

Introduction

In accordance with its responsibilities under relevant Acts of Parliament, regulations and local laws, the Shire of Capel has a duty to respond to all complaints in accordance with its Customer Service Charter and a statutory obligation to enforce compliance in accordance with various legislative requirements.

This procedure reflects the need for compliance action to be carried out in a transparent, efficient, fair and consistent manner having regard to all circumstances. This procedure applies to the investigation and resolution of:

- breaches of legislation for which the Shire is the administrative body;
- failure to comply with the terms or conditions of approvals and orders; and
- any appeals arising out of proceedings brought by the Shire.

Purpose

This procedure provides guidance to:

- ensure there is a consistent approach in the undertaking of compliance and enforcement action;
- ensure transparency, procedural fairness and adherence to the principles of natural justice; and
- assist members of the public and Shire officers in dealing with compliance and enforcement action relating to local government matters.

Procedure

1. Compliance principles and approach
 - 1.1 The Shire shall administer its statutory responsibilities under legislation in a fair, unbiased and equitable manner with regard to the interest of public health, safety and amenity. Each compliance investigation undertaken by the Shire will be assessed on its merits.
 - 1.2 Where a complaint relates to a breach of Statute, subsidiary legislation or policy for which the Shire is the responsible authority, the Shire may request those complaints to be made in writing. Complaints must include:
 - 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 or offence; and
 - d. details of how the matter is affecting the complainant.
 - 1.3 Complaints will be prioritised for investigation based upon the seriousness of the alleged breach or offence when assessed against the criteria prescribed in sub-clause 2.2(b). Prioritising complaints will be the responsibility of each department in accordance with their own procedures and legislative requirements.
 - 1.4 The Shire may discontinue an investigation into a complaint where it can be reasonably ascertained that the complaint is unsubstantiated, pertains to a civil matter or results from a neighbourhood dispute in which Council has no authority to act.

- 1.5 A response to the complaint will be provided in accordance with the Customer Service Charter. The investigation will include a site inspection if appropriate, review of relevant legislation and Shire records and contact with the respective landowner and/or occupier.
2. Enforcement
 - 2.1 The enforcement of relevant legislation is an administrative function for which statutory responsibility rests with the Chief Executive Officer and delegated or authorised officer.
 - 2.2 The Shire will apply the following principles in deciding whether enforcement action is appropriate.
 - a. Enforcement action will be commensurate to the seriousness of the alleged breach or offence and consistent with legal requirements.
 - b. In determining the seriousness of an alleged breach or offence resulting from a complaint or proactive compliance action, the Shire will have regard to:
 - i. the penalty prescribed in the relevant legislation for the alleged breach or offence;
 - ii. the potential harm caused by, or effect of, the breach/offence on public health and safety, environment (built and natural) or the amenity of the district; and
 - iii. whether or not it is in the public interest for the Shire to take action.
 - c. The enforcement measures applied will be those considered most appropriate to achieve the desired outcome.
 - d. Prosecution will only be initiated following consideration of all the available information and circumstances of the individual case.
 - 2.3 The Shire is unable to authorise the continuation of a breach or offence once it has been brought to the Shire's notice. However, compliance efforts will be prioritised to address issues that are both unlawful and likely to present a risk to public health and safety, the environment (built and natural) or the amenity of the district. This may mean that the investigation of relatively minor instances of non-compliance is deferred or not pursued.
 - 2.4 Decisions on enforcement action may have regard to any or all the following considerations:
 - a. whether there has been a failure to comply with any written law, any formal request, lawful direction or notice given by the Shire;
 - b. mitigating or aggravating circumstances;
 - c. any demonstrated history of non-compliance;
 - d. potential short- and long-term consequences of non-compliance;
 - e. the need for deterrence of further breach or offences; and
 - f. the impact which may arise by any failure to take enforcement action.

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