

CITY OF SUBIACO

PLANNING POLICY 1.6

PLANNING COMPLIANCE

ADOPTION DATE: 28 February 2017
AUTHORITY: Planning and Development Act 2005;
Planning and Development (Local Planning Schemes) Regulations 2015; and
Town Planning Scheme No. 4

STATUTORY BACKGROUND

The statutes in respect of which this policy will operate include the *Planning and Development Act 2005*, its subsidiary legislation and the City of Subiaco Town Planning Scheme No. 4 (TPS4).

This policy does not deal with building compliance matters which are dealt with under the *Building Act 2011*. Nothing in this policy should be taken to prevent the Council from commencing legal action at any time with regard to matters dealt with under the *Building Act 2011*.

PURPOSE

The intent of this policy is to provide a process for development compliance within the City of Subiaco and to provide clear criteria for officers making decisions relating to development compliance.

The objectives of this policy are to:

- a) Identify the general criteria by which it is determined whether or not compliance action should be undertaken;
- b) Identify specific circumstances where compliance action will not be taken;
- c) Identify the circumstances in which a 'Stop Work Notice' would be issued; and
- d) Outline general compliance procedures including the issue of infringement notices and prosecution action.

OPERATION OF THE POLICY

In this policy, reference to Council means the Council of the City of Subiaco or any Committee of the Council lawfully authorised to make delegated decisions on planning matters on behalf of the organisation of the City of Subiaco.

Unless the relevant legislation provides otherwise, or the Chief Executive Officer, following legal advice if necessary, determines otherwise, the owner(s) of the property that is in breach of the relevant legislation shall be the subject of compliance action in accordance with this policy.

Nothing in this policy should be taken to prevent the Council from commencing prosecution action for non-compliance with its Town Planning Scheme where the Council resolves that this is the most appropriate course of action.

POLICY

1.0 Jurisdiction

On receipt or notification of any compliance issue, the jurisdiction of the City of Subiaco will first be determined.

Any compliance issue falling outside the jurisdiction of the City of Subiaco, whether geographically or statutorily, will be referred to the relevant authority with jurisdiction for action as soon as possible and any complainant will be advised accordingly. No further action will be taken by the City of Subiaco, aside from notifying the complainant that the issue has been referred on.

Where a matter falls partly within the jurisdiction of the City of Subiaco 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 as soon as possible.

The Western Australian Planning Commission is responsible for all compliance matters on land reserved under the Metropolitan Region Scheme as it is the decision making authority.

2.0 Priority

Where the Manager Planning Services has reasonable grounds to believe that unauthorised development may be occurring on land within the City, compliance issues will be progressed in accordance with the following priorities (in order), irrespective of the number or frequency of any complaints that are received:

- (a) any matter involving irreversible and permanent damage to a building or place on the State Register of Heritage Places or the Register of Places of Cultural Heritage Significance established under TPS4, or to the natural environment;
- (b) All other compliance issues will be progressed in the order in which they arise.

Complaints are required to be submitted in writing (email is acceptable) and should include specific details of the compliance matter to be investigated.

3.0 Circumstances Where Council May Take No Further Compliance Action

Council may, following the consideration of a report and 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:

- (a) a lack of precision in the plans/documents of any relevant approval; or
- (b) a lack of certainty at the time of development as to the legal status of the development or the requirement to obtain approval; or
- (c) any other legal consideration.

3.2 Matter Considered Trivial or Insignificant

Where there is a breach of planning requirements, the matter may reasonably be considered trivial or insignificant in certain circumstances.

For the purposes of this policy, a matter will be considered to be trivial or insignificant 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 law and/or of no reasonable planning consequence.

3.3 Other Circumstances

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

- (a) It can be established that the development that is the subject of the breach has been in existence for a substantial time period, nominally more than five (5) years; and
- (b) The development or construction has no apparent impact on the amenity of adjoining properties, the streetscape, or the locality; and
- (d) It can be established that the development or construction is structurally sound and certification of this is provided by a person who is qualified to provide that evidence.

4.0 Compliance Procedure

Upon becoming aware that unauthorised development may be occurring on land within the City and having ascertained that the matter falls within the jurisdiction of the City of Subiaco, the City will undertake any investigation considered necessary to determine the extent of the non-compliance. This investigation may include contacting the landowner to ascertain the veracity of the allegations.

Where, in the opinion of the Manager Planning Services, the compliance matter is considered likely to fall under section 3.0 of this policy in that the matter may be considered uncertain; trivial or insignificant; or has been in existence for a substantial period of time, the City may determine that no further action be taken.

Where, in the opinion of the Manager Planning Services, the compliance matter is not considered to fall under section 3.0 of this policy or if the Council does not resolve to take no further action regarding a compliance matter in accordance with section 3.0 of this policy, the following procedures will apply:

4.1 Non Compliance with a Condition of Planning Approval

- 4.1.1 If the compliance matter relates to non-compliance with a condition of planning approval which requires an action to be undertaken within a specified timeframe, correspondence will be issued requiring that the matter be rectified within 28 days or a longer period as

determined by the Manager Planning Services having regard to the nature of the condition.

If after the specified timeframe the matter is not rectified:

- (a) A \$500 infringement will be issued immediately without referral to Council; and,
- (b) A notice will be issued requiring the compliance matter to be resolved within four (4) months. This may include:
 - (i) obtaining retrospective development approval,
 - (ii) stopping an unapproved use, or,
 - (iii) removing an unapproved structure or undertaking the prescribed work.

If after four months the matter remains unresolved, then the matter will proceed to legal action without further referral to Council.

- 4.1.2 If the compliance matter relates to non-compliance with a condition of planning approval which does not specify a timeframe, correspondence will be issued requiring that the matter be rectified within 42 days. If after 42 days the matter is not rectified, the provisions of 4.1.1 will apply.

4.2 Other Circumstances

- 4.2.1 In all other cases, as soon as is practicable after first determining the matter does not fall under section 3.0 of this policy, a notice will be issued to the offender specifying the unauthorised development and requiring the compliance matter to be resolved within four (4) months. This may include:
 - (a) obtaining retrospective development approval,
 - (b) stopping an unapproved use; or,
 - (c) removing an unapproved structure or undertaking the prescribed work.
- 4.2.2 The Manager Planning Services may consider issuing a \$500 infringement with the aforementioned notice in appropriate circumstances.
- 4.2.3 If after four (4) months the matter remains unresolved, then further compliance action will be taken. This may include one or more of the following:
 - (a) The issue of a \$500 infringement notice,
 - (b) A direction to comply with the relevant town planning legislation specifying a time period in which the matter must be rectified, or,
 - (c) Referral of the matter to Council for consideration of the commencement of legal action.

5.0 Discretionary Criteria

Where there are extenuating circumstances warranting consideration of the departure from the terms of this policy, the Manager Planning Services will have regard to the following general criteria:

- (a) Whether 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;
- (b) The impact of the contravention of the law on the affected locality and environment. This includes a consideration of whether the breach complained of is purely technical in nature which is unnoticeable other than to a person well versed in the relevant law;
- (c) Those factual circumstances in which the contravention of the law took place;
- (d) The time which has elapsed since development was undertaken in contravention of the law;
- (e) The expense and inconvenience which would be involved in remedying the contravention of the law; and
- (f) The extent of amenity impact the contravention may have on adjoining properties and the locality.

Note 1: An infringement must be issued within 6 months of the City determining that an offence has occurred.

Note 2: A planning prosecution must commence within 12 months of the City determining that an offence has occurred.