Development Applications
Making an Application

What needs approval?

The Development Act requires that no development can be undertaken unless it has the approval of the relevant 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 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. Separate information sheets have been prepared by us to help explain what kinds of minor development do not require approval. In these instances you should always 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 the *Development Plan consent*) and against the technical standards set out in the Building Code (known as the *Building Rules consent*). Collectively, these two consents amount to the formal Development Approval that you require in order to proceed with the development proposal. Similarly, if you are proposing to undertake land division, you will require both a Development Plan consent and Land Division consent. We have prepared a series of information sheets to help explain the requirements for different kinds of applications.

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 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 single application form that covers all types of development proposals, including both the planning and building components. This form is standard throughout the State and is available from our offices and from the Department of Planning and Local Government.

The Development Application form, unless it is for land division, is lodged with us, either personally or by post, along with all relevant plans and supporting information. 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 that must be paid at the time of lodgement. Council can decline to deal further with your application until these are paid. When received, we can then register the application and proceed with an assessment.

What happens with your application?

Firstly, we determine the correct processes under the Act and that all the required information to assess the application is included. If not, then you will be advised in writing as to what further information has to be submitted.

Secondly, we are responsible for undertaking any public notification of the proposal (see separate information sheet) and referring the application to other government agencies as may be 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 agencies are required, however, to respond within strict time limits. These reports may be of a mandatory (ie 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 Council or the Development Assessment Commission (DAC) is the 'relevant authority' responsible for the assessing and issuing of 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 Council who will be responsible for making decisions.

The Commission generally is the authority in the following circumstances:

- where development of a commercial nature is to be undertaken by a Council, 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 (and hence becomes the Commission's responsibility), 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 depending upon the nature of the development being applied for. Applications for routine developments that require assessing can generally be dealt with in a short period of time, usually within 8 weeks of lodgement (2 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 raise.

If a decision is not made within the statutory period, the applicant has the right to insist (in writing) to the authority that he or she is dissatisfied with 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 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 application 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 seriously varies from the Plan's policies. Otherwise, the content and substance of the planning policies provide guidance for the assessment process. We therefore determine the suitability or otherwise of development proposals in terms of what the Plan says.

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 unhappy with a decision of the authority, eg if the proposal is refused or if conditions attached to a consent are unacceptable, then a right of appeal exists to the Environment, Resources and Development Court. An applicant generally has a 2 month period to exercise this right, it is not open-ended No appeal rights are available in the case of decisions made in respect to non-complying developments.

If an application has been subject to Category 3 public notification (see separate information sheet), a valid representor may have appeal rights to the Court within 15 business days.

The appeal will be against the 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. Third party appeals by a representor are against both the authority and the applicant.

The above information is advisory and a guide only to give you a general understanding of the development assessment system. It is recommended that you seek professional advice or contact our **Development Services section on 8384 0666** for any specific enquiries or for further assistance concerning the use and development of land. Being properly prepared can save you time and money in the long run.

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