
1 Objective

To establish standards that guide the City's response to situations relating to motorbikes and other recreational vehicles being used on private residential property.

2 Position Statement

1. To provide criteria to assist City officers in assessing situations involving the use of motorbikes and other recreational vehicles which are designed to provide a balance between the amusement interests of individual property owners whilst minimising nuisances to surrounding neighbours.
2. To provide a clear definition of what the City determines to be a 'reasonable manner' in relation to the noise from such vehicles.
3. To provide a clear definition of when the City determines noise to 'unreasonably interfere' in relation to the use of such vehicles.
4. Nothing in this guideline extinguishes any other legislative requirements particularly those of the *Environmental Protection Act 1986* and the *Environmental Protection (Noise) Regulations 1997* and any other exemptions that may be granted.

3 Scope

This Guideline applies when responding to situations involving motorbikes and other recreational vehicles being used on private residential property within the district of the City of Swan. Where the noise from such vehicles is lower than the assigned or permitted noise levels of the *Environmental Protection (Noise) Regulations 1997* the activity will be considered to be reasonable and not subject to the use restrictions of these guidelines.

Complaints involving motorbikes being ridden on public land are to be dealt with by the City's Customer Safety Advocates using the provisions of the *Control of Vehicles (Off-road Areas) Act 1978* and its subsidiary legislation.

4 Background

Noise is governed by the *Environmental Protection Act 1986* and the *Environmental Protection (Noise) Regulations 1997* with enforcement provisions available to the local authority. Under the Act noise is deemed unreasonable if it exceeds a prescribed standard or if, having regard to the duration of the noise emission, the frequency of similar noise emissions from those premises or that public place, and the time of day at which the noise is emitted, the noise unreasonably interferes with the health, welfare, convenience, comfort or amenity of the occupier making the complaint. No definition of what constitutes unreasonable interference is provided.

The Regulations state that noise is deemed not unreasonable if it complies with one of the exemption regulations. Regulation 14 is one such exemption which applies to the use of specified equipment. Specified equipment is equipment which requires the

presence of an operator for normal use. A motorbike or other vehicle could therefore fit this definition of specified equipment.

Regulation 14 allows specified equipment to be used on a residential property for up to 2 hours per day between:

- 0700 and 1900 hours Monday to Saturday, and
- 0900 and 1900 hours Sunday and Public Holidays.

In order for this exemption to apply the equipment must be used in a reasonable manner and the noise resulting from the use of that specified equipment on those premises, having regard to the duration of the noise emission, the frequency of similar noise emissions from those premises and the purpose for which the equipment is used, does not unreasonably interfere with the health, welfare, convenience, comfort or amenity of an occupier of premises receiving the noise. Again there is no clear definition of what a reasonable manner is and what constitutes unreasonable interference.

The provision of Regulation 14 was designed to allow certain activities to occur which were considered normal practice but which would not otherwise be able to comply with the requirements of the Regulations. Examples include using lawnmowers, chainsaws and other equipment which generate high levels of noise but are accepted as normal practice. These examples however tend to be used infrequently or as part of a property maintenance task particularly when compared to a motorbike which could be ridden daily by an enthusiast.

Another issue which may exacerbate this problem is where jumps are constructed.

Under the *Planning and Development Act 2005* the construction of a track, jumps or other works may be considered development. As such it would require approval from the City's Statutory Planning unit.

Property owners may choose to reside on larger properties for a variety of lifestyle factors or recreational pursuits. These may include horticultural pursuits where motorbikes or quad bikes are essential equipment or where they are used solely for entertainment purposes. Residents may also choose these properties for other factors such as remoteness, peace and tranquillity or the keeping of animals such as horses. Many of these other factors may be in direct conflict with the activity of riding motorbikes.

The City would encourage both riders and those affected by noise to first discuss the issue as mutually agreed practices may be reached which are outside these guidelines. However if an agreement cannot be reached or a complaint is lodged with the City an assessment of the situation will be made in accordance with these guidelines.

5 Definitions

In this guideline unless the context requires otherwise all definitions are to have the same meaning as that given in the *Environmental Protection Act 1986* and its subsidiary legislation.

Development - this definition is taken from the *Planning and Development Act 2005* and means the development or use of any land, including:

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;
- (b) the carrying out on the land of any excavation or other works;

Land Zoning types – for the purpose of this guideline reference to residential or rural land types refers to the Scheme area delineated and depicted on the Scheme Map under the City of Swan Local Planning Scheme No. 17.

Motorbikes and other recreational vehicles - for the purpose of this guideline the term motorbikes and other recreational vehicles refers to any motorised vehicle, licensed or not, which is ridden or driven on private property. It includes vehicles with two or more wheels such as trail bikes, quad bikes, buggies and cars.

Reasonable manner - for the purpose of this guideline this is taken to be in a manner of operation which is considered normal practice for that type of equipment. The equipment should also be maintained to a standard similar to that when it was purchased. For further information on what the City considers a reasonable manner refer to section below City Practice.

Unreasonably Interferes - noise is taken to unreasonably interfere not merely where it is present but where, having consideration for the duration and frequency of the noise, it is considered to not be an accepted practice by the City or one which is a common situation or in line with similar activities in the area. For further information on what the City considers to unreasonably interfere refer to section below City Practice.

6 City Practice

Requirement for Planning Approval

The construction of jumps, berms or other features which alter the natural contour of the land will be considered development and as such will require the approval of the City. In granting development approval, the City may impose such conditions it deems appropriate to minimise the impact on surrounding properties including but not limited to; location of track or jumps, hours of operation, number and type of motorbikes or other vehicles, dust control measures and screening vegetation.

The riding of motorbikes along firebreaks or in a random pattern on a property will not be considered development irrespective of whether a wear pattern develops as a consequence.

Reasonable Manner

1. All motorbikes and other vehicles used as part of an agricultural pursuit (used in association with soil preparation and cultivation, land drainage and water management, crop seeding and planting, crop spraying and fertilisation, pest management, produce harvesting or stock management) will be considered to be used in a reasonable manner and classed as a farming vehicle under Regulation 12, thereby making them exempt from these guidelines.
2. The riding of motor cross style motorbikes over jumps is considered to be an intended use and as such is not considered unreasonable in and of itself.

-
3. Riding, servicing or tuning activities is considered to be a use of a motorbike in a reasonable manner provided it is done within the permitted time period.
 4. The operation of the motorbike for no benefit to the operator or is used in a vexatious or malicious manner is considered to be an unreasonable manner e.g. simply leaving the motorbike running for no purpose.
 5. The operation of the motorbike in a manner that produces more noise than is necessary for the intended activity is considered to be an unreasonable manner e.g. excessive revving.
 6. The operation of a motorbike without a fully functioning muffler is considered to be an unreasonable manner.

Unreasonably Interferes

The City considers that an important factor of whether the noise unreasonably interferes with a person will be dependent on the expectations of that person. These expectations may vary from person to person. Therefore in coming up with the City's position on this matter, consideration has been given to the type of land and typical activities associated with its use.

1. Where development approval is required, noise from motorbikes will be considered not to unreasonably interfere only where the use class category is considered to be incidental to another use class. For example it is part of an existing residence or of a minor scale of operation. Where the use is of such a scale as to warrant an additional classification or primary land use classification the exemption provided under Regulation 14 will no longer apply and the applicant is to demonstrate via an acoustical assessment that the proposal will comply with the assigned noise levels under the *Environmental Protection (Noise) Noise Regulations 1997*.
2. The riding of motorbikes or use of other vehicles on private property without the property owners consent is considered to unreasonably interfere.
3. In relation to the 2 hour period of use possible under Regulation 14 the City considers it is not unreasonable to expect this to be in a continuous time period. Therefore noise which persists after 2 hours from the initial commencement of activities will be deemed as unreasonable interference.
4. Notwithstanding any further restriction imposed by Council, the use of motorbikes before 7am Monday to Saturday or 9am Sunday or on a Public Holiday is considered to unreasonably interfere. Where a time restriction is set by Council the Council time period is to prevail.
5. Notwithstanding any further restriction imposed by Council, the use of motorbikes after 7pm on any day is considered to unreasonably interfere. Where a time restriction is set by Council the Council time period is to prevail.
6. Noise from the riding of motorbikes on land zoned 'Residential' or similar intent, where the property size is <math><5000\text{m}^2</math> will be considered to unreasonably interfere.

7. Noise from the riding of motorbikes on land zoned 'Residential' or similar intent, where the property size is $>5000\text{m}^2$ will not be considered to unreasonably interfere where the property was previously zoned 'rural' or similar and where riding activities are limited to once per calendar month.
8. Noise from the riding of motorbikes on land zoned 'Rural' or similar intent, where the property size is $>5000\text{m}^2$ but $<20000\text{m}^2$ will not be considered to unreasonably interfere where riding activities are limited to once per calendar month.
9. Noise from the riding of motorbikes on land zoned 'Rural' or similar intent, where the property size is $>20000\text{m}^2$ will not be considered to unreasonably interfere where riding activities are limited to once per week.
10. The riding of motorbikes at a frequency greater than that indicated in points 7, 8 and 9 above will be considered to unreasonably interfere unless the noise level is below the assigned levels under the Regulations.

Compliance

Where the use of motorbikes is considered not to be in a reasonable manner or unreasonably interferes as per any of the points above, the City will consider the use of Regulation 14 to be inappropriate. As such the noise of any motorbike activities will be required to comply with the assigned or permitted noise levels. Complaints will be investigated as per established procedures.

Where a complaint is received regarding an unauthorised development then the occupier is to be directed to cease activities and lodge a Development Application.

Where a noise complaint is received regarding an unauthorised development which complies with the noise requirements of this guideline then the matter is considered not to be a noise issue but a Planning Compliance issue and the matter shall be referred to the City's Development Compliance Business Unit.

Other Issues

Other issues which may arise as the result of the riding of motorbikes such as dust nuisances will be investigated by the City as per established procedures.

Guideline Administration

Guideline Owner			
Business Unit Name	Officer Title		Contact Number
Health and Building Services	Manager Health and Building Services		9267 9267
Risk Complexity Classification	2	Review Frequency	Biennial

Version #	Decision Reference	Synopsis
1	Executive 24/09/15	Endorsed draft guideline.
2		
3		