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## CGP025 – Enforcement and Compliance Complaints Policy

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### 1. Policy Purpose

This policy sets out the Shire of Waroona's compliance and enforcement strategies to achieve legislated objectives and encourage compliance by implementing a cooperative and collaborative approach to enforcement action. This policy also establishes more broadly the Shire of Waroona's policy position on general enforcement and compliance matters within the local government area.

### 2. Policy Scope

The scope of this policy is to set out the Shire's approach to compliance and enforcement related matters. The policy provides a range of prescribed compliance and enforcement options for dealing with compliance matters. The policy also aims to ensure consistency in how the Shire makes decisions on enforcement action. This Policy applies to all compliance and enforcement actions where the Shire has a regulatory responsibility under state and local laws.

### 3. Policy Objectives

The objectives of this policy are:

- (a) To ensure a consistent approach in enforcement and compliance related matters;
  - (b) To provide transparency, apply procedural fairness and natural justice for all enforcement and compliance related matters;
  - (c) To provide an educational, cooperative and collaborative process towards compliance and enforcement, aimed at encouraging compliance; and
- To guide decision-making and actions by the Shire in the consistent use of enforcement options commensurate with the risk.

### 4. Limitations

This Policy does not apply to matters not mandated by legally enforceable laws and regulations.

### 5. Implementation

Departments within the Shire which may enforce legislation are:

- Building Development Services
  - *Building Act 2011 and Building Regulations 2012*
  - *Caravan Parks and Camping Grounds Act 1995* and subsidiary regulations
  - *Local Government Act 1995*
- Statutory Enforcement (Planning Compliance) Services
  - *Building Act 2011 and Building Regulations 2012*
  - *Caravan Parks and Camping Grounds Act 1995* and subsidiary regulations
  - *Graffiti Vandalism Act 2016*
  - *Local Government Act 1995* and relevant subsidiary regulations
  - *Planning and Development Act 2005* and relevant subsidiary regulations

- Shire of Waroona local laws (as amended)
- Environmental Health Services
  - *Caravan Parks and Camping Grounds Act 1995* and subsidiary regulations
  - *Environmental Protection Act 1986* (Public Health component only)
  - *Environmental Protection (Noise) Regulations 1997*
  - *Environmental Protection (Unauthorised Discharge) Regulations 2004*
  - *Food Act 2008* and relevant subsidiary regulations
  - *Health (Miscellaneous Provisions) Act 1911*
  - *Local Government Act 1995* and relevant subsidiary regulations
  - *Public Health Act 2016* and relevant subsidiary regulations
  - Shire of Waroona local laws (as amended)
- Technical Services
  - *Local Government Act 1995* and relevant subsidiary regulations
  - *Planning and Development Act 2005*
  - Shire of Waroona local laws (as amended)
- Ranger Services
  - *Bushfires Act 1954* and *Bush Fire Regulations 1954*
  - *Cat Act 2011* and subsidiary regulations
  - *Control of Vehicles (Off Road Areas) Act 1978* and subsidiary regulations
  - *Dog Act 1976* and subsidiary regulations
  - *Graffiti Vandalism Act 2016*
  - *Litter Act 1979* and subsidiary regulations
  - *Local Government Act 1995* and relevant subsidiary regulations
  - *Local Government (Administration) Regulations 1996*
  - *Local Government (Miscellaneous Provisions) Act 1960*
  - Shire of Waroona local laws (as amended)
  - *Local Government (Parking for People with Disabilities) Regulations 2014*
  - *Local Government (Uniform Local Provisions) Regulations 2014*
- Safety & Emergency Services
  - *Bush Fires Act 1954* and subsidiary regulations
  - *Emergency Management Act 2005* and subsidiary regulations
  - *Local Government Act 1995* and relevant subsidiary regulations
- Works & Waste Services
  - *Cemeteries Act 1986*
  - *Planning and Development Act 2005*
  - Shire of Waroona local laws (as amended).

## 6. Lodging a complaint

Where a complaint relates to a breach in legislation, for which the Shire is responsible for administering, the complaint shall be made in writing and include:

- a. name and address, telephone number, and email address of the complainant;
- b. address of the offending property; and
- c. details of the alleged offence.

The Shire may consider verbal complaints received on a case-by-case basis and in accordance with the Compliance and Enforcement Matrix (Appendix 1).

**Commented [KP1]:** Ash, do you know where this may be filed? I'd like to include it in this policy if it's brief.

The Shire will endeavour to keep complaints confidential. However, the Shire notes that Freedom of Information applications may be made in accordance with the *Freedom of Information Act 1992* and will be assessed based on their individual merits.

The Shire will request verbal complaints be submitted to the Shire in writing. This ensures a record of the issue is made and can be validated if needed.

## 7. Principles of Compliance and Enforcement Action

The Shire is required to administer its statutory responsibilities under the applicable legislation in a transparent and fair manner in the interest of public health, safety, and amenity. Each compliance investigation undertaken by the Shire will be assessed on a case-by-case basis and actioned according to the Compliance and Enforcement Matrix (included as an appendix) for each business unit area. The Compliance and Enforcement Matrix is used as a guide only and an offence category can be reviewed during the investigation process.

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## 8. Policy Application

The application of this policy includes -

### a. Community engagement:

- Publish information on the Shire website in relation to compliance requirements;
- Initiate targeted education campaigns using a variety of media tools and education mechanisms;
- Update compliance Policy and Procedures; and
- Work with residents, ratepayers, stakeholders and businesses to encourage compliance with relevant laws, regulations and policies.

### b. Established process of investigation:

- Review internal and external databases;
- Conduct site visits to ascertain if there are any issues and provide time frames to achieve compliance;
- Provide extensions to time frames to achieve compliance where reasonably required; and
- Conduct 'Form 2/ Notice of Determination' approval and refusal audits for planning applications received.

### c. Enforcement options:

- No enforcement action taken;
- Referral to an external agency or relevant authority;
- Requests for retrospective development approvals (if applicable) or removal of unauthorised developments in accordance with relevant legislation and Town Planning Scheme;
- Infringement notices issued under relevant legislation;
- Direction notices;
- Orders and notices issued under relevant legislation;
- Prosecution action; or
- A combination of the above.

### d. Offence Categories:

Where an investigation is undertaken and it is considered that there is sufficient evidence, the Shire will take the appropriate enforcement action based on the specific circumstances of each individual case, and based on the following offence categories:

- **Minor:** A minor offence is a breach of legislation, which has a minimal impact on the community, a person or the environment. The breach may be able to be resolved in a relatively short timeframe without any further impact on the community or the environment once compliance has been reached.
- **Moderate:** A moderate offence is a breach of legislation that may initially have minimal impact on the community, life, critical infrastructure, property, or the environment but if allowed to continue the impact may have a major or more significant impact on the community. The breach may initially be able to be resolved with an infringement, directions notice or order under relevant legislation.
- **Major:** A major offence is a breach of legislation that significantly affects or risks the health and safety of the community, life, critical infrastructure, property, or the environment. It may also be a case whether the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate in order to achieve compliance and which may lead to a prosecution action.

The offence category is subject to review during the investigation process. The Shire further notes that the enforcement actions contained in the above definitions are not exhaustive to each particular definition.

## 9. Compliance Investigations

### 9.1 Investigation of complaints (Reactive Compliance)

Complaints will be prioritised for investigation based upon the offence category set out in clause 8 of this policy.

Decisions on enforcement action may have regard to any or all of the following considerations:

- whether there has been a failure to comply with any request, direction or notice given by the Shire;
- recommendations made at the Development Assessment Unit;
- whether the breach or offence was committed wilfully or unknowingly;
- any mitigating or aggravating circumstances (including vexatious complainants);
- any demonstrated history of non-compliance;
- the length of time since the incident (including statutory time frames);
- the potential short and long-term consequences of non-compliance; and
- legal precedents.

The Shire may take no enforcement action after an investigation where:

- having considered the nature of the non-compliance, an educative approach to preventing the matter from continuing or reoccurring is considered most appropriate;
- there is insufficient evidence to prove non-compliance after reasonable attempts have been made by the Shire to investigate the matter;
- the individual or entity has ceased the non-compliance, has discontinued or removed the unauthorised development or has obtained the relevant approval(s);
- having regard for the capacity of the owner or occupier of the land, it is determined that an alternative approach to achieving compliance is more appropriate; and
- the matter is considered trivial in nature, or would be an unreasonable use of the Shire's resources.

The Shire understands that some complaints received in relation to compliance issues may be the result of neighbourhood disputes. The Shire may discontinue an investigation of a complaint where it can be reasonably ascertained that the complaint is unsubstantiated or pertains to a civil matter. **The Shire will not provide advice in relation to civil matters.**

## 2.2 Audits, patrols, and checks (Proactive Compliance)

The Shire may carry out proactive compliance in the following manner:

- carry out audits of Form 2 planning approvals and refusals;
- carry out yearly audits of extractive industry licencing and conditions
- investigate compliance issues observed by Shire officers during the course of daily work related activities; and
- conduct proactive compliance through an annual work program.

## 2.3 Conclusion of an investigation

At the conclusion of an investigation, Shire officers shall use the most appropriate action based on this policy in conjunction with the Compliance and Enforcement Matrix. Complainants will be advised in writing of the outcome of the investigation (subject to confidentiality requirements) and the compliance matter closed.

## 10. Acting in default of Notices or Orders

The Shire may undertake works as specified in the notice or order to restore the land as nearly as practicable to its condition immediately before the development started or execute that work as it directed that person. The Shire may be entitled to recover its expenses in a court of competent jurisdiction.

## 11. Prosecution Actions

### 11.1 Initiation of proceedings

The Shire may determine to instigate prosecution proceedings under an Act, Regulation or Local Law where the Shire considers that the offence warrants such action.

The Shire may consider the following when determining whether to initiate prosecution proceedings:

- the seriousness and nature of the offence;
- legal advice received by the Shire;
- any evidence of contempt or disregard for the law;
- any public health or safety impacts resulting from the offence; and
- whether the prosecution is in the public interest.

### 11.2 Withdrawal of prosecution proceedings

The Shire may consider the following when determining whether to withdraw from prosecution proceedings:

- legal advice received by the Shire; or
- in the opinion of the Chief Executive Officer, an appropriate level of compliance has been achieved; or
- an error of law or fact; or
- the owner or occupier of the land is deceased or cannot be located.

### 11.3 Appeal of infringements, notices or orders

In the event that an infringement, notice or order is appealed in accordance with the relevant legislation, the Shire may be required to substantiate its actions to a court or tribunal. This may result in the infringement, notice or order being overturned, amended or subject to mediation.

## 12 Delegations

Delegations establish the authorities for dealing with non-compliance. Refer to Register of Delegations and Sub-delegations (as amended).

## 13 Legislative and Strategic Context

This policy operates under an extensive regulatory framework as outlined at clause 5, and as below.

- *Building Act 2011 and Building Regulations 2012*
- *Bushfires Act 1954 and Regulations*
- *Caravan Parks and Camping Grounds Act 1995;*
- *Caravan Parks and Camping Grounds Regulations 1997;*
- *Cat Act 2011 and Regulations*
- *Cemeteries Act 1986*
- *Control of Vehicles (Off Road Areas) Act 1978 and Regulations*
- *Dog Act 1976 and Regulations*
- *Emergency Management Act 2005 and Regulations*
- *Environmental Protection Act 1986 (Public Health component only)*
- *Environmental Protection (Noise) Regulations 1997*
- *Environmental Protection (Unauthorised Discharge) Regulations 2004*
- *Graffiti Vandalism Act 2016 and Regulations*
- *Food Act 2008 and Regulations*
- *Health (Miscellaneous Provisions) Act 1911*
- *Litter Act 1979 and Regulations*
- *Local Government Act 1995 and Regulations*
- *Local Government (Miscellaneous Provisions) Act 1960*
- *Planning and Development Act 2005 and Regulations*
- *Public Health Act 2016 and Regulations*

In addition to meeting the requirements provided for in the legislative instruments above, this policy shall also comply with provisions set out in relevant council policies and Shire of Waroona local laws.

## 14 Review

This policy is to be reviewed biennially.

## 15 Associated Documents

Other documents that have an association to this policy and that may be useful reference material are:

- Shire of Waroona local laws.
- Shire of Waroona policies.

<b>Division</b>		Corporate and Governance			
<b>Policy Number</b>		CGP025			
<b>Contact Officer</b>		Chief Executive Officer			
<b>Related Legislation</b>		<ul style="list-style-type: none"> <li>• Planning and Development Act 2005</li> <li>• Local Government Act 1995</li> <li>• Local Government (Administration) Regulations 1996</li> </ul>			
<b>Related Shire Documents</b>		<ul style="list-style-type: none"> <li>• Shire of Waroona local laws.</li> <li>• Shire of Waroona policies.</li> </ul>			
<b>Risk Rating</b>	Low	<b>Review Frequency</b>	Biennially	<b>Next Review</b>	May 2026
<b>Date Adopted</b>		26/04/2022		OCM 22/04/41	
<b>Amendments</b>					
<b>Date</b>	<b>Details of Amendment</b>			<b>Reference</b>	
25/06/2024	Reviewed with minor amendments			OCM24/06/090	
<b>Previous Policies</b>					