



Compliance and Enforcement of Planning Laws

Local Planning Policy

Version 3

Scheme Provisions:

LPS #11
 3.1 Zoning and Development Table "Deemed Provisions" LPS Regulations
 LPS #10
 4.1 Zoning and Development Table Part 11 Enforcement and Administration

Other References:

Shire of Northampton Local Planning Scheme No. 10
 Shire of Northampton Local Planning Scheme No. 11
 Planning and Development Act 2005
Planning and Development (Local Planning Schemes) Regulations 2015

Special procedural considerations:

1.0 CITATION

This is a local planning policy prepared under the *Planning and Development (Local Planning Schemes) Regulations 2015* and the *Shire of Northampton Local Planning Schemes: No. 10 - Northampton District; and No. 11 - Kalbarri Townsite* ('the Scheme'). It may be cited as the Enforcement of Planning Laws local planning policy.

The local government may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area. In making a determination under the Scheme the local government must have regard to each relevant local planning policy to the extent that the policy is consistent with the Scheme.

2.0 OBJECTIVE

- 2.1 To establish a framework for the community to make their concerns known in a constructive and effective manner.
- 2.2 To clearly delineate the process and procedures for dealing with compliance and enforcement issues related to Planning laws.

3.0 POLICY STATEMENT

3.1 Raising a Concern

- 3.1.1 All concerns must be put in writing with the complainant's name, address and phone/email contact included. Written statements are required to ensure that the complainant's concerns are accurately presented.
- 3.1.2 Contact details must be provided in order for the local government to contact complainants, which may be done in the following circumstances:

- (a) If additional information about the matter is required;
- (b) If it is considered desirable to ask the complainant to monitor the situation in order to obtain additional evidence; and
- (c) Should the concern proceed to legal action, the complainant may be requested to appear as a witness at court proceedings.

3.1.3 If a complainant wishes to raise a concern anonymously, then it is treated as a comment and the local government will be unable to advise the complainant of the outcome of the investigation.

3.1.4 All concerns will be treated confidentially where appropriate.

3.1.5 Concerns will not be dealt with if the local government is of the opinion that:

- (a) The matter is not considered to have a sufficient impact upon the person aggrieved; or
- (b) The concern is vexatious or not made in good faith.

3.2 Procedure for the Enforcement of Planning Laws

3.2.1 Once a complaint has been investigated and deemed worthy of enforcement action, the following general procedure will be followed. Ultimately, the manner and extent in which the local government takes enforcement action will depend on the nature of the matter and the seriousness of the contravention.

(a) Written Warning

- (i) The local government will write to the offender setting out the breach and advising the offender that if the breach continues (in the case of an unlawful use or condition breach), or if the breach is not remedied (in the case of unlawful 'brick-on-brick' type development), the local government may commence formal enforcement proceedings. A clear timeframe in which action is required on the part of the offender will be included;
- (ii) If applicable, the written warning will set out the process and timeline in which the offender may apply for retrospective planning approval.

(b) Secondary Warning

- (i) Should the offender not take the prescribed action described in the written warning or apply for retrospective planning approval within the prescribed period, a second written warning shall be issued, informing the offender that should the prescribed action not be completed or application submitted within a clearly defined period, the local government will commence prosecution proceedings without any further notice given.

(c) Formal Enforcement

- (i) Should no action be taken by the end of the prescribed period of the

second written warning, the local government shall have recourse to the enforcement proceedings defined in the *Planning and Development Act 2005* (“Act”), which include giving formal directions pursuant to section 214 of the Act, commencing prosecution proceedings for an offence pursuant to section 218 of the Act and giving infringement notices pursuant to section 228 of the Act.

3.2.2 Section 164 of the Act allows for the local government to grant its approval under a Scheme for development already commenced or carried out. Therefore, where there is discretion under the Scheme to grant retrospective approval for the development, the local government will advise the offender an application for retrospective approval can be made in both the first and second written warnings.

3.2.3 The making of an application for retrospective planning approval will not necessarily preclude the local government from commencing formal enforcement proceedings in relation to the breach.

3.2.4 Where the local government considers a direction pursuant to section 214 of the Act is appropriate enforcement action for the breach, the Chief Executive Officer will issue a direction to be given to the offender.

3.2.5 Where the local government considers an infringement notice is appropriate enforcement action for the breach, a person appointed by the Chief Executive Officer as a designated person for the purposes of section 228 of the Act will issue an infringement notice to the offender.

3.2.6 Where the local government considers prosecution proceedings are an appropriate enforcement action for the breach, the Chief Executive Officer or an employee of the local government authorised by the Chief Executive Officer will commence prosecution proceedings against the offender.

3.3. Discretion as to the Enforcement of Planning Laws

3.3.1 Formal enforcement proceedings for the enforcement of planning laws include the giving of formal directions pursuant to section 214 of the Act, commencing prosecution proceedings for an offence pursuant to section 218 of the Act and the giving of infringement notices pursuant to section 228 of the Act.

3.3.2 Section 214 of the Act empowers a local government to issue a direction where a development or land use has been carried out unlawfully (eg. without planning approval or in contravention of the conditions of a planning approval). The Act is silent in relation to the factors which the local government should consider in determining whether to exercise its discretion to give a direction and, if it decides to give a direction, as to its terms.

3.3.3 Whilst it may be correct to say that there is a general duty imposed on a local government to enforce laws for which it is responsible, that general duty is not absolute. The facts of a particular matter may be such that it is simply not reasonable or appropriate for a local government to take enforcement action.

3.3.4 The important matters for consideration in the exercise of discretion to commence formal enforcement proceedings are:

- (a) It is in the public interest of the proper and orderly development and use of land that planning law should generally be complied with. It is expected that,

normally, those who carry out development or subdivision, or use land, should comply with the planning legislation and any applicable approval, licence or other authorisation in relation to that activity.

- (b) The impact of the contravention of the Scheme on the affected locality and environment. This includes a consideration of whether the breach complained of is purely technical which would be unnoticeable other than to a person well versed in the relevant law.
- (c) The factual circumstances in which the contravention took place. For example, if the local government had in some way condoned or endorsed the unlawful development, it may not be reasonable for the local government to later attempt to enforce its Scheme in relation to the unlawful development.
- (d) The time which has elapsed since the development was undertaken unlawfully.
- (e) The expense and inconvenience which would be involved in remedying the contravention.
- (f) Whether or not the unlawful development/use in question is dangerous, or potentially dangerous.

3.3.5 In prosecution proceedings, the onus is on the local government to prove all elements of an offence beyond reasonable doubt. Therefore, an additional factor that should be considered when determining whether to initiate prosecution proceedings is the strength of the evidence available; that is, the prospects of the prosecution succeeding.

3.3.6 As an alternative to commencing prosecution proceedings, an offender may be given an infringement notice. An infringement notice is an ‘on-the-spot’ modified penalty for minor planning offences where the local government considers prosecution proceedings are not warranted. An infringement notice is intended to act as a deterrent and to motivate immediate correction of breaches. An infringement notice will only be given where the breach is minor and can be easily remedied. Payment of the modified penalty for an infringement notice may not prevent further formal enforcement proceedings being taken should the breach not be remedied.

4.0 RESPONSIBILITY	<p>The Chief Executive Officer as per the Delegations Policy and Register and further authority is delegated to the Chief Executive Officer for giving infringement notices (Clause 4.2.5). Pursuant to section 234 of the Act, the Chief Executive Officer has appointed the following classes of persons to be designated persons for the purposes of giving an infringement notice pursuant to section 228 of the Act:</p> <p style="text-align: center;"><i>“Principal Planner”</i></p>		
5.0 ADOPTION	19 February 2010	Advertising	Minute 2.8.2
	16 April 2010	Final Approval	Minute 4.8.1
	V2 16 June 2014	Advertising / Final Adoption	(Minutes 6.8.1)
	V3 15 June 2018	Advertising / Final Adoption	