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# DEVELOPMENT INFORMATION GUIDE

## Non-Complying Development



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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. Council's Development Plan identifies development that is classified as non-complying for each relevant zone.

### 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 assessment of non-complying development 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.

The Development Act also allows the relevant authority to refuse a proposal for non-complying development prior to any assessment being undertaken, if it is determined the application has no merit. In some instances, the Council may continue to assess the application.

**A decision to process a non-complying application does not imply in any way that the application will ultimately gain approval.**

### Statement of Effect

A Statement of Effect must be lodged with an application for a non-complying development. The Statement of Effect should demonstrate the merits of the proposal relating to the relevant planning issues.

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, environmental and economic effects of the development on its locality; and
- Any other information specified by the relevant authority when it resolves to proceed with the assessment of the application.

### Procedure for a Non-Complying Application

If Council agrees to assess a non-complying application, Council must publicly notify the proposal in accordance with the legislative requirements of the Development Act. Non-complying developments are Category 3 developments and require full public notification. Furthermore, non-complying applications require the concurrence of the Development Assessment Commission.

### The Decision

There are three possible outcomes for non-complying development:

- The Council may refuse the proposal, in which case the applicant has no appeal rights.
- The Council may resolve to approve the development. The Development Assessment Commission (DAC) 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.
- Alternatively, the DAC may concur with Council's decision, in which case an approval will be issued. The decision is subject to third party appeal rights to the Environment, Resources and Development (ERD) Court.