

5. Development Assessment Commission

The Development Assessment Commission is the State Government's Planning body, which must concur with Council's support of a non-complying application before it can be approved.

Once the application has been referred to the Development Assessment Commission for concurrence the Commission has ten weeks to reply with its decision, although it can request additional time if required.

If the Commission does not concur with Council's decision the application cannot be approved and again, there are **no rights of appeal against the refusal**.

If the Commission concurs with Council's decision to support the application Council can then issue an approval notice. This approval is subject to third party appeal rights through the Environment, Resources and Development (ERD) court, eg by any person who lodged a representation during Public Notification.

How long will this take?

The time taken to assess a non-complying application is dependent upon a number of factors. Council will endeavor to deal with applications as quickly as possible; however experience indicates that on average approximately six months should be set aside for non-complying applications to be assessed.

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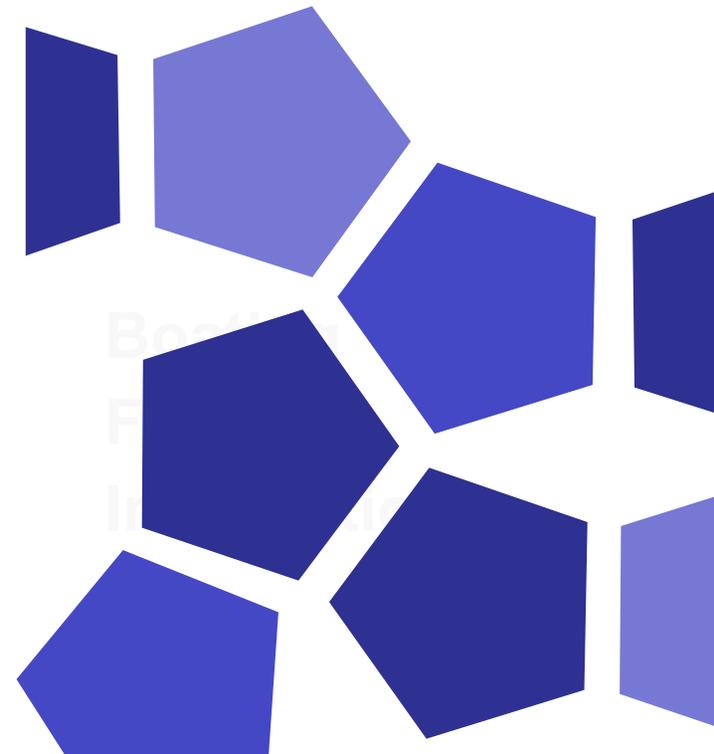
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V03/17



**Non-
Complying
Development**



Non-Complying Applications

Non-complying development is development that has been deemed as unsuitable for a particular area and not to be encouraged.

The Kangaroo Island Council Development Plan clearly defines the types of development that have been identified as inappropriate within particular zones of the Council area, and classifies them as non-complying.

Can an application be made for a non-complying Development?

Yes. An applicant may feel that a proposal has special and significant merit and should be considered by Council even though it is listed as non-complying. The *Development Act 1993* allows for the consideration and assessment of non-complying development proposals, which may result in an approval being granted. However, there are no appeal rights for applicants to a refusal if the application is refused.

Procedure for a non-complying Development?

1. Merit to proceed with assessment

The Development Act 1993 allows the relevant authority to refuse to process a proposal for non-complying development *prior to any assessment being undertaken.*

To enable Council to decide whether it is willing to proceed with an assessment of a non-complying application the applicant must lodge a brief *statement of support* with the application outlining why they believe the application has special or significant merit and warrants consideration by Council.

Council staff will then determine whether to proceed with an assessment taken to the next available

Development Assessment Panel meeting for a decision on whether to proceed with an assessment.

If it is deemed that the application does not have sufficient merit to justify proceeding with an assessment or is at significant variance with the plan, the application will be refused. There are no rights of appeal against refusal.

Where Council does decide to continue with an assessment of the application, however, a decision to process a non-complying application does not imply in any way that the application will ultimately gain approval.

2. Statement of Effect

If the Development Assessment Panel decides to proceed with an assessment of the application, the applicant must then supply a Statement of Effect for the development. The Statement of Effect must address all relevant provisions of the Development Plan and contain a detailed assessment of the social, environmental and economic impacts of the Proposal and it is strongly recommended that A professional planning consultant be employed to prepare the statement.

The statement of effect **must** include:

- A description of the nature of the development and the nature of its locality;
- A Statement as to the provisions of the *Development Plan* which are relevant to the assessment of the proposed development
- An assessment of the extent to which the proposed development complies with the provisions of the *Development Plan*;
- An assessment of the social, environmental and economic effects of the development on its locality; and
- Any other information specified by the relevant authority when it resolves to proceed with the assessment of the application

3. Public Notification and Referrals

Once the statement of effect has been received and the fees for public notification and the required referrals are paid, the application is generally placed on Category 3 public notice and referred to other bodies for advice or direction as required by *Schedule 8 of the Development Regulations 2008.*

Category 3 public notices includes individual notices to adjoining landowners as well as any other people Council believes will be affected by the development, as well as a notice advertised in the local paper.

At this time, Council will also refer the application to any necessary State Government Agencies, such as Transport SA, Heritage SA or the Environment Protection Authority as required by the Development Regulations.

The applicant will be asked to respond to all written submissions (representations) received and may also be given the opportunity to respond to any issues raised by Government Agencies. In some cases, the applicant may also amend the proposal in response to comments made by third parties or Government Agencies.

4. Council Decision

Once Council has received the comments from the referral agencies and the public notice procedure, a detailed report and recommendation will be prepared for the next available Development Assessment Panel (DAP) meeting. At this meeting the Panel will generally make a decision to refuse or support the application, although in some cases the matter may be deferred by the Panel in combination with a request for more information.

If the application is refused there is no right of appeal through the courts against the decision.

If the Panel decide to support the application it must apply to the Development Assessment Commission for its concurrence before any approval can be issued.