

ENVIRONMENT

4.1 WINGECARRIBEE'S DISTINCT AND DIVERSE NATURAL ENVIRONMENT IS PROTECTED AND ENHANCED

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Related Policies/Legislation:	<i>Protection of the Environment Operations Act 1997</i> <i>Protection of the Environment Operations (Noise Control) Regulation 2017</i> <i>SEPP (Exempt and Complying Development Codes) 2008</i> <i>Companion Animal Act 1998</i> <i>Local Government Act 1993</i> EPA Noise Policy for Industry 2017 EPA Noise Guide for Local Government 2013
Related Documents:	WSC Neighbourhood Noise Procedure

OBJECTIVES

The objectives of this policy are to:

- o prioritise investigation and compliance actions based on risk to public safety, human health and the impact on the community
- o provide consistency, transparency, procedural fairness and natural justice in enforcement matters of environmental noise control.

POLICY STATEMENT

Noise is a part of everyday life and can help to create a vibrant culture and community. However, some types of noise can lead to serious environmental amenity issues or cause stress, sleep disturbance and increase the risk of health problems.

Council, together with other agencies outlined in Table 1, have a role in managing local and neighbourhood noise complaints. This policy focuses on common neighbourhood noise. Noise from new development is managed through the development assessment or development compliance processes.



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Type of noise	Contact
Noise from licenced activities – such as large industrial sites	Environment Protection Authority
Noise from pubs and clubs	Liquor and Gaming NSW
Noise associated with antisocial behaviour such as parties and afterhours music	Police
Noise from vehicles on public roads	Police or Environment Protection Authority
Construction noise where there is a private certifier	Private certifier
Properties with strata title, such as units	Owners corporation
Other neighbourhood noise and noise from development or business activities	Council
Council operations	Council or the Environment Protection Authority

Council strives to provide good customer service while also managing available resources. All reports of noise issues are reviewed. Not all reports of noise issues will require a full investigation. When reviewing noise reports Council considers the ability or likelihood for the issue to be resolved through information and mediation. More detail on the process is outlined below.

In managing available resources, Council prioritises responses to the following noise issues:

- Noise that is likely to be harmful.
- Construction noise where the impact is significant.
- Business operations (home business, industrial, commercial and retail).
- Noise causing widespread community annoyance.
- Noise causing sleep disturbance.
- Activities associated with development without consent or a breach of consent, complying or exempt development activities.

Council has an educational approach and provides information and referral to free mediation with the Community Justice Centre. This is particularly relevant to some noise issues such as noise from air conditioners, pumps and tools where the *Protection of the Environment Operations (Noise Control) Regulation 2017* or other legislation has clear criteria for the time equipment can be audible and the level of noise. Where there are continued complaints by one person about another regarding more than one issue, or where the complaint is brought purely to cause annoyance or harm to the person, Council may refer the complaint to the Community Justice Centre as the most appropriate way to resolve the issue.

Where noise issues are complex, persistent, or have been unable to be resolved through mediation, Council may undertake an investigation. Council generally does not investigate noise issues based on anonymous complaints unless there is significant public risk related to the issue. Council may decide not to act on a noise complaint where there is no evidence to support the complaint.



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Council decisions about neighbourhood noise are guided by the *Protection of the Environment Operations (Noise Control) Regulation 2017*, *SEPP (Exempt and Complying Development Codes) 2008*, Environment Protection Authority (EPA) Noise Policy for Industry 2017, and the EPA Noise Guide for Local Government 2013.

NEIGHBOURHOOD NOISE COMPLAINT PROCESS

There are a number of pathways residents can use to resolve neighbourhood noise issues.

- Residents are encouraged to discuss the issue with the person responsible for the noise. The person may not be aware that the noise is causing a problem and will often take steps to fix the issue once they know.
- Residents can seek free, independent mediation through the Community Justice Centre.
- Court action is also available to residents at any time by seeking a Noise Abatement Order from the local court.

Before lodging a complaint with Council, residents should consider talking with the person responsible for the noise as this may be one of the best ways to solve the issue. Regulatory control may not always achieve the same result that talking to the person responsible can.

Lodging a complaint

If talking with the person responsible for the noise or mediation with the Community Justice Centre does not resolve the issue, a written complaint can be submitted to Council using the form on Council's website and also available by phoning Council. The exact address of the noise needs to be identified along with other information about the issue.

There are three phases for Council's response to noise complaints: an initial review, a detailed investigation and a decision on whether regulatory action is suitable. Not all phases of investigation will be required or suitable for all complaints.

Initial review stage

The initial review stage allows Council to determine the initial action required. In this stage Council:

- checks if the noise problem is likely to be related to development activities or requires a priority response, as outlined above
- checks if there are previous related complaints
- provides information to help residents resolve the noise issue. This may be through a phone call, visit or letter.
- provides information on the free mediation from the Community Justice Centre.

Council uses its discretion on what issues will require investigation.

Investigation

A more detailed investigation may be undertaken at the discretion of Council staff based on the evidence available. There is a need to base any regulatory action on credible and reliable



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information and evidence. Investigation could include a site visit, a request to complete a noise diary, measurement of the noise issue where this is required, and additional statements from neighbours.

Any information provided to Council may be used at any court hearing should this step be required. The noise diary contains a statement of agreement to act as a witness and provide evidence if the matter proceeds to Court.

Decision on regulatory action

Following a detailed investigation and assessment of evidence, Council decides whether any regulatory action is required. Council will not proceed past the first advisory letter stage unless there is clear evidence that a legitimate case exists based on an assessment by the authorised officer. Council officers will consider, amongst other things, a noise diary, statements from other neighbours and evidence that Community Justice Centre mediation has been attempted. Council may decide not to take regulatory action, for example when the noise issue does not meet the assessment for offensive noise or not enough evidence is available. Where Council decides not to undertake regulatory action, the complainant and person responsible for the noise are advised of the outcome and reasons for the outcome of the investigation, and no further action will be taken.

Where Council decides to take regulatory actions, Council has a range of powers for regulatory action of noise issues, which are outlined below. The regulatory action taken will depend on the individual context of the noise issue.

Residents are able to apply on their own behalf to the Local Court for a noise abatement order at any time. Useful information on applying for a noise abatement order is available on the Law Access NSW website at www.lawaccess.nsw.gov.au.

ASSESSING NEIGHBOURHOOD NOISE

The following section describes how noise issues are assessed. The *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Noise Control) Regulation 2017* applies in most instances and this section of the policy deals primarily with these types of noise issues. Noise from a barking dog is also controlled through the *Companion Animals Act 1998*.

There are two primary ways that neighbourhood noise is restricted under the *Protection of the Environment Operations (Noise Control) Regulation 2017* - by restricting the times that noisy equipment can be audible and, secondly restricting offensive noise.

Time restrictions for noisy equipment and machinery

The types of equipment restricted and times restrictions are detailed in the Wingecarribee Shire Council Neighbourhood Noise Fact Sheet. During the restricted times, equipment and machinery should not be able to be heard in a habitable room of another residential premise.

Offensive noise

The *Protection of the Environment Operations Act 1997* defines "offensive noise", noting that noise can be considered offensive according to its audibility, duration or inherently offensive



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characteristics. Noise can be offensive based on time of use or the character and nature of the noise regardless of the time of use. Assessment and decisions about offensive noise are made by an authorised officer. Officers will use their discretion about whether to take action based on the evidence available.

The offensive noise test relates to noise impacts on residential areas regardless of whether the activity is commercial or non-commercial. There are also additional controls for commercial activities in the Wingecarribee Local Environment Plan and conditions of development consent.

There are six questions that inform decisions about potentially offensive noise. Not every question needs to apply to the given context and the questions are used in combination to assess a situation rather than as stand-alone criteria. This policy serves to provide further information on these questions.

- 1) Is the noise loud in an absolute sense? Is it loud relative to other noise in the area?
- 2) Does the noise include characteristics that make it particularly irritating?
- 3) Does the noise occur at times when people expect to enjoy peace and quiet? How long does the noise last?
- 4) Is the noise atypical for the area?
- 5) Does the noise occur often?
- 6) Are a number of people affected by the noise? Are there other households also affected by the noise?

Intrusive noise

Noise is considered intrusive if it is noticeably louder than the background noise and considered likely to disturb or interfere with those who can hear it. Based on the EPA Noise Policy for Industry 2017, noise that is 5dB(A) above background levels is considered intrusive in most situations. Noise measurements are required to establish the level of noise above background levels. Intrusive noise may require mitigation measures to reduce the noise.

Sleep disturbance

When investigating noise where sleep disturbance is reported, Council officers will take into account the EPA Noise Policy for Industry 2017 for industrial sources of noise and the EPA Noise Guide for Local Government for other noise issues.

For non-industrial noise issues, a sleep disturbance complaint is considered to be substantiated where the noise exceeds one or both of the sleep disturbance screening criteria suggested in the EPA Noise Guide for Local Government.

Characteristics of an area

The characteristics of an area influence how noise is perceived. In deciding what type of noise is typical for an area, Council considers land uses permitted for that zone under the Wingecarribee Local Environment Plan and any activities that could reasonably be expected to be associated with the permitted land uses. Any relevant conditions of development consent are also taken into consideration when investigating noise issues.



Number of people affected

The number of people and households affected by the noise can play a part in the assessment of the noise and is particularly important where Council undertakes regulatory action. Robust evidence is required for regulatory action and this may require statements from more than one independent person such as other neighbours.

Bird scare guns

Audible bird scare devices are used by some orchardists and viticulturists to protect their crops. The noise, whilst seasonal, may present a noise problem for residents in close proximity to these properties.

The offensive noise test applies to bird scare guns. All practical measures must be undertaken to ensure the impact of the use of the scare gun on adjoining properties is minimised. Use of bird scare guns should comply with the performance criteria of the South Australian EPA Audible Bird Scaring Devices Environmental Noise Guidelines. Council uses both the performance criteria and management principles in the SA EPA Guidelines to guide decision making.

REGULATORY ACTIONS

If regulatory action is required for a neighbourhood noise issue, there are different pathways depending on the issue. These include: issuing a noise control notice, prevention notice or penalty notice under the *Protection of the Environment Operations Act 1997*; issuing a local order under the *Local Government Act 1993* and; issuing an animal nuisance order under the *Companion Animals Act 1998*.

Before issuing a notice or order, Council notifies the person responsible for the noise of its intention to issue a notice or order. The person may make representations to Council in writing (or verbally in certain situations such as emergencies) within the time frame specified about why the order or notice should not be issued, the conditions of the order/notice or the timeframes for actions to be undertaken. Council considers any submissions prior to issuing an order or notice.

After a noise control notice, local order or a prevention notice has been given, an appeal can be made to the Land and Environment Court within 21 days of being served with it, unless a different period is specified in the *Protection of the Environment Operations (Noise Control) Regulation 2017*.

The maximum penalty for failure to comply with a noise control notice under the *Protection of the Environment Operations Act 1997* is \$60,000 for corporations and \$30,000 for individuals, plus daily penalties for continuing offences. The maximum penalty for failure to comply with a prevention notice is \$1,000,000 for corporations and \$250,000 for individuals, plus daily penalties for continuing offences.

The maximum penalty for failure to comply with a nuisance order issued in relation to a dog is \$880 for a first offence and \$1650 for a second or subsequent offence.



SCOPE

This policy applies to Council staff and the public when dealing with neighbourhood noise issues where Council is the appropriate regulatory authority.

DEFINITIONS

Authorised officers – A Council employee appointed and delegated to undertake regulatory actions under section 187 of the *Protection of the Environment Operations Act 1997*.

Bird scare gun – An audible bird scare gas gun operated to deter bird damage of crops and other facilities.

dB(A) – A-weighted decibels, a measure of the relative loudness of sounds in air as perceived by the human ear.

Offensive noise – As defined under the *Protection of the Environment Operations Act 1997*, noise:

(a) that, by reason of its level, nature, character or quality, or the time at which it is made, 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 level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.



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RESPONSIBILITIES

Responsibilities for implementing this policy are shared between Councillors, Executive and staff as follows:

Position	Responsibility
Councillors	To lead the community in understanding this Policy.
Executive	To lead staff, either directly or through delegated authority, in the understanding of and compliance with this Policy.
Manager Environment and Sustainability	Review and update the Policy in conjunction with Group Manager Planning, Development and Regulatory Services
Group Manager Development, Planning and Regulatory Services, and Council Authorised Officers	Implement this Policy and related procedures when responding to and assessing neighbourhood noise issues.

PERFORMANCE MEASURES

The success of this policy will be measured by:

- Provision of easily accessible information for the community
- Consistency in Council's response to noise issues and best use of Council resources.

APPROVED BY:

WINGECARRIBEE SHIRE COUNCIL

14 November 2018

