



## INFORMATION SHEET No 2

### MAKING AN APPLICATION

#### What needs approval?

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

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

The approval process involves separate assessments against the planning policies covering the area in question (known as Development Plan Consent (DPC)) and against the technical standards set out in the Building Code of Australia (known as the Building Rules Consent (BRC)). Collectively, these two consents amount to the formal Development Approval that you require in order to proceed with the development proposal.

It is important to understand that you **cannot** start work on any development until the relevant authority has issued the Development Approval notice. Otherwise, the Development 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?

You must complete in full the Development Application form, which covers all types of development proposals, including both the planning and building components. This form is available from both Council Offices.

The Development Application form, unless it is for land division, is lodged with the local Council, either personally or by post, along with all relevant plans and supporting information. (**INFORMATION SHEET No. 4** outlines the procedure and information required when lodging a land division application).

Although the form can be signed by the applicant or by his or her agent, it is in your interests to have the landowner also sign the documentation to avoid possible delays.

Please remember that there are lodgement and other fees that may be applicable to the proposal which must be paid at the time of lodgement or as soon as practicable upon receipt of a tax invoice. Council can decline to assess your application further until these are paid. When received, Council can then register the application and proceed with an assessment in accordance with the Development Act. (**INFORMATION SHEET No. 3** outlines the type of information required to be submitted with an application).

#### What happens with your application?

Firstly, Council checks that all information required to assess the development is included with the application. If not, then you will be advised in writing as to the nature of the additional information that has to be submitted. No further assessment will occur until the requested additional information has been received by Council.

Secondly, Council is responsible for undertaking any public notification of the proposal (see **INFORMATION SHEET No 5**) and referring the application to Government Agencies as necessary depending upon the type of development and/or its location. The Development Regulations specify the circumstances when this consultation is necessary. A decision cannot be made until the consultation reports have been received and taken into consideration. The Government Agencies are required, however, to respond within strict time limits. These reports may be

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mandatory ( i.e. binding on the Council ) or of an advisory nature only, again depending upon the type and/or location of the development.

### **Who makes the decision and when?**

Either the Council or the Development Assessment Commission is the 'relevant authority' charged with the obligation of assessing and issuing the relevant approvals. The Minister (in the case of Crown developments) or even the Governor (when an Environmental Impact Statement or 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. Generally, it will be the Council that will be responsible for making the decision on your application.

The Commission is the authority in the following circumstances: -

- where the development is to be undertaken by a Council itself; OR
- the proposal is located in an area not covered by local government; OR
- it is classified in the Development 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 where this request has been accepted by the Minister).

There are set time limits specified in the legislation within which decisions need to be made that are dependent upon the nature of the development. 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 12 weeks of lodgement. Where an application has to be referred to a Government Agency, then the time limit is extended to 18 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. Please note that these time limits are exclusive of any delays associated with the provision of additional information by the applicant (or their agent).

If a decision is not made within the statutory period stipulated, the applicant has the right to insist (in writing) to the authority that he or she is aggrieved by its failure to deal with the application and, after 14 days have elapsed

without a response, is then entitled to apply to the Environment, Resources and Development (ERD) Court for an order directing the authority to make a decision by the date fixed by the Court.

### **How will a decision be made?**

The assessment of any development must be made on the basis of the planning policies contained in the Development Plan and a decision made accordingly. A Development Plan Consent cannot be granted if the authority believes that the proposal is seriously at variance with the Development Plan's policies. The content and substance of the planning policies provide guidance for the assessment process. A Council therefore determines the suitability or otherwise of development proposals in terms of what the Development Plan stipulates.

In respect to the Building Rules assessment, the requirements of the Building Code of Australia (BCA) and any other applicable Code or Standard have to be satisfied.

### **What if you don't like the decision?**

If an applicant is aggrieved by a decision made by the relevant authority (eg if the proposal is refused outright or if conditions attached to a consent are considered unacceptable), then a right of appeal exists to the Environment, Resources and Development (ERD) Court. An applicant generally has a 2-month period to exercise this right - it is not open-ended. **Note:** No appeal rights are available in the case of decisions made in respect to non-complying developments. However, appeal rights do exist with regard to the *classification* of the application as being non-complying.

The appeal will be against the relevant authority that made the decision, 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. The appeal is lodged by the applicant directly with the Court itself.

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 Council office regarding any specific inquiries or for further assistance concerning the use and development of land. Being prepared can save you time and money in the long run.