



Local Planning Policy 6 – Planning Compliance

AMRShire Local Planning Policy

August 2016

Authority

The *Planning and Development Act 2005* (**Act**) provides for local governments to establish local planning schemes. The Act also provides for offences where a local planning scheme is contravened. Therefore, a contravention of the Shire of Augusta-Margaret River Local Planning Scheme No.1 (**Scheme**) is an offence under the Act.

Section 223 of the Act provides for a general penalty for offences (ie: contravention of the Scheme) stating:

“Unless otherwise provided, a person who commits an offence under this Act is liable to a fine of \$200,000 and, in the case of a continuing offence, a further fine of \$25,000 for each day during which the offence continues.”

The Act also provides for a local government to be able to issue notices in respect of a contravention of a local planning scheme. These notices can require development or land use to be either:

- (a) ceased: section 214(2) Stop Notice; or
- (b) reversed or altered: section 214(3) Direction Notice.

A modified penalty of \$500 can also be imposed for offences under the Act and are dealt with by way of an infringement notice as prescribed by the *Planning and Development Regulations 2009*.

Background

The most common contraventions of the Scheme (**Contravention**) are either a:

- failure to obtain planning approval for a development or land use as required by the Scheme; or
- failure to comply with planning approval conditions or carry out development in accordance with approved plans.

Objectives of this Policy

1. Facilitate a streamlined process that encourages compliance with the Scheme;
2. Provide for transparent and consistent compliance action;
3. Provide clear criteria for officers making decisions relating to planning compliance; and
4. Consider the resources, cost and time involved in addressing a Contravention.

Margaret River

Monday to Friday: 9am – 4pm
Phone inquiries: 8am – 4:30pm
Ph: +61 8 9780 5265 or 9780 5270

Augusta

Monday to Friday: 9am – Noon, 1pm – 4pm
Ph: +61 9780 5265 or 9780 5270

PO Box 61, Margaret River WA 6285
www.amrshire.wa.gov.au

Definitions

For the purposes of this policy:

“Act” means the *Planning and Development Act 2005*.

“Alleged Offender” means a person who or which is suspected of having committed an offence under the *Planning and Development Act 2005* or under the *Planning and Development Regulations 2009*.

“Development” has the meaning given by the *Planning and Development Act 2005*.

“Regulations” means the *Planning and Development Regulations 2009*.

“Scheme” means the Shire of Augusta-Margaret River Local Planning Scheme No.1.

Policy

Verifying and classifying a Contravention

1. On receiving an allegation of a Contravention, regardless of whether it is referred by a third party complainant or Shire officer, it is to be referred to Planning and Sustainability Services for verification.
2. Upon verifying the alleged Contravention, the evidence is to be reviewed and the Contravention classified to determine it as being of either a major or minor nature. The following criteria will be used to classify a Contravention as either major or minor in nature:
 - (a) The degree of impact on the community;
 - (b) The degree of risk to the health and safety of any community member;
 - (c) The degree of risk or impact on the environment;
 - (d) Whether the matter is intentional or dismissive to the nearby community;
 - (e) Whether the matter can be resolved in a relatively short timeframe;
 - (f) Whether the alleged offender is willing to enter into negotiations to achieve compliance; and
 - (g) Whether the matter will have any further impact on the community or environment once compliance has been reached.
3. A major Contravention is a breach of the scheme that notably impacts or risks the health and safety of the community, a community member or the environment. It may also be an issue that cannot be resolved in a relatively short timeframe or where the alleged offender is uncooperative in achieving compliance.
4. A minor planning offence is a breach of the scheme which has a minimal impact on the community, a community member or the environment that would be appropriate and proportional to address with a modified penalty. 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 Action for Major Planning Offences

5. In the case of a major planning offence, a planning infringement notice may be issued immediately followed by one of the following actions:
 - (a) section 214(2) Stop Notice;
 - (b) section 214(3) Direction Notice; or
 - (c) direct commencement of prosecution action under section 218 of the Act.

Compliance Action for Minor Planning Offences

6. A warning letter is to be issued in respect of a Contravention that is classified as a minor planning offence. This should provide 14 days notice requiring an:
 - (a) explanation of the unlawful development or use;
 - (b) resolution of the issue; or
 - (c) application for retrospective planning approval.
7. Should the alleged offender fail to complete any of the above within the specified timeframe a planning infringement notice will be issued and/or the Contravention be considered e a major planning offence attracting the corresponding compliance action provided for in this policy.

Extending General Compliance Timeframes

8. In keeping with the objective of the policy, timeframe extensions may be granted in circumstances that encourage rectifying a Contravention and making compliance achievable. Requests for timeframe extensions must be:
 - (a) in writing,
 - (b) signed and dated by the applicant,
 - (c) state sufficient reason for the request of a timeframe extension, and
 - (d) state the number of additional days requested.

Application

This policy applies to all land within the Shire of Augusta-Margaret River. Responsibility for the application of this Policy lies with the Council, CEO and delegates.

Adopted by Council	28 September 2011
Reviewed (Advertised)	24 February 2016
Adopted by Council	24 August 2016