
AUTHORISATION

REVIEW

Biennial. Next scheduled review 2018

Part 1

POLICY OPERATION

Introduction

This Policy is prepared under the provisions of clause 3, Schedule 2, Part 2, Division 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations).

Purpose

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

Objectives

The Policy objectives are:-

1. To ensure that development complies with the provisions of the District Planning Scheme No.2 (the scheme), the Planning and Development Act 2005 and conditions of development approval.
2. To ensure that building works comply with the provisions of the Building Act 2011 and the Building Regulations 2012 and building permit conditions, together with any relevant provisions contained in the Local Government Act 1995 and Local Laws adopted by the Council.
3. To ensure that any alleged non-compliances and/or breaches of the relevant legislation are investigated in a fair, transparent and equitable manner.
4. To facilitate negotiated outcomes where it is found that a breach of the relevant legislation or conditions of approval or permit have not been complied with.
5. To undertake legal, accountable and defensible enforcement.

Definitions

- **Building** : has the same meaning as the term defined in section 3 of the Building Act 2011
- **Building Commission** : means a Commission of the Western Australian Department of Commerce
- **Building Work** : has the same meaning as the term defined in section 3 of the Building Act 2011
- **City** : means the administrative officials serving the elected Council of the local government
- **Council** : means the elected Council of the local government
- **Development** : has the same meaning as the term defined in section 4 of the Planning and Development Act 2005
- **District** : means the boundaries of the City of Wanneroo

Discovery of Non-compliance

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 whether received in writing, by telephone or in person.

Inspections

The City will not, as a matter of course, carry out inspections of properties to determine if the development on land is compliant. However, should a site inspection reveal a non-compliance, the City is obliged to investigate the matter and determine what course of action to take if any.

All complaints of alleged non-compliance, will be investigated by the City to determine the level of public and environmental risk as described under clause 2 of the Policy.

Part 2

APPLICATION

The Policy applies to alleged breaches of the Planning and Development Act 2005, the scheme, the Building Act 2011 and the Local Government Act 1995.

Planning issues relating to amenity and/or adverse impacts on adjoining properties will be dealt with before building issues, with the exception of buildings that are deemed to be high risk, dangerous or unsafe. Dangerous and unsafe buildings may be dealt with under both the planning and building legislation simultaneously.

1. Jurisdiction

- 1.1 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 taken by the City.
- 1.2 Any compliance issue falling 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.

2. Priority

- 2.1 Compliance priorities will be processed in the following order, irrespective of the number or frequency of complaints received, namely:-
 1. Dangerous and/or unsafe works, and matters of significant nuisance with a high risk of adversely impacting on public amenity, health and/or safety;
 2. Any matter involving irreversible and permanent damage to a building or place on the State Register of Heritage Places or on the Municipal Heritage Inventory established under the scheme, or the natural environment;

3. All other compliance issues not referred to in 1 and 2 above, will be progressed in the order in which the City becomes aware of the matter;
4. All compliance matters will be investigated where the City has reasonable grounds to suspect that non-compliant activity is occurring.
5. The City will not take action in relation to those complaints which the Council determines are either frivolous, or have been made with the intention to create mischief.

3. Determine Not to Take Compliance Action

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

1. On the balance of issues, it is not within the public interest to do so;
2. After reasonable investigation, it is uncertain that the matter is compliant or is incapable of being made compliant due to a lack of specific information 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;
3. 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; or
4. The non-compliance has been in existence for a substantial period of time 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.

- 3.2 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 particular circumstance, not to pursue the matter.

- 3.3 Notwithstanding clause 3.1 and 3.2 of the Policy, the City may in the future determine to take action to require compliance, in any particular case, pursuant to clause 6 of the Policy.

4. Undertaking Compliance Action

- 4.1 The City will issue a notice requiring that a non-compliant development, building work or breach of the Local Government Act 1995 and/or Local Laws be made compliant within 28 days where:-
1. An outstanding condition of development approval or building work has not been complied with to the City's satisfaction, within a specified time.
 2. Clauses 8.2 and 8.3 of the scheme have been breached relating to the preservation of the local amenity and unkempt land, respectively.
 3. There is a breach of the Local Government Act 1995 or relevant Local Law.
- 4.2 Where the non-compliance or breach of the conditions of approval and/or the scheme 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 land use or the building work be stopped immediately and the non-compliance or breach be rectified within a timeframe appropriate to the severity of the non-compliance or breach, as determined by the City.
- 4.3 The City may at its absolute discretion temporarily defer the commencement of enforcement action where an application for planning or building approval has been submitted in respect of the alleged breach, within 28 days of the City's notice outlined in clause 4.1 above, or such further period agreed in writing by the City.
- 4.4 After the expiry of the notice period outlined in clause 4.1, the City may at its absolute discretion issue a further notice of a lesser period requiring that a non-compliant development, building work or breach of the Local Government Act 1995 and/or Local Laws be made compliant

4.5 If after the notice period the non-compliance referred to in clauses 4.1, 4.2 or 4.4 of the Policy, has not ceased or been rectified as directed, or where land is being used unlawfully or without approval, the following action may apply simultaneously:-

1. The issuing of the following:
 - a. An infringement to the offending party in accordance with the penalties prescribed in the Planning and Development Regulations 2009, the relevant Local Law, or any other applicable law the City is empowered to issue an infringement under, as the case may be;
 - b. A written direction pursuant to section 214 of the Planning and Development Act 2005 will be issued 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;
 - c. A building order may be issued under section 110 of the Building Act 2011 in respect to particular building work, demolition work or incidental structure specifying the period in which to comply with the order;
 - d. A notice under Section 3.25 of the Local Government Act 1995; and/or
 - e. A notice under the respective Local law;
2. If non compliance has not been rectified after the expiry of the date of the written direction, order or notice or other period specified by the City as the case may be, the commencement of legal action:
 - a. As provided for under Section 214 and 218 of the Planning and Development Act 2005;
 - b. To enforce a penalty under Section 115 of the Building Act 2011;

- c. Under Section 9.24 of the Local Government Act 1995; and/or
 - d. As provided for under the relevant Local Law
- 4.6 Nothing in this Clause 4 precludes the City from commencing prosecution in respect of a non compliance at any time.
- 4.7 Notwithstanding clauses 4.1, 4.2 and 4.4 of the Policy, the City may, having regard to clause 6 of the Policy, 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.
- 4.8 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, unless an order has been made under section 111(2) of the Building Act 2011.
- 4.9 If the City is of the opinion that 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.
- 5 Subsequent Approval**
- 5.1 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.
- 5.2 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 2015. Section 51 of the Building Act 2011 provides for the authorisation of unauthorised occupancy of a building or building work by retrospectively issuing an occupancy permit or building approval certificate.

5.3 When considering subsequent approval, the Council shall have regard for the following:-

1. The extent of compliance of the development or building work with the relevant legislation, regulations, scheme provisions and policies.
2. The ability of the development or building work to be made compliant.

5.4 Subject to the receipt of a complete application and the payment of the appropriate fees the Council may issue a subsequent approval with or without conditions.

5.5 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.

5.6 In respect to unauthorised building works, the fees are set out in the City's schedule of building fees. The unauthorised works need to be certified and inspected.

5.7 Before a land owner with unapproved development or unauthorised building works is advised to apply for subsequent approval or a Building Approval Certificate, the City shall ensure that the retrospective approval or permit has the prospect of being issued.

5.8 If the City determines that an unapproved development or unauthorised building work cannot be made compliant by the issue of a subsequent approval or a building approval certificate, the land owner may be liable for a penalty.

6 Discretionary Action

6.1 Where there are extenuating circumstances associated with the reason for non-compliance in relation to a development or building work, the City shall have regard for the following when deciding the course of action it may take against the land owner in relation to the matter:-

1. The need to reinforce the orderly and proper development of the District.

2. The public interest served by requiring the land owner to comply with the law.
3. 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.

7 Proof of Compliant Development

- 7.1 Under clause 6.3.3 of the scheme it states in relation to development that:- *“No use shall commence until such time as all conditions of approval have been satisfied and the development from which the use is to be conducted has been completed in accordance with approved plans, unless otherwise agreed in writing by the Council.”*
- 7.2 In order to satisfy clause 6.3.3 of the scheme, the land owner or authorised agent shall certify to the City that the development has been completed in accordance with all the relevant conditions of the approval.
- 7.3 To facilitate this, a condition shall be included on all conditional development approvals, unless the Council determines otherwise, stating:-

“The owner/applicant is to submit the “Certification of Compliance with Development Approval Conditions” form certifying that all of the conditions specified in the approval by the Council for the development of the land have been completed in accordance with the approved plans, and the certification is to be lodged with the Council within 14 days from the date of practical completion, and applies to all of the conditions, except for those conditions relating to on-going compliance.”

- 7.4 The City shall determine those use classes requiring development approval which will require “certification”, but in any event will include the general land use categories of multi-residential, commercial and industrial.
- 7.5 Attached to the Policy is a copy of the *“Certification of Compliance with Development Approval Conditions”* form. The form will be attached to the City of Wanneroo Development Approval, and is to be completed and certified by the land owner or the applicant as the authorised agent of the owner and returned to the City within the prescribed time.

8 Proof of Compliant Building Work

- 8.1 Under section 33 of the Building Act 2011 and regulation 4 of the Building Regulations 2012, the responsible person is required within 7 days of completion of the works, to submit a Notice of Completion form BA7 to the City notifying that the works are complete. If the form is not submitted to the City within the specified time, the responsible person may be liable for a penalty of \$10,000.
- 8.2 In respect to commercial buildings, the City issues a Certificate of Occupancy, which confirms that the building has been completed in accordance with the conditions of the permit.
- 8.3 For all other building work, any dispute about the building not complying with the conditions of approval, will become a matter to be resolved between the owner and the builder, and if the matter remains unresolved, it may be referred to the Building Commission for determination.
- 8.4 Private building surveyors are responsible for ensuring that privately certified buildings are compliant following completion. In respect to privately certified building applications the City only determines if the correct information has been provided with the application, prior to issuing a building permit.
- 8.5 The City's Building Services' is responsible for assessing building applications and issuing building permits for those buildings that are not privately certified.
- 8.6 In addition, the City's Building Services' is responsible for processing all applications for single houses, grouped dwellings, and multiple dwellings under the Residential Design Codes to ensure the applications comply, whether or not the plans have been privately certified.

9 Limitations

- 9.1 This Policy only relates to development and building works where a development approval and a building permit are required or have been issued.
- 9.2 The policy does not apply to zoning anomalies, inconsistencies with adopted or endorsed structure plans.
- 9.3 Where there is a difference between the provision of the Planning and Development Act 2005 and the scheme, the scheme prevails.

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