

Public Notification



Introduction

This brochure provides information about public notification of Development Applications. Specifically, it provides information on when the Council will notify an application, who the Council will notify, what a person can do if they are interested in a proposed development, what rights do they have, and what will happen with an application that is being publicly notified.

Why does Council publicly notify Development Applications?

Public notification allows people, who are entitled to be notified of a particular application, the opportunity to view the plans and details of a proposal and submit comments to the Council for consideration before a decision is made.

The Development Act and Regulations, and the Council's Development Plan outline when the relevant planning authority (i.e. the Council or the Development Assessment Commission) must notify an application.

Types of Development

Development Applications are assessed against the relevant criteria contained in the Development Act and Regulations, and the Marion Council Development Plan.

Certain types of development do not require Development Plan Consent, and therefore public notification cannot be undertaken. These types of development are prescribed by Schedule 1A and Schedule 4 of the Development Regulations.

An application which requires Development Plan Consent will fall within one of the following categories: Complying, Category 1, Category 2 or Category 3. Only Category 2 and 3 applications are subject to public notification.

Exempt Development

Schedule 3 of the Development Regulations lists certain types of development that does not require Council approval. Examples include:

- Sheds/garages up to 15 square metres in area (subject to conditions)
- Pergolas without a hard roof (subject to conditions)
- Decks no more than 50 centimetres above the ground (subject to conditions)
- Shade sails up to 20 square metres and no higher than 3 metres (with some conditions)
- Fences to 2.1 metres in height (subject to conditions)

Development that does not require Development Plan Consent

Schedule 1A of the Development Regulations lists certain types of residential development which for safety reasons requires Building Consent, but not Development Plan Consent. Examples include:

- Carports, verandahs and shade sails up to 40 square metres (subject to conditions)
- Garages/outbuildings/sheds up to 40 square metres (subject to conditions)
- Swimming pools and spas (subject to conditions)

Complying Development

Schedule 4 of the Development Regulations lists certain types of Complying development. This means that Council must grant Planning Consent (Development Plan Consent) to the proposal.

Complying applications are a 'Category 1' form of development and are therefore exempt from public notification and third-party appeal rights.

Examples include:

- Verandahs/carports up to 60 square metres (subject to conditions)
- Garages/outbuildings/sheds up to 60 square metres (subject to conditions)
- Additions/alterations to an existing dwelling (subject to conditions)
- New detached and semi-detached dwellings, which includes both single storey and two storey dwellings which can feature walls abutting side boundaries (subject to conditions). These new dwellings are also known as "Residential Code" complying development.

Category 1 Development

"Category 1" applications do not require public notification. Typically, Category 1 applications involve:

- Most dwellings in the Residential Zone, whether single storey or two storey
- The alteration of, or addition to, an existing dwelling
- "Minor" development, if Council is of the view that the development will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development
- The construction of (or of any combination of) a carport, garage, shed, pergola, verandah, fence, swimming pool, spa pool or outbuilding if it will be ancillary to a dwelling

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- Certain advertising signs
- Non-residential development located within an appropriate zone, provided that the site is located adjacent to land within the same zone.

Category 2 Development

Typically, Category 2 applications involve:

- A residential building of 2 or more storeys on a battleaxe site
- Demolition of a Local heritage place or State heritage place
- Wall (excluding retaining wall) for residential development which exceeds a length of 8 metres and/or exceeds a height of 3 metres when measured from natural ground level where abutting a side or rear boundary (other than a common wall of semi-detached dwellings, row dwellings or residential flat buildings).
- Retaining wall/s and/or earthworks, other than where assigned Category 1.
- Horse keeping and associated facilities where located within Racecourse Policy Area 15 where the subject property is adjacent a property in a different residential policy area.
- A building of two storeys that contains more than one dwelling (e.g. flat buildings)
- Developments involving two or more dwellings where one or more of those dwellings is two storey (excluding detached, semi-detached and row dwellings of up to two-storeys)
- Certain non-residential development (i.e. commercial, industrial) where the subject land is located adjacent to land within a different zone.

If Council receives an application for Category 2 development, the Council will notify (i.e. send a letter to) all owners and occupiers of "adjacent land" to advise them that an application has been received and invite them to view the plans on Councils' website or our office at 245 Sturt Road, Sturt to make comment.

"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.

Any person notified of the proposed development has ten business days, as stipulated in the application notice, to make comment – in writing – to the Council. Any person who makes written comment to the Council is referred to as a "representor" and their written comments are referred to as their "representation".

Representors on a Category 2 application should nominate on their representation whether they wish to be heard further by the Council in relation to their concerns.

People wanting to make a representation should avoid raising matters that are not relevant to a planning assessment of the application. A planning assessment can only have regard to the relevant provisions of the Development Plan.

Category 3 Development

A proposal will be classed as a Category 3 application if it does not meet the Category 1 or Category 2 criteria.

If Council receives an application for Category 3 development, the Council will notify all owners and occupiers of "adjacent land" and any person that the Council considers may be directly affected to a significant degree. Those persons are invited to view the relevant documentation on Councils' website or our office at 245 Sturt Road, Sturt to make comment.

In addition, an advertisement is also placed in *The Messenger* newspaper regarding all Category 3 applications. This advertisement invites anyone who may have an interest in the proposed development to view the plans and make comment.

Any person interested in the proposed development has ten business days, as stipulated in the application notice, to make comment – in writing – to the Council. Any person who makes written comment to the Council is referred to as a "representor" and their written comments are referred to as their "representation".

Representors on a Category 3 application should nominate on their representation whether they wish to be heard further by the Council in relation to their concerns.

People wanting to make a representation should avoid raising matters that are not relevant to a planning assessment of the application. A planning assessment can only have regard to the relevant provisions of the Development Plan.

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Applicant's Right of Reply

Following public notification of an application, the applicant is given the opportunity to respond, in writing, to the representations received and, in some cases, may provide further information or amend the application to address some of the comments that have been made in the representations.

The applicant has ten business days to respond to representations, although an applicant may choose to respond quicker or may request more time to respond.

Council staff will then consider the representor's comments and the applicant's response and may, if necessary, request further information or changes to a proposal.

Hearing Representors

Where representors concerns are not or cannot be resolved, applications with representations will be presented to the Council Assessment Panel (CAP) for a decision.

All representors will be advised of the time and place of the CAP meeting when the application is to be considered and determined. Representors who indicated on their representation that they wished to be heard further are also given the opportunity to make a short (5 minute maximum) verbal presentation to the CAP. The applicant will also be given the opportunity to address the Panel, to reply to any new issues or concerns raised by representors in their presentations.

After hearing representors and the applicant, the CAP will discuss the application and determine whether to approve the proposal with conditions or refuse it.

Appeals

An applicant or representor may in some cases lodge an appeal with the Environment, Resources and Development (ERD) Court if they are not satisfied with a decision of Council.

An applicant can appeal a decision to refuse an application. The exception to this is in the case of non-complying development where an applicant has no right of appeal.

Representors can appeal a decision by a planning authority in relation to Category 3 applications. No right of appeal exists for representors in relation to Category 2 development applications.

Representors must lodge an appeal within 15 business days of the date of a decision if they are dissatisfied with the decision. An applicant must lodge an appeal within 2 months of the date of the decision if dissatisfied with the decision.

The ERD Court may uphold/confirm or overturn the planning authority's decision. Further information on appeal rights may be obtained by contacting the Environment, Resources and Development Court on 8204 0300.

Additional Costs

When an application is made for Category 2 or 3 development, the applicant must pay public notification fees in addition to other application fees. A Fee Schedule, outlining these additional fees, can be found on the reverse side of Council's Development Application Form.

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 Department

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Oaklands Park SA 5046

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