

**5.6 OUTCOMES OF ADVERTISING AND ADOPTION OF AMENDED DEVELOPMENT COMPLIANCE ENFORCEMENT POLICY**

**Attachments:** 1. **Development Compliance Enforcement Policy**

**RECOMMENDATION:**

**That Council:**

1. **NOTES the outcomes of advertising the proposed Development Compliance Enforcement Policy as detailed in this report;**
2. **RESCINDS Policy No. 4.1.22 – Prosecution and Enforcement; and**
3. **ADOPTS the Development Compliance Enforcement Policy at Attachment 1.**

**PURPOSE OF REPORT:**

To detail the outcomes of advertising the Development Compliance Enforcement Policy (at **Attachment 1**) and consider whether to adopt that policy, which would include rescinding the superseded [Policy No. 4.1.22 – Prosecution and Enforcement](#).

**BACKGROUND:**

The Development Compliance Enforcement Policy (Policy) has been generated from the review of Policy No. 4.1.22 – Prosecution and Enforcement and, if adopted, the new Policy would supersede Policy No. 4.1.22.

The Development Compliance Enforcement Policy was presented to the Ordinary Meeting of Council on 15 December 2020 where it was determined the policy review should be deferred to enable further consultation with Council and the community. Following further amendments, the Policy was presented to the Ordinary Meeting of Council on 26 July 2022 where the Policy was approved for advertising.

The amendments to the Policy as advertised are outlined below:

- Objectives have been amended to include:
  - The principles of fairness, impartiality, consistency, transparency, and accountability; and
  - Encouraging self-resolution between affected parties where appropriate.
- Scope of the Policy has been amended to relate to planning and building compliance only.
- Guidance has been included on what could be a civil matter.
- Information has been provided on risk management and a prioritisation approach to deal with high-risk matters.
- Clarification has been provided on circumstances where unauthorised development would be allowed to continue. The factors to be considered include:
  - Impacts on neighbours and the broader community,
  - The objectives of the City's Public Health Plan, and
  - Reasonable prospects of approvals being obtained.
- A strong emphasis has been placed on proportionate and graduated responses to compliance matters.
- The Policy now includes stronger recognition of the 'Director of Public Prosecutions - Statement of Prosecution Policy and Guidelines'. This is a state government policy, but the City can still adopt the approach outlined by the Director of Public Prosecutions.

**DETAILS:**

No clear stakeholder groups exist to engage with on this policy, so comments were sought from the general community.

In accordance with the City's [Community and Stakeholder Engagement Policy](#), the Development Compliance Enforcement Policy (Policy) was advertised from 10 August 2022 until 2 September 2022 (23 days total) in the following ways:

- Notice published on the 'Imagine Vincent' website.
- Notice posted to the City's social media.
- Notice published in the 'Perth Voice'.
- Notice exhibited on the notice board at the City's Administration, Library and Local History Centre.

The Imagine Vincent website page advertising the Policy was accessed 50 times and copies of the Policy were downloaded 13 times. No submissions have been received via the survey provided on the Imagine Vincent website; and Administration have not received any written or verbal feedback on the Policy during the consultation period.

Given the outcomes of consultation, it is recommended that the Policy at Attachment 1 is adopted by Council per clause 4.5 of the [Policy Development and Review Policy](#) which states: "if no submissions are received a report is prepared for Council advising this, and recommending that the policy document is adopted".

#### **CONSULTATION/ADVERTISING:**

The Policy has already been advertised for community consultation as detailed above. No further consultation or advertising is proposed prior to adoption of the Policy.

#### **LEGAL/POLICY:**

Clause 2.7(2)(b), Division 2, Part 2 of the *Local Government Act 1995* provides Council with the power to determine policies.

The City's Policy Development and Review Policy sets out the process for repealing and adopting policies.

#### **RISK MANAGEMENT IMPLICATIONS**

Low: It is low risk for Council to adopt the Development Compliance Enforcement Policy.

#### **STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

##### Sensitive Design

*Our built form character and heritage is protected and enhanced.*

##### Innovative and Accountable

*Our community is aware of what we are doing and how we are meeting our goals.*

#### **SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any environmental sustainability outcomes.

#### **PUBLIC HEALTH IMPLICATIONS:**

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

#### **FINANCIAL/BUDGET IMPLICATIONS:**

Nil.

**COMMENTS:**

The proposed Development Compliance Enforcement Policy (Policy) would ensure a consistent approach to ensuring planning and building decisions made by Council and Administration are implemented and the legislative framework is upheld.

Council have provided insights to support this policy review. The Policy has been advertised to the community however no feedback was received during the consultation period.

It is recommended that the Development Compliance Enforcement Policy is adopted by Council and the superseded Policy No. 4.1.22 – Prosecution and Enforcement is rescinded.

# Development Compliance Enforcement Policy



<b>Legislation / local law requirements</b>	Any legislation, regulations and local laws referred to in the City's Register of Delegations, Authorisations and Appointments relevant to Planning and Building compliance matters
<b>Relevant delegations</b>	Appointment of authorised and designated officers in accordance with the City's Register of Delegations, Authorisations and Appointments
<b>Related policy procedures and documents</b>	Director of Public Prosecutions Act 1991 – Statement of Prosecution and Policy Guidelines (DPP Guidelines) Other State Government Guidelines Register of Delegations, Authorisations and Appointments Administration Enforcement Procedure Service Area Practice Notes

## PURPOSE

To establish the process for administering compliance with the acts, regulations and local laws relevant to Planning and Building compliance matters under the City of Vincent's (City's) control.

## OBJECTIVES

In undertaking any enforcement action the City will consider the rights of the offender, the interests of the community, the circumstances of each individual case and the risk associated with enforcement decisions.

The City will conduct its compliance and enforcement investigations and actions in a manner that is impartial, fair and consistent. The City endeavours to emulate the approach outlined in the DPP Guidelines, Court decisions and State Government guidelines. To ensure transparency and accountability, decision making processes will be documented in accordance with the Administration Enforcement Procedure and process mapping.

The City strongly supports affected parties genuinely attempting to resolve compliance matters directly with one another. In most scenarios this will lead to a more timely, amicable and efficient resolution.

## SCOPE

This Policy applies to the investigation and resolution of offences for breaches of acts, regulations and local laws relevant to Planning and Building compliance matters.



## POLICY

### 1. Investigation of alleged breaches

1.1 The City will investigate an alleged breach where:

- (a) A customer has contacted the City in respect to it; or
- (b) It relates to an activity that poses an unacceptable risk to the City or community; and/or
- (c) A monitoring observation has been made by an Authorised Officer which is considered to pose an unacceptable risk or outcome to the community.

1.2 The City may utilise its discretion to not investigate an alleged breach, or may discontinue an investigation if the alleged breach:

- (a) Is assessed as 'low' in accordance with the City's Risk Management Policy and does not directly affect the health, safety or amenity of the Customer;
- (b) Arises from the negotiation of a contract of sale of Property, where resolution of the breach should be negotiated by the buying and selling parties;
- (c) Is unsubstantiated, vexatious or involves an ongoing neighbourhood dispute which the parties could reasonably resolve;
- (d) Is a civil matter (no prescribed legislation administered by local government) ;
- (e) Is being managed by the offender submitting an application for existing unauthorised development; or
- (f) When enforcement proceedings are unlikely to be successful due to:
  - (i) The time elapsing since the development was undertaken or statute of limitations expiring; and/or
  - (ii) A lack of documentary evidence (such as plans/documents, reliable witnesses), including if it is unclear who the offender is.

1.3 Where an alleged breach is raised by a Customer, for evidentiary and contact purposes the City would normally request the complaint be made in writing, including:

- (a) Name, address and phone number or email address of the complainant;
- (b) Address of the Property to which the complaint relates;
- (c) Details of the alleged breach; and
- (d) Details of how the matter is affecting the Customer.

The City will advise the customer if they may be required to appear as a witness if prosecution is determined to be the appropriate course of action.



- 1.4 Complaints will be prioritised for investigation in the order set out below, based on an assessment of the 'Risk Classification Matrix' as contained within the Risk Management Policy (Attachment)
- (a) Any matter relating to a property that is considered to be a high risk;
  - (b) Any matter involving irreversible and permanent damage to a Heritage Building;
  - (c) The seriousness/impact of the alleged breach or offence, consistent with legal requirements; and
  - (d) All other alleged breaches will be processed in the order in which they arise.

## 2. Enforcement

- 2.1 Enforcement action often involves a range of options depending on the legislation which is being applied, including:
- Taking no further action;
  - Verbal direction;
  - Written correspondence;
  - Issue of infringement notice/s;
  - Issue of notices/orders/directives;
  - Seeking an injunction; or
  - Prosecution action.
- 2.2 The City would determine the most appropriate method of enforcement action through consideration of the following principles:
- (a) Graduated response – this principle recognises that less severe enforcement options could be utilised and tried first, before progressing to more severe enforcement options;
  - (b) Proportionate response – this is an assessment of the severity of the alleged breach which should lead to more serious enforcement action being utilised to manage more severe breaches or deliberate and/or repeated non-compliance;
  - (c) Applications for existing unauthorised development may be invited if it is established there is a reasonable prospect of Development and/or Building Approval being obtained;
  - (d) Discretion to allow the continuation of an existing unauthorised development while approval is being obtained is to be assessed on a case by case basis. Factors for consideration are to include:
    - (i) Impact to neighbouring properties, public property or the community;
    - (ii) Consideration of the objectives of the City's Public Health Plan; and
    - (iii) Reasonable prospect of Development and/or Building Approval being obtained;
  - (e) Public interest assessment if there is a significant monetary penalty;
  - (f) Consideration of mitigating or aggravating circumstances;



- (g) Provision of legal advice received from the City's legal representatives or precedence of similar cases;
- (h) 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; and
- (i) An assessment against the City's Risk Management Policy.

2.3 Prosecution proceedings may be discontinued where:

- (a) There is an error at law or in the charges;
- (b) There is a mistake of fact;
- (c) The alleged offender is deceased, cannot be located or is declared bankrupt;
- (d) The City's legal advisors recommend this;
- (e) The age, state of physical health and/or mental health of the alleged offender is a determining factor;
- (f) The Court has made comments which would support discontinuing the case;
- (g) There has been consultation with the defendant or their legal representatives to achieve a suitable resolution, noting the City still has the discretion to continue the prosecution even if steps towards compliance are made following commencement; or
- (h) It is not in the Public Interest to continue to pursue the charges.

**3. Recovery of legal costs and penalties**

3.1 The City will seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the Court.

3.2 The City is unable to assist third parties in the recovery of legal costs.

**4. Injunctions/Prosecution Appeals**

4.1 The City may seek an injunction by a court for a breach of statute. The decision will be made at the discretion of the Chief Executive Officer.

4.2 The decision to appeal a decision/penalty made by a court will be made at the discretion of the Chief Executive Officer, based on the following factors:

- (a) The approach documented in the DPP Guidelines; and
- (b) At the recommendation of the City's legal advisors.





**DEFINITIONS**

**Authorised Officer** means an employee of the City who has been appointed by Council, the CEO or the CEO’s delegate, pursuant to the *Local Government Act 1995* or other legislation, to fulfil certain powers and duties assigned under that legislation or local law to an “authorised officer” or “authorised person”.

**Public Interest** means:

- Action and/or conduct which is for the good of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals (Reference: *DPP v Smith* [1991] 1 VR 63). In the local government context, it specifically relates to the general function of the City to provide for the good governance of persons in its district (see section 3.3(1) of the *Local Government Act 1995*); and
- This definition of public interest was developed following consideration of the principles of ‘Evaluation of the Public Interest’ as stated in the *Director of Public Prosecutions Act 1991 – Statement of Prosecution and Policy Guidelines*.

OFFICE USE ONLY	
Responsible Officer	Manager Built Environment and Wellbeing
Initial Council adoption	Date: <Approval Date>, Ref#
Reviewed / Amended	Date:                      Ref#:
Next Review Date	Date: <review Date>