

This written submission by the City of Melville Residents and Ratepayers Association (MRRA) is in response to the Director Planning's, Mr Peter Varelis, report on item U24/51 Deferral of Consideration – CP-114 Compliance & Enforcement Policy Review as included in the [Agenda for the October 15 OMC](#) (attached).

The MRRA asks Council to reject the Responsible Officer's Recommendation to defer consideration of a revised Compliance and Enforcement Policy and direct the CEO to ensure Council's February 2024 resolution, in response to the November 2023 Petition, is complied with this year.

Alternatively, Elected Members could simply allow the Officer's Recommendation to simply lapse.

The Director Planning has stated the deferral from November 2024 date resolved by Council in February 2024 (8 months ago), to June 2025 (7 month deferral) is necessary due to:

- *"The Environmental Health & Compliance service area has recently undergone a review. As a result of some of the changes, further time is required to enable the review of CP-114 Compliance and Enforcement Policy."*
- *"Additionally, a number of local laws are currently under review or preparation which may impact on the final policy to be presented."*

It is the MRRA's view the reasons for deferral lack merit :

1. The February 2024 OMC minutes (attached) show Council specifically resolved the November deadline to give the CEO, Ms Gail Bowman, 8+ months to complete the review initially prompted by the Petition accepted by Council at the November 2023 OMC. What the City is now recommending is contrary to Council's express resolution and would result in the residents' Petition taking over 18 months to bring back to Council. Thus, the late request for a further 7 months to comply with Council's express resolution seems excessive.
2. The CEO has had many months to ensure adequate resources are in place to execute Council's motion.
3. The Planning directorate's further re-organization should not impact on Council's CP-114, rather Council's policy would inform any organizational changes. That is, the Planning directorate should be structured and resourced to ensure Council's policies are properly executed. Council's existing 5-page CP-114 policy (attached) makes no material reference to any organizational roles.
4. The [Minutes of Council's August OMC provides](#) Council's schedule for review of the City's local laws on page 43, shows that the local laws to be reviewed in 2024/2025 are Cats, Fencing (major review, draft complete), Thoroughfares, Property, and Health (major review, started drafting).

The CEO's CP24/187 Schedule for Review of Local Laws noted that *"the City's fencing, thoroughfares, property and health local laws have not been amended for many years, it is anticipated that there will be significant work required to review and amend these local laws in the 2024 and 2025 years to bring them to modern day standards and ensure they meet the City's needs."* The CEO also noted that *"A number of reviews have still been scheduled for 2025, the next election year, as the team responsible does have additional resourcing during the 2024-2025 financial year to assist it with catching up on its local laws."*

The MRRA is concerned that it appears the [Fencing Local Law](#) has not been reviewed since 2011 and, more alarmingly, that the [Health Local Law](#) has not been reviewed since 1997.

CP-114 policy is applicable to legislation and local laws such as the Local Government Act 1995, Building Act 2011, Bush Fires Act 1954, Caravan Parks and Camping Grounds Act 1995, Cat Act 2011, Control of Vehicles (Off-road Areas) Act 1978, Criminal Procedure Act 2004, Dog Act 1976, Environmental Protection Act 1986, Food Act 2008, Graffiti Vandalism Act 2016, Health (Miscellaneous Provisions) Act 1911, Litter Act 1979, Planning and Development Act 2005, Public Health Act 2016 Parking Local Laws, Meeting Procedures Local Laws, and other subsidiary legislation local laws

The MRRA would have thought the CEO would be the most appropriate officer to be responsible for the CP-114 review given the importance of the policy and the applicability across the various directorates, Community Development, Environment and Infrastructure and Planning.

The MRRA is of the view CP-114 can be substantially improved this year as initially resolved by Council, and it can then be further improved if necessary post the review of the Cats, Fencing, Property, Thoroughfares and Health local law reviews if completed next year.

The MRRA suggests Elected Members review the MRRA's [November 2023](#) and [February 2024](#) written submissions in relation to Council's Compliance and Enforcement Policy. The resident exemplified in these submissions, the same resident that put forward the Petition that gave rise to this CP-114 review, still has not had their complaints and allegations of unauthorized encroachments and non-compliance with City issued building approvals resolved.

The MRRA also asks Council to:

1. Ensure the community is properly and diligently engaged in the CP-114 review, ahead of a revised CP-114 being put to Council for a decision at a public meeting.
2. Any revised CP-114 policy ensures and provides:
 - a. A mechanism to enable residents dissatisfied with the Administration's handling of complaints, including a lack of action about non-compliances, to be formally reviewed by Council.
 - b. The authority for decisions referenced in the policy are independent or open to independent review.
 - c. A mediation process precedes any prosecution or third-party interference.
 - d. A beneficial outcome is defined and measurement of achievement of that benefit dictates continuation of the enforcement process and actions.
 - e. Council Advisory Committee is establishment to oversee the performance and policy application.
 - f. A specific reference to the WA Work Health and Safety Act is included under Policy Scope para 3, as being an Act of higher importance.

Background

Persistent unresolved non-compliances, for which the City has jurisdiction to deal with, have significant potential to adversely impact the resident health, safety, psychosocial wellbeing, and local amenity. There are many examples of resident dissatisfaction with the way City officers have dealt with complaints about non-compliances, or requests for enforcement action.

CP-114 was first put in place in July 2021 after the commencement of Ms Weirs community-initiated investigation into the City, and after significant lobbying from the community, including the MRRA. Elected Members should recall recommendation 13 of the [2021 Weir investigation report](#) called for further improvements to CP-114. It is noted that the following has been added to the City's March 2024 status update on that item:

"Reference is made to Officer recommendation and Council Resolution (UP24/31) – Ordinary Council Meeting, 20 February 2024 that the Council:

1. *Request the Chief Executive Officer prepare Compliance Matrices to guide the operational implementation for all compliance related services; and*
2. *Request a review of CP-114 - Compliance and Enforcement Policy be undertaken to incorporate the Compliance Matrices; and*
3. *Request a briefing at an Elected Member Engagement Session and that the review be completed and presented for consideration no later than the November 2024 Ordinary Meeting of Council."*

Despite the community's continued lobbying, and community engagement being a cornerstone of local government, the community's voice has not yet been engaged and nor has the community's voice been comprehensively nor substantively heard and heeded by the City or Council in respect to construction and promulgation of this CP-114 policy.

Whilst the current CP-114 policy is a significant improvement on Council's previous lack of direction to City officers, there is still nothing included in the CP-114 policy to ensure the policy has capacity to measure achievement of the purported desirable outcomes, effective Council oversight, engagement and review of decisions taken under delegated authority by City officers. The general structure of wording of the CP-114 policy still elicits oppression in the absence of concerted direction to community outcome benefits. These are significant short comings in the MRRA's opinion.

Attachments:

1. October 2024 OMC Item U24/51 Deferral of Consideration CP-114 Compliance & Enforcement Policy
2. February 2024 OMC Minutes Item UP/31 Response to Petition – CP-114 Compliance & Enforcement Policy Review, [with on-line audio available from 1:38:30 mark](#).
3. City of Melville existing CP-114 Compliance and Enforcement Policy

Planning**UP24/51 Deferral of Consideration - CP-114 Compliance & Enforcement Policy Review**

File Number:	
Responsible Officer:	Director Planning
Voting Requirements:	Simple Majority
Officer Disclosure of Interest:	No officer involved in the preparation of this report has a declarable interest in the matter.
Attachments:	Nil

COUNCIL'S ROLE

Information: For the Council / Committee to note.

SUMMARY

- At the Ordinary Meeting of Council (OMC) held on Tuesday, 20 February 2024, the Council resolved that a review of CP-114 Compliance and Enforcement Policy be undertaken to incorporate the Compliance Matrices and that a report be presented back to the Council by no later than the November 2024 Ordinary Meeting of Council.
- This report is requesting that the Council note the deferral of this report to the June 2025 Ordinary Meeting of Council.

OFFICER RECOMMENDATION

That the Council notes that CP-114 Compliance and Enforcement Policy will be presented by the June 2025 Ordinary Meeting of Council.

PURPOSE

This report is presented to request that the Council note the deferral to allow for adequate time to undertake the review.

STRATEGIC ALIGNMENT

Outcome	5	Leadership and good governance for the benefit of the whole community.
Objective	5	Good Governance and Leadership
	5.1	Provide transparent and accountable good governance.

BACKGROUND

At the Ordinary Meeting of Council (OMC) held on Tuesday, 20 February 2024, the Council resolved:

That the Council:

- 1. Request the Chief Executive Officer prepare Compliance Matrices to guide the operational implementation for all compliance related services; and***
- 2. Request a review of CP-114 - Compliance and Enforcement Policy be undertaken to incorporate the Compliance Matrices; and***
- 3. Request a briefing at an Elected Member Engagement Session and that the review be completed and presented for consideration no later than the November 2024 Ordinary Meeting of Council.***

The Environmental Health & Compliance service area has recently undergone a review. As a result of some of the changes, further time is required to enable the review of CP-114 Compliance and Enforcement Policy.

CONSIDERATION

This report is advising of a deferral of the consideration of the review of CP-114 Compliance and Enforcement Policy.

Additionally, a number of local laws are currently under review or preparation which may impact on the final policy to be presented.

ENGAGEMENT

There are no engagement implications presented as part of this report. A courtesy notification will be provided to the original petitioners requesting the review.

SUSTAINABILITY IMPLICATIONS

There are no sustainability implications presented as part of this report.

LEGISLATIVE AND POLICY ALIGNMENT

There are no legislative or policy implications presented as part of this report.

FINANCIAL IMPLICATIONS

There are no financial implications presented as part of this report.

CONSEQUENCE

There are no consequences or alternative options presented as part of this report.

At 8:09pm, the Presiding Member advised that a [written submission](#) has been received from City of Melville Residents and Ratepayers Association in relation to item UP24/31 Response to Petition – CP-114 Compliance & Enforcement Policy Review, and was distributed to Elected Members on Monday, 19 February 2024.

UP24/31 Response to Petition - CP-114 Compliance & Enforcement Policy Review

File Number:	CP-114
Responsible Officer:	Director Planning
Voting Requirements:	Simple Majority
Officer Disclosure of Interest:	N/A
Application Number:	N/A
Applicant:	Dr J Stevens
Owner:	N/A
Proposal:	Petition
Attachments:	<ol style="list-style-type: none"> 1. City of Melville - CP-114 Compliance and Enforcement Policy 2. SJ Shire - General Compliance and Enforcement Policy

COUNCIL'S ROLE

Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

SUMMARY

- At the 21 November 2023 Ordinary Meeting of Council (OMC), the Council considered a petition that requested that the Compliance and Enforcement Policy (CP-114) be reviewed to provide “...*much better guidance to the Chief Executive Officer in relation to the City’s compliance and enforcement activities*”.
- The focus of the petition is on how and when officers exercise Council’s *Building Act 2011* powers and duties with respect to adversely affected individual adjoining property owners and referenced the Shire of Serpentine-Jarrahdale Council’s General Compliance and Enforcement Policy Appendix 1 – Compliance Matrix as an example.
- In considering the request of the petition to introduce matrices providing guidance as to the City’s approach to offences in a building compliance context, analysis has been undertaken as to benefits and implications of introducing such an approach.
- Based on the analysis undertaken, the following options are available to Council:
 - Option 1: Do not amend the policy and decide not to prepare matrices and rely on the City’s existing risk management framework to operationally assess the risk of compliance matters.
 - Option 2: Request the City to prepare a matrix for building compliance matters only as part of a review of the Policy.
 - Option 3: Request the City to prepare matrices for all compliance related services matters as part of a review of the Policy.
- Having regard for the information in the report, Option 3 is recommended.

PURPOSE

The purpose of this report is for Council to consider information in response to matters raised in a petition presented at the November 2023 Ordinary Meeting of Council.

STRATEGIC ALIGNMENT

Priority	2	Improve the approach for diverse and sustainable urban development and infrastructure
	P2/4	Enhance regulatory and approval frameworks to ensure sustainable building infrastructure.
Outcome Indicator	4	Safe and Secure
	Goal 7	Safe and Secure Places and Environment

BACKGROUND

Council Policy CP-114 Compliance and Enforcement Policy (the Policy), see Attachment 1, was last reviewed and amended at the 21 June 2022 Ordinary Meeting of Council (OMC). The review considered two recommendations from the Weir Report and resulted in the Policy being amended to include:

1. Commentary on its approach to escalating enforcement actions; and
2. Communication with the complainant when enforcement action is taken or to be taken so the complainant has the opportunity to attend or initiate their own action, if they choose to do so.

At the 21 November 2023 OMC, the Council acknowledged a petition and requested a report on the matters raised in the petition be prepared for consideration February 2024 OMC.

The petition requested the following:

"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."

A review of the Shire of Serpentine Jarrahdale (SSJ) Council Policy – General Compliance and Enforcement (SJ Policy), see Attachment 2, has been undertaken.

The SJ Policy notes that each compliance investigation will be assessed on a case-by-case basis and actioned having regard for the Compliance and Enforcement Matrix (Appendix 1) for each of the relevant business unit areas.

It's noted that Appendix 1 of the SJ Policy is used as a guide only and an offence category can be reviewed during the investigation process. Appendix 1 of the SJ Policy provides details of the relevant compliance matters within the Building Services, Engineering Services, Planning Compliance Services and Ranger Service.

Given the context of the petition, this report to Council considered the relevance of Appendix 1 as it relates to the Building Services area. Notwithstanding, broader considerations across the organisation and its compliance services are also relevant.

CONSIDERATION

In considering the request of the petition to introduce matrices providing guidance as to the City's approach to offences in a building compliance context, analysis has been undertaken as to benefits and implications of introducing such an approach. These are detailed below as "pros" and "cons".

Pros:

1. **Clarity:** Matrices provides a clear visual representation, making complex decision factors more understandable for stakeholders.
2. **Consistency:** It helps ensure consistency in decision-making by applying predetermined criteria uniformly.
3. **Efficiency:** Streamlines the decision-making process, saving time and resources by focusing on relevant factors.
4. **Transparency:** Enhances transparency as the criteria and weighting are visible, potentially promoting accountability and trust.
5. **Objective criteria:** Facilitates the use of objective criteria, reducing the likelihood of subjectivity influencing decisions.
6. **Accountability:** Establishes accountability as decisions are based on predefined, measurable criteria rather than subjective, though often well-informed judgment.
7. **Risk mitigation:** Helps identify and mitigate potential risks by pre-evaluating factors that could impact compliance decisions.
8. **Training tool:** Could serve as a valuable training tool, aiding in the consistent development of decision-making skills among staff.
9. **Resource allocation:** Assists in allocating resources efficiently by prioritizing issues based on their relative importance, impact, scale and risk.

Cons:

1. **Simplification:** May oversimplify complex issues, potentially missing nuances that a more qualitative approach might capture.
2. **Rigidity:** Can be considered rigid, lacking flexibility to adapt to unique situations that may not fit neatly into predefined categories.
3. **Subjectivity in weighting:** The weighting assigned to criteria can be subjective, leading to potential disagreement on the importance of factors. Currently the City utilises its existing policy coupled with its risk management framework to inform compliance responses.
4. **Information dependence:** Relies on accurate and up-to-date information; errors or outdated information/legislation can compromise decision quality if it's not monitored and updated regularly.

5. **Human element:** Ignores the human element and context, potentially overlooking the impact on individuals or communities.
6. **Complexity:** Developing and maintaining comprehensive matrices can be complex, requiring ongoing effort and expertise.
7. **Resistance to change:** Stakeholders may resist the shift to a matrix-based approach, especially if it diverges from established practices which provides flexibility and regard for circumstantial factors.
8. **Limited context consideration:** May not adequately consider the broader context and external factors influencing compliance issues.
9. **Unintended consequences:** Rigidity in adherence to matrices may lead to unintended consequences or outcomes that don't align with broader goals.

A key consideration in preparing any matrix or matrices of this nature is to tailor it to the specific needs and context of the relevant local government having regard for the particular of the locality and its existing operational risk management framework. Flexibility should be built in to accommodate unique situations, and regular updates should be made to ensure relevancy and accuracy.

While analysis of the approach has been undertaken in a building compliance context, matrices can also provide guidance on other similar compliance related activities as detailed within the SJ Policy and also covered by the City's policy.

In reviewing the SJ Policy, it's noted the following clauses are provided with regard to the application of the matrices:

"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...(based on the offence categories).

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."

ENGAGEMENT

Should Council decide it's appropriate to incorporate a matrix or matrices, engagement with a range of stakeholders is important to gather diverse perspectives during the development and implementation.

SUSTAINABILITY IMPLICATIONS

Environmental impact: Include criteria that assesses the environmental impact of decisions, considering factors such as resource use, emissions, and long-term sustainability. Proportionality in a building compliance context is a key consideration particularly with regard to embodied carbon.

Social impact: Ensure that the matrices address social equity by evaluating the potential impacts of building compliance on diverse communities and promoting fair distribution of benefits and burdens.

Economic impact: Ensure the economic impact of compliance activities on small businesses and individuals is considered. Proportionality in a building compliance context is a key consideration particularly with regard to building and construction costs.

LEGISLATIVE AND POLICY ALIGNMENT

- *Local Government Act 1995*
- *Planning and Development Act 2005*
- *Building Act 2011*
- CP-114 Compliance and Enforcement Policy

FINANCIAL IMPLICATIONS

Implementation costs: Evaluate the upfront costs associated with implementing building compliance measures, including construction, equipment, and technology expenses.

Operating and maintenance expenses: Consider ongoing operational and maintenance costs for compliance measures to ensure sustained effectiveness over time.

Cost-benefit analysis: Conduct a thorough cost-benefit analysis to assess the financial implications of compliance decisions against their expected benefits.

Budget and resourcing constraints: Align compliance decisions with the available budgetary resources ensuring financial feasibility and appropriate resource allocation.

Economic Impact Assessment: Analyse the broader economic impact of compliance decisions, considering effects on local businesses, job creation, and economic development.

CONSEQUENCE

Based on the analysis undertaken, the following options are available to Council:

Option 1: Do not amend the policy and decide not to prepare matrices and rely on the City's existing policy and risk management framework to operationally assess the risk of compliance matters and decisions.

Option 2: Request the City to prepare a matrix for building compliance matters only as part of a review of the policy.

Option 3: Request the City to prepare matrices for all compliance related services matters as part of a review of the policy.

Should it be considered appropriate to implement matrices in some form, it should be done carefully, considering the specific context and balancing the need for structure with the flexibility required in real-world decision-making.

Having regard for the information in this report, Option 3 is recommended.

At 8:10pm, Cr G Barber returned to the meeting.

At 8:12pm, Cr J Spanbroek returned to the meeting.

OFFICER RECOMMENDATION

At 8:10pm Cr T Fitzgerald moved, seconded Cr K Wheatland

That the Council:

1. **Request the Chief Executive Officer prepare Compliance Matrices to guide the operational implementation for all compliance related services; and**
2. **Request a review of CP-114 - Compliance and Enforcement Policy be undertaken to incorporate the Compliance Matrices; and**
3. **Request a briefing at an Elected Member Engagement Session and that the review be completed and presented for consideration no later than the November 2024 Ordinary Meeting of Council.**

Amendment

At 8:10pm Cr J Edinger moved, seconded Cr G Barber

That Point 2 of the Officer Recommendation be amended to read:

2. ***Request a review of CP-114 - Compliance and Enforcement Policy be undertaken to:***
 - a) ***incorporate the Compliance Matrices; and***
 - b) ***consider the removal of point 3 of the Policy Statement***

At 8:16pm the Presiding Member declared the motion.

LOST (5/8)

Yes (5): Crs Glynis Barber, Jane Edinger, Clive Ross, Jennifer Spanbroek and Soo Hong

No (8): Mayor Katy Mair, Crs Tomas Fitzgerald, Nicole Robins, Karen Wheatland, Matthew Woodall, Daniel Lim, Scott Green and Terry Lee

OFFICER RECOMMENDATION AND COUNCIL RESOLUTION (UP24/31)

At 8:10pm Cr T Fitzgerald moved, seconded Cr K Wheatland

That the Council:

- 1. Request the Chief Executive Officer prepare Compliance Matrices to guide the operational implementation for all compliance related services; and**
- 2. Request a review of CP-114 - Compliance and Enforcement Policy be undertaken to incorporate the Compliance Matrices; and**
- 3. Request a briefing at an Elected Member Engagement Session and that the review be completed and presented for consideration no later than the November 2024 Ordinary Meeting of Council.**

At 8:18pm the Presiding Member declared the motion.

CARRIED (12/1)

Yes (12): Mayor Katy Mair, Crs Tomas Fitzgerald, Glynis Barber, Jane Edinger, Nicole Robins, Jennifer Spanbroek, Karen Wheatland, Matthew Woodall, Daniel Lim, Soo Hong, Scott Green and Terry Lee

No (1): Cr Clive Ross



Compliance and Enforcement Policy

Policy Type: Council Policy Policy Owner: Manager Governance and Property	Policy No. CP-114 Last Review Date: 21 June 2022
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Policy Objectives

This policy provides guidance to:

- Ensure there is a consistent, efficient and proportionate approach in the undertaking of compliance and enforcement action by the City.
- Ensure transparency, procedural fairness and that the principles of natural justice are preserved.
- Use compliance and enforcement strategies in such a way as to best achieve legislated objectives and provide for the good government of the Melville community.

Policy Scope

1. This policy applies to all compliance and enforcement actions by any City officer with responsibilities under statutory or delegated authority for ensuring compliance with WA state legislation and City of Melville local laws.
2. This policy applies to the investigation of and response to:
 - offences against, or other breaches of, legislation for which the City of Melville is administratively responsible within its district; and
 - failure to comply with lawful directions or statutory orders.
3. This policy will apply to the City's compliance responsibilities under all relevant State and local laws and regulations, including but not limited to the:
Local Government Act 1995;
Building Act 2011;
Bush Fires Act 1954;
Cat Act 2011;
Dog Act 1976;
Environmental Protection Act 1986;
Food Act 2008;
Graffiti Vandalism Act 2016;
Health (Miscellaneous Provisions) Act 1911;
Litter Act 1979;
Planning and Development Act 2005;
Public Health Act 2016,
and subsidiary legislation made under those Acts.
4. This policy is intended to complement and are not a substitute for the:



- Compliance and Enforcement Guideline for Enforcement Agencies published by the Western Australian Department of Health for compliance and enforcement of the *Food Act 2008*, *Food Regulations 2009* and *Australia New Zealand Food Standards Code*,
- Compliance and Enforcement Policy published by the Department of Water and Environmental Regulation applicable to the *Environmental Protection Act 1986*, *Litter Act 1979* and related legislation.

Definitions / Abbreviations Used In Policy

- **Amenity** has the same meaning as in Local Planning Scheme No 6.
- **Authorised prosecutor** means a person or a member of a class of persons who have statutory (including delegated) power or who are otherwise authorised to commence and carry on legal proceedings relating to an offence, as provided in the relevant legislation.
- **City** means the City of Melville.
- **Complaint** means a formal report of non-compliance with a law.
- **Compliance** means acting in accordance with relevant legislation and lawful directions.
- **Enforcement** relates to the function of responding to non-compliance with the measures provided for in the relevant legislation.
- **Investigation** means the process of establishing and analysing facts and applying fair and reasonable interpretations to determine whether non-compliance or an offence have occurred and the person most likely responsible.
- **Non-compliance** means to do something prohibited by legislation or a lawful direction, or to fail to do something that legislation or a lawful direction requires a person to do.
- **Offence** means a form of non-compliance that is classified as an offence in legislation.
- **Public health and safety** means the welfare and protection of the general public.

Policy Statements

1. The City is responsible for the local administration of a wide variety of legislation providing for the safety, health and amenity of the community, environmental protection and the legitimate interests of local business, consumers, workers and residents.
2. Compliance with the law is not an option: it is an obligation. The primary purpose of the City of Melville's compliance and enforcement function is to achieve regulatory compliance and prevent offences through education and incentives, including formal action where necessary.
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.
4. The City of Melville recognises the need for the separation of powers between:
 - a. the adoption of legislation by elected representatives and its enforcement by administrative personnel; and
 - b. the investigation function and the decision whether to prosecute.
5. The City will undertake its statutory compliance and enforcement responsibilities under the applicable legislation in accordance with the following principles:



- a. **Consistent, fair, unbiased and equitable** compliance and enforcement action will be taken in the interests of public health, safety, order, and amenity.
 - b. **Graduated and proportionate** enforcement responses will be commensurate with the seriousness of the alleged non-compliance assessed against public interest criteria established in the Compliance and Enforcement Guidelines, and will be consistent with legal requirements and the responsible use of available resources.
 - c. **Transparent and accountable** processes will be used in dealing with non-compliance, ensuring that warnings, notices and directions explain why an action is non-compliant, identify remedial action required where appropriate, allow reasonable timeframes for achieving compliance and provide for review.
 - d. **Natural justice** will be respected by considering all available evidence, allowing alleged offenders to have their arguments heard, and advising people affected by compliance and enforcement action of the options open to them, including objection and review mechanisms.
 - e. **Outcome-focused** enforcement action will be based on risk management and the efficient use of public resources. Accordingly, the pursuit of minor instances of non-compliance with negligible consequences may be deferred or discontinued.
6. Investigation, including entry on to land by notice or warrant, and subsequent compliance or enforcement action may result from:
 - a. Proactive compliance checks by authorised City officers on a random or routine basis.
 - b. Reactive compliance checks in response to a formal complaint about alleged non-compliance.
7. Complaints about alleged non-compliance with laws which the City administers will be investigated except in cases where on the basis of the information available to it, the City has formed the opinion that:
 - a. the alleged non-compliance is trivial and inconsequential.
 - b. the complaint is frivolous, vexatious or unreasonable as described in the Ombudsman Western Australia Managing Unreasonable Complainant Conduct: Practice Manual.
 - c. the complaint is unsubstantiated or contains insufficient verifiable evidence to enable an investigation to be undertaken.
 - d. the complaint is part of a series of complaints made in the course of a known ongoing neighbourhood dispute where the previous complaints have been unsubstantiated, and another investigation may be perceived as harassment of the subject of the complaint.
 - e. the City is not the appropriate authority to investigate the matter.
8. Complaints will be prioritised for investigation based upon the seriousness of the alleged non-compliance when assessed against public interest criteria provided in the Enforcement and Compliance Guidelines.
9. Where investigation indicates an offence outside the City's authority, the matter will be referred to the appropriate State agency, and information shared with that agency according to legislative requirements and existing protocols.
10. When an investigation has determined that sufficient evidence exists to establish non-compliance, the City will consider the following matters when deciding the most appropriate enforcement action within the City's authority:



- a. The seriousness of the matter having regard to the actual or potential impact on the health, safety and amenity of others or on the environment;
 - b. The accessibility and adequacy of public information concerning the relevant compliance requirements;
 - c. The length of time since the occurrence of the incident and any statutory time limits;
 - d. Whether the breach or offence was committed deliberately or inadvertently
 - e. The previous compliance history of the offender with respect to similar types of offences, and whether the alleged offender has been educated, requested to comply, issued warnings or notices to comply and has failed to do so without reasonable excuse;
 - f. The cooperation of the offender with the City in rectifying or committing to rectify the non-compliance when advised of it;
 - g. Whether the offender belongs to a recognised category of vulnerable persons with limited legal capacity or communication difficulties;
 - h. Any aggravating or mitigating circumstances;
 - i. The likelihood that the enforcement action will provide an adequate incentive to remedy the non-compliance and deter subsequent non-compliance, considering the level of financial or other benefit that the alleged offender could expect to derive from the non-compliance;
 - j. Other issues of public concern, including precedents regarding similar non-compliance within the City and the precedent that may be set by any perceived failure of the City to take appropriate enforcement action.
11. In general, officers will favour the minimum level and type of enforcement action consistent with addressing the matters above and with the City's authority under the relevant legislation.
12. Prior deciding whether to commence prosecution: the authorised prosecutor will consider the information provided by the investigating officer, the presence of a *prima facie* case, the likelihood of securing a conviction and deterrent penalty, and other matters of public interest as described in the Compliance and Enforcement Guidelines.
13. Attempts by any person to improperly influence the compliance and enforcement process will not be condoned.
14. In addition to enforcement action provided by law and the prosecution of statutory offences, the City may, where legislation authorises it to do so:
- a. undertake works on private property where the owner, occupier or other responsible person has failed to undertake remedial works specified in a written notice or order, and recover the reasonable costs of such work;
 - b. take legal action to seek restitution from the offender for the fair value of any public property damaged as a result of regulatory non-compliance, and any remediation costs incurred by the City to the extent that the law allows;
 - c. refer unpaid fines to the Fines Enforcement Registry.
15. Where the City has resolved to initiate further action against an alleged offender, the City will, where and as soon as practicable, and where the proposed action against the alleged offender is consequent on an initial complaint;

- (a) Advise the complainant of the nature of the initial further actions e.g. planning/building orders and/or prosecution, to be taken, and
- (b) Advise the complainant of the first date upon which the action in (a) above results in an attendance of the matter before a Court, Tribunal or external body or agency, where applicable.

References that may be applicable to this Policy

Legislative Requirements:

Local Government Act 1995
Building Act 2011
Bush Fires Act 1954
Caravan Parks and Camping Grounds Act 1995
Cat Act 2011
Control of Vehicles (Off-road Areas) Act 1978
Criminal Procedure Act 2004
Dog Act 1976
Environmental Protection Act 1986
Food Act 2008
Graffiti Vandalism Act 2016
Health (Miscellaneous Provisions) Act 1911
Litter Act 1979
Planning and Development Act 2005
Public Health Act 2016
 and subsidiary legislation including local laws

Procedures, Process Maps, Work Instructions:

Directorate Procedure – Planning Compliance
 Work Instruction – Planning Compliance

Other Plans, Frameworks, Documents Applicable to Policy:

Compliance and Enforcement Guideline
 Complaints Management Policy
 City of Melville Codes of Conduct
 Customer Service Charter
 OP-42 Managing Unreasonable Behaviour Policy

External references:

Compliance and Enforcement Guideline for Enforcement Agencies published by the Western Australian Department of Health,

Compliance and Enforcement Policy published by the Department of Water and Environmental Regulation.

Statement of Prosecution Policy and Guidelines 2018 published by the WA Director of Public Prosecutions.

Managing Unreasonable Complainant Conduct: Practice Manual published by the Ombudsman Western Australia.

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