



Hawkesbury City Council

attachment to item 23

Attachment 1

Draft Self Enforcing Notice Scheme
(SEINS) on Public Exhibition

date of meeting: 13 February 2007
location: council chambers
time: 5:00 p.m.

Self-Enforcing Infringement Notice Scheme (SEINS) Policy

Purpose

This Policy has been developed to clarify and make consistent the procedures undertaken by Council Officers when issuing and reviewing Penalty Infringement Notices. The Policy also identifies the rights of individuals in receipt of a Penalty Infringement Notice and the involvement of Council staff and Councillors in ensuring an open and egalitarian approach is undertaken in all dealings.

Background

The Self-Enforcing Infringement Notice Scheme (SEINS) provides for the issuing of Penalty Infringement Notices for particular offences.

Briefly, the Scheme allows certain law enforcement in New South Wales not to be automatically referred for determination by a Court unless the individual so desires. It is an automated administrative process of enforcement and associated penalty collection.

The Infringement Processing Bureau, New South Wales Police Service, administers SEINS. The Infringement Processing Bureau (IPB) has commercialised its services and undertakes, on behalf of government authorities, the processing of Infringement Notices on a commercial basis.

The Scheme is continually audited by the IPB and in certain circumstances by the Ombudsman's Office and the Independent Commission Against Corruption.

The Regulatory Services Unit is responsible for those compliance matters, which are dealt with through the issuing of a Penalty Infringement Notice. Infringement Notices are never issued unless an offence has been committed and in all cases, contemporaneous notes are taken, in certain circumstances photographic evidence and or samples are also taken.

Offences

The types of offences, which incur a Penalty Infringement Notice, are listed within the "Local Government - Fixed Penalty Handbook". The handbook identifies the short title description of the offence, the corresponding penalty amount, the codes the IPB uses for processing, along with the relevant act and section the offence occurs under.

The assigning of penalties to an offence and specific penalty amounts are reviewed and amended by the Parliamentary Council which then refers changes to the Minister for "signing off". Once gazetted, the changes are enforced. Reviews are undertaken quarterly in January, March, June and September.

Warnings

Generally, prior to issuing a fine, Council officers will give either a verbal or written warning, which is noted on Council's records. However, there are certain fines where this is not possible due either to community expectation or the nature of the fine.

For example, water pollution is an issue, which has strong community support for enforcement. These Infringement Notices generally relate to sediment and erosion control measures on building

sites, which are, in fact, conditioned on the development consent directing specific necessary measures to be undertaken to prevent water pollution.

Council officers are unable to issue warnings for littering (from a vehicle) and parking infringement notices, due to the nature of the offences. The littering issue has experienced extensive education campaigns and parking is addressed through sign posting.

Issuing Fines

No special dispensation is given when issuing Infringement Notices. Infringement Notices can be issued to members of the public, businesses and organisations (recognised legal entities), local or state government contractors, Councillors and Council staff.

There are three parts to an infringement notice. Part A is the original source document and is forwarded to the IPB daily for loading on to the computer data base - the lower section of part A is used for note taking. Additional notes are either kept on the reverse side Part B or recorded in the Officer's notebook.

Part B is the duplicate and is retained in the infringement book for future reference and auditing. Council keeps an infringement book for five years.

Part C is the triplicate and customer's copy. This part is not entirely identical to that of Part A and B in that a copy of the contemporaneous notes section is not provided. Part C is either handed to the offender, placed on an illegally parked vehicle, or mailed to the offender.

It is a two-part notice. The top portion is the offender's record of the infringement and also sets out the methods of disposal of the infringement available to the offender. The lower portion is the pay in slip or butt portion. It is designed to be detached and submitted with payment.

Payment or Appeal

Under the legislation, an individual has four options to deal with an Infringement Notice.

- (1) Pay the infringement Notice penalty amount within the prescribed period (21 days from date of issue)

Payment may be made in the form of cash (only if tendered over the counter at the IBP), cheque, and money order or by completing the Bankcard/Mastercard/Visa Card option on the payment slip portion.

Payments are unable to be made at Council's Administration Centre.

- (2) Enact the owner - onus provision

This refers to the transfer of responsibility. For example, in the case of a parking infringement, the person who was responsible for the vehicle on that particular day, or in the case of a building site, the owner/builder or builder may elect to have the Notice transferred to a subcontractor responsible for breaching development consent.

The transferring of responsibility requires the completion of a Statutory Declaration, nominating the full name and address of the person actually responsible for the offence.

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- (3) Representation to the IPB requesting the matter is reviewed and special consideration is given due to exceptional circumstances

Immediately upon receipt of the representation to the IPB, the final payment date of the offence will be extended.

The matter is generally dealt with by the IPB, however there may be situations where the matter is referred to Council for comment. In these instances, a Review Committee will make a decision and advise the IPB of the outcome.

- (4) Elect to have the matter heard in Court

The reverse side of Part C, the Notice, contains the Court election, which the individual must complete and return to the IPB should they wish to defend the matter before a Magistrate.

Review Procedures

Due to auditing requirements, no written representations will be accepted by Council. All representations are to be forwarded to the IPB in writing.

The cancelling of a fine whilst "writing up" is able to be undertaken only in circumstances where a technical or administration error has occurred (eg incorrect registration details recorded). In these circumstances, the Issuing Officer is able to set the Notice aside by recording "cancellation" on Part A of the Notice. The Manager, Regulatory Services, returns all parts of the Notice to the office for concurrence and co-signature.

When a Council Officer considers an error has been made in issuing the Notice, or where processing has resulted in the incorrect issue of a Notice, the Officer must forward a memorandum to the Manager, Regulatory Services. The Manager, Regulatory Services will table all memorandums at the Review Committee meeting. The Review Committee will determine if the Notice shall be cancelled. For auditing purposes, all directions for cancellations are recorded.

There are three (3) positions within Council, which have authority to cancel a Penalty Notice once it has been issued. These include the General Manager, the Director, External Services and the Manager, Regulatory Services.

- (1) Review Committee

The Review Committee shall either be the Manager, Regulatory Services and/or the Director, External Services, the Compliance Enforcement Co-ordinator or Companion Animals Co-ordinator and the Manager, Corporate Services & Governance (independent Council Officer).

The Review Committee shall consist of a minimum of three (3) Council officers.

The Review Committee will carefully read and adjudicate all cases on their individual merits. Discretion, commonsense, fairness and consistency will be used when making a decision, and the resultant effect on public attitude towards the Council will always be borne in mind.

Reference will always be made to Part B of the Notice to ensure an offence is disclosed. Where considered necessary, reference will be made to the guidelines, relevant Acts, Regulations and Legislation.

Comments of the Issuing Officer will be sought whenever considered necessary for the clarification of either offence details or aspects raised within the representation.

Final adjudication will fall within one of the following categories;

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| i. Penalty to stand | - | where an offence is disclosed and no leniency is extended. |
| ii. Caution | - | where an offence is disclosed and leniency is extended. |
| iii. No action | - | where no offence is disclosed. |

For audit purposes, all comments and decisions made by the Review Committee shall be recorded and, where the penalty is to stand, a brief statement as to why it will be submitted to the IPB.

(2) Conflict of Interest

It is unacceptable for Review Committee Officers to handle representations in which they have a personal interest, or where it may be construed that they have a personal interest eg. representation by family, friends, etc. In such cases an alternate representative shall review the matter.

Non Payment Action

Council currently has what is referred to as a “premium level” contract with the IPB. For each Penalty Infringement Notice that Council's Compliance Officers' issue, no matter what the amount, the IPB automatically deducts an administrative fee. This fee pays for various administrative services undertaken by the IPB on Council's behalf, including the issuing of warning letters, initial review of appeals and the collection and transfer of monies.

Should the Infringement Notice not be paid within the prescribed period of 21 days, a courtesy letter (or reminder for the outstanding penalty) is forwarded by the IPB to the offender. The courtesy letter offers the same four options for finalising as the original Notice.

If the Infringement Notice remains unpaid, after a further statutory period of 21 days from the courtesy letter, the matter is referred to the State Debt Recovery Service for further action.

On receipt of the particulars from the IPB, the State Debt Recovery Service issues the offender an Enforcement Order. Along with the Order, an administration fee is added to the penalty as determined by the State Debt Recovery Service. The Order is mailed to the offender, who is given 28 days to pay.

Should the Enforcement Order be ignored, the State Debt Recovery Service directs the Roads & Traffic Authority to; if the individual is a customer, place a sanction on either the individual's licence or vehicle registration.

Along with the sanction, a further administration cost is added to the penalty as determined by the State Debt Recovery Service. If the offender continues to avoid payment, the Service now has the authority to garnish the offender's wages. If wages are unable to be garnisheed, then the matter is referred to the Sheriff's Office where a Property Seizure Order is issued. Officers are then sent to the address of the offender where demand for immediate payment is made. Should the individual plead financial difficulty, an application can be made to the State Debt Recovery Office requesting permission to finalise the matter in instalments.

Alternatively, seizure of personal property will be carried out where it is placed at public auction and monies equalling the total penalty are obtained.

Enquiries from Councillors

To reassure the community that Council has an open and transparent system in dealing with Infringement Notices, all enquiries from Councillors are to be submitted in writing (email) to the Director, External Services.

A written reply shall be provided to the subject Councillor within 48 working hours.

Councillors are unable to direct the cancellation of any Penalty Infringement Notice nor are Councillors able to contact Council Officers (except the Director, External Services) regarding the issuing of any penalty notice. Any Officer contacted by a Councillor on such matters has a duty to report the matter to the Director, External Services and/or the General Manager.

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