

Council Policy – General Compliance and Enforcement

Responsible Directorate	Development Services
Responsible Business Unit/s	Statutory Planning and Compliance
Responsible Officer	Director Development Services
Affected Business Units	Statutory Planning and Compliance Health and Building and Community Safety Infrastructure Services

Objective

The objective of this Policy is to assist the Shire to use compliance and enforcement strategies to achieve legislated objectives and encourage compliance by implementing a cooperative and collaborative approach to enforcement action. The Policy provides a range of prescribed compliance and enforcement options for dealing with compliance matters and also aims to:

- Ensure a consistent approach in enforcement and compliance related matters;
- Provide transparency, apply procedural fairness and natural justice for all enforcement and compliance related matters;
- Provide an educational, cooperative and collaborative process towards compliance and enforcement; and
- Guide decision making and actions by the Shire in the consistent use of enforcement options commensurate with the risk.

Scope

This Policy applies to all compliance and enforcement actions where the Shire has a regulatory responsibility under State and Local Laws.

Policy

1. Introduction

The Shire is required to administer its statutory responsibilities under the applicable legislation in a transparent and fair manner in the interest of public health, safety, and amenity. Each compliance investigation undertaken by the Shire will be assessed on a case-by-case basis. The action taken will be proportionate to the seriousness of the non-compliance.

2. Legislation Enforced by Shire

The Business Units within the Shire which may enforce legislation are outlined in the below table.

Business Unit	Legislation
Building Services	• <i>Building Act 2011 and Building Regulations 2012</i> • <i>Caravan Parks and Camping Grounds Act 1995 and Regulations</i>

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Business Unit	Legislation
	<i>Local Government Act 1995</i> <i>Shire of Serpentine Jarrahdale Local Laws</i>
Statutory Enforcement (Planning Compliance) Services	<i>Building Act 2011 and Building Regulations 2012</i> <i>Caravan Parks and Camping Grounds Act 1995 and Regulations</i> <i>Graffiti Vandalism Act 2016</i> <i>Local Government Act 1995 and Regulations</i> <i>Planning and Development Act 2005 and Regulations</i> <i>Shire of Serpentine Jarrahdale Local Laws</i>
Environmental Health Services	<i>Caravan Parks and Camping Grounds Act 1995 and Regulations</i> <i>Environmental Protection Act 1986 (Public Health component only)</i> <i>Environmental Protection (Noise) Regulations 1997</i> <i>Environmental Protection (Unauthorised Discharge) Regulations</i> <i>2004 Food Act 2008 and Regulations</i> <i>Health (Miscellaneous Provisions) Act 1911</i> <i>Local Government Act 1995</i> <i>Regulations Public Health Act 2016 and Regulations</i> <i>Shire of Serpentine Jarrahdale Local Laws</i>
Engineering Services	<i>Local Government Act 1995</i> <i>Planning and Development Act 2005</i> <i>Shire of Serpentine Jarrahdale Local Laws</i>
Ranger Services	<i>Bushfires Act 1954 and Regulations</i> <i>Cat Act 2011 and Regulations</i> <i>Control of Vehicles (Off Road Areas) Act 1978 and Regulations</i> <i>Dog Act 1976 and Regulations</i> <i>Graffiti Vandalism Act 2016</i> <i>Litter Act 1979 and Regulations</i> <i>Local Government Act 1995 and Regulations</i> <i>Local Government (Miscellaneous Provisions) Act 1960</i> <i>Shire of Serpentine Jarrahdale Local Laws</i>
Emergency Services	<i>Bush Fires Act 1954 and Regulations</i> <i>Emergency Management Act 2005 and Regulations</i> <i>Local Government Act 1995 and Regulations</i>

Business Unit	Legislation
Environmental and Sustainability Services	• <i>Cemetery Act 1986</i> • <i>Planning and Development Act 2005</i> • <i>Shire of Serpentine Jarrahdale Local Laws</i>

3. Lodging a Complaint

- 3.1 Where a complaint relates to a breach in legislation, for which the Shire is responsible for administering, the complaint shall be made in writing and include:
- (a) name and address, telephone number, and email address of the complainant;
 - (b) address of the offending property; and
 - (c) details of the alleged offence.

The Shire *may* consider verbal complaints received on a case by case basis.

4. Investigation of complaints (Reactive Compliance)

- 4.1 Complaints will be prioritised for investigation based upon the offence category set out in clause 5 of this policy.
- 4.2 Decisions on enforcement action may have regard to any or all of the following considerations:
- (a) The offence category - the type and seriousness of offence
 - (b) The occurrence of the offence and whether it is repeated
 - (c) Whether the offence was committed willfully or unknowingly
 - (d) Voluntary action by the alleged offender to remediate the offence
 - (e) The potential short term and long term consequence of the non-compliance
 - (f) Cooperation by the alleged offender and their willingness to undertake remediation
 - (g) The public interest

5. Offence Categories

Where an investigation is undertaken and it is considered that there is sufficient evidence, the Shire will take the appropriate enforcement action based on the specific circumstances of each individual case, and based on the following offence categories:

Minor: A minor offence is a breach of legislation, which has a minimal impact on the community, a person or the environment. The breach may be able to be resolved in a relatively short timeframe without any further impact on the community or the environment once compliance has been reached.

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, life, critical infrastructure, property, or the environment but if allowed to continue the impact may have a major or more significant impact on the community. The breach may initially be able to be resolved with an infringement, directions notice or order under relevant legislation.

Major: A major offence is a breach of legislation that significantly affects or risks the health and safety of the community, life, critical infrastructure, property, or the environment. It may also be a case where the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate in order to achieve compliance and which may lead to a prosecution action.

The offence category is subject to review during the investigation process and the category will be determined at the discretion of the Officer.

6. Enforcement Action

The Shire may consider the following enforcement actions or a combination of the following actions.

6.1 No enforcement action taken

The Shire may exercise discretion and take no enforcement action after an investigation where:

- (a) The allegation is considered inconsequential or insignificant. For example, where the extent of the non-compliance is minor to the point where the distinction between complying and not complying with the relevant legislation would not be noticeable other than to a person well versed in the relevant requirement.
- (b) The complaint has been made primarily as a result of a neighbour dispute.
- (c) The Shire is not the appropriate authority to investigate the matter.
- (d) Where a complaint is anonymous, unless the matter is considered to be a significant risk to public health, safety, the environment and/or the amenity of the locality.
- (e) Having considered the nature of the non-compliance, an educative approach to preventing the matter from continuing or reoccurring is considered most appropriate.
- (f) There is insufficient evidence to prove non-compliance after reasonable attempts have been made by the Shire to investigate the matter.
- (g) No enforcement action would generally only occur for minor offences.

6.2 Referral to an external agency or relevant authority

- (a) Where the Shire is not the responsible authority to administer the legislation which has been breached, the Shire will refer the complaint to the relevant agency/authority.

6.3 Requests for retrospective development approvals (if applicable)

- (a) Where a breach relates to use or works undertaken without development approval, the Shire may require and assist the offender to submit a retrospective development application where such a development application is capable of approval, subject to a merits-based assessment.
- (b) The Shire may allow the use of a minor offence to continue until the development application is determined dependent on the scale and impact. This would generally be for minor offences.

6.4 Formal Cautions or Warnings

Formal action includes either verbal or written warnings or requests for action by the person committing the offence. This may include the provision of advice, information or assistance to ensure future compliance. This would generally be for a minor to moderate offence.

6.5 Infringement Notices Issued under Relevant Legislation

- (a) For offences that have modified penalties, an infringement notice may be issued. This would generally be for a minor to moderate offence.
- (b) A person who receives an infringement notice may choose to pay the penalty or elect to have the matter heard in court.
- (c) Records of all infringements notices are kept on the electronic record system for future reference, in the event that a further offence be committed.
- (d) The *Fines, Penalties and Infringement Notices Enforcement Act 1994* provides that the effect of payment of an infringement notice is that:-
 - (i) no further prosecution of that matter can take place for the same time period; and
 - (ii) that payment is not to be taken as admission of any kind for that alleged offence.
- (e) Multiple infringement notices can be issued for any given offence/(s).
- (f) Where a fine is not paid within the specified timeframe, the matter will be referred to the Fines Enforcement Registry for collection or action.

6.6 Direction Notices

The Shire may:

- (a) Issue a written direction that development stop immediately and not recommence.
- (b) Issue a written direction that development must be removed.
- (c) Issue a written direction that remedial action be undertaken to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the responsible authority, within a specified time period of no less than 60 days.
- (d) The Shire may undertake works as specified in the notice or order to restore the land as nearly as practicable to its condition immediately before the development started or execute that work as it directed that person. The Shire may be entitled to recover its expenses in a court of competent jurisdiction.
- (e) In the event that an infringement, notice or order is appealed in accordance with the relevant legislation, the Shire may be required to substantiate its actions to a court or tribunal. This may result in the infringement, notice or order being overturned, amended or subject to mediation.

This would generally be for moderate to major offences.

7. Prosecution Action

- 7.1 Prosecution will be undertaken for serious breaches in legislation such as major offences or in matters where other enforcement actions have not resulted in compliance for minor or moderate offences.
- 7.2 The initiation of a prosecution is subject to a Council decision.
- 7.3 The Shire will consider the following as part of a prosecution initiation:
 - (a) the seriousness and nature of the offence;
 - (b) legal advice received by the Shire;
 - (c) any evidence of contempt or disregard for the law;

- (d) any public health or safety impacts resulting from the offence; and
- (e) whether the prosecution is in the public interest.

8. Withdrawal of prosecution proceedings

- 8.1 The Shire may consider the following when determining whether to withdraw from prosecution proceedings:
- (a) legal advice received by the Shire; or
 - (b) in the opinion of the Chief Executive Officer, an appropriate level of compliance has been achieved; or
 - (c) an error of law or fact; or
 - (d) the owner or occupier of the land is deceased or cannot be located.

9. Audits, patrols, and checks (Proactive Compliance)

The Shire will carry out proactive compliance in the following manner:

- (a) carry out audits of development approvals, conditions and refusals;
- (b) carry out yearly audits or as often as required of extractive industry licencing and conditions;
- (c) investigate compliance issues observed by Shire Officers during the course of daily work related activities.

10. Disclosure of Information

The Shire will endeavour to keep complaints confidential however Freedom of Information applications may be made in accordance with the *Freedom of Information Act 1992* and will be assessed based on their individual merits.

Officers shall not release information on specific compliance and enforcement activities, such as active investigations, to the public. General updates may be provided to the complainant however detailed information in relation to ongoing discussions with offenders will not be disclosed.

On completion of an investigation, complainants will be advised in writing of the outcome (subject to confidentiality requirements) and the compliance matter closed.

Definitions

Nil.

Relevant Policies/Council Documents

- Local Planning Policies
- Private Swimming Pool Inspection and Enforcement Business Operating Procedure (E19/11218)
- Conflict of Interests Business Operating Procedure (E19/4606)
- Quick Reference Guide – How to Lodge a Prosecution Notice through the eCourts Portal (E22/13525)

Legislation/Local Law Requirements

Refer to clause 2.

Office Use Only				
Relevant Delegations	The Shire's Register of Delegations and Authorisations (E20/5259) is intrinsically linked to this Policy as it provides important information pertaining to the issuing of infringement notices and the lodgment/commencement of prosecutions.			
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