

Information Sheet

CHANGE OF USE OF LAND

what is a change of use of land ?

The term 'development' has a broad definition given to it by the Development Act 1993, and expressly includes a '*change in the use of land*', which implies that when someone makes a change from one land use to another form of land use on a property then that person has undertaken 'development' within the meaning of the definition. Planning authorities are required to form an opinion as to whether a particular land use constitutes a change of land use or not. If it is of this view, then an approval is required before that use can be lawfully undertaken.

But, what does 'change of use of land' actually mean?

The Act, again, provides direction on this. Section 6 of the Act deals with the '*Concept of change in the use of land*' and explains that a change of land use occurs when that use:

- * supersedes a previous use of the land
- * represents a commencement or revival of a use following a period of non-use, or
- * is additional to an existing established use of the land which continues despite the new use

The Courts have over the years determined that no single factor is necessarily decisive in resolving whether a change of use has taken place, the matter being one of fact and degree. There are no hard and fast rules and many factors have to be considered. One important factor is whether the essential nature or character of the existing use, or its purpose, and the new use are distinctly different and not incidental to each other. If so, then that would represent a change in the use of the land.

A crucial point to also bear in mind regarding this concept is that it relates to both a land use activity carried out on the land and the use to which a building itself is put. If a new development involves both a change in the use of the land and the construction (or adaption) of a building in accord with the new use, then one application to the planning authority can cover both elements.

Significantly, if a land use has not been operative due to closure, vacancy or inactivity for an extended period of time, then the Act makes clear that that use has been discontinued and therefore terminated. The site therefore has no legal existing use rights and the former use cannot be resurrected without new Development Approval from Council's Development Assessment Panel.

when does a change of use occur ?

Often, determining whether a change of use of land has occurred or not is a straightforward commonsense matter, eg when an existing dwelling is proposed to be converted to an office or to flats, when a domestic outbuilding is to be used for commercial storage, despite the presence of a dwelling also on the site, when a shop is going to be used to manufacture a product and thereby becomes an industrial use, the number or the size/location of signs on a site is to be altered, or professional office space is changed into retail shop premises.

But, occasionally, the differentiation is more subtle and less obvious, particularly when changing from one form of commercial or retail activity to another is involved. For example, relacing a butcher shop with a newsagency would not change the primary use of the land, as both are classed as a shop, but a change in the intensity of use such as a butcher shop being converted to a restaurant will be classed as a change of use for which Development Approval is needed.

It is important that before entering into any arrangement or setting up a new activity on a property to check first with the Council planning officers and discuss what is proposed to take place to clarify whether a Development Approval will be needed.

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Please note that Building Consent may also be required, particularly if there are to be additions or internal alterations made to a building or if the changes being made to a building are such that a different building classification is assigned.

what about rural land uses ?

The concept of change of use applies also to rural land uses. Primary production covers a diverse range of farming activities and cropping and of animal husbandry, and the mix of these can change periodically to reflect growing cycles, the markets, and the climate. Such a dynamic state of variation does not fit neatly into a planning system based on a concept of a clearly defined 'static' land use. Generally, most of these activities or operations remain within the overall 'generic' primary production use of the land. But the planning system does deal with some changes of agricultural use.

The following factors are relevant in helping determine if a change in rural land use has occurred:-

- ▶ the nature of the existing use which, in a farm setting, may encompass composite activities such as grazing, cropping and horticulture and rotation of activities throughout the farm property and the seasons
- ▶ the terms and expressions used in previous approvals for a land use - for example, an approval for 'horticulture' will have different implications from an approval for 'vineyard'
- ▶ the potential planning impacts arising as a result of the activity - for example, replacing one field crop (wheat) with another (sunflower) or one horticultural crop (onions) with another (potatoes) has, generally, no different impacts and would not be a change of use; however, replacing a field crop with a vineyard or with an orchard is likely to lead to different impacts and would constitute a change in use
- ▶ whether there will be a clear intensification of the existing use to which the farm property is put, additional to that already carried on - for example, when an intensive animal use is proposed such as a piggery, feedlot or poultry operation.

Again, contact with Council planning officers is encouraged so that prospective changes in rural activity can be discussed. Whether or not a change of use occurs, which needs formal approval, will depend directly upon the circumstances of each case and, in line with Court directions, is a matter of fact and degree.

how do I make an application ?

Basically, the application process is identical to that required by any other development. The standard Development Application form along with relevant plans and information are lodged with the Council for processing, assessment and decision (which in most cases will be the local Panel).

how is such an application handled ?

Depending upon the nature of the land use change and/or where the property is located, Council may be obliged to give public notification to neighbours and possibly refer the application to other authorities for comment or direction. The referral agencies could be the EPA, Transport SA, or the Ministers responsible for Heritage or for the River Murray or for Water Resources.

In the event of public notification, third-parties may have an opportunity to appear personally before the local Panel to elaborate upon their submissions (the applicant, however, would have the same opportunity).

The planning assessment of such a proposal would focus on the impact it is likely to have on the environment and the extent to which it accords with the Development Plan. If the Development Plan polices do not encourage or speak in favour of the new use, then it is likely that the application will be refused. Unless the change of use is for a non-complying form of development, there are appeal rights available to the applicant to challenge the decision.

This information is advisory and is provided by the Council as a community service and as a guide only to key elements of the South Australian planning system. For a more thorough understanding of the system or for any specific enquiries concerning the use and development of land, professional advice should be sought or the Council officers be contacted for further assistance on 8666 2014.

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Information Requirements

The extent and level of information that should accompany an application to change the use of land is dependent upon the specific nature of the proposed new use, and the type of information required will need to be tailored accordingly.

The 'bottom line' is that the more thorough and comprehensive and the higher the quality of the information provided, the less chance delays will occur and the better the understanding of what the change of use entails.

Refer to Council's Information Sheet *Information Required with an Application* for a detailed list of requirements for a Development Application.

But, as a general rule, the following is necessary for a change of use to be properly considered (where relevant to the particular activity):-

- ▶ properly drawn and scaled site and building plans showing or identifying -
 - * the entire site and all buildings and structures on it (including existing trees and bushland areas) and the dimensions of property boundaries and buildings/structures (including separation distances from boundaries and between buildings/structures)
 - * the types of activities existing and proposed across the entire site and a detailed description of their function (including where animals are involved, an indication of the numbers of animals to be kept)
 - * access points, driveways, location of individual car parking spaces, loading/unloading facilities and vehicle manoeuvring areas
 - * proposed landscaping including location and species of trees, shrubs and ground covers to be planted
 - * location, height and design of new fencing
 - * number, size and location of new (or changed) signage
 - * location and nature of waste management facilities
 - * elevation sketches showing external building materials, facade treatments, finishes and colours to be used
 - * internal floor layout plans (existing and proposed) indicating areas of use and a description of their specific function
- ▶ specific information regarding the actual nature of the use -
 - * a clear and precise description of the types of uses and activities proposed to be carried out on the land, eg does the use involve manufacturing, servicing of vehicles, the preparation and/or the handling of food, the keeping of animals, the storage of goods, whether the public will have access and on what basis
 - * details of current land uses on the site
 - * number of staff employed
 - * days and hours of operation
 - * machinery, equipment and plant to be used or worked on the site and details of processes and operations carried out