

MANAGEMENT AND DISPOSAL OF WASTE ON PRIVATE LANDS

Organisation: Sutherland Shire Council

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Date Received: 16 August 2013



Parliamentary Inquiry into the Management and Disposal of Waste on Private Lands
NSW Committee on Environment & Regulation

Sutherland Shire Council Submission

Thursday, 15 August 2013

Sutherland Shire Profile

The Sutherland Shire Local Government Area covers 370km² with about half the area taken up with National Park and bushland. The geographic features include beaches, wetlands, bays, rivers and Hawkesbury sandstone tablelands dissected by deep river valleys and gorges covered in vegetation.

The population is approximately 220,000 making Sutherland Shire Council the second largest local government area, in terms of population, in New South Wales.

Introduction

Sutherland Shire Council welcomes this opportunity to provide an insight into the issues faced by local government authorities in managing and disposing of waste on private lands. This submission will concentrate on the difficulties faced by Council and will suggest possible solutions for consideration.

Council receives complaints and requests relating to the following:

- Clandestine Drug Laboratories
- Fire Hazards
- Overgrown Vegetation
- Solid and Liquid Waste storage on land
- Squalor and Hoarding; and
- Unlawful transportation and depositing of Asbestos

The management of these issues is complex and in some instances Council's ability to effectively manage these issues is the result of difficult and confusing legislative provisions creating obstacles rather than providing solutions to assist Council in responding to public health and safety complaints.

Council's regulatory powers reside in the following legislation:

- *Local Government Act 1993*
 - section 124 - Orders 20 to 25 and section 628(2) enforcement – max penalty \$2,200
- *Protection of the Environment Operation Act 1997*

- Part 5.6 Land Pollution and Waste, Part 5.3 Water Pollution, Chapter 4 Environment Protection Notices – max penalty \$110,000
- *Roads Act 1993*
 - section 107 Encroachment
- *Environmental Planning and Assessment Act 1979*
 - Section 121B - Order 6 Fire Safety, Order 9 Cease use of building – max penalty \$1,100,000
- *Environmental Planning and Assessment Regulation 2000*
 - Part 9 Fire Safety and matters concerning Building Code of Australia – max penalty \$110,000

Waste on Private Lands – Terms of Reference
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The health and safety risks posed by inadequate management and disposal of waste, overgrowth and excess vegetation, pests, and odour.

- a. Sutherland Shire Council is concerned with the current notifications of Clandestine Drug Laboratories by the NSW Police Force Drug Squad Chemical Operations Unit advising Council of potential health and safety issues that may still exist in the Council's area of operations.
- b. The purpose of these notifications is for Council to follow up on the 'clean up' and 'remediation' of the site.
- c. Council has received six (6) notifications since 2011 and this is a growing trend in Council's involvement in dealing with waste material on private lands.
- d. An example of the risk is that Council officers are reliant on NSW Police attending and there is concern that the persons behind the establishment of Clandestine Drug Laboratories may subsequently intimidate or harass Council officers who issue remediation notices or proceed with legal processes through the judicial system.
- e. In addition to the work, health and safety issues referred to above, the requirement of Council staff to manage the assessment and safe removal and disposal of the chemicals left behind at these Clandestine Drug Laboratories is of the utmost concern.
- f. It is suggested that State authorities such as the NSW Environment Protection Authority (EPA) are better equipped to manage and respond to Clandestine Drug Laboratories notifications as they have appropriately trained personnel with the expertise to respond.

2. *The effectiveness of current regulatory arrangements and powers to compel clean-ups on private land and manage derelict buildings;*

- a. In some instances, eg. responding to overgrown vegetation and accumulation of waste, Council is required to follow the legislative provisions of s124 of the *Local Government Act, 1993* which requires the service of a Notice of Intention prior to the Order being served, and then if the Order is not complied with the only options available to Council are:
 - (i) Local Court prosecution by way of a Court Attendance Notice (note that the Local Court has no powers to order any clean up action); and/or

- (ii) Attend to the removal of the waste and recover the costs from the person responsible.
- b. The duration of time of this legislative process is a concern for Council as continuous inspections and delays in process affect the surrounding amenity whilst the health and safety issues continue for the immediate neighbouring properties.
- c. Common problems are the determination of what is 'waste'? when articles and items that may not be stacked properly create harbourage and refuge for vermin, and if continued to be stored in such a fashion end up becoming waste. However if stored correctly they are more likely to be reprocessed or reused and a less likely to create unsightly/unhealthy conditions causing concerns to neighbours.
- d. Council has experienced cases where Local Court prosecution is quite efficient and effective eg where the private land which is overgrown is in fact owned by a developer and there are no other social or health issues.
- e. In the majority of cases, there are complex social/health issues and prosecution can exacerbate the problem without resulting in any improvements, or compliance with the Council Order.

3. ***The adequacy of inspection and enforcement procedures, including relevant sanctions and powers to recover costs;***

- a. Squalor and hoarding are examples of where Council faces the most challenging issues with some owners being too old to deal with the process or lacking the financial capacity to remediate the property to an acceptable standard.
- b. There is no benefit in prosecuting elderly, mobility impaired persons or land owners that may suffer from mental illness as they have no means by which to remove the waste nor any ability to personally comply with Orders served by Council.
- c. In the instances where some compliance is achieved, it is only a matter of time before the property comes to the attention of Council again for the same reasons.
- d. Accessing private property in these cases is also a concern and Council is aware of the case of *Lee and Robert Rumble v Liverpool Plains Shire Council & Ors* [2012] NSWDC 95
- e. To this end, the prosecution process for these matters is mostly inefficient, ineffective and causes further delays and exacerbates the issues. In addition, Council is in turn criticised for not attending to complaints of health and safety in a timely fashion and the matter becomes "Council's problem".

4. ***Possible measures to improve the management of waste on private land;***

- a. In complex cases primarily related to social issues, simply using prosecution as a means to 'solve' the problem ignores fundamental and underlying health and safety issues.
- b. An "enforcement only" approach in complex social cases leaves neighbours in the frustrating position where little changes even after legal action and where residents are increasingly fearful for their own health and wellbeing and exposed to fire risks and vermin
- c. Valid concerns not adequately addressed often result in neighbourhood conflicts and frustration that can go well beyond adjoining neighbours. They can result in physical interactions leading to unintended and perhaps devastating consequences on both sides.

- d. Council is frequently well aware of where problems exist. Indeed it is Council that is often the last resort for neighbours who have sometimes sought to initiate support for their neighbours.
- e. Unfortunately, Council's only course of action to rectify unacceptable circumstances is prosecution at this stage. This course of action frequently will have no impact on the underlying problems. There often exists an incorrect assumption that people make a rational choice to live the lifestyle they do and possess the capacity to change that lifestyle if given the incentive to do so by means of some penalty.
- f. Health authorities require patients / clients to notify them and take responsibility for their own mental health and wellbeing. However in many instances it is deteriorating mental health conditions that lead residents to withdraw from life and live isolated existences away from families and friends as they can be embarrassed by the circumstances they find themselves in. They have no social networks to assist them to make a change.
- g. As concerned citizens we should not distance ourselves from and ignore these issues. Indeed if we were to adopt this approach in the workplace we would probably be subject to penalties for failing to take action to address obvious safety concerns.
- h. Taking meaningful action, however, requires work across agencies with differing mandates and priorities. Overcoming barriers between agencies requires the development of strong mandated partnerships between community services, health services, enforcement staff and the Police. It requires the development of clear memorandums of understanding, the sharing client / patient information and the willingness of stakeholders to work together in partnership – for the benefit of the individual concerned and the broader neighbourhood.
- i. Effective solutions require interagency approaches that implement joined up solutions resulting in meaningful action that, whilst respecting the dignity of individuals, results in the desire to change.
- j. There is little dignity associated with living in conditions so squalid that they impact on the health and well being of not only an individual but that of the broader community. 'Accidents waiting to happen' are not accidents, but foreseeable events which should not be allowed to occur.

5. *The extent of illegal dumping and the impact on local government authorities of requirements to remove dumped waste;*

- a. The cost associated with the management of illegal dumping is one of the most important issues affecting local government insofar as this issue is concerned.
- b. Councils are often the nexus between residents who have had waste deposited unlawfully with an expectation that Council will remove the waste.
- c. Difficulties arise when Councils are unable to assist in the identification of a waste transporter and end up serving 'Clean Up' directions against the property owner who then relies on Council to assist with having the waste disposed lawfully.
- d. Effectively, Council manages a very long and lengthy process with no cost recovery option.

6. *Any other related matter*

- a. A review of legislation focusing on reducing the legislative notice provisions, increasing powers of entry to include the internal and external extremities of a premise to prevent hoarders from stock piling waste inside their premises and reducing the risk of fire hazards.

- b. Increased education, training and education information for State and local authorities and a public campaign that educates land owners of the potential costs that can be attributed to orphan waste deposited on private land and the responsibility that goes with the removal i.e: material disposed at lawful facility.
- c. Clear guidelines should be provided to enforcement staff on the process to be followed in the identification and removal of waste illegally deposited on private land so that such process is consistent across the State.

Case Studies:

- Oyster Bay: Hoarder and encroachment on road reserve. Not waste in his mind. Matter finally resolved after at least 2 separate local court prosecutions 2 or 3 years apart.
- Jannali: Widow, hoarder living in squalid conditions. Repeated Orders and Prosecution resulting in a penalty. No physical change to the property occurred. This person passed away in the presence of police officers.
- Miranda: Morbidly obese woman living in squalid conditions with her son. Example of a number of persons and agencies collaborating and re-housing the person with appropriate care, selling the property and paying Council's costs in excess of \$15,000 for the clean-up. Council worked with the person's family, their solicitor and other agencies to achieve this comprehensive result.

Recommendations:

1. That specific funding be provided to develop educational tools and training for Council officers, members of the public and industry associates, on the subject of managing waste on private lands and the impact on neighbours.
2. That a review of legislation be undertaken to assist Local Councils to:
 - a. Expedite the process of achieving the clean-up of premises, the management of overgrown vegetation and dealing with other unsightly conditions;
 - b. Expedite the formal process where serious health and safety concerns exist;
 - c. Provide sufficient penalties and deterrents; and
 - d. Empower the local court to not only apply a monetary penalty but also make orders similar to those provided for in section 126(3) of the *Environmental Planning and Assessment Act 1979*
3. That a review of legislation provide a definition for waste which prevents confusion.

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