COUNCIL POLICY

Compliance and Enforcement

Policy Objective

To provide a framework and guide the Development and Community Services Directorate in undertaking its enforcement and compliance activities, by outlining:

1. The aims and goals underpinning the enforcement activities undertaken by the Shire with respect to offences against State legislation and Shire local laws.
2. The criteria to be considered in determining whether the Shire will take enforcement action.
3. The manner in which matters requiring enforcement action will be classified and actioned.
4. The options available to the Shire and provide consistency in its enforcement
5. The criteria considered in determining what enforcement option the Shire will apply to the offending conduct.
6. The process of escalation where major offences are dealt with and enforcement is required.
7. Considerations relevant to the exercise of officer discretion and to guide decision making and action commensurate with risk.

Policy Statement

1. Introduction

1.1 The Shire has responsibility for regulating various matters under local laws and relevant laws. The enforcement of these laws is necessary to ensure good governance of the Shire.

1.2 The Development and Community Services Directorate has responsibility for implementing and enforcing many of these laws and regulations.

1.3 The Shire takes enforcement action to:

a) Stop the offending conduct, by:
   i) ensuring that a potential offence is lawfully prevented; and
   ii) ensuring that a proven offence cannot continue to exist or be recommitted.
b) Facilitate redress for those affected by the offending conduct.
c) Change the behaviour of persons concerned to promote further compliance with local laws and relevant laws.
d) Raise the level of public awareness in relation to legislative requirements.
e) Where appropriate, penalise an offender for non-compliance.

1.4 The Shire will seek to utilise its resources to:

a) deal, as a priority, with significant breaches; and
b) provide timely outcomes.

1.5 The Shire will seek to ensure that it is:

a) accountable and transparent in its activities; and
b) consistent in its decision making, impartial and procedurally fair; Proportionate in its response.

2. Enforcement Initiatives

2.1 The Shire may identify specific issues or matters that will be the subject of a coordinated enforcement initiative, e.g. illegal waste dumping in a specific area.

2.2 The selection of such issues or matters will be limited to enable the adequate and effective allocation of resources towards the enforcement initiative.

3. Complaints About Illegal Activities

3.1 Complaints received by the Shire about alleged offences will be examined to determine if the matter requires further investigation.

3.2 If this examination shows the complaint to be vexatious, groundless or outside the Shire's jurisdiction, the matter should be finalised quickly through written communication with the complainant.

3.3 Complaints must be received in writing where possible and include the name and contact details of the complainant, unless:

a) the matter is serious and could impact on public health and safety; and/or

b) the Director Development and Community, Manager Health, Emergency & Rangers or Manager Planning & Building consider there are sound reasons the matter should be investigated in the absence of a written complaint.

4. Authorised by law

Authorised officers should not exceed their powers vested to them under the various legislations that they work under.

5. Enforcement Criteria

5.1 The enforcement criteria in Schedule 1 will be considered by officers when deciding whether to pursue enforcement action. Not all criteria need to be met for a matter to be referred for further investigation.

6. Enforcement Options

6.1 The circumstances of each particular case will determine what enforcement option is exercised.

6.2 The local law or relevant law will also determine the enforcement options that are available.

6.3 It may be appropriate to pursue more than one enforcement option at the same time.

6.4 Enforcement options that are available to the Shire include the following:

a) Verbal warning and/or provision of educational material

This enforcement option involves an officer providing a verbal warning (either in person or over the phone) that the subject conduct is unlawful and asking that the conduct cease or action be taken to rectify the offence.

In addition, or as an alternative:

i) educational material can be provided by an officer to an alleged offender containing information on the requirements of a local law or relevant law and advising how compliance can be achieved.
ii) a formal caution can be handed to the alleged offender by an appropriately authorised officer from a Shire caution book.

b) Formal written communication of warning

This enforcement option involves the Shire forwarding to an offender a formal letter or email of warning that the subject conduct is unlawful and asking that the conduct cease or action be taken to rectify the offence.

c) Infringement notice

An infringement notice is a notice issued in accordance with the *Local Government Act 1995* or a relevant law to a person believed to have committed an offence for which an infringement notice may be issued. Infringement notices are commonly known as "on the spot" fines and impose a fine approximately 10% of the maximum penalty for an offence as set out in a local law or relevant law.

Given that an infringement notice is akin to an out of court settlement for an offence committed, the officer issuing an infringement notice is required (before issuing an infringement notice), to ensure that there is enough supporting evidence should the matter be contested before a Magistrate. This means the evidentiary burden that applies to a prosecution must be satisfied or capable of being satisfied before an infringement notice is given to the alleged offender.

d) Compliance notice

This notice may have a different title (including being called an "order" or "direction" instead of a "notice") depending on the local law or relevant law and will be issued where there is a risk to the public or the environment/amenity. This enforcement option can also be utilised where a formal letter of warning does not result in the action ceasing or the offence being rectified.

Before a compliance notice is issued, officers will:

- ensure records of the offence are accurate and complete;
- ensure witness evidence is available and credible;
- responsibility for the offence can be determined from Shire records and the available information; and
- the officer issuing the compliance notice is convinced, beyond a reasonable doubt, based on an investigation of the offence that the offence has been committed.

The compliance notice must meet all the requirements of the local law or relevant law under which it is issued.

e) Undertaking works

Where a compliance notice issued by the Shire requiring works to be carried out to remedy an offence has not been complied with, the Shire or its agent may be able to perform the required works to rectify the offence under the local law or relevant law.

If the Shire has the legislative power to undertake the required works, it will be able to recover the cost of performing the work from the offender.

Undertaking works for the purposes of this policy also refers to the seizure of goods, equipment, etc in accordance with a local law or relevant law.

f) Enforcement order

This order may have a different title depending on the local law or relevant law. The Shire can apply to the Court for certain orders to restrain or rectify unlawful conduct.

g) Prosecution

A prosecution involves the commencement of legal proceedings against a person in the Magistrates Court.

7. Classification of Enforcement Matters

7.1 Matters considered for enforcement action will be assessed and classified as minor, moderate or major offences. The classification will determine the order in which matters will be attended to and the enforcement action that will be taken.

7.2 The classification for a particular enforcement matter may increase in certain circumstances, for example, if the alleged offender fails to cease or rectify the offence once it is brought to his/her attention or there is persistent reoffending despite previous enforcement action.

7.3 Enforcement matters will be classified by the Shire as set out below:

a) Minor offence

An enforcement matter will be classified as a minor offence when any one of the following criteria applies:

i) A minor, technical or administrative breach of a local law or relevant law has occurred, and the breach is inadvertent.
ii) A small number of the community is affected with little or no detriment.
iii) Stringent enforcement action is unlikely to have a significant deterrent effect or result in the imposition of significant penalties.
iv) The alleged conduct has not and will not be repeated.

b) Moderate offence

An enforcement matter will be classified as a moderate offence when any one of the following criteria applies:

i) A clear breach of a local law or relevant law has occurred.
ii) Enforcement action is likely to lead to a successful outcome.

c) Major offence

An enforcement matter will be classified as major offence when any one of the following criteria applies:

i) A serious breach of a local law or relevant law has occurred.
ii) The alleged conduct appears systemic, ie. it affects many citizens and causes significant detriment or its repeated behaviour from the offender.
iii) The alleged conduct may endanger the health and safety of a member of the public.
iv) There is a need to act quickly to stop or restrain the conduct to avoid significant detriment to the community.
v) The matter has been referred by another agency or government department.
vi) There is potential for loss of evidence.
vii) The alleged conduct is a kind targeted by an enforcement initiative.
viii) Enforcement action has previously been taken on the basis that the offence is a minor or moderate offence and compliance has not been achieved.

8. Enforcement Action

8.1 The following enforcement options are considered appropriate for ***minor offences***:

- Verbal warning and/or provision of educational material or formal caution.
- Formal letter of warning.
- Infringement notice.

8.2 The following enforcement actions are considered appropriate for ***moderate offences***:

- Formal letter of warning.
- Infringement notice.
- Compliance notice.
- Undertaking works.

8.3 The following enforcement actions are considered appropriate for ***major offences***:

- Compliance notice.
- Undertaking works.
- Enforcement order.
- Prosecution.

8.4 The enforcement action taken may be varied or intensified if the classification of an enforcement matter changes in accordance with clause 7.2 of this policy.

9. Conflict of Interest

9.1 8.1 Where a real or perceived conflict of interest may exist in an enforcement situation, the relevant officer will request attendance by another appropriately authorised officer.

10. Extensions of Time for Compliance

10.1 Any request for an extension of time to comply with a deadline specified in a formal letter of warning or compliance notice must be:

a) made in writing by the person to whom the letter or notice is directed;

b) be received before the expiration of the deadline in the letter or notice; and

c) provide sound justification as to why the extension of time should be granted and alterative deadlines for rectifying the offence.

11. Withdrawal of Notices

11.1 An infringement notice may be withdrawn by the CEO or any other senior officer in accordance with the *Local Government Act 1995* or relevant law. A person authorised to give infringement notices is not eligible to be authorised to withdraw an infringement notice.

11.2 A compliance notice may be withdrawn by the CEO or any other authorised senior officer. The person who decides to withdraw the compliance notice must not be the person who issued the compliance notice.

11.3 The following elements could be considered by the CEO or an authorised senior officer in deciding to withdraw an infringement or compliance notice:

a) The notice has been issued to the wrong person;

b) The notice has incorrect details of the offence;

c) The notice has not been issued by a person with the appropriate authorisation;

d) The notice has spelling errors;

e) The notice has not been signed;

f) The notice is not legible and has been destroyed through its handling by postal services;

g) The notice has been sent to the wrong address;

h) Sufficient evidence does not exist to support the notice;

i) A prosecution is to be commenced for the offence as the offence is being continued;

j) A statutory defence to the offence has been provided by the alleged offender;

k) It would be unjust or not in the public interest to refuse to withdraw the infringement notice or compliance notice.

11.4 If an infringement notice is withdrawn after the penalty has been paid, the amount must be refunded.

11.5 If the offence has been rectified by the alleged offender.

Definitions

'Alleged offence' means the alleged contravention of a local law or relevant law.

'Alleged offender' means a person who or which is suspected of having committed an offence under a local law or relevant law.

'Enforcement initiative' see clause 2.1 of this policy.

'Issuing officer' means the officer who issues a compliance notice or formal letter of warning.

'LG Act' means the Local Government Act 1995 (WA).

'Local law' means a Shire of Broome local law.

'Officer' means an officer of the Shire of Broome.

'Relevant law' means the relevant piece of State legislation that is being enforced or under which the Shire or its officers are acting.

'Shire' means the Shire of Broome.

Schedule 1

Enforcement criteria

Criteria	Matters for consideration
Jurisdiction	The alleged conduct is a breach of a local law or relevant law administered by the Shire. The matter is not a civil matter. Having regard to the nature of the conduct and the alleged offence, the Shire is the most appropriate agency to handle the matter. Is the conduct occurring on public or private land?
Seriousness of the offence/complaint	The complaint is of sufficient weight, significance or importance to warrant an investigation and/or enforcement action, taking into account the following factors: intervention by the Shire will have a timely impact on conduct; detriment suffered by the complainant and the general public; the health and safety of the community; prevalence of the alleged offence – if the conduct is widespread and the application of a sanction is likely to have a deterrent effect; and impact on the environment and amenity.
Culpability of the alleged offender	The conduct is systemic. The conduct is deliberate and not inadvertent. The conduct is apparently a blatant or flagrant breach. The complaint is not trivial and/or related to a technical breach without harm.
Special circumstances surrounding the complaint	There are special circumstances that gives the complaint extra weight. The matter has been referred by another agency or government department.
Sufficiency and quality of evidence	The complainant is willing to give a written statement and/or evidence under oath if required. Witnesses to the offence have credibility as witnesses. The timeliness of the complaint as compared to the time of the alleged offence and the effect of any statute of limitations. The availability of corroborative evidence. The availability of obvious defences. The likely outcome of the enforcement action, such as the outcome of a successful prosecution.
Prior conduct	There is a history of complaints against the alleged offender. The alleged offender has been the subject of previous enforcement action by the Shire for a similar offence. The alleged offender is not responsive to conciliation and/or dispute resolution. The alleged offender is not likely to or has previously not responded to a lesser sanction. There is a risk of continuing misconduct.
Alternative enforcement strategy	There is an available resolution other than formal enforcement action and/or prosecution that will bring a

Criteria	Matters for consideration
	satisfactory outcome, in a timely and more cost-efficient manner. In determining if an alternative compliance strategy is appropriate, there is an issue of greater public interest which might preclude the application of such an alternative compliance strategy. An alternative enforcement strategy can be used in conjunction with another enforcement option.
Shire enforcement priorities and program commitments	It has been decided, as a matter of policy, to apply a particular sanction to all conduct of the kind alleged. The alleged conduct is targeted by a Shire enforcement initiative or current Shire enforcement program.
Statutory/legal requirements	There is a legislative requirement for the Shire to take enforcement action. The matter gives rise to a public health risk in relation to which the Shire has a duty to act.

Document Control Box

Document Responsibilities:

Owner:	Director Development and Community	**Owner Business Unit:**	Development Services
Reviewers:	Manager Planning and Building & Manager Environmental Health, Emergency and Rangers	**Decision Maker:**	Council

Compliance Requirements:

Legislation:	*Building Act 2011* *Cat Act 2011* *Dog Act 1976* *Emergency Management Act 2005* *Food Act 2008* *Litter Act 1979* *Local Government Act 1995* *Planning and Development Act 2005* *Public Health Act 2016*
Industry:	
Organisational:	Local Planning Scheme No.7 Shire of Broome Local Laws

Document Management:

Risk Rating:	**Low**	**Review Frequency**:	**3 yearly**	**Next Due:**	**12/2029**	**Records Ref:**	

Version #	Decision Reference:	Synopsis:
1.	25 May 2017	OMC Initial Adoption
2.	12 December 2019	Review and conversion to new Policy Template
3.	18 November 2021	Council Review
4.	31 December 2022	Desktop review – minor amends
5.	2 November 2023	Council review- Minor amendments.
6.	15 October 2024	Desktop review – Minor changes. Approved by MGR GSR.
7.	28 October 2026	Reviewed. Adopted by Council OMC 28 October 2026 Resolution C/1026/008