



LOCAL PLANNING POLICY 7.5: DEVELOPMENT COMPLIANCE

1.0 PURPOSE

1.1 The purpose of the Policy is to provide guidance for the Development Compliance process to be undertaken by the City including:

- Establishing a consistent and transparent approach for planning compliance;
- Outlining the process for assessment of complaints of unlawful activity, land use or structures to determine when further investigation and/or action is required;
- Outlining the City's options for dealing with unlawful activity; and
- Establishing circumstances where further enforcement action is warranted.

2.0 BACKGROUND

2.1 The City is responsible for enforcing the Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations) and the City's Local Planning Scheme No. 3 (the Scheme). These documents set out when development approval is required and the requirements for assessing any development approval.

2.2 Part 13 of the Planning and Development Act 2005 (PD Act) outlines the City's enforcement and legal proceedings as a decision maker of relevant development applications and enforcer of the relevant Local Planning Scheme. Likewise, Schedule 2, Part 10 of the Regulations includes enforcement provisions specific to the district. The City has a legal responsibility to ensure that all development within the district is compliant with the Scheme.

2.3 Development Compliance relates to the specific objectives of the Scheme, which includes the orderly and proper development of land and securing the amenity, health and convenience for the inhabitants thereof. Development Compliance is therefore required to ensure that land use activities and works are undertaken in accordance with Development Approvals issued by the City and the requirements of the Scheme, so as not to be in breach of legislation.

2.4 The PD Act includes a range of actions that can be taken to address a prescribed offence such as serving Direction Notices to stop work, to bring the land into compliance with the Scheme and/or restore the land as nearly as practicable to its condition immediately before the development started.

3.0 APPLICATION OF POLICY

3.1 This policy applies to all development that is within the Scheme area of the City of Nedlands and includes development on zoned land, reserved land, land which is not zoned and development which was not approved by the City of Nedlands.



3.2 The Policy applies to alleged breaches of the PD Act and the Scheme.

4.0 OBJECTIVES

4.1 To ensure that development complies with the provisions of the Scheme, the PD Act and conditions of development approval.

4.2 To ensure that any alleged non-compliances and/or breaches of the relevant legislation are investigated in a fair, transparent and equitable manner.

4.3 To facilitate negotiated outcomes, where appropriate, where it is found that a breach of the relevant legislation or conditions of approval has occurred.

4.4 To undertake legal, accountable and defensible enforcement.

5.0 POLICY MEASURES

Discovery of Non-compliance

5.1 The City may become aware of an alleged non-compliance or a breach by a land owner or occupier within the District through either a site inspection, aerial photography or a complaint. In the case of a complaint, the City will investigate all complaints received in writing.

Complaint

5.2 Any person who is aggrieved by a land use or development matter must lodge their complaint in writing, either by letter delivered to the City in person or via post or by email. The City will record the complaint and deliver (either by post or email) acknowledgement correspondence to the complainant. Complainant particulars will be kept confidential and will not be released to offenders without the consent of the complainant.

5.3 The complaint must contain the following details:

- (a) The complainant's name, property address and preferred contact details;
- (b) The property address where the alleged offence has occurred;
- (c) Details of the alleged offence;
- (d) How the alleged offence is having an impact on the complainant;
- (e) The dates and times the alleged offence has occurred (if applicable); and
- (f) Photographs of the offence (if applicable).

5.4 The City may not respond to any anonymous complaints as it has no way of determining the validity of a complaint.



- 5.5 If the complaint matter can be resolved by City Officers, the complaint will be closed, and no further action will be undertaken, unless there is a subsequent occurrence of non-compliance.
- 5.6 If the complaint involves multiple issues that relate to various City Departments, the matter will be coordinated to ensure joint investigation by City Officers, to reduce the inconvenience and confusion to owners and occupiers.
- 5.7 The Council shall be kept informed of non-compliance issues.

Investigations

- 5.8 The City will investigate all complaints and alleged unlawful land use activity, unless:
 - (a) the matter has already been investigated and resolved;
 - (b) the City has no jurisdiction. i.e. there is no lawful provision for Council or relevant authority to take action;
 - (c) the activity is deemed to be lawful without an investigation; or
 - (d) the matter is the subject of an anonymous complaint.
- 5.9 If the City determines that there is no legal breach of any operative Planning legislation, it will explain in writing to the complainant the reasons why it is unable to act on the complaint.

Jurisdiction

- 5.10 Any compliance issue falling outside the jurisdiction of the City will be referred to the relevant authority for action, and the complainant will be advised accordingly. No further action will be able to be taken by the City in these circumstances.
- 5.11 Where a compliance issue falls partly within the jurisdiction of the City and partly within the jurisdiction of another authority, that part falling within City's jurisdiction will be dealt with in accordance with this policy, and that part falling outside the City's jurisdiction will be referred to the relevant authority for action, and the complainant will be advised accordingly.

Options for Dealing with Unlawful Activity

- 5.12 When acting upon and resolving planning breaches, the City will consider a range of different options depending upon the circumstances of the matter. Some or all the following options may be explored by the City with a person/s undertaking an unlawful activity. These options are initial steps only.

Negotiation

- 5.12.1 Negotiations can be a worthwhile approach to foster relationships and build trust in the community and demonstrate reasonableness to the community. Negotiation can often be the least time-consuming approach in achieving an



acceptable outcome, however, it is dependent upon the seriousness of the breach and willingness of the offender to comply. Negotiation is an important tool but cannot always be relied upon to achieve the desired outcome.

Education

5.12.2 Alleged offenders may be counselled or cautioned, with the purpose of educating them on the relevant requirements. The City recognises that educational incentives may lead to compliance being achieved without enforcement action in some circumstances.

Planning Application

5.12.3 Any person is entitled at any time to apply for development approval for an existing use or retrospective approval of an unlawful construction. The City will not encourage the application for development approval where the development cannot be considered for approval under the Scheme or relevant building legislation. Such an application for development approval must include the applicable fee, plus twice the applicable fee by way of a penalty. The City may consider not commencing formal enforcement proceedings where an application for development approval is made to formalise the unlawful development that complies with the standards and requirements of the Scheme.

Notice

5.12.4 Issuing a written notice or caution requiring the activity/work to cease or modify the development to comply. This is not a direction notice under the PD Act. Notices may be issued by the City for any development compliance matter.

Priority

5.13 Compliance priorities will be processed in the following order, irrespective of the number or frequency of complaints received, namely:

- (a) Dangerous and/or unsafe works and matters of significant nuisance with a high risk of adversely impacting on public amenity, health and/or safety.
- (b) Any matter involving irreversible or permanent damage to a building or place on the State Register of Heritage Places or on the Heritage List established under the Scheme, or the natural environment.

5.14 All other compliance issues not referred to above, will be progressed in the order in which the City becomes aware of the matter.

5.15 All compliance matters will be investigated where the City has reasonable grounds to suspect that non-compliant activity is occurring.

5.16 The City will not act in relation to those complaints which it determines are either frivolous or have been made with the intention to create mischief.



Determine Not to Take Compliance Action

5.17 The City may determine not to take compliance action where:

- (a) On the balance of issues, it is not within the public interest to do so.
- (b) After reasonable investigation
 - (i) it is uncertain that the matter is compliant; or
 - (ii) is incapable of being made compliant due to a lack of specific information in the plans and documents of any relevant approval.
- (c) The extent of the non-compliance is so minor that the distinction between complying and not complying with the relevant legislation would be unnoticeable to the general public.
- (d) The non-compliance has been in existence for a substantial period and has had no apparent adverse impact on the amenity, health or safety of the adjoining properties, the streetscape, the locality or the natural environment, and the land use, development or building work pose no potential risk to the public or the natural environment.

5.18 In determining not to take compliance action, the City is not legitimising or giving its consent or approval to the non-compliance, but has decided, in the circumstance, not to pursue the matter at the time being.

Powers of Entry

5.19 Schedule 2, Part 10, clause 79 of the Regulations authorises an employee of the City authorised by Council to enter any building or land for ascertaining at all reasonable times, whether the provisions of the Scheme are being observed. The City views the power to enter private property very seriously and will ensure that the exercise of these functions is strictly in accordance with the Scheme. The City's Delegated Authority only enables authorised City Officers to legally enter property for them to carry out their investigative duties and take necessary action.

5.20 Authorised City Officers who carry out inspections on private land for regulatory purposes, will carry photographic identification. An owner is not required to be present when an authorised City Officer undertakes an investigative inspection. When property entry cannot be obtained or is denied the City may either:

- (a) seek a WA Police escort; or
- (b) by Warrant obtained pursuant to s.3.33 of the Local Government Act 1995 enter any building or land, together with any other persons described in the Warrant, or a Police Officer using such force as is necessary.

Undertaking Compliance Action

5.21 The City will issue a notice requiring that a non-compliant development be made compliant generally within 14-28 days where an outstanding condition of



development approval has not been complied with to the City's satisfaction. The length of time given to the offender will depend on the nature of the breach and required time for compliance.

- 5.22 The City may extend the period of time for compliance at the request of the offender of the property where the breach has occurred. The City will consider the nature of the breach and steps to be, or already, undertaken to comply with the Scheme when determining if extension for compliance can be granted.
- 5.23 Where a non-compliance with the Scheme or breach of the conditions of approval has occurred and is determined by the City to have a significant adverse impact on the amenity, health and/or safety of the public or the natural environment, a notice may be issued to the land owner requiring that the non-compliance or breach be stopped immediately and rectified within a timeframe appropriate to the severity of the non-compliance or breach.
- 5.24 The City may temporarily defer the commencement of enforcement action where an application for development or building approval has been submitted in respect of the alleged breach, within 28 days of the City's notice outlined in policy measure 5.16 above, or such further period agreed in writing by the City.
- 5.25 After the expiry of the notice period outlined in policy measure 5.16, the City may issue a further notice requiring that a non-compliant development be made compliant within a lesser period of time.
- 5.26 If after the expiry of the notice period, stated in the notice issued under policy measures 5.16, the non-compliance, has not ceased or been rectified as directed, the City may:
 - (a) issue an infringement to the offending party in accordance with the penalties prescribed in the Planning and Development Regulations 2009;
 - (b) issue a written direction pursuant to section 214 of the PD Act requiring the non-compliance be made compliant within 60 days from the date of the direction, or another period specified by the City. The written direction may require (amongst other things) the land owner/recipient to obtain subsequent development approval, cease the unapproved development, remove any unapproved structures or undertake prescribed work; or
 - (c) If non-compliance has not been rectified after the expiry of the date of the written direction, or other period specified by the City as the case may be, legal action as provided for under Section 214 and 218 of the PD Act shall commence.
- 5.27 Nothing in this section precludes the City from commencing prosecution in respect of a non-compliance at any time.
- 5.28 The City may grant an extension of time, where in the opinion of the City, there has been a genuine attempt by the land owner to address the non-compliance.



- 5.29 Where a City decision relating to non-compliance is referred to the State Administrative Tribunal, (SAT) by the land owner, the City will defer any further compliance action until the matter has been determined by SAT.
- 5.30 If the City believes the referral by the land owner to SAT is frivolous, vexatious or used to delay or frustrate the action of the City to require the land use, development or building work to be made compliant, the City will not support any requests for adjournments to the SAT proceedings.

Subsequent Approval

- 5.31 Under clause 65 of the deemed provisions of the Regulations, the Council has the discretion to give subsequent development approval to a development already existing or commenced without having applied for or received the Council's approval. Sometimes is referred to as retrospective approval.
- 5.32 Clause 65 does not affect the power of the Council to take legal action for a breach of the Scheme or the Planning and Development Act 2005.
- 5.33 The Planning and Development Regulations 2009, Schedule 2 prescribes the maximum fees, and in respect to development applications (other than extractive industries) where development has commenced or been carried out, the fee for the subsequent approval is the prescribed development fee which includes an additional charge to reflect a financial penalty for commencing the development without approval.
- 5.34 In accordance with Council's Local Planning Policy – The Waiving and Refunding of Development Application Fees, the waiver or refund of development application fees will not apply to applications made where a use or development has already been commenced or carried out unlawfully and the purpose of the application is to render that use or development lawful under the Scheme.

Discretionary Action

- 5.35 Where there are extenuating circumstances associated with the reason for non-compliance, the City shall have regard to the following when deciding any action, it may take:
- (a) The need to reinforce the orderly and proper development of the District.
 - (b) The public interest served by requiring compliance with the Scheme.
 - (c) The factual circumstances which may have caused the non-compliance and/or the breach of the applicable laws and requirements relating to the development, building or building work.

6.0 RELATED LEGISLATION

- 6.1 This policy has been prepared in accordance with Schedule 2 Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015 and



Western Australian Planning Commission (WAPC) Planning Bulletin No. 98 – Planning and Development Regulations 2009.

6.2 This policy should be read in conjunction with the following additional planning instruments and its requirements apply unless specifically stipulated elsewhere in any of the below:

- Planning and Development Act 2005
- Planning and Development Regulations 2009
- Planning and Development (Local Planning Schemes) Regulations 2015
- Local Government Act 1995
- Town Planning Scheme No. 2

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