



Hawkesbury City Council

attachment 1
to
item 296

Draft Compliance and Enforcement
Policy

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Hawkesbury City Council
Policy

DRAFT
Compliance and
Enforcement
Policy

Hawkesbury City Council



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1.0 PURPOSE

Council is responsible for unlawful activity compliance and enforcement under various legislations with delegated/ authorised officers responsible for the investigation of such matters.

Council is also responsible for proactive compliance monitoring and enforcement under various legislations with delegated/ authorised officers responsible for the inspection of premises which fall within such programs.

The NSW Ombudsman's office encourages as best practice councils to have an adopted policy which covers this area and for that policy to be publically available.

This Policy provides a guide to officers responsible for compliance and enforcement to ensure that investigations and or inspections are undertaken in a manner that is lawful, accountable and transparent, consistent, proportional and timely. This policy also addresses the resource limitations in Council's compliance and enforcement activities and how such resources are to be utilised.

The Policy also outlines for the community matters to be considered at the various stages of the compliance and enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what, if any, enforcement option Council will choose and whether to commence criminal or civil proceedings.

In certain circumstances Council will have shared compliance and enforcement responsibilities with other regulatory authorities. This policy sets out a cooperative approach to such matters. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there is a private certifier, and the role of Councillors in compliance and enforcement.

The intent of this policy is to establish:

- Council's compliance and enforcement principles;
- how reports alleging unlawful activity will be dealt with by Council;
- how Council's limited resources will be deployed in addressing allegations of unlawful activity and proactive compliance monitoring programs;
- how confidentiality of people who report allegations of unlawful activity will be managed;
- what Council expects from people who report allegations of unlawful activity;
- what parties can expect from Council staff;
- how Council deals with complaints about Council's enforcement action; and
- how Council deals with anonymous reports.

The policy also provides advice and guidance on:

- the role of Councillors in compliance and enforcement.

2.0 SCOPE

This Policy applies to all areas within the Hawkesbury City Council local government area and the officers who are authorised to investigate unlawful activity and proactive compliance monitoring including but not limited to:

- development and building control
- pollution control
- environmental health
- public health and safety
- onsite sewage management systems
- weeds control (Biosecurity)
- companion animals



- roads and footpaths
- parks and reserves
- food safety
- fire safety
- tree preservation
- illegal dumping

3.0 DEFINITIONS

Complaint

Means an expression of dissatisfaction made about Council services, staff or the handling of a request for service/ notification of unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.

For the purposes of this policy, a complaint does not include:

- a report alleging unlawful activity (*see definition below*)
- a request for information about a Council policy or procedure
- a request for an explanation of actions taken by Council
- a request for internal review of a Council decision

Council means Hawkesbury City Council.

Enforcement means actions taken in response to serious or deliberate contraventions of laws.

Officer means a Council officer delegated and if required authorised to undertake proactive compliance programs and unlawful activity compliance and enforcement investigations.

Proactive compliance monitoring means a proactive inspection program which is either a one-off or on-going.

Regulation means using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.

Report alleging unlawful activity means an expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.

Unlawful activity means any activity or work that has been or is being carried out contrary to and/or failure to take required action in order to be compliant with:

- the terms or conditions of a development consent, approval, permit or licence.
- an environmental planning instrument that regulates the activities or work that can be carried out on particular land.
- a legislative provision regulating a particular activity or work.
- a required development consent, approval, permission or licence.
- signage regulating a particular activity.

4.0 ROLES AND RESPONSIBILITIES

4.1 Compliance and Enforcement Principles:

4.1.1 Lawful:

- a) Council will only engage in enforcement action where it has legislative authority to take such action.



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- b) Any enforcement activity, including investigation/ inspection methods, will be carried out in accordance with any legislative restraints.
- c) Enforcement activities will be carried out having regard to general principles of justice including the presumption of innocence and the need for evidence that proves, to the necessary standard, that enforcement action is lawfully available to Council.

4.1.2 Accountable and Transparent:

- a) Acting in the best interests of public health and safety and in the best interests of the environment.
- b) Ensuring accountability for decisions to take or not take action.
- c) Acting fairly and impartially and without bias or unlawful discrimination.
- d) Providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community.
- e) Ensuring meaningful reasons for decisions are given to all relevant parties.
- f) Acting on any complaints or concerns about the conduct of Officers in accordance with Council's complaints management policy and procedures advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.

4.1.3 Consistent:

- a) Ensuring all compliance and enforcement action/programs are implemented consistently as far as practicable.
- b) Encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.

4.1.4 Proportional:

- a) Ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach.
- b) Making cost-effective decisions about enforcement action noting the limited resources available to Council to address unlawful activity or conduct proactive compliance monitoring.
- c) Taking action to address harm and deter future unlawful activity.

4.1.5 Timely:

- a) Ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely.

4.2 How reports alleging unlawful activity will be dealt with by Council:

- 4.2.1 Council will record and assess every report alleging unlawful activity.
- 4.2.2 Council will respond to every such report unless the person raising the matter has indicated they do not wish to receive a response about Council's handling of the matter, or the report is anonymous.
- 4.2.3 Reports of illegal activity will be processed in the order in which they are received, irrespective of the source of the report, and prioritised according to the risks associated with the activity under report. In particular, priority will be given to matters that pose serious risks including scenarios that are life threatening or constitute serious health situations, are associated with



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significant environmental harm or that repeatedly detrimentally affect a significant number of people.

- 4.2.4 Generally speaking, Council's objectives when dealing with reports alleging unlawful activity are to:
- a) maintain the collective good and welfare of the community;
 - b) prevent or minimise harm to health, welfare, safety, property or the environment;
 - c) consider the broader public interest having regard to Council's priorities and any resource limitations including the avoidance of deploying a disproportionate amount of resources to matters that are primarily of a private nature.
- 4.2.5 Not all reports will need to be investigated. A preliminary assessment of all matters will be made to determine the priority, and whether investigation or other action is required.
- 4.2.6 Anonymous reports will be recorded and assessed in accordance with this policy and associated procedure. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations and therefore these reports are less likely to warrant investigation.

4.3 *How confidentiality of people who report allegations of unlawful activity will be managed:*

- 4.3.1 People who report allegations of unlawful activity should not expect that their identities will remain confidential from the subject of their report in all circumstances. Council may have to disclose information that identifies them in the following cases:
- a) the disclosure is necessary to investigate the matter;
 - b) their identity has already been disclosed to the subject of their report directly or in a publicly available document;
 - c) the complaint is subject to a GIPA application and Council decides that there is no overriding public interest consideration against disclosure of the information.
 - d) the individual consents in writing to their identity being disclosed;
 - e) the disclosure is required to comply with principles of procedural fairness;
 - f) documents associated with the court process;
 - g) the need for complainants to attend Court to provide evidence to assist in Council enforcement action; and
 - h) other legislation requiring Council to provide the information.
- 4.3.2 Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit Council's ability to investigate the matter.



4.4 What Council expects from people who report allegations of unlawful activity:

- 4.4.1 Council expects that people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by Council.
- 4.4.2 If these expectations of the individual are not met, Council may need to set limits or conditions on the continuation of the investigation or may need to restrict any further communications with the individual. In particular, Council may not be able to take civil or criminal action if the individual does not agree to provide evidence in any Court action.
- 4.4.3 Any unreasonable conduct will be dealt with in accordance with the principles of the NSW Ombudsman's Managing Unreasonable Complainant Conduct – a model policy and procedure 2013 and any applicable Council policy.

4.5 What parties can expect from Council staff:

- 4.5.1 Parties who report alleged unlawful activity, as well as individuals or businesses that are subject to investigation and any enforcement action, can expect that Council staff will:
- a) treat them with courtesy and respect;
 - b) advise them of the outcome of the allegation reported (if required), including an explanation of the reasons why that outcome was considered to be reasonable in the circumstances;
 - c) clearly explain decisions in plain English;
 - d) provide information about any relevant internal and external appeal processes that may be available;
 - e) carefully assess any new information provided by any party after a decision has been made and advise whether further action will be taken.

4.6 Complaints about Council's enforcement action:

- 4.6.1 Any complaints about Council's handling of reports alleging unlawful activity will be recorded separately and handled in accordance with Council's complaints management policy and procedures.
- 4.6.2 Where a person or organisation subject to enforcement action merely disputes Council's decision to take enforcement against them, they will be directed to make representations in accordance with any relevant internal and external appeal processes.
- 4.6.3 Council staff will act on any complaints about the conduct of Officers in accordance with Council's complaints management policy and procedures and the code of conduct.

4.7 Proactive compliance monitoring:

- 4.7.1 In addition to responding to requests and enquiries about alleged unlawful activity Council also provides a number of proactive compliance programs around high risk regulatory areas. These areas include (but not limited to);
- Food premises
 - Cooling towers (and the like)



- Public swimming pool water quality monitoring
- Onsite sewage management systems (septic tanks)
- Fire safety
- Swimming pool safety

4.7.2 Compliance action may be initiated where non-compliance is identified in the course of a proactive compliance inspection, in which case the principles outlined in this policy will also be applied.

4.8 The role of Councillors in compliance and enforcement:

- 4.8.1 Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised Council staff or the Council itself.
- 4.8.2 Individual Councillors do not have the right to direct Council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that their Council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups.
- 4.8.3 The General Manager may present certain decisions to be ratified by the elected Council if this is necessary or desirable, and the Councillors may also have the right to call for a report about particular issues to a Council meeting.

5.0 PROCEDURE

Compliance and Enforcement Procedure