

Compliance and Enforcement of Planning Laws

Local Planning Policy

VERSION 3

December 2015

town planning services

Version	Adoption	Comment
1	8 July 2008 Council Item DS205	Final – No objections received during advertising.
2	8 December 2009 Council Item SC127	Final – No objections received during advertising.
2	1 July 2011 Council Item SC001	Final – Readopted under the new City of Greater Geraldton.
3	15 December 2015 Council Item DRS242	Readopted under LPS No. 1.

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1.0 CITATION

This is a local planning policy prepared under the *Planning and Development (Local Planning Schemes) Regulations 2015* and the City of Greater Geraldton Local Planning Scheme No. 1 ('the Scheme'). It may be cited as the *Compliance and Enforcement of Planning Laws local planning policy*.

The local government may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area. In making a determination under the Scheme the local government must have regard to each relevant local planning policy to the extent that the policy is consistent with the Scheme.

2.0 BACKGROUND

Formal enforcement proceedings for the enforcement of planning laws include the giving of formal directions pursuant to section 214 of the *Planning and Development Act 2005* (the Act), commencing prosecution proceedings for an offence pursuant to section 218 of the Act and the giving of infringement notices pursuant to section 228 of the Act.

Section 214 of the Act empowers a local government to issue a direction where a development or land use has been carried out unlawfully (e.g. without development approval or in contravention of the conditions of an approval). The Act is silent in relation to the factors which the local government should consider in determining whether to exercise its discretion to give a direction and, if it decides to give a direction, as to its terms.

Whilst it may be correct to say that there is a general duty imposed on a local government to enforce laws for which it is responsible, that general duty is not absolute. The facts of a particular matter may be such that it is simply not reasonable or appropriate for a local government to take enforcement action.

3.0 OBJECTIVES

- a) To encourage the community to make their concerns known in a constructive and effective manner.
- b) To clearly prescribe the process and procedures for dealing with compliance and enforcement issue related to planning laws.

4.0 POLICY MEASURES

4.1 Raising a Concern

- 4.1.1 A concern must be put in writing with your name, address and phone/email contact. The reason that we ask for the concern to be put in writing is to ensure that your concern is presented fairly in your own words.

- 4.1.2 Details enable us to contact you in the event we may require additional information or wish to notify you of the outcome of the investigations. If required you may be asked to monitor the times at which the problem occurs, this provides sufficient information for the local government and enables us to take the appropriate actions to rectify the situation. If normal procedures fail to rectify the problem, legal action may be necessary, in this event you may be required to appear as a witness at the court proceedings.
- 4.1.3 All concerns will be treated confidentially where appropriate.
- 4.1.4 Your concern will not be dealt with if the local government is of the opinion that:
- a) The person aggrieved does not have a sufficient personal interest in the matter raised in the concern; or
 - b) The concern is vexatious or not made in good faith.
- 4.1.5 If you wish to raise a concern anonymously, then this is treated as a comment as we are unable to advise you of the outcome of the investigation.
- 4.2 Discretion as to the Enforcement of Planning Laws
- 4.2.1 The important matters for consideration in the exercise of discretion to commence formal enforcement proceedings are:
- a) It is in the public interest of the proper and orderly development and use of land that planning laws should generally be complied with. It is expected that, normally, those who carry out development or subdivision, or use land, should comply with the planning legislation and any applicable approval, licence or other authorisation in relation to that activity.
 - b) The impact of the contravention of the Scheme on the affected locality and environment. This includes a consideration of whether the breach complained of is purely technical which would be unnoticeable other than to a person well versed in the relevant law.
 - c) The factual circumstances in which the contravention took place. For example, if the local government had in some way condoned or endorsed the unlawful development, it may not be reasonable for the local government to later attempt to enforce its Scheme in relation to the unlawful development.
 - d) The time which has elapsed since the development was undertaken unlawfully.
 - e) The expense and inconvenience which would be involved in remedying the contravention.
 - f) Whether or not the unlawful structure in question is dangerous, or potentially dangerous.
- 4.2.2 In prosecution proceedings, the onus is on the local government to prove all elements of an offence beyond reasonable doubt. Therefore, an additional factor that should be considered when determining whether to initiate prosecution proceedings is the strength of the evidence available, that is, the prospects of the prosecution succeeding.

- 4.2.3 As an alternative to commencing prosecution proceedings, an offender may be given an infringement notice. An infringement notice is an 'on-the-spot' modified penalty for minor planning offences where the local government considers prosecution proceedings are not warranted. An infringement notice is intended to act as a deterrent and to motivate immediate correction of breaches. An infringement notice will only be given where the breach is minor and can be easily remedied. Payment of the modified penalty for an infringement notice may not prevent further formal enforcement proceedings being taken should the breach not be remedied.

4.3 Enforcement Procedure

- 4.3.1 In many instances a person may not be aware of their breach of the Scheme. Accordingly, prior to commencing formal enforcement proceedings for a breach of the Scheme, the local government will usually write to the offender advising the offender of the breach and requiring the offender to remedy the breach.

- 4.3.2 Section 164 of the Act allows for the local government to grant its approval under a Scheme for development already commenced or carried out. Therefore, where there is discretion under the Scheme to grant retrospective approval for the development, the local government will advise the offender an application for retrospective approval can be made. The making of an application for retrospective approval will not necessarily preclude the local government from commencing formal enforcement proceedings in relation to the breach.

- 4.3.3 The following outlines the general enforcement procedure to be followed, however the manner in which the local government takes enforcement action will ultimately depend on the nature of the matter and the seriousness of the contravention.

- a) The local government will write to the offender setting out the breach and advising the offender that if the breach continues (in the case of an unlawful use), or if the breach is not remedied (in the case of unlawful 'brick-on-brick' type development), the local government will commence formal enforcement proceedings.
- b) In circumstances where retrospective development approval could be granted for the unlawful development, the local government will advise the offender that an application for retrospective approval can be made.
- c) If the breach continues, and no application for retrospective approval is received, the local government will commence formal enforcement proceedings. Note that local government may commence formal enforcement proceedings against an offender despite an application for retrospective approval being received.
- d) Formal proceedings include the giving of formal directions pursuant to section 214 of the Act, commencing prosecution proceedings for an offence pursuant to section 218 of the Act and the giving of infringement notices pursuant to section 228 of the Act.
- e) Where the local government considers a direction pursuant to section 214 of the Act is appropriate enforcement action for the breach, the local government will issue a direction to be given to the offender.

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- f) Where the local government considers an infringement notice is appropriate enforcement action for the breach, a designated person will issue an infringement notice to the offender.
- g) Where the local government considers prosecution proceedings are an appropriate enforcement action for the breach, the local government will commence prosecution proceedings against the offender.