

Local Nuisance Exemptions

Strategic Alignment - Our Community

Public

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**City Planning, Development
and Business Affairs
Committee**

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EXECUTIVE SUMMARY

This report responds to two Council resolutions regarding Council's role and approach in issuing Local Nuisance Exemptions under the *Local Nuisance and Litter Control Act 2016* (the Act), specifically regarding construction noise before 7am.

The Act defines what constitutes a local nuisance and outlines specific times that construction noise can occur. The Act also allows for exemptions to create noise outside the allowable hours to be issued by Council, subject to certain criteria and conditions.

Delegation to issue Local Nuisance Exemptions is provided to Authorised Officers trained and experienced in this area. When considering exemption requests, a range of circumstances are considered including the reason for the exemption, the potential impact to stakeholders if granting the exemption, and the impact of not granting the exemption.

Each exemption application needs to be individually assessed on its merits. Creating a 'blanket' set of rules where certain exemptions will not be permitted is contrary to the Act.

The appropriate and considered issuing of exemptions enables development to be facilitated to meet Council's strategic growth objectives. This report highlights factors that Authorised Officers consider when granting exemptions, including the creation of a new draft operating guideline.

It is acknowledged that noise-related nuisances can occur without approval or exemption. Such instances are investigated by Administration and enforcement action taken where appropriate.

Determining a nuisance according to the Act is often subjective. Administration's approach to managing local nuisance complaints is largely reactionary, necessitated by the fact a person has to be impacted and consider something to be a local nuisance, for it to be investigated and formal enforcement action taken.

A range of process improvements relating to Local Nuisance Exemptions are underway as outlined in the report, largely focused on improving notification and communication. Alternative options have been considered and are discussed, but not recommended for progression.

RECOMMENDATION

The following recommendation will be presented to Council on 9 July 2024 for consideration

THAT THE CITY PLANNING, DEVELOPMENT AND BUSINESS AFFAIRS COMMITTEE RECOMMENDS TO COUNCIL:

THAT COUNCIL:

1. Notes the report.
 2. Notes the improvement initiatives underway to improve the process and notification requirements, which will not require additional funding or resources.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2024-2028 Strategic Plan	Strategic Alignment – Our Community
Policy	The process is governed by <i>the Local Nuisance and Litter Control Act 2016</i>
Consultation	Not as a result of this report
Resource	Not as a result of this report
Risk / Legal / Legislative	The process is governed by <i>the Local Nuisance and Litter Control Act 2016</i> . Our approach has been reviewed by external legal providers in the preparation of this report.
Opportunities	To balance the impacts of development and growth with residential amenity.
24/25 Budget Allocation	Not as a result of this report
Proposed 25/26 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
24/25 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

Background

1. At the Council meeting on 26 March 2024 it was resolved:
 - 1.1. “That Council
Asks the Administration provide advice at the earliest opportunity on potential changes to the process for granting exemptions to certain building construction hours of operation to include feedback from elected members.”
2. At the Council meeting on 23 April 2024 it was resolved:
 - 2.1. “That Council
 1. Notes the decision of Council on 26 March 2024 that asks the Administration provide advice at the earliest opportunity on potential changes to the process for granting exemptions to certain building construction hours of operation to include feedback from elected members.
 2. Request that Administration include in its advice, options relating to:
 - a. alternative options for the public notification of works that have an exemption for earlier commencement currently undertaken by the Developer, that considers consultation with relevant stakeholders to mitigate the impact on both developers and the community, which is consistent with current legislation.
 - b. improved definitions for when concrete pour exemptions are actioned, including consideration of limiting the use of exemptions prior to 7am between the months of May and August each year.”
3. On 25 June 2024 a Chief Executive Officer (CEO) Briefing was held with Council Members to explain Local Nuisance Exemptions and the *Local Nuisance and Litter Control Act 2016* (the Act) from a legal perspective. Presentation slides used during the briefing are provided in [Link 1](#).

Legislative Overview

4. Section 17 of the Act defines a local nuisance as:
 - (a) *any adverse effect on an amenity value of an area that—*
 - (i) *is caused by—*
 - (A) *noise, odour, smoke, fumes, aerosols or dust; or*
 - (B) *animals, whether dead or alive; or*
 - (C) *any other agent or class of agent declared by Schedule 1; and*
 - (ii) *unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area*
- 4.1. The Act expands on this definition further and can be viewed in its' entirety in [Link 2](#).
5. Regarding construction noise, section 17(1)(e) of the Act outlines that a local nuisance may exist if an Authorised Officer forms the opinion that:
 - (i) (C) *in the case of construction noise—the noise has travelled from the location of the construction activity to neighbouring premises—*
 - *on any Sunday or public holiday; or*
 - *after 7pm or before 7am on any other day;*
 - (ii) *that the level, nature or extent of the noise (including its volume, pitch, vibrational frequency, prevalence or frequency of occurrence) is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises.*
6. It is noted that the Act requires an Authorised Officer to form the opinion that a nuisance exists, and it needs to constitute an unreasonable interference with the enjoyment of persons occupying neighbouring premises.
7. Carrying on an activity that results in a local nuisance may result in an expiation fee of \$500, or further offences if the matter escalates to prosecution and court proceedings.

8. The Act permits a person to breach the Act if declared by the Council through a written notice (referred to informally as a 'Local Nuisance Exemption'). The Act lists the following activities as examples: *construction or demolition works, concerts or events, activities using amplified sound.*
9. Section 17 Part 3 - 5 of the Act sets out activities that are declared not to constitute a local nuisance. Some of these include:
 - (d) *other than in the case of construction noise or other nuisance from construction activities carried out in accordance with a development authorisation within the meaning of the Development Act 1993 or the Planning, Development and Infrastructure Act 2016 noise or other nuisance from any other activity carried on in accordance with an authorisation (including an approval, consent, licence, permit, exemption or entitlement) granted under any other Act (other than this Act), provided that—*
 - (i) *the authorisation imposes requirements to control, minimise or eliminate (as far as reasonably practicable) any noise or other forms of nuisance likely to result from the activity; and*
 - (ii) *those requirements are complied with;*
 - (h) *noise, vibration and other nuisance from public infrastructure works where—*
 - (a) *the works are carried out because of an emergency or urgent public need; or*
 - (b) *the works are carried out in the circumstances in order to avoid or reduce inconvenience or disruption to traffic or pedestrians during normal business hours*
10. Point 9 results in many activities undertaken by utility companies, essential service companies or works undertaken on public infrastructure (often by, or on behalf of, Crown agencies) being exempt local nuisances, and therefore do not require exemption from Council.
11. In many circumstances these organisations notify Council of planned activities. When notified, Council includes details on our website and requests notification is provided to nearby stakeholders. However, this is not something Council can enforce.

Development in the City of Adelaide

12. The housing challenges facing the City and State are well-documented, with the need for a greater supply and greater diversity of housing options documented in many Government plans.
13. The City of Adelaide Strategic Plan 2024-2028 encourages 'bold, interesting and purposeful development', with ambitious growth targets for increasing dwellings and residential population. The Strategic Plan also calls for safe and healthy places for our community.
14. Managing such housing growth and development alongside quality residential living in a capital city context is a complex challenge.
15. Tools such as City Works Permits, Local Nuisance Exemptions and enforcing alleged breaches of relevant Acts are formal levers available to Administration to balance Council's diverse strategic objectives.
16. Over the last 12 months there have been approximately 40 active major construction sites in the City of Adelaide, in addition to many more sites of smaller scale.
 - 16.1. In 2023 Council issued 2416 City Works Permits.
 - 16.2. Approximately 1084 City Works Permits issued in 2024, as of 31 May 2024.
17. Between 1 June 2023 and 31 May 2024, Council received 206 Local Nuisance Exemption applications:
 - 17.1. 135 were exempt from creating a local nuisance as per the Act, largely relating to "public infrastructure works".
 - 17.2. 28 exemptions were Declined – all related to noise.
 - 17.3. 43 exemptions were Granted – all related to noise.
18. Not all construction noise created before 7am is the result of an approved exemption.
19. Community complaints regarding noise can often be about non-compliant or unapproved works without exemptions, which are investigated by Administration.
20. Between 1 June 2023 and 31 May 2024 Council received 327 requests from community members relating to potential instances of local nuisance across the following nuisance types:
 - 20.1. Noise – 218

- 20.2. Odour – 17
- 20.3. Unsightly premises – 14
- 20.4. Dust – 8
- 20.5. Smoke – 9
- 20.6. Light (since the introduction of Light in April 2024) – 1
- 20.7. Uncategorized – 60
- 21. Focusing on noise complaints specifically:
 - 21.1. Approximately 92 were for construction noise.
 - 21.2. Approximately 44 were for noise prior to 7am, some of which were for the same site/occasion.
- 22. From 1 June 2023 and 31 May 2024, one \$500 expiation was issued for construction noise prior to 7am.

Local Nuisance Exemption Process and Assessment Criteria

- 23. All exemption applications must be submitted to Council in advance.
- 24. For works less than 24-hours in duration, applications must be made 2 weeks in advance.
- 25. For works more than 24-hours in duration, applications must be made 4 weeks in advance.
- 26. The Act allows exemptions to be requested, with Council required to assess each application on its merits.
- 27. External legal advice has outlined it would be contrary to the Act for Council to make blanket policies or rules which direct all exemptions, or certain categories of exemptions, to be declined. Doing so would expose Council to potential judicial issues.
- 28. Assessing applications is undertaken by Authorised Officers delegated to determine applications, following training and an induction program.
- 29. Local Nuisance Exemptions during construction are generally submitted to undertake an activity which mitigates impacts during another part of the day, or impacts to another segment of the community. Common requests include:
 - 29.1. Conducting works prior to 7am to avoid undertaking works during peak hour vehicle or pedestrian traffic – mitigating public safety impacts and traffic congestion.
 - 29.2. Undertaking works on the weekend to avoid busier vehicle and pedestrian traffic during the week.
- 30. Certain construction activities also generate requests for exemptions, namely large concrete pours.
- 31. Exemption applications to commence works earlier relating to concrete pours are usually related to traffic and engineering matters:
 - 31.1. Traffic – Concrete pours require a continuous stream of concrete, which can take numerous hours. To achieve this, many concrete trucks can be needed at the same time. Undertaking this during peak hours would create traffic impacts – hence the desire to commence earlier than 7am.
 - 31.2. Engineering:
 - 31.2.1. Concrete needs the right time and weather conditions to cure before other tasks are undertaken. This is particularly relevant during very warm or cold temperatures, in which earlier starts can be needed. Council has received advice from qualified engineers regarding the impact of both colder and warmer temperatures in previous requests to commence earlier than 7am.
 - 31.2.2. Selecting the appropriate construction methodology to ensure the structural integrity of buildings, particularly in complex or unique sites, rests with the developer and is not something Administration determines via permit or exemption processes.
 - 31.3. For a combination of the reasons above, concrete pours often seek earlier starts, particularly in hot or cold temperatures.
- 32. Applications for exemption must include:
 - 32.1. the nature of the activity and exceptional circumstances that require an exemption
 - 32.2. the name and contact details of the responsible person in relation to the activity
 - 32.3. the proposed strategy for minimising, managing and monitoring the effects of the local nuisance on potentially affected persons

- 32.4. the proposed communication strategy for communicating with potentially affected persons
- 32.5. a copy of the notice (forming part of the communication strategy) proposed to be given to those persons to notify them of the activity, which must include the name and contact details of who can be contacted by potentially affected persons regarding concerns or complaints in relation to the activity.
- 33. The Act and Regulations outline that the following aspects are considered when assessing requests:
 - 33.1. the sensitivity of the affected premises
 - 33.2. whether the local nuisance was avoidable
 - 33.3. whether, in the case of local nuisance generated by an activity outside of normal business hours, the activity has been so timed to avoid inconvenience to traffic or pedestrians during normal business hours (for example, in the case of early morning rubbish collection, or late night construction works, in populated or high traffic areas)
 - 33.4. whether all reasonable measures have been taken at the source premises to prevent or minimise the local nuisance
 - 33.5. The impact of allowing the exemption, and the impact of not allowing the exemption.

Notification Requirements

- 34. All exemptions issued include specific conditions regarding stakeholder notification.
- 35. Notification is the responsibility of the applicant, which is defined in the Act and Regulations.
- 36. All exemptions must be published on Council's website.
- 37. Anyone who receives an exemption is required to have a communication strategy for communicating with potentially affected persons.
- 38. Notification (usually a letter drop) is required to be given to nearby stakeholders in advance of the activity, outlining:
 - 38.1. the nature of the proposed activity
 - 38.2. the start and finish dates for the activity
 - 38.3. the daily start and finish times for the activity
 - 38.4. the anticipated sources of local nuisance generated by the activity
 - 38.5. the proposed measures to be implemented to minimise the local nuisance
 - 38.6. the name and contact details of the person who may be contacted by potentially affected persons regarding concerns or complaints in relation to the activity.
- 39. The radius of notification is different for every application depending on the specific circumstances.
- 40. The importance of notification is acknowledged, along with the added complexity within the City of Adelaide in notifying those in multi-dwelling units and apartment complexes.
- 41. Administration is developing improvements to this component, outlined in the 'Improvements Underway' section of this report.

City of Adelaide's Enforcement Approach

- 42. The City Safety Enforcement Guidelines, provided as [Link 3](#), provide the framework for Authorised Officers during investigations into potential breaches of Acts, Regulation or Permits.
- 43. The Guidelines aim to protect individuals and the community, promote and enforce compliance, raise awareness of safety practices and legislative requirements, and take a proportional approach to enforcement.
- 44. The Guidelines promote an education-first approach, followed by escalating enforcement action based on seriousness of any breach and/or repeat behaviour.
- 45. All instances raised of potential breaches and local nuisances are investigated by Council's Community Safety team. In addition, proactive monitoring of construction sites and permitted activities is also undertaken, including regular monitoring after hours (before 7am).
- 46. In almost all circumstances, evidence to constitute a formal local nuisance requires direct statements and feedback from those impacted to demonstrate a nuisance has occurred. Without input from those impacted, it is difficult to prove a local nuisance has been caused.

47. For a nuisance to exist, it must have interfered with a person's enjoyment of their premises/area. On this basis, construction activity and noise can occur outside the allowable hours, as long as it does not disturb anyone.
48. There is no numeric or objective decibel level as to what constitutes a noise-related nuisance. The Act is deliberately broad and subjective in this manner.

Benefits of Local Nuisance Exemptions

49. While exemptions can cause impacts, it is also noted that issuing exemptions provides benefits to the community.
50. All exemptions require specific action to be undertaken by developers, such as mitigation methods, strict conditions, and advanced stakeholder notification.
51. Should Council not issue exemptions or be viewed as difficult to engage with in this process, there is a risk that exemptions will not be sought, and works will be conducted regardless without any notification or mitigation methods required.
52. This is considered a negative outcome as it reduces Council's ability to manage impacts to nearby stakeholders.
53. Exemptions also demonstrate to the development community that Council understands the pressures of building in the City, and seeks to work fairly with developers to facilitate construction which ultimately encourages future investment.

Challenges

54. Considering exemption requests and investigating potential local nuisances poses significant challenges for local governments across the state, not only the City of Adelaide.
55. The manner in which local nuisances are defined under the Act is such that to determine whether an activity is or is not a local nuisance is a matter of fact and degree. It often involves a value judgment specific to each and every case.
56. Relevant to construction in particular, it is also noted that the penalties for breaches (e.g. expiations) are often unsubstantial compared to the cost of large-scale developments.
57. While greater penalties are possible through prosecution, this is a resource-intensive process for Council to undertake, and generally only actioned for significant trends or repeated breaches.
58. There is no objective standard for what constitutes an unreasonable level of noise before 7am. If noise occurs but does not impact anyone, it may not be considered a local nuisance in that instance. However, in a different location, the same activity may disturb someone and pose a genuine local nuisance.
59. Similarly, noise, even unreasonable noise, on a once-off basis may not in itself constitute a nuisance worthy of enforcement action. Council needs to consider how much resource it allocates to investigating and following up one-off instances after the fact.
60. Both developers seeking exemptions, and residents impacted by a potential local nuisance, can challenge decisions by Council to approve or decline exemptions.
61. Council needs to balance its responsibility to facilitate approved development with the need to protect residents from nuisances.

External Review

62. In parallel with the recent Council resolutions, Administration has been undertaking a review and recently engaged external advice to provide recommendations on our Local Nuisance Exemption assessment process and compliance approach.
63. Findings provided in May 2024 by law firm Kelliedy Jones highlighted:
 - 63.1. Administration staff have a good understanding on the part of officers authorised under the Act regarding what ought to be considered in determining whether or not a local nuisance arises.
 - 63.2. Council is comparatively very responsive to acting upon complaints that it receives.
 - 63.3. Each exemption application needs to be individually assessed on its merits. Creating a 'blanket' set of rules for certain exemptions will not be permitted as this is contrary to the Act.
 - 63.4. Opportunities for strengthening the approach and creating efficiencies exist. These recommendations are now being actioned by Administration:

- 63.4.1. Creation of forms for those lodging complaints which outline all information required to determine if a nuisance can exist.
- 63.4.2. Altering enforcement approach to allow 'Abatement Notices' to be issued earlier in the process for repeated breaches.
- 63.4.3. Wording changes to Guidelines and exemption conditions to meet the Act requirements.
- 63.4.4. Creating greater clarity between the City Works Permit process and Local Nuisance Exemption process to avoid duplication.

Improvements Underway

- 64. The sensitivity and community interest regarding construction noise is acknowledged.
- 65. Council's Authorised Officers are cognisant of this with every exemption request received and assessed.
- 66. A range of changes are currently underway aimed at improving the process. Many changes do not require additional budget or resource to be delivered.
- 67. Actions being implemented include:
 - 67.1. Formalisation of an internal Local Nuisance Exemption Application Assessment Standard Operating Procedure, currently in draft at [Link 4](#).
 - 67.2. Introduction of a Local Nuisance Exemption Application fee in Council's 2024/25 fees and charges;
 - 67.2.1. The introduction of the \$250 application fee is designed to cover some of the resource costs in assessing exemptions, while not being set too high to deter applications altogether.
 - 67.3. Enhanced stakeholder notification templates for developers to use when communicating exemptions which provide more information to potentially impacted stakeholders.
 - 67.4. Increased notification requirements for multi-dwellings and apartment complexes.
 - 67.4.1. Previously, applicants were provided a basic map showing the area to be notified.
 - 67.4.2. Commencing 1 August 2024, each specific address within the area will be provided, detailing all premises and buildings needing to be notified.
 - 67.4.3. For apartment complexes, the developer is required to contact the central point of the building rather than each individual tenant/dwelling. The central body usually have existing methods for communicating to their residents, which is considered more appropriate than the developer undertaking this.
 - 67.5. All exemptions will continue to be listed on Council's website.

Other options considered

- 68. The following alternative enhancements to the process have been considered, but are not recommended for progression:
 - 68.1. Fortnightly E-News to Council Members highlighting all approved exemptions for the coming month.
 - 68.1.1. Considered a double-up given all exemptions are publicly available at all times via CoA website found in [Link 5](#).
 - 68.2. Council taking on the function of issuing stakeholder notification, rather than the applicant.
 - 68.2.1. While this option would give Council more control in the messaging, it is considered likely to create confusion in the community as to who is undertaking the works, and where concerns should be lodged, creating additional workload for staff and customers.
 - 68.2.2. As the Act and Regulations detail notification is the responsibility of the applicant, it is likely that should Council seek to issue communication, it would be in addition to the applicant, not instead of the applicant.
 - 68.2.3. Taking on this workload would require additional budget/resources.
 - 68.3. Requiring applicants to undertake stakeholder consultation, rather than notification.
 - 68.3.1. While Council can request consultation occurs, it cannot enforce it as it is not a requirement of the Act.
 - 68.3.2. Advice obtained outlines Council would be exposed to legal risk if an exemption application was refused solely on the basis of no consultation occurring.

- 68.3.3. In addition to delaying lead times and increasing costs, consultation may result in decisions being made to approve exemptions for legitimate reasons according to the Act (e.g. for engineering requirements) which are contrary to stakeholder feedback received, causing greater frustration for those who have taken the time to provide input.

DATA AND SUPPORTING INFORMATION

Link 1 - Slides from CEO Briefing

Link 2 - *Local Nuisance and Litter control Act 2016*

Link 3 - The City Safety Enforcement Guidelines

Link 4 - Local Nuisance Exemption Assessment Operating Guideline

Link 5 - City of Adelaide website – Local nuisance page

ATTACHMENTS

Nil

- END OF REPORT -