

Fact Sheet

Development Information Guide

Non-Complying Development

The Barossa Council Development Plan outlines the types of development that have generally been identified as inappropriate (non-complying) within different zones.

Non-complying development is development that has been deemed as being unlikely to contribute to the attainment of the desired future character of a locality.

Can an application be made for a non-complying development?

Yes. An applicant may feel that a proposal has significant merit to be considered by Council even though it is listed as non-complying. The Development Act allows for the assessment of non-complying 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.

Procedure for a non-complying application

Applications for non-complying development should include a brief statement in support of the application in addition to other application information such as floor plans and elevations. In instances where the proposal has merit, Council may determine that it wishes to proceed with an assessment of the application.

The Development Act, however, allows Council to refuse the proposal for non-complying development prior to any assessment being undertaken. A decision to proceed to assess a non-complying application does not imply in any way that the application will ultimately gain approval.

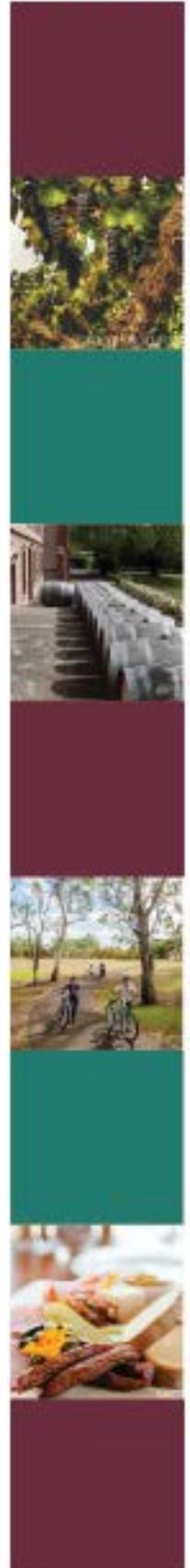
Statement of effect

If Council agrees to process a non-complying application, a Statement of Effect must be submitted. The Statement of Effect should demonstrate the merits of the proposal relating to the relevant planning issues (e.g. the appropriateness of a land use or urban design elements).

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, economic and environmental effects of the development on its locality; and
- 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).

The Statement of Effect may include other information or material the applicant thinks fit.



It is essential that the Statement of Effect is of a quality and standard that assists in the assessment process.

Non-complying applications are in the nature of 'spot rezoning' and assessment is not a straightforward matter. It is therefore expected that, other than in the case of minor applications, the Statement of Effect will be prepared by a professional planner who is qualified to provide an expert interpretation of the Development Plan. Depending on the circumstances, experts in other fields (eg. heritage conservation, acoustic engineering, and architecture) may also be required to have input into the Statement of Effect.

Public notification

Council must publicly notify the proposal in accordance with the legislative requirements of the Development Act 1993. Refer to The Barossa Council's Public Notification Development (Category 3 Development) Information Guide).

Through the public notification process, third parties have the opportunity to lodge a written representation about the proposal as well as have the opportunity to be heard personally before Council's Development Assessment Panel when the application is considered.

The applicant is also given the opportunity to provide a written response to any representation received or amend their application prior to any report being presented to Council's Development Assessment Panel.

The applicant also has an opportunity to make a verbal submission to Council's Development Assessment Panel when the application is considered.

How long will this take?

The time taken to process a non-complying application depends on a number of factors. Council aims to deal with applications as quickly as possible. However, experience indicates that at least 12 weeks should be set aside for the application to be processed.

What next?

There are three possible outcomes for a non-complying development:

- the Council may refuse the proposal in which case the applicant has no rights of appeal;
- the Council may resolve to approve the development. The State Government-appointed Development Assessment Commission is then required to provide its concurrence on the decision. It may choose not to concur, in which case the application is refused and the applicant has no right of appeal; or
- the Development Assessment Commission may concur with Councils' decision, in which case an approval will be issued. The decision is subject to third party appeal rights to the Environment, Resources and Development Court.

Further information

Further information can be obtained from the web www.barossa.sa.gov.au or by contacting the Council's Development and Environmental Services Section.