of the *Environmental Planning & Assessment Act 1979* ('the EP & A Act') to carry out a development, a person must not carry out the development without consent or fail to comply with a consent for the development.

Under Section 121B of the EP & A Act, Council can also order a person using premises without consent to cease the use or order a person contravening a development consent to comply with the consent.

Before serving an order, Council must give notice of its intention to do so and consider any representations received.

10.4 Local Government Act 1993

Under Section 124 of the Local Government Act 1993, Council may order a person to do or refrain from doing certain things.

In particular, Council may order a person who is keeping animals or birds inappropriately to keep them in a specified manner or to cease keeping them. For example, Council may order the owner of a rooster that is causing a nuisance by crowing to cease keeping the rooster.

Before serving an order, Council must give notice of its intention to do so and consider any representations received.

10.5 Companion Animals Act 1998

Nuisance dog orders:

Under Section 21 of the *Companion Animals Act 1998* ('the CA Act') an authorised officer can serve a nuisance dog order if a dog makes persistent noise that unreasonably interferes with the peace, comfort or convenience of any person in any other premises.

Before serving an order, the authorised officer must give notice of his or her intention to do so and consider any objections made.

The order remains in force for 6 months after it is issued and failure to comply with the order is an offence.

Nuisance cat orders:

Under Section 31 of the CA Act an authorised officer can serve a nuisance cat order if a cat makes persistent noise that unreasonably interferes with the peace, comfort or convenience of any person in any other premises.

11.0 REPORTING NOISE PROBLEMS

Complaints about noise problems can be lodged with Council by telephone, facsimile, e-mail or post:

Telephone: 9952 8222

Facsimile: 9952 8070

E-mail: cityofryde@ryde.nsw.gov.au

Post: The General Manager
City of Ryde
Locked Bag 2069
NORTH RYDE NSW 1670

Anonymous complaints will not be investigated as the details of the complainant and the impact of the noise will be important in any prosecution.

All complaints about barking dogs must be in writing.

12.0 PRIVACY

Personal information provided by a complainant will not be divulged to third parties without the complainant's permission, subject to the provisions of the *Freedom of Information Act 1989*.

13.0 STAFF TRAINING AND AUTHORISATION

As a regulatory authority, Council is responsible for determining that any officer it authorises is sufficiently competent to act as an authorised officer.

In assessing whether an officer is competent to act as an authorised officer, Council will consider such factors as the officer's qualifications, training and experience.

All authorised officers will be issued with an identification card or certificate of authority as required by the relevant legislation.

Additional training will also be provided for authorised officers to ensure that their knowledge and skills are updated.

14.0 AUDIOMETRIC TESTING

All authorised officers responsible for investigating noise complaints must have their hearing tested at least every 3 years.

15.0 REVIEW OF POLICY

This policy will be reviewed every three (3) years and as required to reflect changes in noise legislation.

16.0 CONCLUSION

This policy has no legal status and cannot be used to limit Council's discretion to take any regulatory or enforcement action.

17.0 ACKNOWLEDGEMENT

The information contained in this policy is consistent with the *Noise Guide for Local Government* (DEC, 2004).