



NON COMPLYING DEVELOPMENT

Non complying development is development that has been deemed as being inappropriate and inconsistent with the character desired for a particular area and are not to be encouraged.

The *Mid Murray Council Development Plan* clearly defines the types of development that have been identified as inappropriate within particular zones of Council, 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* 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 of the application or any conditions imposed. It is also pointed out that such applications are handled in a different way to normal applications and involve additional cost and time with no guarantee of gaining an approval.

The *Act* also provides for the relevant authority to refuse the proposal right at the outset if it so desires without even making an assessment of the development.

The process should not therefore be taken lightly. Development Plan policy is based on rigorous examination and acceptance, after extensive consultation with the community, of desired future character and how this is to be achieved.

Procedure for a non complying application.

1. Merit to proceed with assessment

As already stated, the *Development Act* allows the relevant authority to refuse a proposal for non-complying development prior to any assessment being undertaken.

To enable Council to decide on 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 prepare a report and recommendation and the application will be taken to the next available Development Assessment Panel meeting for a decision on whether to proceed with an assessment. See Council's *Information Sheet 30 — Development Assessment Panel* for more information.

If the Panel determines that the application does not have sufficient merit to justify proceeding with an assessment there are no rights of appeal.

In some instances, the Panel may 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* should 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 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.

3. Public Notification and Referrals

Once the statement of effect has been received and the fees for public notification and the required referrals paid, the application is 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 notice 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 in the relevant local paper. See Council's *Information Sheet 8 – Public Notification* for more information.

The most common referral bodies for non-complying applications are the Environment Protection Authority, Department for Environment, Water and Natural Resources and Transport SA. These bodies have between six to eight weeks to provide a response to Council.

4. Council Decision

Once Council has received the comments of the referral agencies and the public notice procedure has been completed, staff will prepare a detailed report and recommendation for the next available Development Assessment Panel 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 decides to support the application it must apply to the Development Assessment Commission for its concurrence before any approval can be issued.

5. Development Assessment Commission

The Development Assessment Commission is a state government planning body, which must concur with Council's support of an application before a non-complying application can be approved.

Once the application has been referred to the Development Assessment Commission to request its 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.

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 on average approximately six months should be set aside for non-complying applications to be assessed.

For further information contact the Environmental Services Section of the Mid Murray Council on 8564 6020.

Information Sheets

Information Sheets are available to help answer many of your Planning enquiries.

We also have many Information Guides available regarding Building and Health Issues.

These Information Guides are available from our Cambrai, Mannum and Morgan offices. You can also see them on our website at www.mid-murray.sa.gov.au



Mid Murray Council

Phone: 8564 6020

Fax: 8569 1931

49 Adelaide Road, Mannum

Main Street, Cambrai

Fourth Street, Morgan

E-mail: postbox@mid-murray.sa.gov.au

Web: www.mid-murray.sa.gov.au

PO Box 28, Mannum SA 5238

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