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| POS | DEVELOPMENT COMPLIANCE PROCESS | PSPD29 |
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| <b>POSITION STATEMENT CODE:</b> | PSPD29                      |
| <b>DIRECTORATE:</b>             | Planning and Development    |
| <b>BUSINESS UNIT:</b>           | Planning and Development    |
| <b>SERVICE UNIT:</b>            | Statutory Planning Services |
| <b>RESPONSIBLE OFFICER:</b>     | Manager, Statutory Planning |
| <b>FILE NO.:</b>                | 182/002                     |
| <b>DATE FIRST ADOPTED:</b>      | 10 December 2015            |
| <b>DATE LAST REVIEWED:</b>      | 14 December 2017            |
| <b>ATTACHMENTS:</b>             | Yes                         |
| <b>VERSION NO.</b>              | 2                           |

|                                       |                                      |
|---------------------------------------|--------------------------------------|
| <b>Dates of Amendments / Reviews:</b> |                                      |
| DAPPS Meeting:                        | 26 November 2015<br>23 November 2017 |
| OCM:                                  |                                      |

## BACKGROUND:

The City deals with a range of development compliance matters which vary significantly from an unauthorised use or development to non-compliance with conditions of Council approval.

*The Planning and Development Act 2005* (the Act) sets out a formal legislative process for Local Government to utilise.

## PURPOSE:

To provide a clear position and process for ensuring that development of land complies with the City of Cockburn Town Planning Scheme No. 3 (TPS 3).

## POSITION:

### (1) Definition

The term *development* used in the Position Statement has the same meaning as the definition in the Act:

**Development** - means the development or use of any land, including—

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;
- (b) the carrying out on the land of any excavation or other works;

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- (c) in the case of a place to which a Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990* applies, any act or thing that —
  - (i) is likely to change the character of that place or the external appearance of any building; or
  - (ii) would constitute an irreversible alteration of the fabric of any building.

(2) Statement of position

All landowners and operators of development are required to comply with TPS 3, Council Policies and any relevant Local Laws. Pursuant to the Scheme the Council's approval is required prior to commencement of the use or development of land and the use or development must comply with any conditions imposed.

(3) Planning Consent exemption

A planning consent is not required for certain development types on land zoned pursuant to TPS 3.

(4) Notification of Unlawful development

The Act sets out a formal legislative procedure for Local Government to utilise when dealing with breaches of its operative Town Planning Scheme.

The Local Government must adhere to this procedure as a baseline, state wide Development Control Policy that is in force as legislation. Any additional procedure the Local Government sees fit to include above this standard is at the Local Government's discretion.

The Local Government may delegate the power to issue directions to the CEO, who may delegate that function to an Officer pursuant to section 5.45 of the *Local Government Act 1995*.

The flowcharts attached to this Position Statement show the process to be followed in relation to the Act and the Policy.

(5) Explanation of Directions

1. Section 214(2) - Direction to 'Stop'. In this case, stop means stop work immediately and not recommence the use or development. The City is not required to give a notice period, however the person affected has a right of appeal against the direction. A direction to stop may be used where the breach involves an unapproved land use (i.e. home business).

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2. Section 214(3) - If a development has been undertaken in contravention of TPS 3, and the Local Government requires the development to be altered, pulled down, removed or land restored to its original condition prior to the development taking place, a direction may be issued to that effect, however a notice period of 60 days must be given and the person affected by the direction has a right of appeal. It is expected that this part would be used for such things as unapproved structures, unapproved earthworks and non-compliance with conditions of approval.
  
3. Section 214(5) - *“If it appears to a responsible authority that delay in the execution of any work to be executed under a Scheme would prejudice the efficient operation of the Scheme, the responsible authority may give a written direction to the person whose duty it is to execute the work to execute that work.”* It is unclear as to how this part can be used, however it could be used in a similar fashion to Section 214 (3) regarding non-compliance with Development Application (DA) conditions.

Following the service of any of the directions above, the person affected by the direction may appeal to the State Administrative Tribunal (SAT) to have the direction stayed, altered, or overturned. Such an appeal must be made within 28 days of the service of the direction.

When delivering its decision, the SAT will either, affirm the direction issued by the Local Government, alter the direction issued by the Local Government, or substitute the direction issued by the Local Government.

If a person does not comply with a Direction issued under Section 214(3) of the Act, the Local Government is empowered by Section 215 of the Act to carry out the works required by the Direction and recover the costs of doing so from that person in the courts.

## **(6) Principles**

Prior to undertaking legal proceedings the following principles must be generally observed:-

1. There is a clear breach of the City of Cockburn’s TPS 3; or
  
2. The person concerned has been directed to rectify the breach and has been given 28 days to make satisfactory arrangements to bring the development into compliance; or
  
3. A continuation of the breach would result in an adverse impact on the amenity of the area, and a likelihood of a complaint being received; or

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4. The development conflicts with the principles of orderly and proper planning in a general sense.

(7) Legal Implications

1. A person who:

- a) Contravenes a Town Planning Scheme;
- b) Contravenes a condition imposed with respect to a development approved under the Scheme by the Local Government;
- c) Fails to comply with a direction issued under section 214(2), 214(3) or 214(5) by the Local Government, or;
- d) Fails to comply with a direction issued by the SAT:

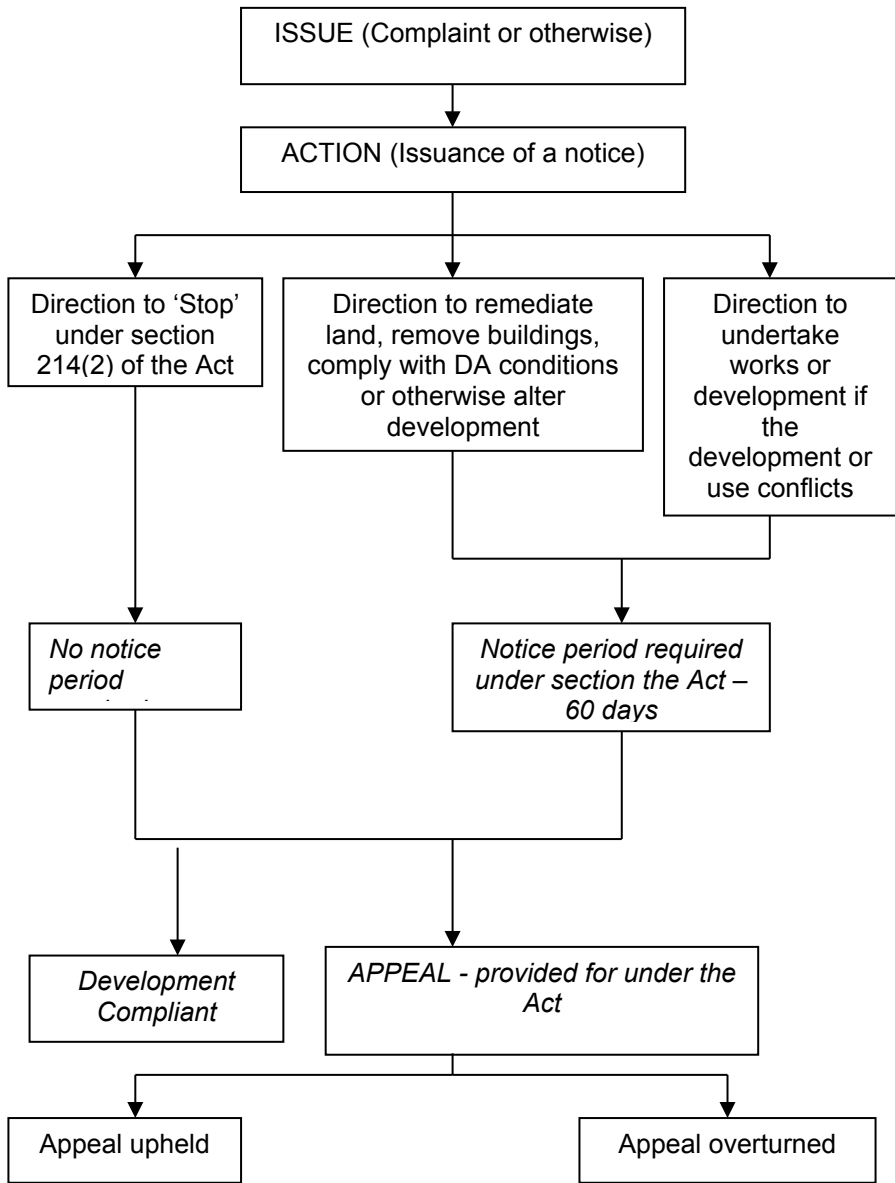
If guilty of an offence pursuant to the Act, the liable penalty for which is \$200,000 and in the case of a continuing offence, a further fine of \$25,000 for each day of the offence. In the case of businesses/ co-operation and company the penalty is \$1,000,000, and in the case of a continuing offence, a further fine of \$125,000 for each day of the offence.

2. A person may be prosecuted under the Act, for breaching a Town Planning Scheme, irrespective of whether or not a direction has been given under section 214. Notwithstanding the process of resolving a breach of the Town Planning Scheme outlined in this Position Statement, the City may decide to prosecute a person for breaching the Scheme, without any advance warning or notice.
3. It should be noted that the Act treats a breach of a Town Planning Scheme and failure to comply with a Direction as two separate offences, albeit with the same penalties.

(8) Costs

Any costs incurred by the City will be recovered where possible from the person or persons found guilty of breaching of TPS 3.

**Attachment I – Planning and Development Act 2005 process**



**Attachment II – Development Compliance Process**

