

This submission is made on behalf of Dr Jeffrey Stevens in response to the City's Director Planning, Mr Peter Varelis', February 5, 2024 invitation to comments the City's response to Dr Stevens' November 2023 petition calling for a review of [Council's Compliance and Enforcement Policy \(CP-114\)](#) as accepted by [Council at its November 21, 2023 meeting](#).

We ask Council to amend the Director Planning's proposed resolution to:

- expand the review scope to cover:
 - all compliance and enforcement activities that fall within the City's jurisdiction and for which it has the powers, duties and obligations to enforce,
 - Council oversight and governance processes, for example to ensure that there is public performance reporting and there is a mechanism to escalate longstanding complaints to Council from dissatisfied residents about the City's inaction (think the recent Reynolds Road hoarding horror house)
- ensure there are community members with direct experience with the City's poor compliance and enforcement activities are engaged to assist Council with its review, and
- immediately remove CP-114 Policy statement 3 *"The City undertakes enforcement actions on behalf of and in the interests of the community as a whole, not in pursuit of the interests or benefit of any individual or group."* As this appears to be the City administration's easy go to excuse for not properly enforcing the laws the State intended to actually protect individuals and groups that make up the community.

Comments

Dr Stevens' Petition asked: *"Council to upgrade its Compliance and Enforcement Policy (CP-114) to bring it more into line with similar policies of other Councils and community expectations by providing much better guidance to the Chief Executive Officer in relation to the City's compliance and enforcement activities."*

An illustrative example of good guidance was provided with respect to building compliance issues. The Petition does not limit the scope of the Policy Review. The MRRA provided a [Written Submission to the November Meeting in support of Dr Stevens' Petition](#), as attached, in which it spelt out a number of points including;

- "The Compliance and Enforcement Policy reflects Council's guidance with respect to how and when the CEO and other officers execute the powers and duties Council has delegated to them to enforce the laws including in relation to Health, Food, Dogs, Cats, Bush Fires, Planning & Development, Building, Litter, Parking, as outlined in [Council's Statutory Delegations and Authorisation Manual](#)." Delegation Manual index pages attached.
- "The City's Director Planning, Mr Peter Varelis, has refused numerous requests to take enforcement action to address Dr Stevens' complaints with the City arguing: *"The City undertakes enforcement actions on behalf of and in the interests of the community as a whole, not in pursuit of the interests or benefit of any individual or group."* (response to Dr Stevens public questions at [18 July 2023 Council meeting](#), amongst others)"
- The Governance Committee's Charter requires it to
 - Ensuring there are effective decision-making processes in place that reflect the transparency and accountability principles which underpin excellence in governance;
 - Ensuring that effective delegations are implemented and maintained; and
 - Ensuring that there is an active organizational performance management system in place that enables Elected Members and Officers to be openly accountable for their performance.
- In a number of instances City officers have failed to exercise their delegated authorities appropriately and at times have caused many residents detriment, including psychosocial harm. Council needs to do better at ensuring laws are enforced in an objective and impartial manner in-order to protect the community and individual residents by providing much clearer guidance to its CEO, by better reporting to Council on compliance enforcement activities and introducing formal rights of Council review for complainant should City officers refuse to take enforcement actions.
- Dr Stevens' petition reflects just one instance.

We are aware that many residents and ratepayers have expressed their dissatisfaction with the City's compliance and enforcement performance in relation to the many State Government Acts and local laws for which it has jurisdiction, powers and duties to enforce. This includes but not limited to local laws (eg health and parking), fire protection, noise and dust, barking dogs, rats, codes of conduct, planning & development and building law enforcement. The recent 7 News report on the [Reynolds Road Mt Pleasant hoarding horror house is another typical example](#) of the City's failure to act.

Community concerns about the City's poor law enforcement performance are long standing. For example, Bronwyn Weir's 2021 Investigation into the City of Melville called for improvements to Council's compliance and Enforcement policies; however we have not seen any marked improvement when it comes to building matters, suggesting that the City has not learned or properly implemented Ms Weir's report findings and recommendations.

We have subsequently found that the [Town of Mosman Park have also introduced a planning and building compliance policy](#), that should also be included as a reference Council should consider in its review of CP-114 attached.

We think that it is crucial for Council to improve its CP-114 policy to specify how it will oversee and govern the City's compliance and enforcement activities. There should be improved public reporting, and mechanisms for Council to deal with community complaints about the City's performance. For example, the City has continually told Dr Stevens and others that non-compliances relating to boundary retaining walls are a matter for the Magistrates Court, despite the City being provided with evidence boundary retaining walls do not fall into the jurisdiction of the Magistrates court, including being provided with copies of Magistrate Court decisions that clearly state that a **Magistrate "cannot make orders dealing with an application under the Dividing Fences Act for retaining walls"**, as attached.

City officers have repeatedly cited CP-114 Policy statement 3 Policy statement 3 *"The City undertakes enforcement actions on behalf of and in the interests of the community as a whole, not in pursuit of the interests or benefit of any individual or group."* As their reason for not taking enforcement action, in stark contrast to the State Governments intentions and community expectations. For example in Dr Stevens case the City has cited this as one of the reasons it will not issue orders to remove the neighbours' unauthorised encroaching structures from his land, which is diametrically opposed to the State Government's intentions for Part 6 of the Building Act which is: ***"The Dividing Fences Act provides a mechanism for seeking a contribution to the cost of building or maintaining a dividing fence, but does not specify construction standards or processes. The bill [Building Act] has been drafted to align with that act and reinforce the principle that a person's home is their castle and that other people must get permission to intrude, be they workmen seeking easy access to work on a neighbour's building or encroachment on the building itself."***

Council, the City's Director Planning's U24/31 Report to Council limits the scope of the review to deal with building related compliance matters with a proposal to be presented to Council to no later than the November 2024 Council meeting, 12 months post the Petition being accepted by Council.

This is too little, too late.

Council, you must improve your Compliance and Enforcement Policy and performance to reflect community expectations and ensure residents like Dr Stevens and the Reynolds Road Mt Pleasant neighbours don't suffer psychosocial harm due to City officer non-feasance.

Attachments

1. City of Melville Council Statutory Delegation and Authorization's Manual contents page
2. Magistrates Court transcript of FR GEN 261 of 2021 decision, showing the Magistrates Courts can't deal with retaining walls.
3. The Town of Mosman Park Council's Regulatory Services, Compliance and Enforcement Policy
4. MRRRA Written Submission on petition to November 21, 2023 Council meeting.



City of
Melville

City of Melville Statutory Delegation and Authorisation Manual

Including Registers of Delegations

2023-2024

**To search for a particular delegation, use
CTRL+F on your keyboard to open the
Find function.**

Updated 8 August 2023

Statutory Delegation and Authorisation Manual Including Registers of Delegations

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THE MAGISTRATES COURT OF

WESTERN AUSTRALIA

CIVIL

FR GEN 261 of 2021

[REDACTED]

and

[REDACTED]

and

[REDACTED]

MAGISTRATE N. LEMMON

TRANSCRIPT OF PROCEEDINGS

AT FREMANTLE ON TUESDAY, 7 FEBRUARY 2023, AT 11.21 AM

[REDACTED] appeared in person.

[REDACTED] appeared in person.

[REDACTED] appeared in person.

here. So I can only make orders at the end of the day if I'm satisfied that it's appropriate to make those orders in relation to the need for and the kind of dividing fence to be constructed - the need for and the kind of dividing fence to be constructed - what portion of the fence should be constructed by each other, and the time in which that fence will be constructed.

I can, if necessary, also make orders in relation to the boundary and the line of the dividing fence and any compensation in the form of an annual payment to be paid by one owner to another owner in consideration for loss of occupation of any land. Now, that's probably not going to have any role here because I think it's agreed that, whatever order might be made in relation to the construction of the dividing fence, it is on the common boundary line. Correct?

██████████, MR: Correct.

██████████: Yes.

HIS HONOUR: Yes. Everyone is agreeing with that. So that's really not going to be an issue. So what I'm going to decide at the end of the day is the need for and the kind of dividing fence that should be constructed, what portion of the fence should be constructed by each owner, and the time in which the fence should be constructed. There's also a principle in the Dividing Fences Act to the effect that, where there's an order with respect to the construction of the new dividing fence, that the obligation in terms of the construction including the costs will be shared equally.

So there's a principle that says that that's how it has to be approached. So if I'm inclined to make an order in relation to the construction of the dividing fence, if I get to that point, it will be on the assumption that the cost of doing so is to be shared equally and I hope that that's understood. I cannot make orders dealing with an application under the Dividing Fences Act for retaining walls. I can't make an order that anyone construct a retaining wall or any orders with respect to the cost of that occurring. So there's a lot of information here about retaining aspects that go along the line of where the dividing fence would go.

That's not part of what I'm here to resolve. There's also my making of the orders in relation to the need for and the kind of fence to be constructed, the portion of fence to be constructed by each owner, and the time frame

for the construction. Before I can even make those orders, I need to be satisfied that certain things have happened in terms of notices. Now, if I'm not satisfied in relation to those matters - and this is a claim by Mr Nguyen, an application by Mr Nguyen - it is possible that one outcome will be that I make no orders with respect to construction of a new dividing fence.

And that outcome, I would think, given the history of this matter, is very, very unsatisfactory to all of you because you're back to square 1. But this - I'm just wanting to stress that, because of the type of application that this is, I can only make orders with respect to those matters that I've identified under the legislation. I can't make orders about compensation. I can make orders about removal because that's part of the construction process of a dividing fence.

But it has to - the only orders I can make really have to concern the need for and the construction of the dividing fence, and not about retaining walls because that's not within - retaining walls are not something which are within the scope of the Dividing Fences Act, so I don't have power to make any orders with respect to them. So you just need to bear that in mind because, see, I think there's agreement here in relation to the actual dividing fence, isn't there, the type, height, need? Well, there's agreement about the need for one, isn't there - - -

Yes.

HIS HONOUR: - - - because, as I understand it, there's a sort of half-constructed dividing fence there at the moment. Am I right in saying that?

Yes.

Your Honour - - -

HIS HONOUR: So by virtue of that fact, there's the need for something to be there to replace what's there at the moment. Does everyone agree about that?

No.

HIS HONOUR: You don't agree that there needs to be anything there? You say it can either be left as is or no fence? Is that what you're saying, Ms Jones?

Your Honour - - -

HIS HONOUR: No, no, just tell me the answer to that question. Do you accept that there should - that I should allow the status quo just to continue: yes or no?

[REDACTED] No.

HIS HONOUR: Okay. Do you accept that there should - that what is there at the moment should simply be removed and there be nothing there?

[REDACTED]: Yes, your Honour.

HIS HONOUR: So no fence at all.

[REDACTED]: No. The fence needs to be removed to comply with the Dividing Fences Act.

HIS HONOUR: Well, that's for me to decide. But I just want to ask what your position is. Are you saying that one outcome that you would argue for is that what is there at the moment be removed and that there be nothing there? I'm sure you're not saying that.

[REDACTED] I'm sorry, what I'm trying to say is the structure that is there is unsafe.

HIS HONOUR: Well, that's for me to decide maybe. I'm not sure that actually is within the parameters of what I have to decide, but assume that I do. But something has to happen. There has to be some change to what's there at the moment. Correct? Do you agree with that: yes or no?

[REDACTED] I agree with that with the return of the soil.

HIS HONOUR: Okay. And the outcome if what is there is completely removed has to be the construction of some dividing barrier. Do you accept that? It has to be replaced with something. It can't be nothing. It can't be open. You're not saying that it should be open, are you?

[REDACTED] I don't understand how a fence can be an issue when the support underneath and removal of our soil has occurred.

HIS HONOUR: Yes. I probably - - -

[REDACTED] And that's my issue. I can answer questions.

HIS HONOUR: I suspect I'm not going to get into any of those issues. I'm just deciding is there a need for a dividing fence?

REGULATORY SERVICES, COMPLIANCE AND ENFORCEMENT

Policy Statement

Council is required to review and respond to complaints received from external parties regarding aspects of non-compliance with various items of legislation. This process includes investigation of any alleged non-compliant operation, review, and action based on the outcomes of investigation.

This policy provides clear guidance to Councillors, Town of Mosman Park staff, complainants and the general public, on the usual steps undertaken through regulatory compliance matters.

Regulatory Services relates to Urban Planning (Town Planning), Building Services and Environmental Health Services.

Policy Details

1.0 Objectives

- To ensure a consistent approach in enforcement and compliance related matters;
- Provide transparency and apply procedural fairness for all enforcement and compliance related matters;
- Provide an educational, cooperative and collaborative process towards compliance and enforcement, aimed at encouraging proactive compliance; and
- To guide decision making and actions by the Town, in the consistent use of enforcement options commensurate with the associated risks/offence.

2.0 Purpose

To assist the Town in using compliance and enforcement strategies to achieve legislated objectives, whilst encouraging compliance by implementation of a proactive, consistent and collaborative approach to enforcement action.

3.0 Scope and application of policy

This policy applies to all land within the Town's municipal boundaries and sets out the Town's general approach to compliance and enforcement matters.

Where a complaint relates to a breach in legislation outside the jurisdiction of the Town, whether it be geographically or statutorily, the Town will advise the complainant of the responsible authority and then no further action will be taken by the Town.

4.0 Regulatory services, legislation enforced by the Town

The Town will refer to applicable State Legislation and Local Laws through the enforcement of regulatory compliance. This includes, but is not limited to, the following:

Building Services	<i>Building Act 2011 Building Regulations 2012 Local Government Act 1995 Town of Mosman Park Local Laws Australian Standard 1926.1 National Construction Code</i>
Planning Services	<i>Planning and Development Act 2005 Planning and Development (Local Planning Schemes) Regulations 2015 Planning and Development Regulations 2009 Local Planning Scheme No. 3 – Town of Mosman Park Local Government Act 1995 Town of Mosman Park Local Laws and adopted local planning policies</i>
Environmental Health Services	<i>Caravan Parks and Camping Grounds Act 1995 Environmental Protection Act 1986 (Public Health component only) Health (Asbestos) Regulations 1992. Health (Public Buildings) Regulations 1992 Environmental Protection (Noise) Regulations 1997 Environmental Protection (Unauthorised Discharges) Regulations 2004 Food Act 2008 Health (Miscellaneous Provisions) Act 1911 Local Government Act 1995 Public Health Act 2016 Health Local Laws Town of Mosman Park Tobacco Products Control Act 2006</i>

5.0 Lodging a complaint relating to a regulatory services compliance matter

All compliance related complaints are required to be submitted to the Town in writing, in the following forms:

- Electronically via the Town’s email admin@mosmanpark.wa.gov.au; or
- Via the Antenna App or other non-verbal correspondence method, or
- A hard copy written submission addressed to PO Box 3, Mosman Park or hand delivered to the Town’s Administration Building at 1 Memorial Drive, Mosman Park.

Compliance complaints shall include specific details of the compliance matter to be investigated, including:

1. The complainant’s name, property address, email address and preferred contact details;

2. The property address where the alleged compliance matter has occurred;
3. How the compliance matter is affecting the complainant or broader the community;
4. All relevant details of the compliance matter, including the following where applicable –
 - a) The dates and times the compliance matter has occurred;
 - b) Photographs of the compliance matter;
 - c) Any written correspondence as between the complainant and the other person who is the subject of the compliance matter; and,
 - d) Where the complaint relates to an activity or use, information such as time and frequency of the use.

Please note:

- Complainant details will be kept confidential and will not be released to alleged offenders without the consent of the complainant (personal information is exempt from disclosure under the *Freedom of Information Act 1992 (WA)*).
- The Town may choose to not respond to anonymous complaints as the validity of the complaint may not be verifiable.

5.1 How the Town will respond to receipt of a compliance complaint

Complainants will be notified in writing of the progress of compliance matters at the following stages:

- a) Upon receipt of a complaint to advise that the Town is investigating the matter; and
- b) At the conclusion of the investigation to advise whether the complaint has been substantiated by the Town and to advise whether the Town proposes to take further action in relation to the compliance matter (subject to confidentiality requirements).

The Town may provide additional notice where it is considered appropriate. However, the Town is not obliged to provide further notice than that specified in Clause 5.1 (a & b).

Should a breach of legislation be apparent, the Town may investigate and undertake compliance action in accordance with this policy without receipt of a complaint.

6.0 Compliance Investigation Procedure

The Town 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 Town will be assessed on a case-by-case basis and will generally be actioned according to the Compliance and Enforcement Matrix (Appendix Two) for each business unit area.

Note: The Compliance and Enforcement Matrix is used as a guide only and an offence category can be reviewed during the investigation process.

6.1 Uncertainty of compliance matter

The Town may determine not to undertake compliance action, or to conclude existing compliance action, where, after reasonable investigation, it is uncertain whether a matter is compliant with the relevant requirements, or it is uncertain whether it is capable of successful enforcement owing to:

- a) A lack of precision in the plans/documents of any relevant approval; or
- b) Evidence provided as part of a complaint cannot be verified in terms of time, date and/or location;
- c) Insufficient evidence to conclude that a statutory requirement has been breached;
- d) The person who is the subject of the compliance matter having an arguable exemption or other legal defence; or,
- e) Any other legal consideration.

6.2 Other circumstances

Where it has been established that a breach of legislation has occurred, the Town may determine not to act, or to conclude existing compliance action, where a compliance matter meets any the following criteria:

- a) The issues giving rise to the compliance matter have been rectified; or
- b) A new approval has been issued to regularise the compliance matter; or
- c) The conduct in question is trivial and does not warrant the use of resources associated with taking formal compliance action.

7.0 Offence categories and enforcement action

Following receipt of a complaint and subsequent investigation by Town officers, a range of enforcement actions may be utilised. Where an investigation is undertaken and it is considered that there is sufficient evidence, the Town will take the appropriate enforcement action. This will be based on the specific circumstances of each individual case and the category of the offence.

Refer to Appendix One for explanations of each enforcement category and a list of potential enforcement actions.

7.1 Escalation of matters through the compliance process

7.1.1 Dependent on the category of compliance matter the Town will initially seek to have the alleged infringing party rectify the matter through the issue of a notice of breach. Depending upon the context, this could be by way of a formal statutory notice or by ordinary written correspondence. This may include the invitation to lodge for approval of the unauthorised works via a development application or building permit (if applicable to the situation). The notice of breach will specify a latest time for compliance. Should the matter be resolved,

then subject to any special considerations in the particular matter, no further actions will be undertaken.

(Example: A notice issued stating that unauthorised signage has been erected, which the alleged infringing party removes.)

7.1.2 Should the notice not be complied with the matter will be escalated. This may result in:

- a) Further notices being issued;
- b) Potential fines or infringements;
- c) The town acting in default for the alleged infringing party (refer Clause 8.0);
or,
- d) Prosecution (refer Clause 9.0)

(Example: The unauthorised signage is not removed so the Town undertakes the works itself before seeking to recoup the costs through a court of competent jurisdiction.)

7.1.3 If considered appropriate by the Town in the circumstances of a particular case, owing to the seriousness of the compliance matter (based upon the nature, scale and effect of a breach) or otherwise, the Town may proceed directly to prosecution (in accordance with clause 9) without issuing an initial notice of breach under clause 7.1.1.

7.2 Extension of time to rectify compliance matter

7.2.1 The Town may consider extending the period for rectification of compliance matters on a case-by-case basis **by written request**. The Town may have consideration to the following matters when determining whether an extension can be granted:

- a) The nature of the compliance matter;
- b) The steps proposed to be undertaken, or already undertaken, to comply with the relevant legislation;
- c) The amount of time that has lapsed since the compliance matter was initially identified by the Town;
- d) Whether an extension would have implications for the timeframe for commencement of legal action (as set out in section 9.0 of this policy);
- e) Whether the alleged offender has acted in good faith with the Town in relation to the compliance matter. This may include evidence of demonstrated action to progress the matter to resolution; and
- f) Any other matter considered to be relevant by the Town.

7.2.2 Notwithstanding section 7.2.1, the Town is not obliged to extend the timeframe for rectification of compliance matters. In such instances the final decision not

to extend a timeframe will be made by the Chief Executive Officer

8.0 Acting in default of notices or orders

If the Town issues a notice in accordance with clause 7.1.1 and that notice is not complied with, then in accordance with any relevant statutory powers, the Town may:

- a) Undertake the works as specified in the notice on its own accord; and
- b) Seek to recover its expenses in a court of competent jurisdiction.

9.0 Prosecution actions

9.1 Initiation of proceedings

9.1.1 The Town may initiate prosecution proceedings under any relevant legislation, where the Town considers the alleged offence warrants such action, with regard to the definitions and matrixes contained within Appendix One and Two.

9.1.2 The Town will consider the following when determining whether to initiate prosecution proceedings:

- a) The seriousness and nature of the alleged offence;
- b) Legal advice received by the Town;
- c) Any evidence of contempt or disregard for the law;
- d) Any amenity, public health or safety impacts resulting from the alleged offence; and
- e) Whether the prosecution is in the public interest.

9.2 Appeal of Infringements, Notices or Orders

9.2.1 If an infringement, notice or order is appealed in accordance with the relevant legislation, the Town may be required to substantiate its actions in a court or tribunal. This may potentially result in the infringement, notice or order being overturned, amended or made subject to mediation.

Governance References

Statutory Compliance	Refer to 4.0 of this Policy
Organisational Compliance	Refer to 4.0 of this Policy

Policy Administration

Directorate:		Responsible Business Units
Planning & Development		Planning Building Environmental Health
Next Review		Review Cycle
2027		5 years
Version	Date	
1.	22 March 2022 (OCM-029-2022)	
2.		
3.		

Appendix One – Offence Categories and Enforcement Actions

Offence Categories

The following is a list of offence categories that may be applied by the Town:

Minor: A minor offence is a breach of legislation, which has a minimal impact on the community, amenity, 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. The breach may initially be able to be resolved by issuing a notice of breach letter, however may lead to a possible infringement.

(Example: Failure to give notice of completion of a build, or unauthorised erection of signage)

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, amenity, 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 a notice of breach letter, infringement, directions notice or order under relevant legislation.

(Example: Unauthorised change of land use)

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 where the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate to achieve compliance. The offence may result in multiple infringements and formal prosecution action.

(Example: Unauthorised swimming pool or spa, unsanitary food premises, unauthorised storage of materials)

Note: The offence category is subject to review during the investigation process.

The Town further notes that the enforcement actions contained in the above definitions are not exhaustive to each particular definition.

Enforcement Actions

Over the course of a compliance investigation the following enforcement actions may be undertaken:

- a) No enforcement action taken;
- b) Referral to an external agency or relevant authority;
- c) Requests for specialist reports that may be require to ensure safety whilst seeking retrospective development approvals (if applicable) or removal of unauthorised developments in accordance with relevant legislation;
- d) Infringement notices issued under relevant legislation;
- e) Direction notices;
- f) Orders and notices issued under relevant legislation;
- g) Prosecution action; or
- h) A combination of the above.

Appendix Two – Enforcement Matrix

Note: The Town is not bound by the classification of categories within the enforcement matrix and they are to be used as a guide only. The seriousness of the offense will be determined on a case-by-case basis by the Town upon investigation of the matter.

Compliance Enforcement Matrix – Building Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Building Compliance				
Unauthorised swimming pool or spa	Building Act s9			X
Failure to install barrier around private swimming pool	Building Regs r50			X
Non-compliant pool barrier – hinges, windows	Building Regs r50		X	
Non-compliant pool barrier – non-compliant barrier (height, gates swinging in wrong direction, openings too large)	Building Regs r50			X
Unauthorised building work	Building Act s9,		X	X
Unauthorised demolition	Building Act s10			X
Failure to give notice of completion	Building Act s33	X		
Failure to give notice of cessation	Building Act s34	X		
Non-compliance applicable building standards – after completion	Building Act s37		X	
Non-compliance applicable building standards – demolition	Building Act s38		X	
Occupying a building without occupancy permit	Building Act s41		X	
Non-display or non-notification of occupancy Permit	Building Act s42	X		
Occupation use to comply with occupancy permit	Building Act s43		X	
Failure to ensure smoke alarms compliant prior to transfer of dwelling	Building Regs r56			X
Failure to ensure smoke alarms compliant prior to tenancy	Building Regs r58			X
Failure to ensure smoke alarms compliant prior to hiring of dwelling	Building Regs r59			X
Occupancy permit – general compliance	Building Act s44		X	
Encroachments outside of works land	Building Act s76			X
Adverse effect to other land without consent	Building Act s77			X
No protection structure on or over land without consent	Building Act s78		X	

Work not to affect party wall without consent	Building Act s79		X	
Removal of dividing fence without consent	Building Act s80		X	

Compliance Enforcement Matrix – Planning Compliance Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Planning Compliance				
Breach form 2 conditions	P&D Act 2005	X	X	X
Unauthorised erection of signs	P&D Act 2005	X		
Unauthorised storage and wrecking of motor vehicles (for example, derelict vehicles in front yard of dwelling)	P&D Act 2005	X		
Unauthorised parking of motor vehicles (for example parking of commercial trucks in residential areas)	P&D Act 2005	X		
Operating a business or conducting an activity outside of the approved operating hours of such business or activity	P&D Act 2005	X	X	X
Exceeding the approved capacity limit of land or premises used for business or activity	P&D Act 2005	X	X	X
Failure to provide adequate car parking facilities	P&D Act 2005	X	X	
Failure to provide appropriate road access	P&D Regs	X		
Failure to undertake and maintain landscaping (where this a condition of approval)	P&D Act 2005	X		
Unauthorised or non-conforming garden walls and/or retaining walls and excavation	P&D Act 2005	X	X	X
Unauthorised dumping of waste	P&D Act 2005	X	X	X
Unauthorised storage of materials	P&D Act 2005	X	X	X
Unauthorised clearing of vegetation	P&D Act 2005	X	X	
Unauthorised use of land, or buildings (for example, use of residential premises for commercial purposes)	P&D Act 2005		X	
Unauthorised change in the type of land use (for example, change from warehouse to showroom; or residential to consulting rooms)	P&D Act 2005		X	X
Unauthorised minor works or structures	P&D Act 2005	X		

Compliance Enforcement Matrix – Environmental Health Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Health Compliance				
Unsanitary food premise	Food Act 2008		X	X
Noise complaints – party noise	EPA (Noise) 1997	X	X	
Asbestos complaints	Health Asb Regs 1992	X	X	X
Noise complaints air conditioning	EPA (noise) 1997	X	X	
Noise building	EPA (Noise) 1997	X	X	
Noise delivery vehicles	EPA (Noise) 1997	X	X	
Unfit house	HMP 1911		X	X
Light complaints	HLL TOMP	X		
Unauthorised discharge	EPA 1986	X	X	
Smoke complaints	EPA 1986	X		
Smoking in outdoor eating areas	Tobacco Products Control Act 2006	X		

This submission is in response to the Petition, Attachment 1, calling for a review of [Council's Compliance and Enforcement Policy \(CP-114\)](#) as added to the meeting agenda published November 17, 2023.

We ask Council to reject and replace the Officer's recommendation, in-line with section 6.11 (3)(b) of [City's Meeting Procedures Local Law](#), with one to the effect of:

"Refer it to the Governance Committee for consideration and a preparation of a report for consideration by Council at the February 2024 Ordinary Meeting of Council."

We do not believe it is appropriate for the CEO and the City officers to take charge of reviewing and recommending improvements to the Compliance and Enforcement Policy. We believe the Governance Committee should drive any review and recommendations in relation to this important Council Policy, consistent with its [Charter](#), Attachment 4.

The objective of the **Governance Committees is to ensure that appropriate standards are applied by the Elected Members of the Council and its various Committees as well as the Officers of the Council when performing the functions delegated to them**, assigned tasks and duties include:

- Ensuring there are effective decision-making processes in place that reflect the transparency and accountability principles which underpin excellence in governance;
- Ensuring that effective delegations are implemented and maintained; and
- Ensuring that there is an active organisational performance management system in place that enables Elected Members and Officers to be openly accountable for their performance.

The Compliance and Enforcement Policy reflects Council's guidance with respect to how and when the CEO and other officers execute the powers and duties Council has delegated to them to enforce of the laws including in relation to Health, Food, Dogs, Cats, Bush Fires, Planning & Development, Building, Litter, Parking, as outlined in [Council's Statutory Delegations and Authorisation Manual](#).

In a number of instances City officers have failed to exercise their delegated authorities appropriately and at times have caused many residents detriment, including psychosocial harm. Council needs to do better at ensuring laws are enforced in an objective and impartial manner in-order to protect the community and individual residents by providing much clearer guidance to its CEO, by better reporting to Council on compliance enforcement activities and introducing formal rights of Council review for complainant should City officers refuse to take enforcement actions.

Dr Stevens' Petition reflects just one instance. Dr Stevens continues to suffer detriment because City officers have refused to take appropriate enforcement action against his neighbor for building part of a retaining wall encroaching onto his land without his consent. Retaining walls matters fall within Council's remit as the primary Building compliance enforcement agency, not the Magistrates Court.

Dr Stevens is pointing to the Shire of Serpentine-Jarrahdale (S-J) Council's General Compliance and Enforcement Policy as an example of a good policy, Attachment 3. You will see the S-J Policy Appendix 1 considers any encroachments outside of works land (a breach of s 76 of the Building Act) as a major offence, that is:

"a breach of legislation that significantly impacts or risks the health and safety of the community, a community member, 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 to achieve compliance."

Council not only has the power to issue building orders to have Dr Stevens' neighbor remove the unauthorised encroachment (DA-128), but it can also prosecute the neighbor for a breach of the Building Act (DA-105), Attachment 2.

Parliament introduced Part 6 of the Building Act into the 2011 legislation with the specific intention of protecting individual property owners from the adverse affects of building work undertaken on adjoining properties. The Objectives of the Building Act were outlined to [Parliament in April 2011](#):

*“The Building Bill [Act] will clarify issues related to construction on boundaries that have caused anxiety and uncertainty for many years. The Dividing Fences Act provides a mechanism for seeking a contribution to the cost of building or maintaining a dividing fence, but does not specify construction standards or processes. **The bill has been drafted to align with that act and reinforce the principle that a person’s home is their castle and that other people must get permission to intrude, be they workmen seeking easy access to work on a neighbour’s building or encroachment on the building itself.** If permission is refused, a builder can seek a court order to get access, but cannot just march in. There are clear rules dealing with removal of fences, protection of adjoining buildings during construction, jointly owned walls, and quality of construction along boundary lines. Local governments are given effective powers to intervene when a builder does the wrong thing.”*

“The bill [Act] continues the role of local governments and other permit authorities in enforcing compliance with building standards and processes. A local government will monitor building activity in its area and can give notices requiring owners to improve, obtain approval for, or demolish unsafe or unauthorised buildings. The permit authority for a building will be able to inspect at any time and require compliance with certified plans. The bill provides a range of enforcement options, including infringement notices, improvement notices and prosecution for noncompliance. If dangerous situations are not being dealt with, the permit authority can take action itself and recover the costs from the owner or builder. I commend the bill to the house.”

The City’s Director Planning, Mr Peter Varelis, has refused numerous requests to take enforcement action to address Dr Stevens’ complaints with the City arguing:

“The City undertakes enforcement actions on behalf of and in the interests of the community as a whole, not in pursuit of the interests or benefit of any individual or group.” (response to Dr Stevens public questions at [18 July 2023 Council meeting](#), amongst others)

This argument is at odds and with the Shire of S-J’s Compliance Policy and directly contradicts the objectives of Part 6 of the Building Act 2011: Work affecting other land, especially section 76: No encroachment without consent, court order or other authority.

Council needs to improve its Compliance and Enforcement Policy to ensure residents like Dr Stevens do not suffer detriment because City officers fail to take appropriate compliance enforcement actions.

Attachments

1. Petition as included in Council’s November 21, 2023 meeting agenda.
2. City of Melville Statutory Delegations by Council
 - a. DA-105 Prosecutions and Legal Proceedings – Building Matters
 - b. DA-128 Building Orders
3. The Shire of Serpentine-Jarrahdale Council’s General Compliance and Enforcement Policy
4. City of Melville Council Governance Committee Charter

12.4 Petition - CP-114 Compliance & Enforcement Policy Review

A petition signed by 37 residents of the City of Melville was submitted by Mr J Stevens of Bicton on Monday, 6 November 2023. The petition reads as follows:

“We, the undersigned, all being electors of the City of Melville, respectfully ask Council to upgrade its Compliance and Enforcement Policy (CP-114) to bring it more into line with similar policies of other Councils and community expectations by providing much better guidance to the Chief Executive Officer in relation to the City’s compliance and enforcement activities. The Shire of Serpentine-Jarrahdale Council’s General Compliance and Enforcement Policy Appendix 1 provides good guidance on when and how City officers should act when non-compliances are identified, including among other things, how and when officers exercise Council’s Building Act 2011 powers and duties with respect to adversely affected individual adjoining property owners.”

OFFICER RECOMMENDATION

That the Council acknowledged the petition and direct that a report on the matters raised be prepared for consideration by Council at the February 2024 Ordinary Meeting of Council.

Part 2 - Register of Statutory Delegations by Council

DA-105 Prosecutions and Legal Proceedings – Building Matters

Delegator: Council as permit authority Process Owner: Director Planning		Delegation: DA – 105 Last Review Date: 20 June 2023
Description	Authority to commence and have the carriage and conduct of legal proceedings and other matters pursuant to the <i>Building Act 2011</i> and <i>Building Regulations 2012</i> and exercise the powers set out in section 133.	
Statutory Power or Duty Delegated	<i>Building Act 2011</i> Section 133(1)(b): Prosecutions may be commenced by a local government or a person authorised to do so by the local government	
Statutory Power to Delegate	<i>Building Act 2011</i> Section 127(1): A local government may delegate any of its powers or duties as a permit authority Section 127(3): A local government may only delegate its powers or duties to a local government employee	
Delegated to	Chief Executive Officer	
Statutory Power to sub delegate:	<i>Building Act 2011</i> Section 127(6A): CEO of a local government may delegate to any other local government employee a power or duty that has been delegated to the CEO	
Sub Delegated to:	<ul style="list-style-type: none"> • Director Corporate Services • Director Planning • Manager Building and Environmental Health Services • Building Compliance Officer 	
Conditions on Delegation/Sub Delegation	None	
Compliance links	<i>Building Act 2011</i> Part 12 Legal Proceedings	
Policy Reference	Building Compliance Work Instruction CP-114 Compliance and Enforcement Policy Compliance and Enforcement Guideline	
Recordkeeping	Records of exercise of delegated authority and associated contracts to be retained in ECM index: COUNCIL ADMINISTRATION – Delegated Authority – Exercises 5.119 P PLANNING AND DEVELOPMENT – Building Inspections – prosecutions, notices, complaints, demolition 20.69 10D	
Period of Validity	Ongoing	
Adopted by Council	Ordinary Meeting of Council – 21 May 2013 – C13/5291	
Substantive Amendments	Ordinary Meeting of Council – 16 June 2020 – M20/5749 Amended to remove redundant matters and provide for authorising a person to commence prosecution in accordance with section 133. Ordinary Meeting of Council – 15 June 2021 – M21/5842 Approved sub-delegation to Building Compliance Officer.	

DA-128 Building Orders

Delegator: Council as permit authority		Delegation: DA – 128	
Process Owner: Director Planning		Last Review Date: 20 June 2023	
Description	<ol style="list-style-type: none"> 1. Authority to issue building orders, give notice of a building order, revoke a building order and give notice to that effect; and 2. In the event of non-compliance with a building order, cause an authorised person to take any action, or commence or complete any work, specified in the order or to take reasonable steps to cause specified action to cease, and recover the reasonable costs in giving effect to the building order. 		
Statutory Power or Duty Delegated	<i>Building Act 2011</i> <u>Section 110(1):</u> Building orders <u>Section 111:</u> Notice of proposed building order <u>Section 117:</u> Revocation of building order <u>Section 118:</u> Give effect to building order if non-compliance <u>Section 88(3):</u> Specify the finish of a close wall in a building order		
Statutory Power to Delegate	<i>Building Act 2011</i> <u>Section 127(1):</u> A local government may delegate any of its powers or duties as a permit authority <u>Section 127(3):</u> A local government may only delegate its powers or duties to a local government employee		
Delegated to	Chief Executive Officer		
Statutory Power to sub delegate:	<i>Building Act 2011</i> <u>Section 127(6A):</u> CEO of a local government may delegate to any other local government employee a power or duty that has been delegated to the CEO		
Sub Delegated to:	<ul style="list-style-type: none"> • Manager Building and Environmental Health Services • Building Services Coordinator • Senior Building Surveyor 		
Conditions on Delegation/Sub Delegation	The Senior Building Surveyor is delegated the power to give notice of a building order only (section 111).		
Compliance links	<i>Building Act 2011</i> , Part 8, Division 5		
Policy Reference	CP-114 Compliance and Enforcement Policy Compliance and Enforcement Guideline		
Recordkeeping	Records of exercise of delegated authority and associated contracts to be retained in ECM index: COUNCIL ADMINISTRATION – Delegated Authority – Exercises 5.119 P PLANNING & DEVELOPMENT – Building & Planning Compliance 20.107 5A		
Period of Validity	Ongoing		
Adopted by Council	Special Meeting of Council – 27 March 2012 – P12/3298		
Substantive Amendments	Ordinary Meeting of Council – 16 June 2020 – M20/5749 Amended to incorporate delegations recorded in instruments DA-097, DA-099, DA-100, DA-101, DA-102.		



Council Policy – General Compliance and Enforcement

Responsible Directorate	Development Services
Responsible Business Unit/s	Planning and Compliance Health and Building Emergency Services and Community Safety
Responsible Officer	Director Development Services
Affected Business Units	Planning and Compliance Health and Building Emergency Services and Community Safety

Objective

- Ensure a consistent approach in enforcement and compliance related matters;
- Provide transparency, apply procedural fairness and natural justice for all enforcement and compliance related matters;
- 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.

Scope

To assist the Shire to use compliance and enforcement strategies to achieve legislated objectives and encourage compliance by implementing a cooperative and collaborative approach to enforcement action.

1 Policy

1.1 Introduction

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.

2. Legislation Enforced by Shire

This Policy applies to all compliance and enforcement actions where the Shire has a regulatory responsibility under State and Local Laws.

Departments within the Shire which may enforce legislation:

Building Services	<i>Building Act 2011 and Building Regulations 2012 Caravan Parks and Camping Grounds Act 1995 and Regulations Local Government Act 1995</i>
Statutory Enforcement (Planning Compliance) Services	<i>Building Act 2011 and Building Regulations 2012 Caravan Parks and Camping Grounds Act 1995 and Regulations Graffiti Vandalism Act 2016 Local Government Act 1995 and Regulations Planning and Development Act 2005 and Regulations Shire of Serpentine Jarrahdale Local Laws (as amended)</i>



Council Policy – General Compliance and Enforcement

Environmental Health Services	<i>Caravan Parks and Camping Grounds Act 1995 and Regulations</i> <i>Environmental Protection Act 1986 (Public Health component only)</i> <i>Environmental Protection (Noise) Regulations 1997</i> <i>Environmental Protection (Unauthorised Discharge) Regulations 2004</i> <i>Food Act 2008 and Regulations</i> <i>Health (Miscellaneous Provisions) Act 1911</i> <i>Local Government Act 1995 and Regulations</i> <i>Public Health Act 2016 and Regulations</i> <i>Shire of Serpentine Jarrahdale Local Laws (as amended)</i>
Engineering Services	<i>Local Government Act 1995 and Regulations</i> <i>Planning and Development Act 2005</i> <i>Shire of Serpentine Jarrahdale Local Laws (as amended)</i>
Ranger Services	<i>Bushfires Act 1954 and Regulations</i> <i>Cat Act 2011 and Regulations</i> <i>Control of Vehicles (Off Road Areas) Act 1978 and Regulations</i> <i>Dog Act 1976 and Regulations</i> <i>Graffiti Vandalism Act 2016</i> <i>Litter Act 1979 and Regulations</i> <i>Local Government Act 1995 and Regulations</i> <i>Local Government (Miscellaneous Provisions) Act 1960</i> <i>Shire of Serpentine Jarrahdale Local Laws (as amended)</i> <i>Local Government (Administration) Regulations 1996</i> <i>Local Government (Parking for People with Disabilities) Regulations 2014</i> <i>Local Government (Uniform Local Provisions) Regulations 2014</i>
Emergency Services	<i>Bush Fires Act 1954 and Regulations</i> <i>Bush Fires (Infringements) Regulations 1978</i> <i>Emergency Management Act 2005 and Regulations</i> <i>Local Government Act 1995 and Regulations</i>
Environmental and Sustainability Services	<i>Cemetery Act 1986</i> <i>Planning and Development Act 2005</i> <i>Shire of Serpentine Jarrahdale Local Laws (as amended)</i>

3. Lodging a complaint

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

- name and address, telephone number, and email address of the complainant;
- address of the offending property; and
- 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).

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.

4. 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.

5. Community engagement

- Information available on Shire website in relation to compliance requirements;
- Update compliance Policy and Procedures; and
- Working with residents, ratepayers, stakeholders and businesses to encourage compliance with relevant laws, regulations and policies.

6. 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.

7. Enforcement options

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

8. 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:

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

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

- (a) having considered the nature of the non-compliance, an educative approach to preventing the matter from continuing or reoccurring is considered most appropriate;
- (b) there is insufficient evidence to prove non-compliance after reasonable attempts have been made by the Shire to investigate the matter;
- (c) the individual or entity has discontinued or removed the unauthorised development or has obtained the relevant approval(s);
- (d) 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
- (e) 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.

9.2 Audits, patrols, and checks (Proactive Compliance)

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

- (a) carry out audits of Form 2 planning approvals and refusals;
- (b) carry out yearly audits of extractive industry licencing and conditions;



- (c) investigate compliance issues observed by Shire officers during the course of daily work related activities; and
- (d) conduct proactive compliance through an annual work program.

9.3 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:

- (a) the seriousness and nature of the offence;
- (b) legal advice received by the Shire;
- (c) any evidence of contempt or disregard for the law;
- (d) any public health or safety impacts resulting from the offence; and
- (e) 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:

- (a) legal advice received by the Shire; or
- (b) in the opinion of the Chief Executive Officer, an appropriate level of compliance has been achieved; or
- (c) an error of law or fact; or
- (d) 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**

Refer to Register of Delegations and Sub-delegations (as amended).

Definitions

Not applicable

Relevant Policies/Council Documents

Not applicable

Legislation/Local Law Requirements

- *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*

Office Use Only

Relevant Delegations	Refer to Register of Delegations and Sub-delegations (as amended).			
Council Adoption	Date	22/05/2017	Resolution #	OCM052/05/17
Reviewed/Modified	Date	18/12/2017	Resolution #	OCM179/12/17
Reviewed/Modified	Date	16/09/2019	Resolution #	OCM195/09/19



Appendix 1

Compliance Matrix – Building Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Building Compliance				
Unauthorised swimming pool or spa	Building Act s9			x
Authorised swimming pool or spa – no security barrier	Building Regs r50			x
Non-compliant pool barrier – hinges, windows	Building Regs r50	x		
Non-compliant pool barrier – non-compliant barrier (height, gates swinging in wrong direction, openings too large)	Building Regs r50			x
Unauthorised building work	Building Act s9,		x	
Unauthorised Demolition	Building Act s10			x
No Notice of Completion	Building Act s33	x		
Non-compliance applicable Building Standards – After completion	Building Act s37		x	
Non-compliance applicable Building Standards – Demolition	Building Act s38		x	
Occupying a building without Occupancy permit	Building Act s41		x	
Non-Display or non-notification of Occupancy Permit	Building Act s42	x		
Occupation use to comply with Occupancy permit	Building Act s43		x	
Occupancy permit – General Compliance	Building Act s44		x	
Encroachments outside of works land	Building Act s76			x
Adverse affect to other land without consent	Building Act s77			x
No protection Structure on or over land without consent	Building Act s78		x	
Work not to affect party wall without consent	Building Act s79		x	
Removal of dividing fence without consent	Building Act s80		x	

Major: A major offence is a breach of legislation that significantly impacts or risks the health and safety of the community, a community member or the environment. It may also be a case where the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate to achieve compliance.

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, community member, 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 a warning or an infringement, however, if allowed to continue could escalate into a major breach which may require issuing notice or prosecution action.

Minor: A minor offence is a breach of legislation which has a minimal impact on the community, a community member 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.



Compliance Matrix – Engineering Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Local Government Act 1995				
Unauthorised works within road reserve/POS	Schedule 9.1 (8)		X	
Damage public Infrastructure	Schedule 9.1 (8)		X	
Discharge stormwater into public land/Road	Schedule 9.1 (10)		X	
Wind erosion or sand drift	Schedule 9.1 (12)		X	
Cemeteries Local Law 2005				
Excessive Speed	Clause 5.4		X	
Unauthorised use – driving of vehicles	Clause 5.4	X		
Placing of rubbish and surplus materials	Clause 7.3	X		
Leaving uncompleted works in an untidy or unsafe condition	Clause 7.7	X		
Animal at large	Clause 8.1		X	
Dumping of rubbish	Clause 8.5	X		
Unauthorised advertising and or trading	Clause 8.6	X		
Disobeying sign or lawful direction	Clause 8.7	X		

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Compliance Matrix – Planning Compliance Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Development Compliance				
Unauthorised Tree Clearing	TPS 2		X	
Unauthorised Land Use			X	
Unauthorised Development – Structures	TPS 2	X		
Unauthorised Development – Sea Containers	TPS 2		X	
Unauthorised Commercial Vehicles	TPS 2	X		
Unauthorised Transport Depot	TPS 2		X	
Unauthorised Fill/Excavation	TPS 2		X	
Unauthorised Home Business	TPS 2	X		
Breach Form 2 Conditions			X	
Unauthorised Signage		X		
Extractive Industries:				
<ul style="list-style-type: none"> No Approval 	Extractive Industries Local Law			X
<ul style="list-style-type: none"> Breach of conditions minor 	Extractive Industries Local Law	X		
<ul style="list-style-type: none"> Breach of conditions major 	Extractive Industries Local Law			X
Unauthorised land use - horses	TPS 2	X		
Unauthorised home occupation	TPS 2	X		

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Compliance Matrix – Ranger Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Ranger Services				
Unregistered Dog	Dog Act S7(1)	X		
Unregistered Cat	Cat Act S5(1)	X		
Wandering Dogs – Private Property (Dog in a place without Consent)	Dog Act S33A(3)		X	
Wandering Dogs – Public (Dog not held or tethered in public place)	Dog Act S31(3)		X	
Dog Attack - Causing Physical Injury	Dog Act S33D(1)			X
Dog Attack - Causing No Physical Injury	Dog Act S33D(2A)		X	
Restricted Breed or Declared Dangerous Dog Offences	Dog Act S33E			X
Dog Causing a Nuisance by Barking	Dog Act S38(5)		X	
Collection of Stray Dogs – Vet Establishments	Local Government Act	X		
Collection of Stray Dogs - Community	Dog Act S29	X		
Collection of Stray Cats – Vet Establishments	Local Government Act	X		
Collection of Stray Cats - Community	Cat Act S27	X		
Parking Control – School Parking	Parking Local Law		X	
Parking Control – Illegal General Parking	Parking Local Law	X		
Parking Control - Obstruction	Parking Local Law		X	
Livestock – Wandering at Large	LG Miscellaneous Provisions Act & Local Law			X
Livestock - Trespassing	LG Miscellaneous Provisions Act		X	
Abandoned Vehicles - General	Local Government Act	X		
Abandoned Vehicles - Obstructing	Local Government Act		X	
Litter – Building Development Sites	Litter Act		X	
Litter – Illegal Dumping	Litter Act		X	
Litter – Household Rubbish	Litter Act	X		
Signage – Builders Signs	Signs Local Law	X		
Signage – Advertising Signs	Signs Local Law	X		
Signage – Nuisance signs	Litter Act	X		
Unightly Properties	Local Law	X		
Illegal Camping	Local Government Act	X		
Registration Enquiries	Dog & Cat Act's	X		
Pound Transfer	Local Government Act, Dog Act, Cat Act	X		



Continued

Council Policy – General Compliance and Enforcement

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GOVERNANCE COMMITTEE CHARTER

1. Operation

The Committee will operate in accordance with the requirements of *the Local Government Act 1995 (the Act)* and Regulations, City of Melville policies, procedures, delegations and relevant best practice standards and guidelines.

2. Objectives/Terms of Reference

To provide guidance and assistance to the Council on matters of Corporate Governance other than Financial Management, Audit, Risk and Compliance issues, as these will be monitored by the Financial Management, Audit, Risk & Compliance Committee.

The Governance Committee is to ensure that appropriate standards are applied by the Elected Members of the Council and its various Committees as well as the Officers of the Council when performing the functions delegated to them, or for which they are specifically made responsible for by *the Local Government Act 1995*. The Committee will promote excellence in governance within the City of Melville by:-

- Nurturing a positive culture within the Council that promotes openness and honesty, in which appropriate questioning is encouraged and accountability is clear;
- Ensuring there is clarity about the roles of the Elected Members and Officers and that the statutory separation of powers and roles, as articulated in the Local Government Act 1995, and its regulations, is enforced;
- Fostering effective working relationships within and between the Mayor, Councillors, the Chief Executive Officer (CEO) and other officers of the City;
- Ensuring that appropriate professional development is available to Elected Members and that the new Elected Member induction program is relevant;
- Ensuring there are effective decision-making processes in place that reflect the transparency and accountability principles which underpin excellence in governance;
- Ensuring that effective delegations are implemented and maintained;
- Ensuring that the City of Melville has a documented approach to the governance of the City ;
- Ensuring that there is an active organisational performance management system in place that enables Elected Members and Officers to be openly accountable for their performance;
- Conducting an annual performance review of the City's and CEO's performance;



GOVERNANCE COMMITTEE CHARTER

- Ensuring that internal structures are established that provide for independent review of processes and decision-making to assist the City of Melville to meet its accountability obligations to its stakeholders;
- Ensuring that the City of Melville has a documented approach to stakeholder relationship management in the City
- Applying the City of Melville Code of Conduct and determining matters in relation to Elected Members and the CEO;
- Making recommendations to the Council concerning the payment of contested and/or claims beyond allowances or reimbursement of expenses to Elected Members;
- Exercising oversight of the Council policies relating to Civic and Ceremonial Functions and Elected Members Allowances and Claims for Expenses and Conference Attendance.

3. Membership

- In accordance with Section 5.8 of the *Local Government Act 1995*, members of the Committee will be appointed by absolute majority decision of the Council;
- The Committee will comprise at least the Mayor, Deputy Mayor and four Councillors of the City of Melville;
- In accordance with section 5.11 of the *Local Government Act 1995* membership of the Committee will be reviewed following each Ordinary Election day i.e. once every two years, or upon the cessation of office by any member or the resignation from the Committee by a member.

4. Meetings

- The Chairperson will call and conduct meetings of the Committee in accordance with the City of Melville's Standing Orders and the *Local Government Act 1995* and Regulations;
- The Committee will meet at as required, with the timing of each meeting coinciding with the conduct of particular aspects of the City of Melville's business planning and performance reporting cycle;
- An agenda, and written reports on the business to be conducted at the meeting, will be prepared and distributed to Committee members at least 72 hours prior to the meeting;

GOVERNANCE COMMITTEE CHARTER

- Minutes of the Committee meeting proceedings and recommendations made will be taken and submitted to the next Ordinary Meeting of the Council for decision;

5. Reporting

Reports and recommendations of each Committee meeting shall be presented to the next Ordinary Meeting of the Council.

Last Review Date 18 November 2014 – Ordinary Meeting of the Council –
Item M14/5397
Document owner: Governance & Compliance Program Manager