

Representation

Frequently Asked Questions



Why was I notified of this development application?

The Development Act and Regulations and the Council's Development Plan outline when a Council must notify an application.

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.

An application will fall into one of three categories of public notification – Category 1, Category 2 or Category 3.

Category 1 developments do not require (and Council cannot undertake) any public notification.

If you have received a letter advising you of a proposal, it therefore must be either Category 2 or 3. Whether the proposal is Category 2 or 3 will be clearly marked in your correspondence.

I have been notified of a category 2 or 3 development. Is it compulsory to complete and return the form?

No. If you do not have any concerns, you do not need to respond to Council.

What is the difference between Category 2 and Category 3 developments?

If Council receives an application for Category 2 development, the Council will send a letter to (i.e. the Council will notify) all owners and occupiers of "adjacent land" to advise them that an application has been received and invite them to view the plans and make comment.

With respect to Category 3 developments, in addition to the above, a notification will be placed in Coast City Weekly newspaper. This ad invites anyone who may have an interest in the proposed development to view the plans and make comment.

Representors with respect to Category 3 developments also have a right to appeal the decision of Council to the Environment Resources and Development Court if they are aggrieved by the decision. There is no right of appeal with respect to Category 2 developments.

Why haven't any plans been included in my letter?

Plans relating to Category 2 or 3 applications that are currently on public notification are available for viewing on Council's website at:

www.marion.sa.gov.au/public-notifications

You are also welcome to come to the "Planning and Building" counter at Council's Administration Centre to view the full set of plans and speak to one of the staff who can advise you further on the nature of the proposal. The Administration Centre is located at 245 Sturt Road, Sturt and open weekdays 8.30am to 5.00pm.

Alternatively, you can speak to one of our friendly staff on 8375 6600 during normal business hours.

I have been notified of a development on the opposite side of the road that I have little interest in. However, I was not notified of the development next door, which is of more concern to me. Why?

It is probable that the development next door to you was a Category 1 form of development and therefore exempt from public notification, whereas the notice you have just received relates to a form of development where public notification is required.

It is common for quite substantial buildings to be exempt from public notification and relatively minor structures to require public notification. Often a form of development, which an applicant can construct "as of right" in a particular zone or policy area will be exempt from public notification for this very reason.

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I intend to lodge a representation opposed to the development. What happens next?

You must make your written comment (representation) to Council within ten (10) business days from the date of the letter sent to you. Your representation will be forwarded to the applicant, who is then given a right to respond.

In some cases, the applicant may amend the proposal or address some of the comments you have made. Your representation cannot be confidential and must be forwarded to the applicant for a response.

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

The application may be referred to the Council Assessment Panel for a decision. If so, all representors will be advised of the time and place of the CAP meeting when the application is to be considered.

Representors (or a third party on their behalf) can make a verbal (5-minute maximum) presentation to the Council Assessment Panel. The applicant will also be given the opportunity to address the Panel, to reply to any new issues or concerns raised by the representors in their presentations.

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

Once the Panel makes a decision on the proposal, you will be notified by Council of the decision in writing and (if approved) any conditions associated with the approval.

My neighbour was not notified of the proposal. Why were they not notified?
Can they lodge a representation as well?

Your neighbour would not have been notified, as they must not satisfy the criteria for "adjacent land".

"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.

If your neighbour was not notified of the proposed development and it is a Category 2 form of development, they cannot lodge a valid representation.

However, if it is a Category 3 form of development, anyone who can demonstrate that the proposal might affect them can lodge a representation within the notification period.

I oppose the development. Should I get all the neighbours to sign a representation form as well?

The decision of the Council Assessment Panel will not be based on how many representations are received, rather, the merits of the application having regard to the provisions of the Development Plan.

Some applications with no representations are refused and some with a large number of representations are approved.

Can I contact the applicant to discuss my concerns first hand?

You are welcome to contact the applicant personally to discuss your concerns. Sometimes applicants will modify a proposal to address a neighbour's concern. At the very least, they would be aware of your concerns first hand, rather than receiving notification direct from the Council.

This application clearly does not meet all the provisions of the Development Plan. Does this not mean it will automatically be refused?

No. Many applications (if not most) will not meet various provisions of the Development Plan. The Development Plan is a guideline not a prescriptive requirement that must be met.

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The relevant delegate of Council (either Planning staff or the Council Assessment Panel) are required to determine whether the proposal is “on balance” worthy of Development Plan Consent.

The development application will only be refused where Council finds the development either, “seriously at variance” with the Development Plan or, “at variance” with the Development Plan of a magnitude such as to warrant refusal.

What kind of issues can I raise in my representation?

You 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.

As an example, matters associated with dividing fences or noise/disruption during the construction process are not relevant planning considerations and lie outside the jurisdiction of Council’s planning assessment. Council’s administration staff can provide you with a brochure that outlines your rights, obligations and entitlements in regards to dividing fences.

Property values are also not relevant to the planning assessment of an application.

Matters which are relevant include (but are not limited to) loss of privacy, overshadowing, visual impact, and streetscape impacts.

You are not expected to understand the planning process or make a planning assessment. Please outline your concerns as you find them and Council staff can determine their relevance during the assessment of the application.

I do not understand the process - who can help me lodge a representation?

Whilst Council staff can assist you by providing you with information, they cannot help you directly with your representation.

Elected Members who do not sit on the Council Assessment Panel may be able to assist you.

Otherwise, you can seek outside assistance of your own accord.

Will my representation change the outcome?

As mentioned previously, the Council Assessment Panel will confine its deliberations to the merits of the proposal having regard to the relevant provisions of Council’s Development Plan. Whilst your representation will be considered, it may or may not change the decision of the Panel.

Can I lodge my representation after the public notification period has closed?

No. Council must have received the representation before the closure of the notification period for it to be considered a valid representation.

I am going overseas shortly after the notification process is completed. Can the decision on the application be deferred until I return?

No. Council has an obligation to meet statutory timeframes and accordingly will not defer the deliberation of an application until you return. If you are away, you can send a proxy to speak on your behalf at the Council Assessment Panel meeting.

What is the Council Assessment Panel?

The Council Assessment Panel is the determining body to make decisions on designated development applications delegated to it by Council.

The Panel operates with five members comprising one (1) Elected Member and four (4) independent members from the community with relevant expertise in development assessment matters.

The Panel is scheduled to meet twice per month on an ‘as needs’ basis, if there are sufficient items to warrant an agenda being prepared.

For further information of the CAP see our separate information brochure on *CAP Procedures*.

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Can I approach the members of the Council Assessment Panel to discuss my concerns?

No. The members of the Council Assessment Panel cannot speak to you before the Panel meeting. As mentioned previously, you are more than welcome to approach Elected Members who do not sit on the Panel to discuss your concerns.

What if I don't like the decision the Council Assessment Panel makes? Can I appeal?

If the application was a Category 2 form of development and the application is approved, you have no right of appeal to the Environment Resources and Development Court.

However, if the application is a Category 3 form of development, you do have a right of appeal and will be notified of the appeal process when Council sends you the decision.

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. You are welcome to contact us for more information via the contact details below.

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