



*Shire of Wyndham East Kimberley*  
**Council Policy**  
**DC26**

<b>POLICY NO:</b>	<b>DC 26</b>
<b>DIVISION:</b>	<b>Development Services</b>
<b>SUBJECT:</b>	<b>Compliance and Enforcement Protocol</b>
<b>AUTHOR:</b>	<b>Bruce Harding and Ian D'Arcy</b>
<b>REPORTING OFFICER:</b>	<b>Ian D'Arcy (EXTPED)</b>
<b>ENABLING LEGISLATION:</b>	<b>Local Government Act 1995</b>

**1. OBJECTIVE**

To provide a framework and consistent approach for Council Officers to implement compliance standards and instigate enforcement action, as described in various Acts and Regulations (Legislation) the Shire administers, proportionate to the seriousness of an alleged offence or issue of non-compliance.

**2. POLICY**

**1.0 Introduction**

As with many Local Governments in Western Australia the Shire of Wyndham East Kimberley is largely responsible for the administration and enforcement of an array of State Government Legislation. Whilst the list is extensive this Policy specifically applies to the legislative framework and provisions prescribed under, but not necessarily limited to:

- *Building Regulations, 1989*
- *Building Code of Australia,*
- *Caravan Parks and Camping Ground Act, 1995*
- *Caravan Parks and Camping Ground Regulations, 1997*
- *Environmental Protection Act, 1986*
- *Food Act, 2008*
- *Health (Food Hygiene) Regulations, 1993*
- *Health Act, 1911*
- *Land Administration Act, 1997*
- *Litter Act, 1979*
- *Local Government (Miscellaneous Provisions) Act, 1960*
- *Planning and Development Act, 2005*
- *Strata Titles Act, 1985*
- *Shire of Wyndham – East Kimberley Town Planning Scheme No.6*

- *Shire of Wyndham – East Kimberley Town Planning Scheme No.7*
- *Shire of Wyndham – East Kimberley adopted Local Planning Policies*
- *Shire of Wyndham – East Kimberley adopted Local laws*

In consideration of this legislation and in order for the Council to achieve an appropriate standard of amenity in step with the social fabric and community expectations for both Kununurra and Wyndham it is necessary for the Shire to apply a consistent approach to addressing issues of non-compliance associated with development. In this regard the following general principals and enforcement procedures provides a clear guide for Shire Officers to administer an equitable communication process and approach to addressing issues of non-compliance.

## **2.0 General Principles**

- 2.1 For a concern from a member of the public to be acted upon notice must be in written form incorporating relevant details, including name, address, contact details and nature of concern. Anonymous or verbal notification will not be accepted and acted on unless otherwise determined by the Chief Executive Officer.
- 2.2 All concerns will be treated confidentially, where possible and appropriate.
- 2.3 All concerns will be considered on merit and in context of a non personal interest. A matter will not be progressed should, in the opinion of the Chief Executive Officer, the concern be perceived as vexatious or not in good faith.
- 2.4 Councillors and Shire Officers who become aware of potential issues of non-compliance are required to submit details to the CEO or the relevant Executive Manager in the form of a written and signed file note.
- 2.5 All matters of alleged non-compliance must be recorded by the responsible officer/s in written format and filed in the Shires record management system.
- 2.6 Notwithstanding the requirements of the Legislation all notifications regarding an alleged issue of non-compliance must give the recipient a minimum of thirty (30) calendar days in which to comply, unless in the opinion of the Officer there is a known or perceived risk to the public where it is incumbent on the Officer to do everything in their power to alleviate the risk.
- 2.7 In the event of an application being progressed at the time of an alleged offence the processing/assessment of the application shall be 'suspended' until the issue of non-compliance has been resolved to the satisfaction of the Chief Executive Officer or Council.
- 2.8 Notwithstanding any legislative requirement, Officers that hold delegated authority are authorised under this policy to issue letters of warning

under procedures 3.1 and 3.2 in consultation with the Executive Manager for Town Planning and Economic Development. Further delegation is afforded to the Executive Manager for Town Planning and Economic Development to administer procedures 3.1 to 3.3, and the Chief Executive Officer to administer procedures 3.1 – 3.4.

- 2.9 Whilst there is a general duty imposed on the Shire to enforce legislation for which it is responsible, that general duty is not absolute. In each case it will be necessary to determine whether legal costs and other liabilities are justified for the good governance of the Shire and whether or not engagement, enforced and self regulation would be a suitable alternative means of achieving the required level of compliance within the relevant legislation.

### **3.0 Enforcement Procedure**

- 3.1 Upon receipt of a complaint or when attention is drawn to an alleged issue of non-compliance the relevant officer shall investigate the matter through written notice to the occupier/owner of the property seeking confirmation of the status of the activity or serving a notice to comply with a response to be received within thirty (30) days.
- 3.2 At the expiration of the first notice, if necessary, a second letter of non-compliance shall be sent by registered mail with receipt of notification being obtained from Australia Post. This notice shall be for a period of thirty (30) days where by a response is to be received and/or necessary compliance has been achieved. At this point the matter shall be listed for the Council's information.
- 3.3 Should a response to the second notice prove unsatisfactory a memo is to be submitted to the relevant Executive Manager outlining all the details of the complaint, the section of the legislation that has been breached, the compliance actions already taken (copies of letters sent) and the recommended action within the legislation. The Executive Manager for Town Planning and Economic Development is to review all the evidence and if deemed necessary authorise the issue of a third notice to comply within a further thirty (30) days. This notice shall flag that failure to comply may result in legal proceedings to be instigated in accordance with the relevant legislation. An update of the progress of the matter will again be listed for the Council's information.
- 3.4 At the conclusion of the third notice the matter of alleged non-compliance will be presented to the Chief Executive Officer where, based on the nature and circumstances and extent of co-operation from occupier/owner, and in consultation with the Shire President and Deputy Shire President, a determination to commence legal proceedings may be instigated pursuant to the relevant legislation. Conversely, the matter is to be referred to the Council for consideration and an appropriate course of action to be taken.

**ADOPTED: 21 April 2009**

**REVIEWED:**

**AMENDED:**