

REGULATORY SERVICES, COMPLIANCE AND ENFORCEMENT

Policy Statement

Council is required to review and respond to complaints received from external parties regarding aspects of non-compliance with various items of legislation. This process includes investigation of any alleged non-compliant operation, review, and action based on the outcomes of investigation.

This policy provides clear guidance to Councillors, Town of Mosman Park staff, complainants and the general public, on the usual steps undertaken through regulatory compliance matters.

Regulatory Services relates to Urban Planning (Town Planning), Building Services and Environmental Health Services.

Policy Details

1.0 Objectives

- To ensure a consistent approach in enforcement and compliance related matters;
- Provide transparency and apply procedural fairness for all enforcement and compliance related matters;
- Provide an educational, cooperative and collaborative process towards compliance and enforcement, aimed at encouraging proactive compliance; and
- To guide decision making and actions by the Town, in the consistent use of enforcement options commensurate with the associated risks/offence.

2.0 Purpose

To assist the Town in using compliance and enforcement strategies to achieve legislated objectives, whilst encouraging compliance by implementation of a proactive, consistent and collaborative approach to enforcement action.

3.0 Scope and application of policy

This policy applies to all land within the Town's municipal boundaries and sets out the Town's general approach to compliance and enforcement matters.

Where a complaint relates to a breach in legislation outside the jurisdiction of the Town, whether it be geographically or statutorily, the Town will advise the complainant of the responsible authority and then no further action will be taken by the Town.

4.0 Regulatory services, legislation enforced by the Town

The Town will refer to applicable State Legislation and Local Laws through the enforcement of regulatory compliance. This includes, but is not limited to, the following:

Building Services	<i>Building Act 2011 Building Regulations 2012 Local Government Act 1995 Town of Mosman Park Local Laws Australian Standard 1926.1 National Construction Code</i>
Planning Services	<i>Planning and Development Act 2005 Planning and Development (Local Planning Schemes) Regulations 2015 Planning and Development Regulations 2009 Local Planning Scheme No. 3 – Town of Mosman Park Local Government Act 1995 Town of Mosman Park Local Laws and adopted local planning policies</i>
Environmental Health Services	<i>Caravan Parks and Camping Grounds Act 1995 Environmental Protection Act 1986 (Public Health component only) Health (Asbestos) Regulations 1992. Health (Public Buildings) Regulations 1992 Environmental Protection (Noise) Regulations 1997 Environmental Protection (Unauthorised Discharges) Regulations 2004 Food Act 2008 Health (Miscellaneous Provisions) Act 1911 Local Government Act 1995 Public Health Act 2016 Health Local Laws Town of Mosman Park Tobacco Products Control Act 2006</i>

5.0 Lodging a complaint relating to a regulatory services compliance matter

All compliance related complaints are required to be submitted to the Town in writing, in the following forms:

- Electronically via the Town’s email admin@mosmanpark.wa.gov.au; or
- Via the Antenna App or other non-verbal correspondence method, or
- A hard copy written submission addressed to PO Box 3, Mosman Park or hand delivered to the Town’s Administration Building at 1 Memorial Drive, Mosman Park.

Compliance complaints shall include specific details of the compliance matter to be investigated, including:

1. The complainant’s name, property address, email address and preferred contact details;

2. The property address where the alleged compliance matter has occurred;
3. How the compliance matter is affecting the complainant or broader the community;
4. All relevant details of the compliance matter, including the following where applicable –
 - a) The dates and times the compliance matter has occurred;
 - b) Photographs of the compliance matter;
 - c) Any written correspondence as between the complainant and the other person who is the subject of the compliance matter; and,
 - d) Where the complaint relates to an activity or use, information such as time and frequency of the use.

Please note:

- Complainant details will be kept confidential and will not be released to alleged offenders without the consent of the complainant (personal information is exempt from disclosure under the *Freedom of Information Act 1992 (WA)*).
- The Town may choose to not respond to anonymous complaints as the validity of the complaint may not be verifiable.

5.1 How the Town will respond to receipt of a compliance complaint

Complainants will be notified in writing of the progress of compliance matters at the following stages:

- a) Upon receipt of a complaint to advise that the Town is investigating the matter; and
- b) At the conclusion of the investigation to advise whether the complaint has been substantiated by the Town and to advise whether the Town proposes to take further action in relation to the compliance matter (subject to confidentiality requirements).

The Town may provide additional notice where it is considered appropriate. However, the Town is not obliged to provide further notice than that specified in Clause 5.1 (a & b).

Should a breach of legislation be apparent, the Town may investigate and undertake compliance action in accordance with this policy without receipt of a complaint.

6.0 Compliance Investigation Procedure

The Town 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 Town will be assessed on a case-by-case basis and will generally be actioned according to the Compliance and Enforcement Matrix (Appendix Two) for each business unit area.

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

6.1 Uncertainty of compliance matter

The Town may determine not to undertake compliance action, or to conclude existing compliance action, where, after reasonable investigation, it is uncertain whether a matter is compliant with the relevant requirements, or it is uncertain whether it is capable of successful enforcement owing to:

- a) A lack of precision in the plans/documents of any relevant approval; or
- b) Evidence provided as part of a complaint cannot be verified in terms of time, date and/or location;
- c) Insufficient evidence to conclude that a statutory requirement has been breached;
- d) The person who is the subject of the compliance matter having an arguable exemption or other legal defence; or,
- e) Any other legal consideration.

6.2 Other circumstances

Where it has been established that a breach of legislation has occurred, the Town may determine not to act, or to conclude existing compliance action, where a compliance matter meets any the following criteria:

- a) The issues giving rise to the compliance matter have been rectified; or
- b) A new approval has been issued to regularise the compliance matter; or
- c) The conduct in question is trivial and does not warrant the use of resources associated with taking formal compliance action.

7.0 Offence categories and enforcement action

Following receipt of a complaint and subsequent investigation by Town officers, a range of enforcement actions may be utilised. Where an investigation is undertaken and it is considered that there is sufficient evidence, the Town will take the appropriate enforcement action. This will be based on the specific circumstances of each individual case and the category of the offence.

Refer to Appendix One for explanations of each enforcement category and a list of potential enforcement actions.

7.1 Escalation of matters through the compliance process

7.1.1 Dependent on the category of compliance matter the Town will initially seek to have the alleged infringing party rectify the matter through the issue of a notice of breach. Depending upon the context, this could be by way of a formal statutory notice or by ordinary written correspondence. This may include the invitation to lodge for approval of the unauthorised works via a development application or building permit (if applicable to the situation). The notice of breach will specify a latest time for compliance. Should the matter be resolved,

then subject to any special considerations in the particular matter, no further actions will be undertaken.

(Example: A notice issued stating that unauthorised signage has been erected, which the alleged infringing party removes.)

7.1.2 Should the notice not be complied with the matter will be escalated. This may result in:

- a) Further notices being issued;
- b) Potential fines or infringements;
- c) The town acting in default for the alleged infringing party (refer Clause 8.0);
or,
- d) Prosecution (refer Clause 9.0)

(Example: The unauthorised signage is not removed so the Town undertakes the works itself before seeking to recoup the costs through a court of competent jurisdiction.)

7.1.3 If considered appropriate by the Town in the circumstances of a particular case, owing to the seriousness of the compliance matter (based upon the nature, scale and effect of a breach) or otherwise, the Town may proceed directly to prosecution (in accordance with clause 9) without issuing an initial notice of breach under clause 7.1.1.

7.2 Extension of time to rectify compliance matter

7.2.1 The Town may consider extending the period for rectification of compliance matters on a case-by-case basis **by written request**. The Town may have consideration to the following matters when determining whether an extension can be granted:

- a) The nature of the compliance matter;
- b) The steps proposed to be undertaken, or already undertaken, to comply with the relevant legislation;
- c) The amount of time that has lapsed since the compliance matter was initially identified by the Town;
- d) Whether an extension would have implications for the timeframe for commencement of legal action (as set out in section 9.0 of this policy);
- e) Whether the alleged offender has acted in good faith with the Town in relation to the compliance matter. This may include evidence of demonstrated action to progress the matter to resolution; and
- f) Any other matter considered to be relevant by the Town.

7.2.2 Notwithstanding section 7.2.1, the Town is not obliged to extend the timeframe for rectification of compliance matters. In such instances the final decision not

to extend a timeframe will be made by the Chief Executive Officer

8.0 Acting in default of notices or orders

If the Town issues a notice in accordance with clause 7.1.1 and that notice is not complied with, then in accordance with any relevant statutory powers, the Town may:

- a) Undertake the works as specified in the notice on its own accord; and
- b) Seek to recover its expenses in a court of competent jurisdiction.

9.0 Prosecution actions

9.1 Initiation of proceedings

9.1.1 The Town may initiate prosecution proceedings under any relevant legislation, where the Town considers the alleged offence warrants such action, with regard to the definitions and matrixes contained within Appendix One and Two.

9.1.2 The Town will consider the following when determining whether to initiate prosecution proceedings:

- a) The seriousness and nature of the alleged offence;
- b) Legal advice received by the Town;
- c) Any evidence of contempt or disregard for the law;
- d) Any amenity, public health or safety impacts resulting from the alleged offence; and
- e) Whether the prosecution is in the public interest.

9.2 Appeal of Infringements, Notices or Orders

9.2.1 If an infringement, notice or order is appealed in accordance with the relevant legislation, the Town may be required to substantiate its actions in a court or tribunal. This may potentially result in the infringement, notice or order being overturned, amended or made subject to mediation.

Governance References

Statutory Compliance	Refer to 4.0 of this Policy
Organisational Compliance	Refer to 4.0 of this Policy

Policy Administration

Directorate:		Responsible Business Units
Planning & Development		Planning Building Environmental Health
Next Review		Review Cycle
2027		5 years
Version	Date	
1.	22 March 2022 (OCM-029-2022)	
2.		
3.		

Appendix One – Offence Categories and Enforcement Actions

Offence Categories

The following is a list of offence categories that may be applied by the Town:

Minor: A minor offence is a breach of legislation, which has a minimal impact on the community, amenity, 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. The breach may initially be able to be resolved by issuing a notice of breach letter, however may lead to a possible infringement.

(Example: Failure to give notice of completion of a build, or unauthorised erection of signage)

Moderate: A moderate offence is a breach of legislation that may initially have minimal impact on the community, amenity, 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 notice of breach letter, infringement, directions notice or order under relevant legislation.

(Example: Unauthorised change of land use)

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 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. The offence may result in multiple infringements and formal prosecution action.

(Example: Unauthorised swimming pool or spa, unsanitary food premises, unauthorised storage of materials)

Note: The offence category is subject to review during the investigation process.

The Town further notes that the enforcement actions contained in the above definitions are not exhaustive to each particular definition.

Enforcement Actions

Over the course of a compliance investigation the following enforcement actions may be undertaken:

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

Appendix Two – Enforcement Matrix

Note: The Town is not bound by the classification of categories within the enforcement matrix and they are to be used as a guide only. The seriousness of the offense will be determined on a case-by-case basis by the Town upon investigation of the matter.

Compliance Enforcement Matrix – Building Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Building Compliance				
Unauthorised swimming pool or spa	Building Act s9			X
Failure to install barrier around private swimming pool	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	X
Unauthorised demolition	Building Act s10			X
Failure to give notice of completion	Building Act s33	X		
Failure to give notice of cessation	Building Act s34	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	
Failure to ensure smoke alarms compliant prior to transfer of dwelling	Building Regs r56			X
Failure to ensure smoke alarms compliant prior to tenancy	Building Regs r58			X
Failure to ensure smoke alarms compliant prior to hiring of dwelling	Building Regs r59			X
Occupancy permit – general compliance	Building Act s44		X	
Encroachments outside of works land	Building Act s76			X
Adverse effect 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	

Compliance Enforcement Matrix – Planning Compliance Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Planning Compliance				
Breach form 2 conditions	P&D Act 2005	X	X	X
Unauthorised erection of signs	P&D Act 2005	X		
Unauthorised storage and wrecking of motor vehicles (for example, derelict vehicles in front yard of dwelling)	P&D Act 2005	X		
Unauthorised parking of motor vehicles (for example parking of commercial trucks in residential areas)	P&D Act 2005	X		
Operating a business or conducting an activity outside of the approved operating hours of such business or activity	P&D Act 2005	X	X	X
Exceeding the approved capacity limit of land or premises used for business or activity	P&D Act 2005	X	X	X
Failure to provide adequate car parking facilities	P&D Act 2005	X	X	
Failure to provide appropriate road access	P&D Regs	X		
Failure to undertake and maintain landscaping (where this a condition of approval)	P&D Act 2005	X		
Unauthorised or non-conforming garden walls and/or retaining walls and excavation	P&D Act 2005	X	X	X
Unauthorised dumping of waste	P&D Act 2005	X	X	X
Unauthorised storage of materials	P&D Act 2005	X	X	X
Unauthorised clearing of vegetation	P&D Act 2005	X	X	
Unauthorised use of land, or buildings (for example, use of residential premises for commercial purposes)	P&D Act 2005		X	
Unauthorised change in the type of land use (for example, change from warehouse to showroom; or residential to consulting rooms)	P&D Act 2005		X	X
Unauthorised minor works or structures	P&D Act 2005	X		

Compliance Enforcement Matrix – Environmental Health Services

Offence Description	Statutory Authority	Offence Category		
		Minor	Moderate	Major
Health Compliance				
Unsanitary food premise	Food Act 2008		X	X
Noise complaints – party noise	EPA (Noise) 1997	X	X	
Asbestos complaints	Health Asb Regs 1992	X	X	X
Noise complaints air conditioning	EPA (noise) 1997	X	X	
Noise building	EPA (Noise) 1997	X	X	
Noise delivery vehicles	EPA (Noise) 1997	X	X	
Unfit house	HMP 1911		X	X
Light complaints	HLL TOMP	X		
Unauthorised discharge	EPA 1986	X	X	
Smoke complaints	EPA 1986	X		
Smoking in outdoor eating areas	Tobacco Products Control Act 2006	X		