

Local Planning Policy 7 – Compliance (LPP7)

Management Procedure

Relevant Delegation

Purpose

Councils have an obligation to properly record and consider all reports and complaints about unauthorised uses and development under Local Planning Scheme No.3 (LPS 3). An effective complaint handling system is also a good risk management practice.

The purpose of this Policy is to establish a consistent, transparent and integrated process for planning compliance including the issuance of Infringement Notices and Directions orders.

This Policy:

- a) Is not legally binding on the City;
- b) Is general in nature and does not exhaustively address all specific considerations that may be considered by the City;
- c) Does not limit the discretion of the City, or compel the City to take action; and
- d) Is not intended to be viewed as a substitute for legal advice or process.

Policy Statement

This policy is to be read in conjunction with Council Policy S-DSO-1 Enforcement in respect to the principles outlined in that policy.

The policy provisions are set out and are applied as follows:

1. Jurisdiction

On receipt or notification of any planning compliance issue, the jurisdiction of the City will first be determined. Any matter falling outside of the jurisdiction of the Local Planning Scheme and relevant planning policies will be referred to the appropriate authority and the complainant advised as such. No further action will be taken by the City.

2. Priority

Compliance issues will be progressed in accordance with the following priorities (in order) irrespective of the number or frequency of complaints received:

- a) Dangerous or unsafe buildings and matters of significant nuisances impacting on broad public amenity, health or safety.

- b) Any matter involving direct environmental impacts or degradation.

The City will not take compliance action on complaints that are considered to be frivolous or vexatious, where a complainant cannot reasonably demonstrate that the non-compliance directly impacts upon them.

All other compliance matters will be progressed in the order in which they arise.

Complaints are required to be in writing and include specific details of the compliance matter. Where the complaint relates to an activity, information such as time and frequency of events should be provided.

3. **Circumstances where the City may take no further compliance action**

The City may determine not to take compliance action where:

- a) The extent of the non-compliance is minor to the point of being barely distinguishable from a compliant development;
- b) The non-compliance has been in existence since the gazettal of the scheme and has no apparent impact on the amenity of adjoining properties, the streetscape, is structurally sound (where applicable) and poses no threat to community safety;
- c) Where the potential rectification or penalty is disproportionate to the outcome the action would seek to achieve; or
- d) Where an activity constitutes domestic enjoyment, notwithstanding that the activity may be defined under the Local Planning Scheme.

4. **Undertaking Compliance action**

Compliance action will usually involve one or more of the following:

a) **Planning Infringement Notice**

Where an unauthorised land use is occurring, or is occurring contrary to a planning consent, the City may issue a Planning Infringement Notice as prescribed by the Planning and Development Regulations 2009.

In respect to issuing a Planning Infringement Notice with the accompanying modified penalty, these may be issued on multiple occasions at a frequency at the discretion of the Chief Executive Officer or delegated officer.

b) **Direction Notice**

Where an unauthorised use or development has occurred, or has occurred contrary to a planning consent, the City may issue a Directions Notice as prescribed under the Planning and Development Act 2005, as follows:

- i. Where the matter related to an unauthorised use, a Direction Notice may be given to the owner or alleged offender seeking the cessation of the use within a specified

time period. The specified time period will depend on the nature of the offence and its effect on the public interest.

- ii. Where the matter related to an unauthorised built development, a Directions Notice may be given to the owner or alleged offender seeking them to remove, pull down, take up, or alter the development, and restore the land as nearly as practicable to its condition immediately before development started. Where a Direction Notice has been issued for unauthorised built development, a minimum of 60 days from the date of the issue of the Directions Notice will be allowed for the owner or alleged offender to comply.

c) Referral to the City's Solicitors to initiate Legal action

Where an unauthorised use or development has occurred, the City may refer the matter directly to its solicitors for potential prosecution.

In considering legal action in respect of prosecuting a matter, the City will take into account:

- i. The likely success of achieving a conviction;
- ii. The potential cost of legal action; and
- iii. The broader public interest in the action.

d) Retrospective application seeking approval

Where an authorised use or development has occurred and in the opinion of the City the use or development may be capable of being considered for retrospective consideration, the land owner/occupant will be requested in writing to lodge a retrospective development application within 21 days. If an application has not been received within this period a second request in writing will be sent with an additional 7 days for submission.

If after this period no formal application has been granted, or additional time for lodgement not been granted, the City may undertake compliance action for the unauthorised use or development in accordance with items 4.1, 4.2 or 4.3 above.

Related Policies	Local Planning Scheme No.3 Planning and Development Act 2005 Planning and Development Regulations 2009
Legislation	<i>City of Kalamunda Local Planning Scheme No.3</i>
Adopted	25 July 2016
Reviewed	
Next Review Date	