

# Development Information Sheet 05

## Non-Complying Development

### What is a Non-Complying Development?

'Non-Complying' forms of development are listed in the Development Plan and are land uses which are not envisaged or encouraged within a particular area. These uses will generally be inconsistent with the objectives and principles of the zone or Policy Area that they are in, for example industrial developments in a Residential Zone or a high rise building in a Residential Character Zone.

Non-Complying development is not usually approved unless it is a special circumstance.

It is recommended that applicants refer to the Development Plan before making an application. The Development Plan is available for viewing at Council's website <http://www.walkerville.sa.gov.au/>

### Can I submit an application for a Non-Complying form of development?

Yes. The lodgement of a Non-Complying Development Application incurs a number of additional fees. You are encouraged to seek advice from a qualified planning consultant before preparing your application.

### What process will my Non-Complying application follow?

The assessment process for a Non-Complying Development Application is rigorous and involves a number of steps.

#### Step 1 – Lodging your application with a Statement of Support

The first step is to submit a Development Application (an "application") with a brief Statement of Support. The Statement of Support should outline the reasons why you believe the proposed development should be considered by Council even though it is listed as a Non-Complying development.

From this, Council will decide to either refuse the application or proceed with a full assessment. If the application is refused at this time the applicant has no right of appeal against the decision. An application proceeding to a full assessment has no guarantee that it will be approved.

#### Step 2 – Proceeding to assessment with a Statement of Effect

If the Council agrees to proceed with full assessment of the application, a report called a Statement of Effect must be submitted. The Statement of Effect must address how the proposal addresses all the relevant provisions and objectives of the Development Plan. Specific requirements are outlined in Regulation 17(5) of the *Development Regulations 2008*.

This is a complex document and it is strongly recommended that you engage the services of a planning consultant to prepare the Statement of Effect on your behalf.

During the assessment process, the application may require public notification.

The application will be assessed on its merits against the provisions and objectives of the relevant Development Plan and a report subsequently prepared.

#### Step 3 – Decision; approval or refusal

The application will be considered at the Town of Walkerville Council Assessment Panel meeting, where a decision will be made to either support or refuse the application.

If the Council refuses the application, the applicant has no right to appeal the decision.

If the Council supports the application, then the Development Assessment Commission, the state planning authority, must also make a decision on the development. There is no guarantee that the Development Assessment Commission will agree with Council's recommendation.

#### Step 4 – Concurrence from the Development Assessment Commission

If given support by Council administration and the Council Assessment Panel, the decision is forwarded to the Development Assessment Commission for concurrence.

If the Development Assessment Commission does not provide concurrence with the decision of the Development Assessment Panel, the application will be refused.

If the Development Assessment Commission concurs with the decision of the Development Assessment Panel, the application will be granted Development Plan Consent in the first instance.

### **How long does it take to get a decision?**

A minimum of twelve weeks should be set aside for the assessment by Council of a Non-Complying Development Application.

PLEASE NOTE: The Development Assessment Commission may take an additional ten weeks to issue its concurrence in some circumstances.

### **Can I appeal the decision if my application gets refused?**

The applicant has no right of appeal on Non-Complying applications.

Third parties (arising from public notification) may have appeal rights in some instances. These are defined by the *Development Regulations 2008*.

Development Information Guides are intended to help applicants to submit applications which are complete, well prepared, and can be processed efficiently. The information provided is intended as a general guide only and applicants are encouraged to refer to the Town of Walkerville Development Plan and to seek professional advice if necessary. This information is subject to frequent updates. This version last updated in January 2018.

Access the Development Plan and current versions of information guides at <http://www.walkerville.sa.gov.au/>

**Should you have any further enquiries or wish to discuss this process, please do not hesitate to contact the Planning and Environment team via:**

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