

Policy P319 Planning Compliance

Responsible Business Unit/s	Development Services
Responsible Officer	Manager Development Services
Affected Business Unit/s	Development Services

Policy Objectives

1. Identify the criteria by which it is determined whether or not a compliance action should be undertaken.
2. Identify specific circumstances where compliance action will not be taken.
3. Outline compliance procedures including the issue of infringement notices and prosecution action.
4. To ensure that any alleged non-compliance and/or breaches of legislation or conditions of approval are investigated in a fair, transparent, and equitable manner.

Policy Application

This Policy applies to all development within the City of South Perth where the City of South Perth is the relevant authority to deal with such matters.

Policy Status

This policy is made pursuant to Schedule 2, Part 2, Division 2 – ‘Local Planning Policies’ of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations).

The statutes in respect of which this policy will operate include the *Planning and Development Act 2005* (the Act), its subsidiary legislation, and the City of South Perth Town Planning Scheme No. 6 (TPS6).

This policy does not deal with compliance matters under other acts such as the *Building Act 2011* or the *Health Act 1911*. Nothing in this policy should be taken to prevent the City from commencing legal action at any time with regard to matters dealt with under these or any other acts.

The definitions for terms used throughout this policy are provided for in section 4(1) of the Act.

Policy statement

1.0 Jurisdiction

Any compliance issue falling outside the jurisdiction of the City of South Perth, whether geographically or statutorily will be referred to the authority with jurisdiction for consideration, and any complainant advised as such. No further action will be taken by the City of South Perth.

Where a matter falls partly within the jurisdiction of the City of South Perth and partly within the jurisdiction of another authority (such as another local government area), that part falling within the City's jurisdiction will be dealt with in accordance with this policy, that part falling outside will be referred to the relevant authority.

2.0 Manner of complaint

All complaints are required to be submitted in writing either as a hard copy or via electronic mail and shall include the following information:

- details of the property/land to which the matter relates;
- details of the complainant including contact details and address;
- details of the compliance matter; and
- where the complaint relates to an activity or use, information such as time and frequency of the use.

3.0 Circumstances where the City may take no further compliance action

The City may, having regard to any legal or technical advice, resolve to take no further compliance action in the following circumstances.

3.1 Uncertainty of compliance

Where, after reasonable investigation, it is uncertain that a matter is compliant with planning requirements, or it is uncertain whether it is capable of enforcement owing to:

- (i) a lack of precision in the plans/documents of any relevant approval
- (ii) a lack of certainty at the time of development as to the legal status of the development or the requirement to obtain approval
- (iii) the matter is considered to be a civil matter
- (iv) any other legal consideration.

3.2 Matter considered inconsequential or insignificant; or of a vexatious nature

Where there is non-compliance with planning requirements, the matter may reasonably be considered inconsequential or insignificant in certain circumstances.

For the purposes of this policy, a matter will be considered to be inconsequential or insignificant only 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.

The City will also not take further action in relation to a complaint which the City determines to be of a vexatious nature or has been made with the intention to create mischief.

3.3 Other circumstances

Where it has been established that non-compliance with planning requirements has occurred and that the matter is neither trivial nor insignificant, the City may determine not to take action where a matter meets both of the following criteria:

- (i) It can be established that the development that is the subject of the breach has been in existence for a substantial time period (generally 6 years or longer); and
- (ii) The development has no apparent impact on the amenity of adjoining properties, the streetscape, or the locality.

4.0 Compliance procedure

Upon becoming aware that non-compliant activity may be occurring on land within the City and having ascertained that the matter falls within the jurisdiction of the City of South Perth, the City will undertake any investigation considered necessary to determine the extent of the non-compliance. This investigation may include contacting the landowner to determine the legitimacy of the allegations and/or conducting a site inspection.

Where, in the opinion of the Manager Development Services, the compliance matter is considered likely to fall under section 3.0 of this policy in that the matter may be considered uncertain; inconsequential or insignificant; or has been in existence for a substantial period of time, no further compliance action will be taken and any complainant advised as such.

Where, in the opinion of the Manager Development Services, the compliance matter is not considered to fall under section 3.0 of this policy the following procedures will apply.

4.1 Initial correspondence

A letter will be sent to the offender specifying the non-compliance and requiring that the matter be rectified with a timeframe specified by the Manager Development Services, usually 28 days. The ways a matter may be rectified include, but is not limited to:

- (i) Stopping and not recommending a non-approved Use
- (ii) Removing or altering an unapproved structure
- (iii) Undertaking works to restore land to its condition prior to works being undertaken
- (iv) Obtaining retrospective development approval

The City may proceed to issuing a directions notice or infringement without undertaking initial correspondence where considered necessary by the Manager Development Services.

4.2 Written direction and infringement

If after the timeframe specified in the initial correspondence the matter is not rectified, the City may undertake one or more of the following:

- (i) Issue a written direction that development stop immediately and not recommence.
- (ii) 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.
- (iii) Give an infringement notice of not less than \$500.

4.3 Commencement of legal action

If a written direction is not complied with within the timeframe specified in the direction notice, the City may commence legal action.

Notwithstanding the provisions of clauses 4.1 and 4.2, the City may commence legal action at any time in relation to a compliance matter.

LEGISLATION/ LOCAL LAW REQUIREMENTS

City of South Perth Town Planning Scheme No. 6
Planning and Development Act 2005
Planning and Development (Local Planning Schemes) Regulations 2015

OTHER RELEVANT POLICIES/ KEY DOCUMENTS

City of South Perth Local Planning Policies
City of South Perth Heritage List
City of South Perth Local Heritage Inventory
Heritage Act 2018
Building Act 2011
Building Regulation 2012
Health Act 1911