

Owner	Planning and Sustainability
Implementation	DRAFT
Next Scheduled Review	DRAFT

Policy Development

This Policy is prepared under the provisions of Clause 8.11 of the City of Wanneroo District Planning Scheme No. 2 (DPS 2).

Purpose

The purpose of this Policy is to establish a consistent, transparent and integrated process for planning and building compliance.

Application

This Policy applies to alleged breaches of the Planning and Development Act 2005, DPS 2 and the Building Act 2011.

Planning matters that deal with issues of amenity and impact on adjoining properties will be dealt with before building matters with the exception of dangerous or unsafe buildings. Dangerous and unsafe scenarios that are at the heart of the compliance matter will be dealt by both planning and building legislation simultaneously.

Provisions

The Policy provisions are set out and are to be applied as follows:

1. Jurisdiction

- 1.1 Any compliance issue falling outside the jurisdiction of the City, whether geographically or statutorily will be referred to the authority with jurisdiction for action and any complainant advised as such. No further action will be taken by the City.
- 1.2 Where a matter falls partly within the jurisdiction of the City and partly within the jurisdiction of another authority, 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. Priority

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

- Dangerous or unsafe buildings and matters of significant nuisance impacting on public amenity, health and safety.
- Any matter involving irreversible and permanent damage to a building or place on the State Register of Heritage Place or the Municipal Heritage Inventory established under DPS 2, or to the natural environment.
- All other compliance issues not meeting Clauses 2.1(a) and 2.1(b) of this Policy will be progressed in the order in which the City becomes aware of the matter.

2.2 All compliance matters will be investigated where the City has reasonable grounds to believe that non-compliant activity may be occurring within the City's jurisdiction. The City will not take compliance action on complaints that are determined to be frivolous or vexatious.

3. Determine not to take Compliance Action

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

- After reasonable investigation, it is uncertain that a matter is compliant or it is uncertain whether it is capable of enforcement due to a lack of precision in the plans and documents of any relevant approval or a lack of certainty at the time of development as to the legal status of the development or the requirement to obtain approval; or
- The extent of the non-compliance is minor to the point where the distinction between complying and not complying with the relevant legislation is unnoticeable other than to a person well versed in the relevant law; or
- The non-compliance has been in existence for a substantial time period and has no apparent impact on the amenity of adjoining properties, the streetscape or the locality and is structurally sound and poses no threat to community safety.

3.2 In determining not to take compliance action, the City is not legitimising or given its consent or approval to the matter in question and is simply only determining not to pursue compliance action.

3.3 Notwithstanding Clause 3.1 of this Policy, the City may determine to take compliance action pursuant to Clause 5.1 of this Policy.

4. Undertaking Compliance Action

4.1 The City will issue a notice requiring that a matter be rectified within 21 days where:

- A compliance matter that relates to a condition of planning approval which requires action within a specified time frame has not been met; or
- Amenity and unkempt land Clauses 8.2 and 8.3 of DPS 2 are breached.

A notice may be issued requiring that a matter be stopped immediately and rectified in less than 21 days where the non-compliance or breach is determined be a matter of significant nuisance impacting public amenity, health and safety.

4.2 If after the notice period the matter referred to in Clause 4.1 of this Policy is not stopped, rectified or in any other case where there is unapproved development, unauthorised land use or non-compliance with other development approval conditions, the following will apply simultaneously:

- An infringement will be issued to the property owner for the monetary amount prescribed by the Planning and Development Regulations 2009; and
- A Directions Notice pursuant to Clause 214 of the Planning and Development Act 2005 will be issued to the property owner requiring the compliance matter to be resolved* within 4 months. If after 4 months the matter is not resolved, then the matter will proceed to legal action.

**This may include obtaining retrospective development approval, stopping an unapproved land use, removing an unapproved structure or undertaking prescribed work.*

4.3 The City may grant an extension to any timeframe in Clauses 4.1 or 4.2 of this Policy where there has been a reasonable effort to address the matter of non-compliance and having regard to Clause 5.1 of this Policy.

4.4 Where a compliance matter is subject to a decision that is under review by the State Administrative Tribunal (SAT) the City will defer further compliance action until the matter is resolved unless the City determines that a review is frivolous, vexatious or used to delay or frustrate the compliance process. The City will not support adjournments where sought through the SAT.

5. Discretionary Action

5.1 Where there are extenuating circumstances and in considering leniency, stringency and severity the City will have regard to the following criteria:

- Where it is in the public interest of the proper and orderly development and use of land that the applicable law(s) should generally be complied with; and
- The factual circumstances in which the contravention of the law took place.