

# Non-Complying Development

## What is Non-Complying development?

Non-Complying developments are listed in the Development Plan and are land uses which are not envisaged or encouraged within a particular area. These uses will generally be inconsistent with the objectives and principles of the zone or policy area that they are in, for example industrial developments in a residential zone or a new high rise building in a heritage policy area. Non-Complying development is not usually approved unless it is a special circumstance. The Adelaide Plains Council Development Plan is available at <http://www.apc.sa.gov.au/developmentplan>.

## Making an application for a Non-Complying development?

An application can still be made to Council for a Non-Complying development if the applicant believes that it has significant merit. The lodgement of a Non-Complying application incurs a number of expensive fees including Public Consultation fees. It is recommended you seek the advice of Council's Planning staff or engage a professional planning consultant before making your application.

## Information required

When a Non-Complying application is made Council staff undertake a preliminary assessment. From this, they will decide to either refuse the application or proceed with a full assessment. If the application is refused at this time the applicant has no right of appeal against the decision. If the application is allowed to continue there is no guarantee that it will be approved. If Council agrees to proceed with full assessment of the application a report called a Statement of Effect addressing the following

- The nature of the development and its locality
- The provisions of the Development Plan relevant to an assessment of the proposal
- The extent to which the proposal complies with these provisions
- An assessment of the expected social economic and environmental effects of the proposal on its locality
- Any other information or material that may be relevant and helpful to Council in its assessment of the proposal.

is required to be submitted. The statement must reflect some understanding of the importance of the Development Plan as well as the context of the proposal and its location. The preparation of the Statement of Effect should be discussed with Council as early as possible.

## Assessment of the application

If Council decides to proceed with the application, the application is assessed as a Category 3 development and Council must undertake public notification for the proposal stating that it is non-complying. Third parties will then have an opportunity to lodge written representations and be heard personally by the Council. The Applicant also has a right of response to representations and to address Council.

Some applications are required to be referred to and assessed by further statutory bodies. For example:

- Some development near the coast must be referred to the Coastal Protection Board
- Some developments adjacent to main roads must be referred to the Commissioner of Highways

This process is undertaken under statutory time limits of up to 8 weeks. Referrals and concurrences are listed under Schedule 8 of the Development Regulation 1993.

## Authorities and decision making

No Individual planning authority has sole discretion to act alone in issuing an approval for a non-complying form of development. If Council is the authority (which will be in most cases), and Council's Development Assessment Panel is willing to approve the development, then the concurrence of the Development Assessment Commission (a body established by the state government) must be sought.

## Right to appeal against the decision

The applicant has no right of appeal. This includes appeal against Council initially declining to access the application; refusal; or the Commission's refusal to concur with Council's decision to approve the development.

However, where third parties are involved, they do have appeal rights if they disagree with an approval being issued or are not satisfied with conditions attached to that approval.