

Non-Complying Development

Who should read this guide?

Anyone who considers that their development proposal has significant merit to be considered by Council even though their proposed development is listed as non-complying.

A non-complying development is development identified as not being appropriate for a particular locality according to the *Adelaide (City) Development Plan*.

Can an application be made when the development is Non-Complying

Yes. If an applicant considers that their proposal has significant merit to be considered by Council (even though their proposed development is listed as non-complying) they may apply for their proposal to be assessed.

The application may then be approved if it has been demonstrated that the proposal is not seriously at variance with the *Development Plan*. Importantly, however, there are no appeal rights for applicants if their application is refused or conditions are imposed.

The Non-Complying Development Application Process

Statement of Support and other information

An application for a non-complying development must include a brief statement in support of the application and other information such as floor plans and elevations. (To find out what information is required, please refer to the relevant Development Information Guide on Council's website.)

If Council considers that the proposal has merit, it may choose to proceed with an assessment of the application.

Importantly, the *Development Act 1993*, allows Council to refuse a proposal for a non-complying development before any assessment is undertaken.

A decision to assess a non-complying application does not imply in any way that the application will ultimately be approved.

Statement of Effect

If Council agrees to assess a non-complying application, a Statement of Effect must be submitted. This statement is required to demonstrate the merits of the proposal as it relates to the relevant planning issues (e.g. the appropriateness of a land use). It must include:

- a description of the nature of the development and the nature of its locality
- a statement about the provisions of the *Development Plan* that 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, economic and environmental effects of the development on its locality
- any other information needed by Council to assess the application. This is information that Council reasonably requires in the circumstances of the particular case and may include other information or material provided by the applicant.

It is essential that the Statement of Effect is of a quality and standard that will help the assessment process. It is therefore expected that, other than in the case of minor applications, the Statement of Effect will be prepared by a professional planner who is qualified to provide an expert interpretation of the *Development Plan*.

Depending on the circumstances, experts in other fields (e.g. heritage conservationists, acoustic engineers and architects) may also have input into the Statement of Effect.

For further information please refer to the relevant Development Information Guide for the type of development being proposed.

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Public Notification

Council must notify the public about the proposal. (Further information about this can be found on the Development Information Guide; 'Public Notification and your Role'.)

Public notification gives the public an opportunity to lodge a written comment about the proposal and an opportunity to be heard in person by Council Assessment Panel when the application is considered.

The applicant is given the opportunity to provide a written response to any public comments received or to amend their application before any report is presented to the Council Assessment Panel.

The applicant also has an opportunity to be heard in person by the Council Assessment Panel when the application is considered.

Application Time

Council will endeavour to process applications as quickly as possible, however experience indicates that at least 12 weeks should be set aside for the application to be processed.

Following the Decision

- Council may refuse the proposal, in which case the applicant has no rights of appeal.
- Council may approve the development, in which:
 - the State Commission Assessment Panel (SCAP) is then required to agree to the decision. This is referred to as 'concurrence'. If the SCAP chooses not to agree, the applicant has no rights of appeal. If the SCAP agrees with Council's decision (provides concurrence), an approval will be issued.
 - The decision is then subject to third party appeal rights at the Environment, Resources and Development Court.

Where the SCAP is the relevant authority, they must seek Council concurrence in the event where the SCAP support a non-complying development.

Further Information

For further information or to discuss your specific requirements, please contact Council's Development Assessment team on **08 8203 7185** or **d.planner@cityofadelaide.com.au**.