

Responsible Directorate	Development Services
Responsible Business Unit/s	Planning and Compliance Health and Building Emergency Services and Community Safety
Responsible Officer	Director Development Services
Affected Business Units	Planning and Compliance Health and Building Emergency Services and Community Safety

Objective

- Ensure a consistent approach in enforcement and compliance related matters;
- Provide transparency, apply procedural fairness and natural justice for all enforcement and compliance related matters;
- Provide an educational, cooperative and collaborative process towards compliance and enforcement, aimed at encouraging compliance; and
- To guide decision making and actions by the Shire in the consistent use of enforcement options commensurate with the risk.

Scope

To assist the Shire to use compliance and enforcement strategies to achieve legislated objectives and encourage compliance by implementing a cooperative and collaborative approach to enforcement action.

1 Policy

1.1 Introduction

The scope of this policy is to set out the Shire's approach to compliance and enforcement related matters. The policy provides a range of prescribed compliance and enforcement options for dealing with compliance matters. The policy also aims to ensure consistency in how the Shire makes decisions on enforcement action.

2. Legislation Enforced by Shire

This Policy applies to all compliance and enforcement actions where the Shire has a regulatory responsibility under State and Local Laws.

Departments within the Shire which may enforce legislation:

Building Services	<i>Building Act 2011 and Building Regulations 2012 Caravan Parks and Camping Grounds Act 1995 and Regulations Local Government Act 1995</i>
Statutory Enforcement (Planning Compliance) Services	<i>Building Act 2011 and Building Regulations 2012 Caravan Parks and Camping Grounds Act 1995 and Regulations Graffiti Vandalism Act 2016 Local Government Act 1995 and Regulations Planning and Development Act 2005 and Regulations Shire of Serpentine Jarrahdale Local Laws (as amended)</i>



Council Policy – General Compliance and Enforcement

Environmental Health Services	<i>Caravan Parks and Camping Grounds Act 1995 and Regulations</i> <i>Environmental Protection Act 1986 (Public Health component only)</i> <i>Environmental Protection (Noise) Regulations 1997</i> <i>Environmental Protection (Unauthorised Discharge) Regulations 2004</i> <i>Food Act 2008 and Regulations</i> <i>Health (Miscellaneous Provisions) Act 1911</i> <i>Local Government Act 1995 and Regulations</i> <i>Public Health Act 2016 and Regulations</i> <i>Shire of Serpentine Jarrahdale Local Laws (as amended)</i>
Engineering Services	<i>Local Government Act 1995 and Regulations</i> <i>Planning and Development Act 2005</i> <i>Shire of Serpentine Jarrahdale Local Laws (as amended)</i>
Ranger Services	<i>Bushfires Act 1954 and Regulations</i> <i>Cat Act 2011 and Regulations</i> <i>Control of Vehicles (Off Road Areas) Act 1978 and Regulations</i> <i>Dog Act 1976 and Regulations</i> <i>Graffiti Vandalism Act 2016</i> <i>Litter Act 1979 and Regulations</i> <i>Local Government Act 1995 and Regulations</i> <i>Local Government (Miscellaneous Provisions) Act 1960</i> <i>Shire of Serpentine Jarrahdale Local Laws (as amended)</i> <i>Local Government (Administration) Regulations 1996</i> <i>Local Government (Parking for People with Disabilities) Regulations 2014</i> <i>Local Government (Uniform Local Provisions) Regulations 2014</i>
Emergency Services	<i>Bush Fires Act 1954 and Regulations</i> <i>Bush Fires (Infringements) Regulations 1978</i> <i>Emergency Management Act 2005 and Regulations</i> <i>Local Government Act 1995 and Regulations</i>
Environmental and Sustainability Services	<i>Cemetery Act 1986</i> <i>Planning and Development Act 2005</i> <i>Shire of Serpentine Jarrahdale Local Laws (as amended)</i>

3. Lodging a complaint

Where a complaint relates to a breach in legislation, for which the Shire is responsible for administrating the complaint shall be made in writing and include:

- (a) name and address, telephone number, and email address of the complainant;
- (b) address of the offending property; and
- (c) details of the alleged offence.

The Shire may consider verbal complaints received on a case by case basis and in accordance with the Compliance and Enforcement Matrix (Appendix 1).

The Shire will endeavour to keep complaints confidential however the Shire notes that Freedom of Information applications may be made in accordance with the *Freedom of Information Act 1992* and will be assessed based on their individual merits.

4. Principles of Compliance and Enforcement Action

The Shire is required to administer its statutory responsibilities under the applicable legislation in a transparent and fair manner in the interest of public health, safety, and amenity. Each compliance investigation undertaken by the Shire will be assessed on a case-by-case basis, and actioned according to the Compliance and Enforcement Matrix (included as an appendix) for each business unit area.



The Compliance and Enforcement Matrix is used as a guide only and an offence category can be reviewed during the investigation process.

5. Community engagement

- Information available on Shire website in relation to compliance requirements;
- Update compliance Policy and Procedures; and
- Working with residents, ratepayers, stakeholders and businesses to encourage compliance with relevant laws, regulations and policies.

6. Process of investigation

- Review internal and external databases;
- Conduct site visits to ascertain if there are any issues and provide time frames to achieve compliance;
- Provide extensions to time frames to achieve compliance where reasonably required; and
- Conduct Form 2/Notice of Determination approval and refusal audits for planning applications received.

7. Enforcement options

- (a) No enforcement action taken;
- (b) Referral to an external agency or relevant authority;
- (c) Requests for retrospective development approvals (if applicable) or removal of unauthorised developments in accordance with relevant legislation and Town Planning Scheme;
- (d) Infringement notices issued under relevant legislation;
- (e) Direction notices;
- (f) Orders and notices issued under relevant legislation; or
- (g) Prosecution action; or
- (h) A combination of the above.

8. Offence Categories

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, and based on the following offence categories:

Minor: A minor offence is a breach of legislation, which has a minimal impact on the community, a person or the environment. 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.

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, life, critical infrastructure, property, or the environment but if allowed to continue the impact may have a major or more significant impact on the community. The breach may initially be able to be resolved with an infringement, directions notice or order under relevant legislation.

Major: A major offence is a breach of legislation that significantly affects or risks the health and safety of the community, life, critical infrastructure, property, or the environment. It may also be



a case whether the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate in order to achieve compliance and which may lead to a prosecution action.

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.

9. Compliance Investigations

9.1 Investigation of complaints (Reactive Compliance)

Complaints will be prioritised for investigation based upon the offence category set out in clause 8 of this policy.

Decisions on enforcement action may have regard to any or all of the following considerations:

- (a) whether there has been a failure to comply with any request, direction or notice given by the Shire;
- (b) recommendations made at the Development Assessment Unit;
- (c) whether the breach or offence was committed wilfully or unknowingly;
- (d) any mitigating or aggravating circumstances (including vexatious complainants);
- (e) any demonstrated history of non-compliance;
- (f) the length of time since the incident (including statutory time frames);
- (g) the potential short and long-term consequences of non-compliance; and
- (h) legal precedents.

The Shire may take no enforcement action after an investigation where:

- (a) having considered the nature of the non-compliance, an educative approach to preventing the matter from continuing or reoccurring is considered most appropriate;
- (b) there is insufficient evidence to prove non-compliance after reasonable attempts have been made by the Shire to investigate the matter;
- (c) the individual or entity has discontinued or removed the unauthorised development or has obtained the relevant approval(s);
- (d) having regard for the capacity of the owner or occupier of the land, it is determined that an alternative approach to achieving compliance is more appropriate; and
- (e) the matter is considered trivial in nature, or would be an unreasonable use of the Shire's resources.

The Shire understands that some complaints received in relation to compliance issues may be the result of neighbourhood disputes. The Shire may discontinue an investigation of a complaint where it can be reasonably ascertained that the complaint is unsubstantiated or pertains to a civil matter. The Shire will not provide advice in relation to civil matters.

9.2 Audits, patrols, and checks (Proactive Compliance)

The Shire may carry out proactive compliance in the following manner:

- (a) carry out audits of Form 2 planning approvals and refusals;
- (b) carry out yearly audits of extractive industry licencing and conditions;



- (c) investigate compliance issues observed by Shire officers during the course of daily work related activities; and
- (d) conduct proactive compliance through an annual work program.

9.3 Conclusion of an investigation

At the conclusion of an investigation, Shire officers shall use the most appropriate action based on this policy in conjunction with the Compliance and Enforcement Matrix.

Complainants will be advised in writing of the outcome of the investigation (subject to confidentiality requirements) and the compliance matter closed.

10. Acting in default of Notices or Orders

The Shire may undertake works as specified in the notice or order to restore the land as nearly as practicable to its condition immediately before the development started or execute that work as it directed that person. The Shire may be entitled to recover its expenses in a court of competent jurisdiction.

11. Prosecution Actions

11.1 Initiation of proceedings

The Shire may determine to instigate prosecution proceedings under an Act, Regulation or Local Law where the Shire considers that the offence warrants such action.

The Shire may consider the following when determining whether to initiate prosecution proceedings:

- (a) the seriousness and nature of the offence;
- (b) legal advice received by the Shire;
- (c) any evidence of contempt or disregard for the law;
- (d) any public health or safety impacts resulting from the offence; and
- (e) whether the prosecution is in the public interest.

11.2 Withdrawal of prosecution proceedings

The Shire may consider the following when determining whether to withdraw from prosecution proceedings:

- (a) legal advice received by the Shire; or
- (b) in the opinion of the Chief Executive Officer, an appropriate level of compliance has been achieved; or
- (c) an error of law or fact; or
- (d) the owner or occupier of the land is deceased or cannot be located.

11.3 Appeal of infringements, notices or orders

In the event that an infringement, notice or order is appealed in accordance with the relevant legislation, the Shire may be required to substantiate its actions to a court or tribunal. This may result in the infringement, notice or order being overturned, amended or subject to mediation.

**12. Delegations**

Refer to Register of Delegations and Sub-delegations (as amended).

Definitions

Not applicable

Relevant Policies/Council Documents

Not applicable

Legislation/Local Law Requirements

- *Building Act 2011 and Building Regulations 2012*
- *Bushfires Act 1954 and Regulations*
- *Caravan Parks and Camping Grounds Act 1995;*
- *Caravan Parks and Camping Grounds Regulations 1997*
- *Cat Act 2011 and Regulations*
- *Cemeteries Act 1986*
- *Control of Vehicles (Off Road Areas) Act 1978 and Regulations*
- *Dog Act 1976 and Regulations*
- *Emergency Management Act 2005 and Regulations*
- *Environmental Protection Act 1986 (Public Health component only)*
- *Environmental Protection (Noise) Regulations 1997*
- *Environmental Protection (Unauthorised Discharge) Regulations 2004*
- *Graffiti Vandalism Act 2016 and Regulations*
- *Food Act 2008 and Regulations*
- *Health (Miscellaneous Provisions) Act 1911*
- *Litter Act 1979 and Regulations*
- *Local Government Act 1995 and Regulations*
- *Local Government (Miscellaneous Provisions) Act 1960*
- *Planning and Development Act 2005 and Regulations*
- *Public Health Act 2016 and Regulations*

Office Use Only

Relevant Delegations	Refer to Register of Delegations and Sub-delegations (as amended).			
Council Adoption	Date	22/05/2017	Resolution #	OCM052/05/17
Reviewed/Modified	Date	18/12/2017	Resolution #	OCM179/12/17
Reviewed/Modified	Date	16/09/2019	Resolution #	OCM195/09/19



Appendix 1

Compliance Matrix – Building Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Building Compliance				
Unauthorised swimming pool or spa	Building Act s9			x
Authorised swimming pool or spa – no security barrier	Building Regs r50			x
Non-compliant pool barrier – hinges, windows	Building Regs r50	x		
Non-compliant pool barrier – non-compliant barrier (height, gates swinging in wrong direction, openings too large)	Building Regs r50			x
Unauthorised building work	Building Act s9,		x	
Unauthorised Demolition	Building Act s10			x
No Notice of Completion	Building Act s33	x		
Non-compliance applicable Building Standards – After completion	Building Act s37		x	
Non-compliance applicable Building Standards – Demolition	Building Act s38		x	
Occupying a building without Occupancy permit	Building Act s41		x	
Non-Display or non-notification of Occupancy Permit	Building Act s42	x		
Occupation use to comply with Occupancy permit	Building Act s43		x	
Occupancy permit – General Compliance	Building Act s44		x	
Encroachments outside of works land	Building Act s76			x
Adverse affect to other land without consent	Building Act s77			x
No protection Structure on or over land without consent	Building Act s78		x	
Work not to affect party wall without consent	Building Act s79		x	
Removal of dividing fence without consent	Building Act s80		x	

Major: A major offence is a breach of legislation that significantly impacts or risks the health and safety of the community, a community member or the environment. It may also be a case where the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate to achieve compliance.

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, community member, or the environment but if allowed to continue the impact may have a major or more significant impact on the community. The breach may initially be able to be resolved with a warning or an infringement, however, if allowed to continue could escalate into a major breach which may require issuing notice or prosecution action.

Minor: A minor offence is a breach of legislation which has a minimal impact on the community, a community member or the environment. 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 Matrix – Engineering Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Local Government Act 1995				
Unauthorised works within road reserve/POS	Schedule 9.1 (8)		X	
Damage public Infrastructure	Schedule 9.1 (8)		X	
Discharge stormwater into public land/Road	Schedule 9.1 (10)		X	
Wind erosion or sand drift	Schedule 9.1 (12)		X	
Cemeteries Local Law 2005				
Excessive Speed	Clause 5.4		X	
Unauthorised use – driving of vehicles	Clause 5.4	X		
Placing of rubbish and surplus materials	Clause 7.3	X		
Leaving uncompleted works in an untidy or unsafe condition	Clause 7.7	X		
Animal at large	Clause 8.1		X	
Dumping of rubbish	Clause 8.5	X		
Unauthorised advertising and or trading	Clause 8.6	X		
Disobeying sign or lawful direction	Clause 8.7	X		

Major: A major offence is a breach of legislation that significantly impacts or risks the health and safety of the community, a community member or the environment. It may also be a case where the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate to achieve compliance.

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, community member, or the environment but if allowed to continue the impact may have a major or more significant impact on the community. The breach may initially be able to be resolved with a warning or an infringement, however, if allowed to continue could escalate into a major breach which may require issuing notice or prosecution action.

Minor: A minor offence is a breach of legislation which has a minimal impact on the community, a community member or the environment. 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 Matrix – Planning Compliance Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Development Compliance				
Unauthorised Tree Clearing	TPS 2		X	
Unauthorised Land Use			X	
Unauthorised Development – Structures	TPS 2	X		
Unauthorised Development – Sea Containers	TPS 2		X	
Unauthorised Commercial Vehicles	TPS 2	X		
Unauthorised Transport Depot	TPS 2		X	
Unauthorised Fill/Excavation	TPS 2		X	
Unauthorised Home Business	TPS 2	X		
Breach Form 2 Conditions			X	
Unauthorised Signage		X		
Extractive Industries:				
<ul style="list-style-type: none"> No Approval 	Extractive Industries Local Law			X
<ul style="list-style-type: none"> Breach of conditions minor 	Extractive Industries Local Law	X		
<ul style="list-style-type: none"> Breach of conditions major 	Extractive Industries Local Law			X
Unauthorised land use - horses	TPS 2	X		
Unauthorised home occupation	TPS 2	X		

Major: A major offence is a breach of legislation that significantly impacts or risks the health and safety of the community, life, critical infrastructure, property, or the environment. It may also be a case where the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate to achieve compliance.

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, life, critical infrastructure, property, or the environment but if allowed to continue the impact may have a major or more significant impact on the community. The breach may initially be able to be resolved with a warning or an infringement, however, if allowed to continue could escalate into a major breach which may require issuing a directions notice or prosecution action.

Minor: A minor offence is a breach of legislation which has a minimal impact on the community, a community member or the environment. 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 Matrix – Ranger Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Ranger Services				
Unregistered Dog	Dog Act S7(1)	X		
Unregistered Cat	Cat Act S5(1)	X		
Wandering Dogs – Private Property (Dog in a place without Consent)	Dog Act S33A(3)		X	
Wandering Dogs – Public (Dog not held or tethered in public place)	Dog Act S31(3)		X	
Dog Attack - Causing Physical Injury	Dog Act S33D(1)			X
Dog Attack - Causing No Physical Injury	Dog Act S33D(2A)		X	
Restricted Breed or Declared Dangerous Dog Offences	Dog Act S33E			X
Dog Causing a Nuisance by Barking	Dog Act S38(5)		X	
Collection of Stray Dogs – Vet Establishments	Local Government Act	X		
Collection of Stray Dogs - Community	Dog Act S29	X		
Collection of Stray Cats – Vet Establishments	Local Government Act	X		
Collection of Stray Cats - Community	Cat Act S27	X		
Parking Control – School Parking	Parking Local Law		X	
Parking Control – Illegal General Parking	Parking Local Law	X		
Parking Control - Obstruction	Parking Local Law		X	
Livestock – Wandering at Large	LG Miscellaneous Provisions Act & Local Law			X
Livestock - Trespassing	LG Miscellaneous Provisions Act		X	
Abandoned Vehicles - General	Local Government Act	X		
Abandoned Vehicles - Obstructing	Local Government Act		X	
Litter – Building Development Sites	Litter Act		X	
Litter – Illegal Dumping	Litter Act		X	
Litter – Household Rubbish	Litter Act	X		
Signage – Builders Signs	Signs Local Law	X		
Signage – Advertising Signs	Signs Local Law	X		
Signage – Nuisance signs	Litter Act	X		
Unightly Properties	Local Law	X		
Illegal Camping	Local Government Act	X		
Registration Enquiries	Dog & Cat Act's	X		
Pound Transfer	Local Government Act, Dog Act, Cat Act	X		



Continued

Council Policy – General Compliance and Enforcement

Major: A major offence is a breach of legislation that significantly impacts or risks the health and safety of the community, life, critical infrastructure, property, or the environment. It may also be a case where the issue cannot be resolved in a relatively short timeframe or where the alleged offender is not willing to cooperate or negotiate to achieve compliance.

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, life, critical infrastructure, property, or the environment but if allowed to continue the impact may have a major or more significant impact on the community. The breach may initially be able to be resolved with a warning or an infringement, however, if allowed to continue could escalate into a major breach which may require issuing a directions notice or prosecution action.

Minor: A minor offence is a breach of legislation which has a minimal impact on the community, a community member or the environment. 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.