



- 4.3 Complaints will be prioritised for investigation based upon the seriousness of the alleged offence when assessed against the criteria prescribed in sub-clause 5.2.3 of this policy.
- 4.4 The City acknowledges that some complaints received in relation to compliance issues are largely as a result of neighbourhood disputes. The City may refuse to investigate a complaint where the compliance issue is considered minor and it can be reasonably deduced from the circumstances that the complaint has been made primarily as a result of a neighbourhood dispute.
- 4.5 Occasionally the City receives complaints in relation to unapproved development following the negotiation of contracts for the sale of land or businesses. Generally the City will not become involved in resolving compliance issues whilst a contract for sale is current on the basis that the parties to the contract ought to resolve which party is responsible for addressing the compliance issues prior to settlement occurring.

5. ENFORCEMENT

- 5.1 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 for which statutory responsibility rests with the Chief Executive Officer.
- 5.2 Where voluntary compliance cannot be achieved, in deciding whether enforcement action is appropriate and what measures should be used, the City applies the following principles:
 - 5.2.1 Enforcement action will be in proportion to the seriousness of the alleged offence and consistent with legal requirements.
 - 5.2.2 The investigation of compliance issues will be prioritised based upon the seriousness of the alleged offence.
 - 5.2.3 In determining the seriousness of an alleged offence, the City will have regard to:
 - (a) the potential harm caused by, or effect of, the breach on other people, the environment (built and natural) or the amenity of the district;
 - (b) whether or not it is in the public interest for the City to take action; and
 - (c) the penalty prescribed in the relevant legislation for the alleged breach or offence.
 - 5.2.4 The enforcement measures applied will be those considered most likely to achieve the desired outcome.
 - 5.2.5 Prosecution where it is the appropriate response given all of the circumstances applicable to the compliance issue.
 - 5.2.6 The City is unable to condone or authorise the continuation of an offence once detected. However, given the City's limited resources, the City's



compliance efforts are targeted at addressing issues that are both unlawful and likely to cause harm to other people, the environment (built and natural) or the amenity of the district. This may mean that the investigation of trivial or relatively minor instances of non-compliance is delayed.

6. ENFORCEMENT CRITERIA

6.1 Decisions on enforcement action should be taken in accordance with the following considerations:

- (a) Whether there has been a failure to comply with any formal request, lawful direction or notice given by an authorised person;
- (b) The length of time since the incident and the subsequent behaviour of the alleged offender;
- (c) Whether the breach or offence was committed deliberately or accidentally;
- (d) Any mitigating or aggravating circumstances;
- (e) Any demonstrated history of non-compliance;
- (f) The level of public concern or interest in that type of offence;
- (g) The potential consequences of non-compliance;
- (h) The need for deterrence of further offences; and
- (i) The precedent which may be set by any failure to take enforcement action.

7. ENFORCEMENT OPTIONS

7.1 The City will apply a graduated and proportionate approach to compliance and enforcement. Enforcement action may only be initiated by officers with relevant delegated authority or authorisation.

7.2 At the conclusion of an investigation, officers shall use the most appropriate action which may include one or more of the following enforcement options (listed in order of severity):

- (a) Pursue no further action
- (b) Informal action
- (c) Formal warning
- (d) Infringements
- (e) Statutory notices
- (f) Prosecution and injunctions.

8. INITIATION OF A PROSECUTION

8.1 Prosecution is one of the enforcement options that may be used when there are reasonable grounds for suspecting that an offence against an Act, Regulation or local law has been committed.

8.2 A decision on whether or not to initiate a prosecution for an alleged offence should have regard to any or all of the following considerations:



- (a) The prospects of conviction including *prima facie* evidence to prove the case beyond reasonable doubt including but not limited to written or verbal admissions and witness statements.
- (b) Whether the prosecution is in the public interest.
- (c) The seriousness and the type of the offence.
- (d) Any evidence of contempt or disregard for the law.
- (e) Any prior convictions or history of the alleged offender relevant to the offence.
- (f) The statutory timeframes relating to the relevant legislation.
- (g) Whether the alleged offender had prior knowledge or industry experience relating to the offence.
- (h) The potential legal consequences or reputation impact on the City if no action is taken.
- (i) The City's statutory responsibilities to enforce legislative provisions under its administrative control.
- (j) Legal advice received from the City's legal representatives.

8.3 The City may also become involved in prosecution proceedings if the alleged offender elects to go to Court in relation to an infringement or if the matter is escalated to the Supreme Court in response to a court or State Administrative Tribunal decision.

9. DISCONTINUANCE OF A PROSECUTION

9.1 If, 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; the City will not discontinue the prosecution.

9.2 A prosecution is only to be discontinued if —

- (a) The prosecution complaint is wrong at law;
- (b) The prosecution involves a mistake of fact;
- (c) The alleged offender is deceased, cannot be located or is declared bankrupt; or
- (d) Upon legal advice.

9.3 The decision to discontinue a prosecution may only be made by an officer with relevant delegated authority or authorisation.

10. INJUNCTIONS

In instances of serious non-compliance with legislation and where efforts to resolve that non-compliance have proven ineffective, the City may seek an injunction requiring a person not to breach, or to cease breaching, a statute. Decisions on whether to seek an injunction shall be made at the discretion of the Chief Executive Officer.



11. RECOVERY OF LEGAL COSTS

The City 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 City will also seek to recover any penalty imposed by a Court.

12. RECTIFICATION WORKS

12.1 Where the City successfully prosecutes an offender, the City may complete the rectification works to ascertain compliance if the:

- (a) person responsible for the non-compliance has not completed the required work within a specified timeframe; and
- (b) relevant legislation enables the City to complete the rectification work.

12.2 Where the City completes rectification work to ascertain compliance, the City will seek to recover its costs in a court of competent jurisdiction.

12.3 Where a Court order has been issued in favour of the City in relation to the completion of rectification works, the City may lodge a caveat over the land to which the costs relate. Such caveat shall only be withdrawn where the City has received payment of its costs in accordance with the Court order.

13. DISCLOSURE OF INFORMATION

13.1 Requests for information from members of the public in relation to compliance or enforcement matters will be handled in accordance with the City's Freedom of Information Statement (available on the City's website).

Requests for information relating to compliance or enforcement matters made pursuant to the *Freedom of Information Act 1992* (FOI Act) will be handled in accordance with the processes set out in the FOI Act. Any decision to release or refuse to release information will be considered on a case-by-case basis in accordance with the provisions of the FOI Act.

13.2 Staff may not release information on specific compliance and enforcement activities, such as active investigations, to the public unless it is absolutely necessary or required by the investigative process. Information may be shared with co-regulators and police.

13.3 Councillors are entitled to request information relating to the investigation of compliance matters, however, any information provided is to be treated as confidential and may not be revealed to third parties as doing so may compromise investigations or disclose evidence the City may subsequently seek to rely upon in Court.

GOVERNANCE REFERENCES

Statutory Compliance	Freedom of Information Act 1992
Industry Compliance	Nil.
Organisational Compliance	Nil.
Process Links	Freedom of Information Statement Compliance and Enforcement Guidelines.



POLICY ADMINISTRATION

Directorate		Officer Title		Contact:	
Business Services		Director Business Services		9397 3000	
Risk Rating	Low	Review Cycle	Triennial	Next Due:	2024
Version	Decision Reference	Synopsis			
1.	OCM 251/12/06/2012	New policy to establish a uniform approach to compliance and enforcement across the organisation.			
2.	OCM 415/28/08/2012	Reviewed and amended to include discontinuance provisions and inclusion of a central register for withdrawn infringements and discontinued prosecutions.			
3.	OCM 531/17/12/2013	Amended to include provisions relating to seeking injunctions in instances of serious and ongoing non-compliance with legislation and the completion of rectification works following successful prosecutions.			
4.	OCM 429/28/10/2014	Amended to establish processes where compliance issues are prioritised for investigation based upon the seriousness of the alleged breach.			
5.	OCM 375/22/09/2015	Reviewed with no amendments.			
6.	OCM 302/11/09/2018	Reviewed with amendments			
7.	OCM 16/08/02/2022	Reviewed with no amendments.			