



NON COMPLYING DEVELOPMENT

What is non-complying development?

Types of non-complying development are listed in the City of Holdfast Bay's Development Plan. Such development has been judged inappropriate and inconsistent with the character desired for that area in the plan and therefore generally couldn't be supported by the Council. An obvious example is the establishment of industry within a residential area.

Is it possible to make an application for a non-complying development?

You may feel that your proposal has substantial merit even though it is listed in the Development Plan as non-complying. If this is the case you are able to make a formal application to the relevant authority (in most instances the City of Holdfast Bay), which must then decide whether it wishes to undertake an assessment. These applications are handled differently to normal applications and involve additional cost and time with no guarantee of obtaining consent.

Under the Development Act, the relevant authority can refuse the proposal at the outset without even assessing the development. Therefore, the assessment process should not be taken lightly. Development Plan policy is based on rigorous examination and acceptance of the desired future character of the area and how this character is to be achieved.

Who makes the decision?

In the decision making process a number of authorities are involved. No single planning authority can act alone in issuing an approval for non-complying development. If Council is the relevant authority and is willing to approve a use then it must seek the concurrence of the Development Assessment Commission for that consent to become effective. If the Commission is the relevant authority it must seek concurrence from Council and the Minister for that consent to become effective.

Although there are no time limits imposed, the whole process may take 22 weeks to complete once Council (or the Commission) has decided it is willing to assess it.

What do you need to do?

- Prove to the relevant authority that your proposal has substantial merit, including a brief statement setting out logical reasons why the development should be supported despite its non-complying nature.

Without this statement, the application cannot go any further.

- On the basis of the statement, Council can either accept and process the application or refuse it.

There are no rights of appeal available for you to challenge Council's decision.

- If Council decides to assess your application, you will be asked to supply a detailed 'statement of effect' before anything else happens.

At this stage you must be aware that a decision to assess your application does not imply intent to approve the development.

- **Your statement of effect must describe and address the following:**
 1. The nature of the development and the area in which it is located;
 2. The Development Plan provisions relevant to assessing the proposal;
 3. The extent to which the proposal complies with those provisions;
 4. An assessment of the expected social, economic and environmental effects of the proposal on the locality; and
 5. Any other information or material that may be relevant and helpful to Council in its assessment.

What happens to the application?

Once the above information is received Council must give public notification of the proposal as a Category 3 development stating that the proposal is non-complying.

Other people have the opportunity to make written representation and be heard by the Development Assessment Panel. As the applicant you will also have the right to respond both in writing and personally.

The application may need to be referred formally to government agencies for their consideration and for them to provide a report.

Before making a decision legally Council must obtain planning advice from a qualified person (generally a qualified professional planner) and consider that advice.

The advice has to provide an assessment of the proposal and comments on the statement of effect and whether any representations received are consistent with the objectives of the Development Plan.

What happens when a decision is made?

As the applicant you have no rights of appeal to the Environment, Resources and Development Court. As non-complying uses are very strongly discouraged, decisions maintaining the status quo of the Development Plan are protected from legal challenge.

However, if your proposal is approved other people involved (third parties) can appeal if they dislike the approval or the conditions attached to it. As an approval is disrupting the status quo of the Development Plan, they are given the opportunity to challenge the merit of the decision in court.

Want to know more?

The above information is advisory and a guide only to give you a general understanding of the key points associated with the approval system. It is recommended that you seek professional advice or contact the City of Holdfast Bay regarding any specific inquiries or for further assistance concerning the use and development of land. Being properly prepared can save you time and money in the long run.

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