

Compliance and Enforcement Policy

Directorate CCS



28 May 2025

This policy was adopted by Council to set governing principles in place that align with the Strategic Community Plan 2040: Strategy PF.1.2 .3: regulate and provide support to ensure that Councillors and employees deliver integrity and transparency in their behaviour, decision making and in compliance with codes of conduct.

Objectives

The objective of this policy is to assist in ensuring compliance action initiated by the Shire is transparent, efficient, fair, consistent and proportionate to the circumstances.

Application

This policy applies to offences for breaches of legislation for which the Shire is responsible for administering and failure to comply with the terms or conditions of approvals and orders.

Council recognises the need for the separation of powers in respect of the adoption of regulation and the enforcement thereof, acknowledging that the enforcement of regulations is an administrative function. Accordingly this Policy applies to the Chief Executive Officer (CEO) and persons authorised under the *Local Government Act 1995* (LG Act) and other laws administered by the Shire to undertake investigative and enforcement action.

This procedure does not apply to:

- (a) Internal staff investigations and disputes;
- (b) Complaints relating to Councillors;
- (c) Civil disputes and matters where the Shire is a defendant.

Definitions

'Authorised Person' means a person appointed by the CEO under section 9.10 of the LG Act to issue an infringement, or a person authorised to commence prosecution under the section 9.24 of the LG Act, or otherwise authorised to commence a prosecution or issue an infringement under any other law the Shire administers.

'Policy' means this document

'Shire' means the CEO of the Shire of Augusta Margaret River or an Authorised Person.

Policy

1. General Principles

The Shire's various statutory enforcement responsibilities shall be administered having regard to the following general principles:

- (a) The Shire shall administer its statutory responsibilities under the applicable legislation, in a fair unbiased and equitable manner.
- (b) Compliance and enforcement will be proportionate to the level of risk and seriousness of the non-compliance and in the public interest, including public health, safety, environmental values and amenity.
- (c) Decision making for compliance and enforcement activities will be made;
 - in accordance with this policy and any CEO endorsed guidelines;
 - on a case by case basis;
 - based on merits;
 - impartially and free from personal or political bias;
 - demonstrating balance and integrity.
- (d) The Shire's communications with members of the public will be in accordance with the Customer Service Charter, but having regard to the privacy of complainants and suspects and without prejudice to the integrity of the investigative process.

2. Complaints and Investigations

2.1 Investigating Complaints

- 2.1.1 Where a complaint relates to a breach of Statute, subsidiary legislation or policies, for which the Shire is responsible for administering, the Shire may request those complaints to be made in writing and must include:
 - (a) Name, address and phone number or email address of the complainant.
 - (b) Address of the property to which the complaint relates.
 - (c) Details of the alleged breach or offence.
 - (d) Details of how the matter is affecting the complainant.
- 2.1.2 Complaints will be prioritised for investigation based upon the seriousness of the alleged offence and the criteria prescribed in clause 3.2 of this policy.
- 2.1.3 The Shire acknowledges that some complaints received in relation to compliance issues are made as a result of civil or neighbourhood disputes. The Shire may refuse to investigate a complaint where the compliance issue is considered minor and it can be reasonably ascertained that the complaint has been made primarily as a result of a civil dispute.
- 2.1.4 Anonymous complaints should be treated in accordance with the principles applying to proactive investigations under clause 2.2 of the Policy.

2.2 Proactive Investigations

In the absence of a complaint from a resident or member of the public, it is acknowledged that the Shire does not have resources to proactively police and investigate all potential breaches of all the laws that it administers. However, the Shire will actively police, inspect and investigate for potential breaches in the following circumstances:

- (a) Where the breach poses a risk to health and public safety – for example breaches of the Building Act; breaches of the Food Act; and dog attacks;
- (b) Breaches resulting in destruction of native vegetation or resulting in environmental degradation;
- (c) Where there are policy or strategic reasons for investigating and enforcing a law – for example unapproved holiday house investigations (policy reason – impacts on housing stocks);
- (d) Minor infringement offences that are subject to daily patrols or policing and require minimal investigation – for example parking offences, animal offences.

- (e) Breaches that effect the use of Shire owned land including circumstances where the public may not be aware of the breach – for example encroachment onto Shire property.
- (f) Significant breaches of the Planning and Development Act – for example large scale commercial developments

3. Enforcement actions

Enforcement action may only be initiated or discontinued by an Authorised Person and in accordance with any procedures or guidelines endorsed by the CEO.

3.1 Enforcement Options

At the conclusion of an investigation, the Shire shall determine the most appropriate action that may include one or more of the following enforcement options listed below, in order of severity:

- (a) Pursue no further action;
- (b) Informal action (including education);
- (c) Formal warning;
- (d) Infringements;
- (e) Cancellation of permits;
- (f) Statutory notice or direction or work order;
- (g) Specific statutory remedies including impoundments/confiscations;
- (g) Prosecution;
- (h) Injunction.

It is noted that some of the above options, such as infringements or statutory notices may be escalated to prosecutions, Tribunal reviews or Supreme Court judicial reviews upon the election of the alleged offender.

3.2 Enforcement Considerations in Determining Appropriate Action

The Shire will apply the following considerations in deciding which enforcement action is appropriate:

- (a) Enforcement action will be commensurate to the seriousness of the alleged breach.
- (b) The enforcement measures applied will be those considered most appropriate to achieve the desired outcome.
- (c) Limitation dates that may apply to some actions.
- (d) Whether there has been a prior history of non-compliance or failures to comply with warnings or other actions.
- (e) Prosecution will only be initiated following consideration of all the available information and circumstances of the individual case.

Further guidance on the factors relevant to the commencement of a prosecution are detailed below.

4. Prosecutions

4.1 Additional Considerations Before Commencing a Prosecution

- 4.1.1 In addition to the considerations relevant to determining appropriate action, listed above, the Shire should have regard to the following considerations before deciding whether to commence a prosecution:

- (a) Whether there is sufficient evidence to prove the accused has committed the breach beyond reasonable doubt;
- (b) Any demonstrated history of non-compliance by the accused;
- (c) Potential short and long term consequences of non-compliance;
- (d) The competence, reliability and availability of witnesses;
- (e) Whether damage caused by the breach can be remedied without legal action or whether attempts have been made to negotiate an alternative remedy;
- (f) The age, state of physical health and/or mental health of the offender;
- (g) Whether the offending was commercially motivated;
- (h) The need for deterrence of further breach or offences and public interest (do other enforcement options provide sufficient deterrent?);
- (i) Reputational impact if no action is taken;
- (j) Precedent which may be set by any failure to take enforcement action;
- (k) The likelihood of recovery of fines and costs from the offender;
- (l) Any wishes of the complainant or victim;
- (m) Any legal advice received.

4.1.2 A decision whether to prosecute must not be influenced by:

- (a) The race, religion, gender, nationality, political associations or beliefs of the offender or any other person involved;
- (b) Personal feelings concerning the offender or their representative; or
- (c) Possible political advantage or disadvantage to any individual, Councillor or political group or party.

4.2 Presumption in Favour of Prosecution

4.2.1 Without limiting the regard had to the above considerations there should be rebuttable presumption in favour of prosecution in any of the following situations:

- (a) The breach caused an injury or death to a person or animal (for example dog attack causing injury);
- (b) The breach put a person (or public) at risk of serious injury or death (for example breach of the Building Act);
- (c) The breach has caused significant environmental damage;
- (d) The breach was committed for commercial reasons or has resulted in a financial windfall for the accused;
- (e) Alternative enforcement action has been undertaken for the same offender in the past and has been ineffective;
- (f) Where prosecution is the result of a contested infringement.

4.2.2 Where a decision is made not to commence a prosecution in one of the situations mentioned in this clause written reasons for the decision should be recorded by the Authorised person or decision maker having regard to the general principles of the Policy.

4.3 Discontinuance of a Prosecution

4.3.1 A prosecution should only be discontinued in one of the following situations:

- (a) Where facts come to light after the commencement of the prosecution that result in fatal error of law or mistake of fact on the face of the prosecution notice;
- (b) The accused is deceased, cannot be located or is declared bankrupt;
- (c) In consultation with or following comments made by the court; or
- (d) Following legal advice from the Shire's legal representative.

- (e) Where the accused suffers a significant personal tragedy after the commencement of the prosecution and the physical or mental health of the accused is at risk.

4.3.2 The following are not reasons for discontinuance of a prosecution:

- (a) The financial situation of the accused, although this is something that may be taken into account by the court during sentencing;
- (b) following the commencement, but prior to the conclusion of prosecution action, an alleged offender complies with any prior order that gave rise to the prosecution, or submits any application for approval.

5. Recovery of Costs

The Shire will seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by a charge on the land, consent or by order of the Court. The Shire will also seek to recover any penalty imposed by a Court.

6. Publishing Outcomes and Disclosure of Information

- (a) The Shire may publish information about enforcement action and outcomes in order to raise awareness of relevant laws and the consequences of non-compliance, with the aim of deterring people from engaging in similar conduct and promoting better practices.
- (b) Requests for information from members of the public in relation to compliance or enforcement matters will be handled in accordance with the Shire's Freedom of Information Statement (available on the Shire's website).
- (c) Where a prosecution is in process the accused will be able to access documents relevant to their charge through the disclosure requirements in the *Criminal Procedure Act*.
- (d) Officers shall not release information on specific compliance and enforcement activities, such as active investigations, to the public. The Shire may provide a press statement if it is absolutely necessary or required through the investigative process. Information may be shared with coregulators and police.

Relevant Legislation

1. *Building Act 2011 and Regulations*
2. *Bush Fires Act 1954 and Regulations*
3. *Criminal Procedure Act 2004 and Criminal Procedure Regulations 2005*
4. *Cat Act 2011 and Regulations*
5. *Dog Act 1976 and Regulations*
6. *Director of Public Prosecutions Act 1991 - Statement of Prosecution and Policy Guidelines*
7. *Freedom of Information Act 1992*
8. *Public Health Act 2016 and Regulations*
9. *Litter Act 1979 and Regulations*
10. *Local Government Act 1995 and Regulations*
11. *Local Planning Scheme No 1*
12. *Planning and Development Act 2005 & Regulations*
13. *Shire of Augusta Margaret River Local Laws*

Related documents

Customer Service Charter

Document and version control table			
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