

Development Assessment Process & Public Notification

Information Sheet 02

What is development assessment?

Development approval is required prior to the commencement of work on new buildings and structures, alterations to or demolition of existing buildings, or changes in land use. The development assessment process allows Council to assess a proposal against relevant guidelines to ensure that the development is consistent with the expectations of Council and the community, and to ensure that the method of construction meets current standards.

Development Approval is typically made up to two separate consents:

- Development Plan Consent, which determines whether or not a proposed development is sufficiently consistent with the relevant provisions of Council's Development Plan or with specific development types prescribed in the Development Regulations 2008. Each of the provisions of the Development Plan will have a different weighting (or relevance) according to the nature of the proposal and the potential impacts that it may have.
- Building Rules Consent, which determines whether or not the proposal satisfies technical building requirements and will be structurally sound if built in accordance with the approved plans. Assessment is made against the Building Code of Australia and/or the South Australian Housing Code.

An additional consent type is Land Division Consent, which applies only to applications involving the division of land and is determined by the Development Assessment Commission. Land division applications also require Development Plan Consent, which is determined by Council prior to development approval being issued.

An application may be made for Development Plan Consent only, which means that the final construction details and working drawings required for building rules consent can be deferred until such time as consent is granted.

How long does an assessment take?

The time frame for assessment of an application commences from the lodgement date, but does not include the time that passes when additional information or fees have been requested by Council.

While there are time limits specified in the legislation within which decisions should be made, an application is not automatically approved (or refused) at the end of these periods. The prescribed time frames for the planning assessment of an application are:

- Consent (On Merit): 8 weeks
- Complying: 2 weeks
- Development Plan Consent Not Applicable: 1 week
- Land Division Applications: 12 weeks

Where an application is referred to a Government Agency, then the time frame is extended by an additional 6 to 8 weeks. An additional 4 weeks is also prescribed for Building Rules Consent.

Who decides my application?

In most instances, Council is the relevant authority for the assessment of applications for Development Plan Consent. Council's Elected Members are not, however, empowered to make planning decisions. This ability is delegated to Council officers and to Council's Development Assessment Panel (DAP). The DAP is comprised of Council's Elected Members and Independent Members with relevant expertise. In some cases, the State Government's Development Assessment Commission is the relevant authority.

Most applications are assessed and determined by Council officers under delegation. Some applications are determined by the Council's Development Assessment Panel (DAP) after assessment by staff.

Building Rules assessment may be undertaken by Council or a Private Certifier. Upon receipt of the Building Rules Consent from a Private Certifier, the approved documentation is required to be presented to Council. Council will then issue the Full Development Approval.



What happens during the assessment process?

Classification of Development Type

The assessment process can involve a number of different steps, depending on the nature of the application and the zoning of the land on which it is proposed. Initially, the proposal is determined to be one of the following types of application:

- **Consent (On Merit):** if the proposed development is neither complying nor non-complying, it is individually assessed on merit against the relevant provisions of the Development Plan. If generally consistent with these provisions, then consent is granted.
- **Complying:** if the proposed development meets the criteria specified in the Development Plan or Schedule 4 of the Development Regulations 2008, then Development Plan Consent must be granted.
- **Development Plan Consent Not Applicable (Schedule 1A):** if the proposed development satisfies the criteria listed in Schedule 1A of the Development Regulations 2008, then only a Building Rules Consent is required. An assessment of the proposal to confirm consistency with Schedule 1A is still required to be undertaken prior to development approval being issued.
- **Non-complying:** if the proposed development is listed in the relevant zone within the Development Plan as a non-complying type of development, then it may be refused without detailed assessment. Alternatively, Council may resolve to proceed with an assessment of the proposal. If it is determined that the proposal is sufficiently consistent with the Development Plan (despite being identified as non-complying), then Council must seek the concurrence of the State's Development Assessment Commission prior to granting Development Plan Consent.

Referrals, Notification and Independent Advice

In addition to consideration against the Development Plan, the assessment process may include:

- Referrals to external government agencies, such as the Department of Transport, Planning and Infrastructure. Advice from such agencies can directly influence the outcome of an application.
- Public notification, which allows neighbouring property owners or occupiers an opportunity to view the proposal details and make comment on the application. These comments, and the applicant's response, are then factored into the final decision.
- Advice from Council departments, such as the Infrastructure and Environment Department or the Eastern Health Authority. Advice from these departments assists in ensuring that all relevant matters are considered during the assessment process.
- Advice from independent expert advisers, for matters such as traffic generation, parking demand and heritage impacts.

Decision and Appeal Rights

The assessment process doesn't always end with Council's decision. If an application is refused, the applicant usually has a right to appeal to the Environment Resources and Development Court against that decision. If the application is approved subject to conditions, then the applicant may appeal against one or more of the conditions that were imposed on the consent.

In some instances, third parties who have lodged objections to development applications will also have appeal rights against a decision to grant consent.

After consideration of the evidence provided and the relevant provisions of the Development Plan, the Court may decide to uphold or overturn Council's decision.

For further information:

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What is the purpose of public notification?

The public notification process allows owners and/or occupiers of land in the vicinity (or in the broader community in the case of a Category 3 development) who would possibly be affected by the proposal an opportunity to comment on the proposal. Council is then able to take these comments into consideration when assessing the application.

Before making a decision on some types of development proposals, the planning authority may be obliged to give public notification of the application so that people likely to be affected by the development have an opportunity to comment.

The Development Act, Development Regulations and Council's Development Plan describe under which conditions people are afforded this opportunity.

How does notification occur?

How the public is notified will depend on the Category of development.

A **Category 1** development is exempt from public notification. As such, Council does not undertake consultation

A **Category 2** development only involves Council giving written notice to owners or occupiers of land adjacent to the site of the proposed development. The notice advises of the nature of the proposed development, where the proposal plans can be inspected and by what date comments must be submitted. No additional consultation is undertaken.

A **Category 3** development involves Council giving written notice to owners or occupiers of land adjacent to the site of the proposed development, and to other owners/occupiers within the locality that may be impacted on by the proposal. A notice informing the wider community is also published in the local Messenger newspaper.

The costs associated with notification are borne by the applicant and are additional to the other lodgement and assessment fees.

Which applications require notification?

Whether or not notification is required can depend on the nature, size and location of development. There are three categories of notification:

Category 1

This form of development is exempt from any requirement for public notification and no community consultation occurs. Depending on the zoning of the land, Category 1 proposals typically include:

- Detached dwellings and dwelling additions
- Single-storey or two-storey dwellings
- Minor development that will not unreasonably impact on adjoining properties, such as sheds, carports and verandahs.

Category 2

Owners or occupiers of adjacent land must be notified. Development in this category may include:

- Domestic outbuildings situated within prescribed distances of boundaries.
- Two storey residential flat buildings (within residential zones).
- Two storey group dwellings.
- Some retail, commercial and industrial development where the site of the proposed development is adjacent to a different zone.

Category 3

Category 3 development includes all development not listed in either of Categories 1 or 2. It mainly covers a range of commercial and industrial uses although some types of residential development can trigger the process. Virtually all non-complying development is Category 3 development.

Uncategorised

Some types of development, such as the demolition of an existing building, have not been categorised for the purpose of public notification. As such, no community consultation occurs.



Can I make a representation to Council?

Any person who has been notified of an application, either by letter from Council or through the publication of a notice in the local paper, is able to make a representation to Council.

A representation must provide your name and address details, the reasons why you object to (or support) the proposed development, and whether you wish to be heard in person by Council's Development Assessment Panel in support of your representation.

What happens to my representation?

All representations received are provided to the applicant, who has an opportunity to respond to the issues raised. Sometimes the comments received result in changes being made to the proposal to address the concerns raised.

In its assessment of an application, Council has regard to the matters raised in representations and the applicant's response. In the event that the application proceeds to a Development Assessment Panel (DAP) meeting, then the DAP is provided with copies of all representations and the applicant's response.

Can I be heard by the Development Assessment Panel (DAP)?

If you make a valid representation to Council in respect of a Category 2 or 3 development and have indicated that you wish to appear before the DAP in support of your representation, then you will be invited to do so.

If one or more of the representors have indicated they wish to appear before the DAP, then the applicant will also be invited to be heard.

What happens if I appear before the DAP?

On attendance at the meeting, you (as well as other representors and the applicant) will be given five minutes in which to highlight the key points of your submission. The DAP members may then ask questions of you to clarify any issues.

Can I challenge the decision of the DAP?

In the case of Category 3 developments, you have right of appeal to the Environment, Resources and Development Court if you have lodged a valid representation. Any appeal must be lodged with the Court within 15 business days from the date of the decision.

There are no third party appeal rights in the case of Category 2 developments.

The applicant can appeal against the DAP's decision in all cases, except where the application was determined to be a non-complying development. Representors may apply to the Court to join Council in defending the DAP's decision.

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