

What is non-complying development?

A development may be listed as non-complying within Council's Development Plan. This means that the development in question is considered to be an inappropriate form of development within the relevant zone. However, there may be certain circumstances where non-complying development may be assessed as suitable once the merits of the particular application have been considered.

This guide provides useful information on the non-complying development application process.

Before deciding to lodge an application for a non-complying development, it is important that you read the information here carefully and seek the advice of a town planning consultant to determine the likelihood of your application being supported by Council.

What is the non-complying process?

- A non-complying development application process involves the following steps:
- A statement in support of the application must accompany any non-complying development application lodged with the Council. This statement should outline the reasons why you believe Council should proceed to assess the application in question.
- On receipt of your supporting statement Council can decide to assess the application or, alternatively, to refuse the application. You will not be able to appeal a decision of Council to refuse your application.
- If Council decides to proceed with assessing your application, additional information will be required. As a minimum, Council will request that you provide a Statement of Effect.

The Statement of Effect should address the following factors:

1. The nature of the development and the area in which it would be located
2. Development Plan provisions relevant to the assessment and the extent to which your proposal meets these provisions
3. An assessment of the expected social, economic and environmental effects of the proposal on the amenity of the locality
4. Any other information or material that may be relevant and helpful to Council in performing its assessment.

Council will not request a Statement of Effect if it considers the proposal to be of a minor nature or in cases where the development in question could be described (wholly or substantially) as any of the following types:

1. The alteration of a building
2. The construction of a new building which is to be used in association with the use of an existing building and which would facilitate the occupants' better enjoyment of the existing building
3. The division of land where the number of proposed new allotments is equal to or less than the number of existing allotments.

Once all relevant information has been received it is likely that the application will need to be advertised for notification as a Category 3 development. For more information on the public notification process, please refer to Development information guide —Public notification.

Once the public notification process has been completed and the planning officer has completed his/her assessment, the application will be presented to Council's Development Assessment Panel (CDAP) for



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consideration. The CDAP can either resolve to support or refuse the application. If the application is supported, the application will need to be referred to the Development Assessment Commission (DAC) for concurrence. The application cannot be approved without this concurrence.

How long will it take to assess a non-complying application?

Non-complying development applications often take much longer to assess than other development applications. The extended time frame relates to the more rigorous nature of the non-complying assessment process.

The minimum assessment time frame for non-complying development is 18 weeks but this may increase to 22 weeks if the development is for a land division application, or the application also seeks Building Rules Consent.

How much does it cost to submit a non-complying application?

A non-complying development application is the most expensive type of development application you can lodge, attracting an additional lodgement fee together with a concurrence fee.

In addition to the above-mentioned fees, it is also likely that the application will be subject to Category 3 public notification and so there will be an additional fee for advertising.

Your greatest associated expense will probably be the preparation of the supporting documentation, and in particular, the Statement of Effect. The cost to prepare this document can vary significantly and so it is recommended that you source a number of quotes before engaging a planning consultant to prepare this document.

Other useful information

A non-complying development will be assessed by three entities: the planning officer, the CDAP and the DAC. Any of these individuals or bodies may refuse the application, and there are no appeal rights against a negative decision. Lodging a non-complying development application is therefore a high-risk venture.

Furthermore, even if the application is approved, the decision may be overturned by the Environment Resources and Development Court if an appeal is lodged by a third party. Such an appeal could be lodged by an individual who submitted a representation as part of the Category 3 public notification process.

For the reasons outlined above, it is strongly recommended that you seek the advice of a qualified town planning consultant before deciding to lodge a non-complying development application.



City of Port Lincoln