

DEVELOPMENT COMPLIANCE POLICY

PURPOSE

The intent of this policy is to establish priorities for development compliance action.

BACKGROUND

It is an offence for a person or company to act in contravention of the Local Planning Scheme or the Building Act.

Where development, land use, or building, has occurred in manner that not consistent with the provisions of planning or building legislation the Shire is able to consider undertaking various legal actions in respect of that land use or development to ensure that the land in question is brought into compliance.

However, there is no an absolute obligation on the Shire to enforce compliance in all cases. In determination of compliance action, the Shire may give due regard to the particular circumstances of the matter, including its scale and severity, and its impacts on the environment and / or community and whether these are permanent or reversible.

The Shire may also determine the extent to which the administrative resources that it applies to development compliance actions associated are appropriate and proportionate to the degree of severity of the matter. It is for this purpose that this Policy provides clear identification of compliance priorities.

POLICY

Level 1 compliance issues

Criteria - Compliance issues involving any of the following, irrespective of the number or frequency of complaints received;

- (a) Any matter involving a potential danger to the public or potential significant damage to property.
- (b) Any matter involving irreversible damage to, or significant change to the appearance of, a building or place on the State Register of Heritage Places or located within the Bridgetown Special Design Heritage Precinct established under clause 7.5 of LPS 3.
- (c) Any matter involving significant negative and irreversible impacts on the natural environment, or significant impacts on community / neighbour amenity.

Policy - All reasonable actions will be taken that are necessary to;

- (a) Ensure that the non-compliant activity ceases, and
- (b) Return the land / buildings to its original state as much as is practicable.

Where the CEO is of the opinion that the matter of such severity to justify prosecution, then this shall be referred to Council for its consideration.

Level 2 compliance issues

Criteria – All development compliance issues, excluding those categorised as Level 1 above or Level 3 below.

Policy – Action to cease the non-compliance or otherwise impose penalties on owners / occupiers of Level 2 properties will not generally be pursued, excepting in cases where;

- (a) There is specific circumstance that creates a broad public interest in rectifying the matter, or
- (b) The non-compliant matter escalates or might reasonably be expected to escalate to a point where it is categorised as Level 1 under this Policy.

Owners of properties will be notified in writing of the nature of the non-compliance on their land and advised of how the land may be brought into compliance, where it is possible and practical to do so.

Owners will further be notified that where the Shire may not take action in respect of Level 2 non-compliant development or activity in accordance with this Policy, this activity is not legitimised or approved by the Shire. The activity does not become compliant as a result of that decision, and compliance action can be considered by the Shire at any time in the future.

Level 3 compliance issues

Criteria - Compliance issues meeting the criteria below will generally not be the subject of action by the Shire;

- (a) Where the non-compliance is insignificant on the basis that the extent is minor to the point where the distinction between compliance and non-compliance with the relevant legislation is unnoticeable other than following precise measurement,
- (b) Where it can be established that the non-compliance has been in existence for a substantial time period, and has no significant impact on the amenity of adjoining properties, the streetscape, or the locality.

Notwithstanding that non-compliant activity may meet the criteria above, in exceptional circumstances, where the CEO is of the opinion that initiation of compliance action may be in the broader public interest, the matter may be considered by Council having regard to the particular circumstances applicable.

Uncertainty of compliance

Where, after reasonable investigation, it is uncertain that a matter is compliant with Shire requirements, or it is uncertain whether it is capable of enforcement owing to a lack of precision in the plans / documents of any relevant approval, or a lack of certainty at the time of development as to the legal status of the development or the requirement to obtain approval or any other legal consideration, the CEO may determine that no compliance action will be pursued in the case of Level 2 and 3 compliance issues. In the case of Level 1 compliance issues, the matter shall be presented to the Council for further consideration of appropriate action.

Jurisdiction

Any compliance issue falling outside the jurisdiction of the Shire of Bridgetown Greenbushes, 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 Shire. Where a matter falls partly within the jurisdiction of the Shire and partly within the jurisdiction of another authority,

that part falling within the Shire's jurisdiction will be dealt with in accordance with this policy, that part falling outside will be referred to the relevant authority.