



## **CITY OF FREMANTLE**

### **LOCAL PLANNING POLICY 1.5 PLANNING COMPLIANCE**

**ADOPTION DATE: 24 SEPTEMBER 2008**  
**AMENDED: 24 MARCH 2010, 23 MAY 2012**  
**AUTHORITY: LOCAL PLANNING SCHEME NO.4**

#### **PURPOSE**

The intent of this policy is to provide a standardised process for planning compliance within the City of Fremantle and to provide clear criteria for officers making decisions relating to compliance.

The statutes in respect of which this policy will operate include the Planning and Development Act 2005 and City of Fremantle Local Planning Scheme No. 4.

The policy assumes the precedence of planning over building compliance matters in most instances (except for dangerous buildings) as planning matters deal with issues of amenity and impact on adjoining properties which should be dealt with before building matters that primarily deal with structural and safety issues which are often more easily addressed.

#### **OBJECTIVES**

The objectives of this policy are to:

1. Define whether a particular compliance matter is under the jurisdiction of the City;
2. Identify the general criteria by which it is determined whether to take compliance action or not;
3. Identify specific circumstances where no further action will be taken;
4. Identify in what instances a Stop Work Notice is issued; and
5. Outline the general compliance procedure including the issue of infringements and prosecution.

#### **OPERATION OF THE POLICY**

In this policy, reference to Council means the Council of the City of Fremantle, or any committee or officer lawfully authorised to make delegated decisions on behalf of the organisation of the City of Fremantle.

Unless the relevant legislation provides otherwise or the Chief Executive Officer following legal advice determines otherwise, the owner(s) of the property that is in breach of the relevant legislation shall be the subject of compliance action in accordance with this policy.

## **POLICY**

Compliance matters will be investigated in the following order:

### **1.0 JURISDICTION**

On receipt or notification of any compliance issue, the jurisdiction of the City of Fremantle will first be determined.

Any compliance issue falling outside the jurisdiction of the City of Fremantle, whether geographically or statutorily will be referred to the authority with jurisdiction for action, and any complainant advised as such. No further action will be taken by the City of Fremantle.

Where a matter falls partly within the jurisdiction of the City of Fremantle and partly within the jurisdiction of another authority, that part falling within the City's jurisdiction will be dealt with in accordance with this policy, that part falling outside will be referred to the relevant authority.

The Western Australian Planning Commission is responsible for compliance matters on land reserved under the Metropolitan Region Scheme as they are the decision making body.

### **2.0 PRIORITY**

Where the Coordinator of Compliance has reasonable grounds to believe that non-compliant activity may be occurring on land within the City, compliance issues will be progressed in accordance with the following priorities (in order), irrespective of the number or frequency of complaints received:

- (a) Any matter involving irreversible and permanent damage to a building or place on the State Register of Heritage Places or the Heritage List established under LPS4, or to the natural environment.
- (b) All other compliance issues not meeting these priorities will be progressed in the order in which they arise.

Complaints are generally required to be in writing and include specific details of the compliance matter.

### **3.0 CIRCUMSTANCES WHERE COUNCIL MAY TAKE NO FURTHER COMPLIANCE ACTION**

Council may, following the consideration of a report and having regard to any legal or technical advice, resolve to take no further compliance action in the following circumstances.

#### **3.1 Uncertainty of Compliance**

Where, after reasonable investigation, it is uncertain that a matter is compliant with planning or building requirements, or it is uncertain whether it is capable of enforcement owing to:

- a) A lack of precision in the plans / documents of any relevant approval, or
- b) A lack of certainty at the time of development as to the legal status of the development or the requirement to obtain approval,
- c) Any other legal consideration.

### 3.2 Matter Considered Trivial or Insignificant

Where there is a breach of planning or building requirements and the matter may reasonably be considered trivial or insignificant.

For the purposes of this policy, a matter will be considered to be trivial or insignificant only where the extent of the non-compliance is minor to the point where the distinction between complying and not complying with the relevant legislation is unnoticeable other than to a person well versed in the relevant law;

### 3.3 Other Circumstances

Where it has been established that a breach of planning or building requirements has occurred and that the breach is neither trivial nor insignificant, Council may determine not to take action where a matter meets all of the following criteria:

- a) It can be established that the development the subject of the breach has been in existence for a substantial time period; and
- b) The development has no apparent impact on the amenity of adjoining properties, the streetscape, or the locality; and
- c) The development is, in the opinion of the Principal Building Surveyor, structurally sound.

## 4.0 COMPLIANCE PROCEDURE

If part 3.0 of the policy above is not satisfied, the following will apply:

- 4.1 If the compliance matter relates to non-compliance with a condition of planning approval which requires an action within a specified time frame, a letter is issued requiring that the matter be rectified within 21 days. If after 21 days the matter is not rectified:
  - a. A \$500 infringement will be issued; and
  - b. A notice will be issued requiring the compliance matter to be resolved within 4 months (this may include obtaining retrospective development approval, stopping an unapproved use, removing an unapproved structure or undertaking the prescribed work). If after 4 months the matter is not resolved, then the matter will proceed to legal action.
- 4.2 In all other cases (e.g. unapproved development or non-compliance with other development approval conditions):
  - a) A \$500 infringement will be issued; and

- b) A notice will be issued requiring the compliance matter to be resolved within 4 months (this may include obtaining retrospective development approval, stopping an unapproved use, removing an unapproved structure or undertaking the prescribed work). If after 4 months the matter is not resolved, then the matter will proceed to legal action.

## **5.0 DISCRETIONARY CRITERIA**

Where there are extenuating circumstances to depart from the terms of this policy, the Manager Development Services will prepare a report which will be referred to the Planning Services Committee, having regard to the following general criteria:

- a) Whether it is in the public interest of the proper and orderly development and use of land that the applicable law(s) should generally be complied with;
- b) The impact of the contravention of the law on the affected locality and environment. This includes a consideration of whether the breach complained of is purely technical in nature which is unnoticeable other than to a person well versed in the relevant law;
- c) Those factual circumstances in which the contravention of the law took place;
- d) The time which has elapsed since development was undertaken in contravention of the law;
- e) The expense and inconvenience which would be involved in remedying the contravention of the law; and
- f) The extent of amenity impact the contravention may have on adjoining properties and the locality.

NOTE 1: An infringement must be issued within 6 months of the City determining that an offence has occurred.

NOTE 2: A planning prosecution must commence within 12 months of the City determining that an offence has occurred.