

CITY OF HOBART

**COMPLIANCE INVESTIGATION
PROCEDURE POLICY 2022**



City of **HOBART**

CONTENTS

Part A - Preliminary	1
1. Purpose	1
2. Scope	2
3. Principles	2
4. Definitions	3
Part B - Compliance	4
5. Overview	4
6. Risk-based approach	4
7. Compliance and Enforcement Actions	4
7.1. Compliance and Enforcement Actions Overview	4
7.2. Compliance assistance	5
7.3. Pro-active monitoring	5
7.4. Reactive investigation	5
7.5. Enforcement action	6
8. Customer Requests (Complaints)	7
9. Role of Elected Members in compliance and enforcement	8

Part A - Preliminary

1. Purpose

1.1. The purpose of this policy document is to provide:

1.1.1. An outline with respect to how the Hobart City Council (the Council) undertakes compliance and enforcement activities in a fair and equitable manner.

1.1.2. An outline of Council's investigation procedures, including pro-active and reactive monitoring activities and resource allocation.

2. Scope

2.1. The Council is responsible for a number of regulatory functions under and with respect to a large number of acts, regulations, guidelines, codes and standards and carries out a range of activities in relation to those functions, including:

2.1.1. Investigating reported or discovered breaches of the law.

2.1.2. Developing policies and standards for investigation, compliance and enforcement activities.

2.1.3. Undertaking compliance or enforcement activities in relation to detected breaches.

2.1.4. Ensuring the regulated community has access to information to assist them in complying with the law.

2.1.5. Ensuring the Council remains accountable for its decision making in relation to investigation, compliance and enforcement activities.

2.2. This policy document applies to the compliance and enforcement related functions carried out by the Council.

3. Principles

3.1. The Council commits itself to the following principles:

3.1.1. Acting in accordance with the principles of **natural justice** and the **rule of law**.

3.1.2. Actively seek **voluntary compliance** and undertake legal action only where necessary and in all cases appropriate to do so.

3.1.3. When undertaking its enforcement and compliance duties to **collect, store and use appropriate information** to inform strategic decision making and the allocation of resources to associated enforcement and compliance activities.

3.1.4. Deploy a **risk-based approach** to the allocation of compliance and enforcement related assets to ensure efficient and effective utilisation of Council's limited resources to provide the best protection to the community and ensure the good governance of the municipality

3.1.5. Seek **inter-agency cooperation** involving information and resource sharing with other compliance and enforcement agencies at a Local, State and Federal level, where appropriate to achieve common compliance outcomes.

4. Definitions

- 4.1. **Authorised Officer** means an officer employed by the Hobart City Council and authorised or appointed under an Act or Regulation to perform a specific function or exercise a specific power.
- 4.2. **Compliance** is the act of adhering to, and demonstrating adherence to, laws, regulations, conditions, standards and policies.
- 4.3. **Enforcement, enforcement action** means the undertaking of any act by an authorised officer, including the issuing of verbal or formal warnings, notices, orders, infringement notices or the institution of legal proceedings, to motivate, require or compel observance or compliance with the law.
- 4.4. **Council** means Hobart City Council
- 4.5. **Non-compliant activity (NCA)** means an action (or set of actions), use, event or state of affairs whereby the activity is not in adherence to the applicable laws, regulations, conditions, standards and/or policies.
- 4.6. **Regulated community** means a group of individuals defined by their responsibility to comply with a given law, regulation, condition, standard or policy. Examples include:
- Property owners and occupiers
 - Business operators
 - Dog owners
 - Developers
 - Builders and Plumbers
 - Motor vehicle owners/drivers
 - Users of public space

Part B - Compliance

5. Overview

- 5.1. Council commits itself to the overarching principle of effective compliance
- 5.2. Effective compliance involves:
 - 5.2.1. Using the most appropriate compliance and enforcement tools to quickly address the most significant problems to achieve the best outcomes in the circumstances
 - 5.2.2. Determining compliance and enforcement action based primarily on the risks associated with the given NCA and allocating unit resources accordingly
 - 5.2.3. Gathering, using and storing appropriate data and intelligence to enable the unit to effectively monitor and manage regulated communities

6. Risk-based approach

- 6.1. In accordance with the principles of effective compliance Council will seek to respond with priority to reported non-compliant activities that involve higher or more significant risk to the community and environment.
- 6.2. Upon detection of a NCA Council will perform a risk based analysis to determine what action ought to be taken with respect to the NCA and what priority should be given to that action. Primarily the risk-based analysis will involve categorising the NCA into a risk category outlined below. Once an NCA is appropriately categorised, strategic decisions can be made in relation to resourcing and what compliance and enforcement action should be undertaken.
- 6.3. Risk categories include:
 - 6.3.1. Risk to human safety and wellbeing
 - 6.3.2. Risk to environment
 - 6.3.3. Risk to Council's liability
 - 6.3.4. Risk to Council's assets and capacity to deliver services
 - 6.3.5. Risk to Council's reputation

7. Compliance and Enforcement Actions

- 7.1. Compliance and Enforcement Actions Overview
 - 7.1.1. Council has the overarching responsibility to ensure that the various acts, regulations, guidelines, codes and standards under which it is authorised are complied with.
 - 7.1.2. In order to achieve satisfactory compliance with the various acts, regulations, guidelines, codes and standards under which it is authorised, Council performs a range of activities outlined below.
 - 7.1.3. The nature of the regulation and the regulated community may determine what compliance actions are available.

7.2. Compliance assistance

- 7.2.1. Council will provide information and assistance to a regulated community with respect to how compliance with the applicable regulation(s) is achieved and the reasons why compliance is necessary and important.
- 7.2.2. Council recognises the importance of voluntary compliance and acknowledges that providing compliance information to the regulated community will result in:
 - 7.2.2.1. Removing the barriers to compliance such as lack of knowledge and/or awareness of applicable acts, regulations, guidelines, codes and standards.
 - 7.2.2.2. Increasing understanding and solidifying expectations within the regulated community as to how compliance is achieved and how compliance with the law is monitored and enforced.
 - 7.2.2.3. Increasing understanding and solidifying expectations with respect to what consequences are applicable for non-compliance.

7.3. Pro-active monitoring

- 7.3.1. Council will, where appropriate, implement a pro-active monitoring regime with respect to regulated communities, who, if non-compliant, create significant risk to the health, safety and wellbeing of the community.
- 7.3.2. Examples of pro-active monitoring include:
 - 7.3.2.1. Inspections carried out at regular intervals determined by a number of factors including level of risk of NCA and measurable impact on compliance outcomes of the pro-active inspection.
 - 7.3.2.2. Targeted inspection campaigns in relation to novel or seasonal NCAs.
 - 7.3.2.3. Pro-active monitoring may lead to the detection of the targeted NCA and/or other NCAs. If a NCA is detected, Council will initiate its usual investigation and enforcement procedure.

7.4. Reactive investigation

- 7.4.1. Council will undertake investigation into alleged NCAs that are reported to Council.
- 7.4.2. Council receives a significant number of reported NCAs. Due to limited resourcing Council must prioritise its efforts towards those NCAs that pose the greatest risk to the health, safety and wellbeing of the community.
- 7.4.3. Council will undertake the following investigation procedure with respect to a reported NCA as appropriate:
 - 7.4.3.1. Categorise the reported NCA based on the level of risk and allocate resources appropriately.
 - 7.4.3.2. Gather appropriate and relevant intelligence and evidence.
 - 7.4.3.3. Perform a site inspection to confirm the NCA and liaise with the responsible individual(s) if appropriate and necessary.
 - 7.4.3.4. Determine appropriate enforcement response.
 - 7.4.3.5. Perform follow up investigation to ensure compliance if appropriate and necessary in the circumstances.

7.5. Enforcement action

- 7.5.1. Council may decide that enforcement action is appropriate in the circumstances.
- 7.5.2. When determining what enforcement action to take in response to a NCA, authorised officers will chose an action that is appropriate in the circumstances and which considers:
- 7.5.2.1. The level of risk of harm or potential harm associated with the relevant NCA to the public and the environment.
 - 7.5.2.2. The objectives of the act, regulation, guideline, code and/or standard applicable.
 - 7.5.2.3. Whether the action is an appropriate use of Council's resources.
 - 7.5.2.4. Whether the action sets an appropriate precedent for future cases.
 - 7.5.2.5. The need for general and specific deterrence.
 - 7.5.2.6. Any mitigating or aggravating circumstances.
- 7.5.3. The authorised officer will not select an enforcement action that relies upon an unreasonable or extreme interpretation of the act, regulation, guidelines, code or relevant standard.
- 7.5.4. An indicator of what types of enforcement actions Council will consider in relation to given levels of risk associated with a particular NCA is provided in Table 1.0 below.
- 7.5.5. In some cases it is appropriate for Council to initiate the compliance process with a lower-level enforcement action, and escalate the action only where continued non-compliance persists. This enforcement method may be appropriate within a particular case or between cases depending on the circumstances.

Table 1.0		Enforcement Action	Seriousness of breach		
			Low	Medium	High
Level of Enforcement Action	High	Prosecution		X	X
		Seizure of property Closure/evacuation of premises		X	X
	Medium	Infringement Notice	X	X	X
		Notice/Order	X	X	X
	Low	Official Warning	X	X	
		Verbal Warning	X		

7.5.6. Other factors that may impact the Council's enforcement action include:

7.5.6.1. When the NCA was undertaken and the duration of the activity, including whether the NCA is continuing.

7.5.6.2. The level of harm or potential harm caused by the NCA.

7.5.6.3. The need for general or specific deterrence.

7.5.6.4. Any prior enforcement action taken against the individual for the same or similar NCA(s).

7.5.6.5. The level of compliance with Council's investigation of the NCA, including any lawful directions to cease the activity or undertake specific actions in relation to the activity by authorised officers.

7.5.7. In accordance with the principles of natural justice, factors that are irrelevant to what enforcement action will be undertaken include:

7.5.7.1. An individual's ethnicity, nationality, political association, religion, gender, sexuality, ability, age or beliefs.

7.5.7.2. An individual's political or social status, relationships or affiliation with any other person or organisation.

7.5.7.3. Any political advantage or disadvantage to a government, person holding (or candidate for) public office, or any political group or party.

8. Customer Requests (Complaints)

8.1. Council will assess all customer requests related to NCAs and first determine whether or not an investigation is to be commenced.

8.2. Examples of instances where an investigation will not be commenced are:

8.2.1. The matter has already been investigated and the matter has resolved.

8.2.2. Council is not the appropriate authority to investigate the matter.

8.2.3. The activity is considered to be lawful or otherwise in substantial compliance with the appropriate act, regulation, guideline, code and/or standard.

8.2.4. An investigation would be contrary to the public interest or policy considerations.

8.2.5. Investigation into the NCA will pose a real danger or risk of harm to Council officers or the public and the danger or risk of harm is otherwise unavoidable.

8.3. Where Council determines it inappropriate to investigate a complaint the complainant will be notified and reasons for Council's decision will be provided.

8.4. If a member of the public makes persistent and continued complaints in relation to a matter that has been previously determined and communicated to be either compliant or not warranting further action, Council may cease further communication with that person.

8.5. Council may seek the continued cooperation of the complainant during the investigation process. This may involve access to the complainants' property or the request for further information including the provision of admissible evidence. While the cooperation of the complainant during an investigation is not necessary, failure to cooperate may result in the investigation being unable to proceed and possibly closed.

- 8.6. Outside of the requirements of the Right to Information Act 2009, Council will not provide details of the investigation or any enforcement action taken to the complainant. While acknowledging the concerns of the complainant to be informed, Council respects the privacy of any person who is under investigation or who has been the subject of enforcement action.
- 8.7. Council will not in any circumstances disclose the identity of the complainant during an investigation or otherwise. If information is to be shared with the individual alleged to be in breach, personal identifying information will be erased.
- 8.8. Any person who is not satisfied with Council's response to NCA may refer the matter for external review to the Tasmanian Ombudsman who is an independent officer responsible for investigating complaints about the administrative actions of local government.

9. Role of Elected Members in compliance and enforcement

- 9.1. It is recognised that members of the public may choose to report NCAs directly to an elected member.
- 9.2. Elected members have a key role in reinforcing the Compliance & Investigation Procedure Policy by:
 - 9.2.1. Supporting the executive arm of the Council in undertaking its compliance role and fulfilling its duties and responsibilities.
 - 9.2.2. Developing and implementing policy that supports Council's compliance and enforcement duties and responsibilities under governing legislation.
 - 9.2.3. Advocating the importance of compliance to the wider community.
- 9.3. Decision-making in relation to the investigation of NCAs and the undertaking of enforcement action, if any, is the responsibility of the respective authorised officer or Council itself. Any a NCA is referred to an elected member by a member of the public should be referred to the unit within Council responsible for investigating the NCA and taking appropriate action, if necessary.
- 9.4. Elected members must not exert pressure, influence or interfere with the investigation or the undertaking of any enforcement action in relation to a reported NCA.
- 9.5. Elected members can assist the community by satisfying themselves that the Compliance & Investigation Procedure Policy is adhered to.

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