Development Act 1993

Information Sheet

MAKING AN APPLICATION

what needs approval ?

The Development Act 1993 states that ***no*** development can be undertaken unless it has the approval of the relevant planning authority, which in most cases is the District Council of Mount Remarkable Development Assessment Panel (the Panel). This means that any construction, alteration, addition to or demolition of a building or structure, a change in the current use of the land, or *anything* that modifies a designated heritage item constitutes development as defined in the Act and therefore requires formal Development Approval.

Certain minor activities or building work are excluded by Regulation from this definition and are thereby exempt from the need to seek approval. In these instances, it is wise to firstly contact the Council to clarify the position. It is pointed out, however, that the scope for these exemptions is quite limited and it should normally be expected that an application will be necessary.

The approval process involves separate assessments against the planning policies covering the area in question (known as the *Development Plan consent*) and against the technical standards set out in the Building Code (known as the *Building Rules consent*). Collectively, these two provisional consents amount to the formal Development Approval that must be obtained in order for any development proposal to proceed.

It is important to understand that work ***cannot*** be started on any development until the Panel has issued the Development Approval notice. Otherwise, the Act provides for heavy penalties including exemplary damages and/or a daily fine for each day the offence continues.

how do you go about lodging an application ?

An applicant must complete in full the standard application form which covers all types of development proposals, including both the planning and the building components and land division. This form is common throughout the State and is available from the Council Office and from Planning SA located in Adelaide.

The Development Application form, unless it is for land division, is lodged with the District Council, either personally or by post, along with all relevant plans and supporting information and must be accompanied by the application fee. Although the form can be signed by the applicant or by his or her agent, it is desirable that the landowner also sign the documentation to avoid possible delays or misunderstandings.

It must be stressed that, legally, the lodgement fee must be paid for the application to become 'active'. Council will not deal further with an application until this fee is paid. Other fees (such as referral and/or public notification costs) may also be applicable and Council officers can advise what these will be. When all fees have been received, Council will then register the application and proceed with an assessment in terms of the Act.

what happens with your application ?

Council will check firstly, that all the necessary information to assess the development is included with the application. If not, Council will notify the applicant that further information is required to be submitted to help the assessment of the proposal.

Secondly, Council is responsible for undertaking any public notification of the proposal and for referring the application to other Government Agencies as may be necessary depending upon the type of development and/or its location. The Development Regulations 2008 specify the circumstances when this consultation must occur. A decision cannot be made until the consultation reports have been received and taken into consideration. The Agencies are required, however, to respond within strict time limits. These reports may be of a mandatory (ie binding on the Panel's decision) or of an advisory nature only, again depending upon the type and/or location of the development.

District Council of Mount Remarkable

Development Act 1993

Information Sheet

who makes the decision and when ?

Either the local Council Panel or the Development Assessment Commission is the 'relevant authority' charged with the obligation of assessing and issuing decisions. The Minister (in the case of Crown developments) or even the Governor (when a major project is declared under the Act) are also specified as 'authorities' under the Act, but their involvement is the exception rather than the rule. Mostly, it will be the local Panel who will be responsible for making decisions.

It is stressed, though, that the majority of decisions are made by Council's officers under delegated authority. Generally, only the more complex or controversial applications are referred to the Panel for decision.

The Commission is the authority in the following circumstances :-

- where the development is to be undertaken by a Council itself (in certain circumstances), OR
- the proposal is located in an area not covered by local government, OR
- it is classed in the Regulations as being of State significance OR
- where a Council has requested the Minister to declare the Commission to act as the authority on an application (and the Minister accepts).

There are set time limits specified in the legislation within which decisions need to be made depending upon the nature of the development being applied for. Applications for routine developments that require an assessment to be made can generally be dealt with in a short period of time, and in any case within 8 weeks of lodgement (4 weeks for complying developments). Where an application has to be referred to a Government Agency, then the time limit is extended to 14 weeks; for land division proposals, the period is 12 weeks. Whether a decision can be made in less time than these limits depends largely upon the complexity of the proposal and the issues that it may consequently raise. If a decision is not made within the statutory time period, an applicant has the right to insist that the Panel issue a decision and, after 14 days without a response, an application may be made to the Environment, Resources and Development (ERD) Court for an order directing the Panel to make a decision.

how will a decision be made ?

The assessment of any application ***must*** be made consistent with the planning policies contained in the Mount Remarkable (DC) Development Plan, and a decision has to be made solely on the basis of this policy. The content and substance of the planning policies are mostly of an advisory nature and provide a guide to the assessment process. But, a Development Plan consent cannot be granted if the Panel believes that the proposal is *seriously* at variance with the Plan's policies. The suitability or otherwise of a development proposal is determined solely in the context of the Development Plan.

In respect to the Building Rules assessment, the requirements of the Building Code have to be satisfied.

what if you don't like the decision ?

If an applicant is aggrieved by a decision of the Panel, eg if the proposal is refused outright or if conditions attached to a consent are unacceptable, then a right of appeal exists to the ERD Court. An applicant generally has a two (2) month period to exercise this right, it is not open-ended (NB: no appeal rights are available in the case of decisions made in respect to non-complying developments). Third-parties also may have a right of appeal. Appeals are lodged direct with the Court, not with the local Panel. For the procedure, refer to the Court's website at: *http://www.courts.sa.gov.au/courts/environment/index.html*

The appeal will normally be against the Panel. But, where a decision was made, or conditions imposed, as a result of directions given by a State Agency, then the appeal may also involve that particular Agency.