

Non-Complying Development

WHAT IS NON-COMPLYING DEVELOPMENT?

The Mount Gambier (City) Development Plan divides all land within the Council area into particular zones and lists the types of development which are either complying or non-complying in that zone.

If your intended land use falls into the category of non-complying development, it will usually be inappropriate in that locality. For example, agricultural uses are non-complying within a residential zone.

CAN AN APPLICATION BE MADE FOR NON-COMPLYING DEVELOPMENT?

You may lodge a Development Application for a non-complying development with Council; however, there is a specific non-complying development process which may involve some cost and time, with no guarantee of gaining approval. It is important to be aware that as an Applicant you have no rights of appeal if consent is not granted.

THE NON-COMPLYING DEVELOPMENT APPLICATION

You need to lodge a Development Application to Council in the normal matter. In addition to the Development Application information normally required, you will be required to submit a statement giving detailed reasons as to why the proposed non-complying development has merit and should proceed. It may be useful to engage a planning consultant who has expertise in development assessment and the non-complying process.

Your statement (known as a Statement of Merit) should consider and provide the following information:

- why the proposed land use is acceptable when considered against all relevant provisions of the Development Plan;
- why the proposed land use will not undermine the objectives of the zone;
- why the proposed land use is more appropriate than an existing development on the site and will assist in gradually achieving the provisions of the Development Plan;
- why the proposed land use will not be a significant variation from the provisions of the Development Plan.

The Statement of Merit should reflect the relevant provisions contained within Council's Development Plan and is to be more than a letter stating why the non-complying use is sought.

THE NON-COMPLYING ASSESSMENT PROCESS - WHO MAKES THE DECISION?

The Development Application is lodged with Council and a preliminary assessment of the proposal is undertaken.

The Council Assessment Panel (CAP) makes a decision to either refuse the application or proceed to the next stage of the assessment process. (Please note: If the CAP refuses the application at this point the applicant has no appeal rights).

Should the CAP recommend the proposal proceed to the next stage of the assessment process, a Statement of Effect must be provided by the applicant. The Statement of Effect must include all of the matters detailed under Section 17 (5) of the *Development Regulations 2008*, which are as follows:

- a description of the nature of the development and the nature of its locality;
- 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 specified by the relevant authority when it resolves to proceed with an assessment of the application (being information which the relevant authority reasonably requires in the circumstances of the particular case); and may include such information or material as the applicant thinks fit.

Once this information has been received, the application will proceed to the next stage of the assessment process, in accordance with the statutory requirements relating to the non-complying development.

Upon receipt of the Statement of Effect, Category 3 public notification of the proposal is undertaken.

After a detailed assessment of the proposal is undertaken, a final planning assessment report is prepared and the Development Application is then forwarded to the CAP for a decision to be made.

If the CAP resolves to refuse the application, the Development Application will be refused Development Plan Consent. (Please note: If the CAP refuses the application at this point the applicant has no appeal rights).

If the CAP resolves to grant Development Plan Consent, concurrence of the Development Assessment Commission (DAC) must be obtained. There are no

assurances that the DAC will provide concurrence if the application is at variance to Council's Development Plan.

If the DAC resolves to not grant concurrence with the CAP's decision, the Development Application will be refused Development Plan Consent. (Please note: If the DAC refuses to grant concurrence at this point the applicant has no appeal rights).

If the DAC resolves to grant concurrence with the CAP's decision, the Development Application will be granted Development Plan Consent.

The information contained here is a guide only. It is recommended that the advice and assistance of the Development Services Division be sought before undertaking any development.

Please contact the Operational Services with any other queries (08) 8721 2555.

