

PLANNING COMPLIANCE

Information Sheet

The Shire applies a range of regulatory powers in providing for the good governance of the people in the Shire of Ashburton. This includes enforcing laws that provide for offences.

This information sheet is provided to assist in understanding how the Shire will investigate and approach town planning compliance matters.


Purpose

The Shire's approach to compliance protocols is largely underpinned by the following:

- support widespread understanding of minimum standards of conduct, and conduct that may render a person liable to prosecution
- apply legislation and regulatory standards in accordance with the principles of timeliness, fairness, consistency and proportionality
- promote a high level of voluntary compliance with the requirements of legislation, by property owners
- support the Separation of Powers doctrine, under which Shire's role is to take action to enforce laws and the court's role is to determine questions of fact and culpability
- take enforcement action against persons who commit offences
- deter persons from committing offences and protecting the community
- promoting public confidence in the Shire's administration and exercise of regulatory powers.

Compliance Considerations

1. The Shire respects the fundamental value under our legal and political system of the inherent right of each citizen to freedom of action.
2. The Shire's role is to provide for good governance. This necessitates establishing and enforcing laws (rules) that necessarily impact on the freedom of the individual, where this is for the greater good of the community.
3. The Shire has the responsibility for taking action to ensure that regulatory (offence) laws are complied with. In carrying out this function, the Shire expressly acknowledges and respects the presumption of innocence in law, under which all citizens are presumed innocent until proven guilty in a competent court.
4. Where the Shire has information that indicates a potential contravention by a person of a regulatory law, the first principles to apply are as follows:
 - a. Information about alleged unlawful behaviour may come to the attention of Shire officers in several ways. In the first instance, Shire officers are to consider whether the information has sufficient substance to warrant further investigation and consideration and undertake any additional preliminary enquiries as may be considered appropriate; and
 - b. Where there is sufficient information to form a preliminary view that a person has engaged in unlawful use or works on a site, Shire officers are to consider whether reasonable endeavours to communicate with the person, for the purpose of educating and achieving voluntary compliance, will be sufficient and appropriate

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- c. to resolve the matter. This may include issuing a statutory notice requiring action to be taken by the person.
 5. Where Shire officers form the view that education and negotiation to achieve voluntary compliance is not, or is unlikely to be, either sufficient or appropriate to properly resolve the matter, then consideration is to be given to whether to issue a letter of warning, issue an infringement notice, undertake prosecution action or refer the matter to another jurisdiction.
 6. The consideration of the alternative courses of action under sub-clause 5) is entirely independent of any action taken to carry out remedial work where a statutory notice has been issued but not complied with, including the recovery by the Shire of costs of carrying out that work. In each case:
 - a. Shire officers are to consider the relative merits of the alternative courses of action; and
 - b. Shire officers are to provide information where reasonably possible to promote the objectives of education and future voluntary compliance.
 7. Where the legislation provides for an offence relating to property, Shire officers are to ensure that the potential liability of any property owner is given consideration. Property owners have a primary and continuing responsibility for ensuring that their property is lawfully held, used and maintained.
 8. The Shire's compliance actions are to be applied, having regard to the circumstances of each case and the resources available to the Shire, in accordance with the principles of timeliness, fairness, consistency and proportionality. The compliance actions are to be directed at promoting public confidence in the administration. Accordingly
 - a. Prosecution action is not a 'last resort'
 - b. Prosecution action is to be undertaken whenever circumstances warrant that action being taken.
 9. Prior to commencing a prosecution, the Shire is to determine that the prosecution is in the 'public interest'. This requires the proper consideration of whether there are reasonable prospects of conviction, whether there are any relevant factors that support or do not support the taking of prosecution action, the relative merits of those factors, and not considering any irrelevant factors. Regard is to be given to the factors identified in the Director of Public Prosecutions' 'Statement of Prosecution Policy and Guidelines 2018'.
 10. Given the basis on which a prosecution is to be commenced, once a decision to prosecute has been made and a prosecution action has commenced, the prosecution action should only be discontinued where there is a sound persuasive basis for doing so.
 11. Where the Shire prosecutes a person and the court convicts that person, the Shire is to consider whether there is benefit in publishing notice of that conviction. Public notice of a conviction may serve to promote the general deterrent effect of prosecution action. Public notice of a conviction may also maintain community confidence that laws made for regulatory purposes will be actively and effectively applied.

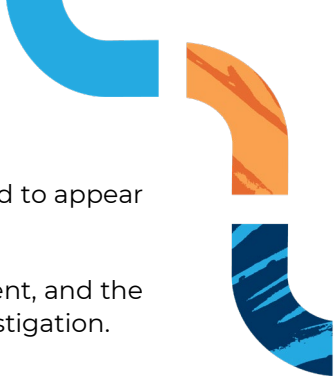
Procedure

Raising a Concern

All concerns must be put in writing with the complainant's name, address and phone/email contact included. Written statements are required to ensure that the complainant's concerns are accurately presented and addressed to townplanning@ashburton.wa.gov.au.

Contact details must be provided for the local government to contact complainants, which may be done in the following circumstances:

- a. If additional information about the matter is required
- b. If it is considered desirable to ask the complainant to monitor the situation to obtain additional evidence

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- c. Should the concern proceed to legal action, the complainant may be requested to appear as a witness at court proceedings.

If a complainant wishes to raise a concern anonymously, then it is treated as a comment, and the local government will be unable to advise the complainant of the outcome of the investigation.

All concerns will be treated confidentially where appropriate.

Concerns will not be dealt with if the local government is of the opinion that:

- a. The matter is not considered to have a sufficient impact upon the person aggrieved; or
- b. The concern is vexatious or not made in good faith.

Shire Consideration and Processes

Where the Shire has determined that it is in the public interest to take prosecution action in any matter, the Chief Executive Officer (CEO) is to inform the Council of that decision at the next reasonable opportunity. The CEO is also to inform Council upon prosecution action being commenced in court and if, in any case, the prosecution action is withdrawn. Information in respect of prosecution decisions and actions is to be provided to Council on a confidential basis.

The CEO may make appropriate Staff Management Procedures relating to the processes to be followed, types of considerations to be considered and standards to be applied to deliver outcomes in accordance with the above stated considerations.