

Proposed amendment to Local Law No.3 (Community and Environment) 2015

Add new Part 7 and renumber balance.

Part 7

Good neighbourhoods

Obligations of neighbours

1. (1) The owner or occupant of a residential premises must not cause unacceptable residential amenity.

- (2) Causing unacceptable residential amenity is an offence.

Maximum penalty 50 penalty units.

- (3) A person is not guilty of an offence under subsection (2) if the person had a lawful excuse for knowingly allowing or suffering causing an unacceptable residential amenity to exist on, emanate from any premises owned or occupied by that person.

Example: Where a permit has issued for an event to occur that authorises a band to play in an outdoor setting.

Authorised Officer Attendance

2. (1) Where a person considers that an occupier of premises is causing unacceptable residential amenity the person may do either or both of:
 - i) write to Council and explain why the person considers that there is unacceptable residential amenity, what the cause of that unacceptable residential amenity is and ask for Council's assistance in addressing it; or
 - ii) contact the Council on the designated telephone number and request the urgent attendance of Council's authorised officer to address the cause of unacceptable residential amenity.

***Explanatory Note:** Where a series of events occur over time write to Council to allow the causes of the unacceptable residential amenity to be addressed in a more cooperative way. Where there is a loud party happening and the occupants have not responded reasonably then contact the Council on the designated telephone number.*

- (2) Where an authorised officer attends following a call for urgent assistance and reasonably forms an opinion that an occupier is causing unacceptable residential amenity the authorised officer may do either or both of:

- i) give a notice of unacceptable behaviour to the occupier requiring the unacceptable behaviour to stop; or
- ii) give a penalty infringement notice to the occupier.

- (3) Where an authorised officer has given a notice to the occupier and the occupier is not the owner of the premises, the authorised officer must within 48 hours provide a copy of the notice of unacceptable behaviour to the owner.

- (4) It is an offence to fail to comply with a notice of unacceptable behaviour.

Maximum penalty 50 penalty units.

(5) The cost of attendance of an authorised officer following a call for urgent assistance where the unacceptable behaviour is confirmed to have occurred may be recovered from the owner of the premises where the unacceptable behaviour existed on or emanated from.

Explanatory note: A party spilling out from a premises onto the street is caught.

(6) Where it is established that there was no unacceptable behaviour the cost of attendance of an authorised officer following a call for urgent assistance may be recovered from the person making the complaint or the owner of the premises from where the complainant complained.

(7) The Council must consider the number of complaints and the significance of the unacceptable behaviour in determining whether to recover the cost of attendance.

(8) To recover the cost of attendance of the authorised officer following a call for urgent assistance, the Council must give a notice to the owner stating:

- i) the unacceptable behaviour and the date on which it occurred;
- ii) payment of the total cost of attendance is required;
- iii) the date the cost is payable; and
- iv) an information notice.

Explanatory note: An information notice allows for an internal review of the decision. See LL1 s22 for giving and review following an information notice.

(9) The cost of attendance may be recovered as if it were a rate.

Compliance Notice for Works

3. (1) Where an authorised officer forms a reasonable opinion that an occupier of a premises has caused an unacceptable residential amenity on at least three separate occasions in any 12 month period, the authorised officer may issue a compliance notice requiring the owner to undertake works to assist in achieving an acceptable residential amenity.

Examples:

- i) construct an acoustic barrier;
- ii) install light control switches that turn lights off at a particular time;
- iii) remove a deck;
- iv) enclose a deck;
- v) plant and maintain screening vegetation.

(2) To determine whether to give a compliance notice to the owner, the authorised officer must consider:

- i) the frequency of the unacceptable behaviour;
- ii) the significance of the unacceptable behaviour;
- iii) the likely cost of the work;
- iv) whether any affected premise should also reasonably undertake works and whether there is a commitment to undertake those works; and
- v) whether the affected premises also causes unacceptable behaviour.

(3) The authorised person must inform any person required by the compliance notice to perform work and any person whose commitment to undertake works has been considered

under subsection (2)iv) of the intention to issue a compliance notice and provide them with a reasonable opportunity to respond to the requirement to undertake works prior to giving a compliance notice.

(4) The authorised person must only give a compliance notice where it is likely to assist in achieving an acceptable residential amenity.

Explanatory note: See LL1 s27 for giving a compliance notice.

Duty of Council

4. (1) Council has a duty to investigate any notice of unacceptable residential amenity.

(2) Council has a duty to remedy as far as is reasonably practicable all unacceptable residential amenity.

(3) If the Council is of the opinion that the unacceptable residential amenity is better settled privately, advise all relevant parties of any available methods for settling the matter privately.

Example: Where a dispute may be best resolved in a legal action Council would suggest the parties seek legal advice. Where a dispute may be best resolved in mediation Council would suggest the parties seek mediation.

Definitions

The definitions should be in the local law not the subordinate local law.

Acceptable residential amenity means:

Achieving a fair balance between a persons right to live in a premises and the rights of others in the neighbourhood to enjoy being there.

Acceptable residential amenity will involve a consideration of impacts from nuisance, noise, light intrusion, and overlooking.

Unacceptable residential amenity means;

Unacceptable residential amenity will involve a consideration of impacts from nuisance, noise, light intrusion, and overlooking.

Where noise levels exceed those set out in table XYZ they will be deemed to cause unacceptable residential amenity.

(Insert table: Noise levels should not exceed DBA (insert from reports differing daytime and night levels))

Lighting exceeding (Lux at boundary) is deemed to cause unacceptable residential amenity.

A series of nuisance, noise, lighting or overlooking events that individually would not be unacceptable but because of their frequency or duration are unacceptable.

See *Padley v Foley* (1983) 32 SASR 122 at 129 for scope of the definitions set out above.

Causing, in relation to unacceptable behaviour, means:

- a) to cause; or
- b) knowingly allow or suffer unacceptable residential amenity to exist on, or emanate from, any land owned or occupied by that person.

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