

# Non-Complying Development



## Introduction

This brochure provides information about what a non-complying development is, and the assessment process for non-complying Development Applications.

## Non-Complying Development

Each Council's Development Plan establishes 'Zones'. Each Zone contains information on the desired character for that area, what type of development is preferred, and criteria that different types of development are assessed against.

A zone may be further broken down into 'Policy Areas', which also contain more detailed policies and criteria for various types of development.

Each Zone will include a list of uses that are classed as "Non-Complying". Non-complying uses are typically types of development that are not encouraged for that area. The lists of non-complying forms of development are typically found at the end of each Zone's Principles of Development Control.

To find out which zone and policy area a property is located in, you may:

- Refer to the Mapping Section contained in the Marion Council Development Plan (available for viewing at [www.planning.sa.gov.au](http://www.planning.sa.gov.au)).
- Refer to the map titled "Marion's Residential Zones and Policy Areas" located on Council's webpage ([www.marion.sa.gov.au](http://www.marion.sa.gov.au), select *Development or Planning & Building*, then *Development Guides and Forms*)
- Contact the City of Marion on 8375 6600

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

Although a certain form of development is listed as non-complying, a Development Application can still be lodged with Council. However, applications for non-complying development follow a different process to other Development Applications and substantial justification for the proposed development must be submitted with the application.

## Lodging an Application

Development Applications for non-complying development must include the following:

- a completed Development Application form
- the relevant fees, comprising a lodgement fee and a planning assessment fee (*Refer to Fee Schedule on Page 3 of the Development Application Form*)
- standard plans, drawings and other information relevant to the proposal (*Refer to separate Information Brochure titled 'Information to be Submitted with an Application' for more detail on information requirements*)
- A brief statement in support of the application.

## Resolving to Proceed

On the basis of the details outlined above, the Council will make a preliminary assessment of the application and will either refuse the application or resolve to proceed with a full assessment of it.

If the application is refused at this stage, the applicant has no right to appeal against the Council's decision and there is no refund of any fees paid.

## Additional Fees and Statement of Effect

If the Council resolves to proceed with a full assessment of the application, the applicant must then submit additional fees and a "Statement of Effect".

The additional fees requiring payment are:-

- Category 3 Public Notification Fee
- Category 3 Notice in The Advertiser
- Non-Complying Development Concurrence Fee
- Referrals to Government Agencies Fee (if applicable) (Please refer to Page 3 of the Development Application Form for the current value of these fees.)

A Statement of Effect must include the following:-

- a description of the nature of the development and the nature of its locality;
- a statement regarding 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;

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- an assessment of the expected social, economic and environmental effects of the development on its locality; and
- Any other information requested by the Council (being any further information that the Council considers necessary to support or detail the proposal).

The applicant may also include any other information or material that they think is necessary to support the proposal.

## Public Notification and Referrals

Upon receiving the additional fees, Statement of Effect and any further information requested, the Council must publicly notify the application according to Category 3 procedures.

*(Please refer to the Information Brochure titled "Public Notification" for detailed information about Category 3 notification.)*

In brief, Category 3 notification involves:

- letters to owners and occupiers of "adjacent land";
- letters to owners and occupiers of land that may be directly affected to a significant degree by the development; and
- An advertisement in "The Messenger" newspaper.

"Adjacent land" is a term that is defined in the Development Act. It includes land that shares a boundary with the site of the proposed development, or certain properties which are directly separated from the development site by features such as a road, railway, watercourse, or reserve.

At this time, the Council will also refer the application to any necessary State Government Agencies, such as Department of Planning, Transport and Infrastructure, Heritage SA or the Environment Protection Authority.

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.

## Planning Assessment

Council's planning staff will then carry out a planning assessment of the Development Application.

An assessment typically involves consideration of the development site and surrounding land, issues such as the proposed appearance, setbacks, carparking, overlooking and overshadowing, and other relevant policies contained in the Council's Development Plan, and any issues raised in representations (i.e. the written submissions by neighbours or other interested persons) and comments from government agencies.

In making an assessment, the 'pros' and 'cons' of an application will be weighed up and, in some cases, a proposed development may receive Council support despite being non-complying and despite not meeting all the relevant Development Plan policies.

Staff will write a report to the Council Assessment Panel (CAP). The CAP will listen to any third party representors that wish to speak further to their written representation, and will provide the applicant a right of reply in these cases. The CAP will then consider the application.

## Making a Decision at CAP

The Council Assessment Panel will do one of three things:

1. Defer a decision if they consider that, for example, further information is necessary or details of the application require clarification/amendment. In this case, Council's planning staff will continue to discuss the application with the applicant before a report is prepared and presented to the Panel at a later meeting.
2. Refuse the development if they think that the application does not warrant support. In this case, Council staff will issue a decision notice to advise the applicant and third parties that the application is refused. The applicant has no right of appeal against a refusal of a non-complying development application.
3. Resolve to support the proposal and seek the concurrence of the State Commission Assessment Panel.

*(Please refer to the Information Brochure titled "Procedures of the City of Marion Council Assessment Panel" for detailed information about the CAP process.)*

## Concurrence

Should Council resolve to support the proposal, the concurrence of the State Commission Assessment Panel (SCAP) - the state planning authority - must also be gained before the decision can be finalised - that is, the

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SCAP must agree with the Council's decision to support the proposal. Council staff will forward all the application details and a copy of the Council Assessment Panel report and decision to the Commission who will then independently reassess the proposal.

If the State Commission Assessment Panel does not concur with the Council's support of the application, the application will be refused. Council staff will issue a decision notice to advise the applicant and third parties. The applicant has no right of appeal against a refusal of a non-complying development application.

## Appeal Rights

If an application for non-complying development is refused at any stage, there is no right of appeal against that decision offered to the applicant.

If an application for non-complying development is granted Development Plan Consent, third party representors (i.e. neighbours and other interested persons who made written submissions about the proposal during the formal consultation period) have a right of appeal against both the decision to grant consent and/or any of the conditions attached to the consent. Therefore, the time within which a third party can appeal a decision must pass before an applicant can act on a decision.

For further information on appeal rights or lodging an appeal, you can contact the Environment Resources and Development Court on 8204 0289.

## Existing Non-Complying Uses

In some limited cases, minor development associated with an existing non-complying use may be treated as a consent use and not processed as a non-complying development. If you consider your proposal may be of this nature, you should discuss your proposed development with a professional town planner who can assist you with an application.

## Other Information

Due to the nature of the information that is required for a non-complying Development Application, it is recommended that you seek professional town planning advice and assistance. You may wish to undertake an internet search via 'Town and Regional Planning'.

## Want to Know More?

The above information is advisory only. It is intended to provide a guide and a general understanding of the key points associated with the particular topic. It is not a substitute for reading the relevant legislation or the Development Plan.

It is recommended that if you are intending to undertake development, you seek professional advice or contact the Council for any specific enquiries or for further assistance concerning the use and development of land.

## Contact Details - City of Marion Development and Regulatory Services Division

245 Sturt Road  
Sturt SA 5047

PO Box 21  
Oaklands Park SA 5046

Telephone (08) 8375 6685  
Facsimile (08) 8375 6899

Website <http://www.marion.sa.gov.au>