



Coorong District Council Information Guide 11

Planning & Development Non Complying Development

Introduction

Non-Complying Development is development that has been deemed as being unlikely to contribute to the desired future character of a locality. Coorong District Council's Development Plan outlines types of development that have been generally identified as inappropriate within different zones of the Council area.

Can an application be made for a Non-Complying Development?

YES. An applicant may feel that a proposal has significant merit to be considered by Council even though it is listed as non-complying. The Development Act allows for 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 of the application or any conditions imposed.

The Development Act also allows the relevant authority to refuse a proposal for Non-Complying Development prior to any assessment being undertaken if it is determined the application has no merit. In some instances, the Council may continue to assess the application. The requirements for the assessment of a Non-Complying Development are set out in Regulation 17 of the Development Regulations 2008.

Statement of Support

When a person makes an application for non-complying development, a brief statement outlining the reasons why the proposed development should proceed is to be submitted. This Statement of Support is required to assist the relevant authority to determine whether the development application should be further assessed or be refused.

A decision to process a non-complying application does not imply in any way that the application will ultimately gain approval.

Statement of Effect

If, on preliminary assessment of application and the Statement of Support Council decides to proceed with the assessment, then the applicant will be asked to prepare a Statement of Effect. This should demonstrate the merits of the proposal relating to the relevant planning issues (eg. the appropriateness of a land use or urban design elements).

The Statement of Effect **must** include all of the following:

- 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 expected 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.

The statement may also include any other information or material as the applicant sees fit.

Procedure for a Non-Complying Application

If Council agrees to assess a non-complying application, Council must publicly notify the proposal in accordance with the legislative requirements of the Development Act. In almost all circumstances non-complying developments are Category 3 developments and require full public notification (refer to Development Information Guide - Public Notification). Furthermore, non-complying applications require the concurrence of the Development Assessment Commission.

The Decision, what next?

There are three possible outcomes for Non-Complying Development:

1. The Council may refuse the proposal, in which case the applicant has no appeal rights.
2. The Council may resolve to support the development. The Development Assessment Commission (DAC) is then required to provide its concurrence on the decision. It may choose not to concur, in which case the application is refused and the applicant has no right of appeal.
3. Alternatively, the DAC may concur with Council's decision, in which case an approval will be issued. The decision may be subject to third party appeal rights to the Environment, Resources and Development (ERD) Court.

The decision to seek the concurrence of the Development Assessment Commission or not is delegated to Council's Development Assessment Panel.

The decision to proceed with assessment of a non-complying development or refuse it prior to assessment is delegated to Council Staff. However in some circumstances this decision may be made by Council's Development Assessment Panel.

How long will this take?

The time taken to assess a non-complying application is dependent upon a number of factors. Council will endeavour to deal with applications as quickly as possible. However, experience indicates that at least 12 weeks should be set aside for non-complying applications to be assessed.

Further Information

Further advice can be obtained from Council's Development and Environmental Services Team on 1300 785 277.

Development Information Guides are intended to help applicants to submit applications which are complete, well prepared, and can be processed efficiently. The information provided is intended as a general guide only and applicants are encouraged to refer to Coorong District Council's Development Plan and to seek advice from our staff if necessary.