

Unhappy about a proposed development?

What is a development consent?

A development consent is a form of authority that must be obtained, usually from the local council, before certain kinds of activities can occur. For instance, development consent may be required before building a house or a major home extension, subdivision of land, demolition or changing the use of a factory or office.

Depending upon the proposal, the development may be exempt from requiring development consent. It may also only require a "complying development certificate", which can be issued by the council or privately by an accredited certifier.

How do I find out if development consent is required?

The best way to find out whether a development needs or has consent is to ask council staff. Councils control development by zoning land for various purposes including residential, commercial, industrial, etc. Within each zone, councils have detailed requirements (eg. maximum building height) which are set out in zoning plans called local environmental plans and in documents called development control plans. Zoning and development controls will determine whether a proposal requires consent. Council staff can tell you how a certain property is zoned and the development controls which are likely to apply to development proposals in certain areas.

Ask council staff whether a development application has been lodged for the property about which you are concerned. If council has received a development application it must make it available for inspection by members of the public. Ask council staff if the development can be dealt with as a 'complying development'. Council or an accredited certifier can authorise this kind of development so long as it complies with requirements. This is done by issuing a 'complying development certificate'.

What if the development is already under way?

If a development has begun, you can ask council staff for a copy of its register of development consents to see whether consent has been given. If consent has been granted, you may ask to see it.

If you believe a development has occurred without consent, or if you think consent conditions are being breached, you can write to the council's general manager asking for an investigation. Make sure you ask the council to keep you informed. For more information on what to do in this case, refer to the fact sheet titled *Having trouble with unlawful development activity*.

Should I have been notified?

Development applications

In relation to development applications for most types of development, councils can decide for themselves whether to notify nearby property owners or to advertise in local newspapers. However, notification of affected property owners and advertising is mandatory for applications for 'designated developments' – those developments which have the potential for significant environmental damage like heavy industry and development in sensitive areas.

If a development application has been lodged and you have received no written notification and noticed no advertisements, ask to see council's notification and advertising policy to ensure it has not been breached.

If a council has a policy, it will specify which property owners are to be notified, how applications are to be advertised and to which sorts of development applications the policy applies. If you are not happy with council's notification policies, you can write to the council asking for them to be changed.

Notification involves writing to property owners giving them details of the proposal and inviting them to make a submission. If the proposal includes building work, the notification should include a plan showing the height and external configuration of the work. Notifications usually include an invitation to visit the council to review the full application.

Applications for complying development certificates

Councils can decide for themselves whether to notify nearby property owners of applications for complying development certificates and whether such applications will be advertised in local newspapers. Because of the relatively minor nature of most complying developments, advertising and notification is the exception.

Preparing a submission

Anyone may make a submission to a council about a development application, whether or not it has been advertised or notified. A submission may support an application, oppose it, request that modifications be made or that conditions be imposed. You are not obliged to lodge a submission simply because you have been notified of an application.

If the proposed development is on your neighbour's property, it may be worthwhile asking them for details and discussing your concerns with them before considering making a submission. They may be willing to accommodate your concerns by modifying and resubmitting their plans.

Before writing a submission you should visit the council, inspect the application and ask council staff what requirements are likely to apply. Good submissions are fairly short and to the point. They do not use emotive language or personal criticism. They focus on non-compliance only where that has a significant impact, and they suggest changes that might resolve the problems identified.

Applications for complying development

Submissions relating to an application for complying development must focus on whether the proposal complies with the council's requirements for that type of development. Opposing an application for a complying development certificate because the proposal is unattractive or out of character with the area will not constitute grounds for rejecting an application.

Development applications

Submissions in relation to development applications should point out where the application does not comply with the council's requirements but may also comment on the general merits of the application.

Most councils do not acknowledge receiving submissions or respond in writing to the points made. You can ask the council for a copy of the town planning report as soon as it is available. This will give you some idea on how your submission has been assessed.

How are development applications assessed?

Complying development certificates

Applications for complying development certificates are assessed by checking whether the proposal complies with all legal requirements. If it complies with the requirements, a certificate will be issued with standard conditions.

Development applications

Councils consider a range of matters when assessing development applications, including mandatory requirements (like whether the development is allowed in the area) discretionary requirements and merit issues like the impact of the proposal on the environment and surrounding properties. These considerations are listed in s.79C of the *Environmental Planning and Assessment Act*.

When council staff write a report summarising their assessment of the application they usually include a summary of the points raised in submissions and comments on any objections. The report will also include a recommendation on whether the application should be approved or refused. If the report recommends that the application be approved, it will usually also recommend that certain conditions apply. The final decision on the application is made by the elected council (or by a committee of councillors or a staff member if this power has been delegated).

What else can I do to put forward my point of view?

Consultants

Development applications are often complex and confusing so many objectors obtain professional advice. For a fee, town planning consultants, building consultants or solicitors with expertise in town planning will review applications, check them against the council's requirements and prepare submissions on your behalf.

Councillors

You may approach councillors for support, giving them reasons why you believe the application should be modified or refused. Avoid overloading them with information and don't be too pushy or you may put them off side. It is not appropriate to ask for commitments of support from councillors.

Mediation

If the council has a mediation service for disputes between applicants and objectors, consider applying to have the application mediated. No matter how strongly you feel about the application, try to remain conciliatory. Consider any reasonable proposals that might ensure your problems are resolved. Uncompromising objectors are generally less successful in negotiating with councils and applicants.

Addressing council

If the application goes to a council committee or the full council for determination, find out if the council allows members of the public to address the meeting. If it does, you usually have a few minutes to briefly outline your views. Try to speak calmly and clearly. Set out no more than your strongest three or four points. If you do not agree with the town planning report on the application, this is probably your last chance to explain why.

What if I am unhappy with the outcome?

Unless the development is a designated development, objectors cannot appeal against the merits of a decision to grant a development consent. Objectors' rights to challenge development consents in the Land and Environment Court are limited to cases where councils fail to follow legal procedures. For instance, you could challenge a consent if the council failed to notify you of the application contrary to its policy or the council issued a consent for a development that was prohibited in the area.

It is important to get legal advice on the likely cost and the prospects of success in a legal challenge. Usually, the unsuccessful party pays the legal costs of both sides.

If you believe that the development consent raises a serious legal issue or poses a serious threat to the environment, you can consult a community legal centre, the Environmental Defender's Office or the Public Interest Advocacy Centre. These organisations sometimes take on cases at no charge.

Can the Ombudsman help me?

The Ombudsman receives many complaints about development applications but investigates very few of these complaints.

The Ombudsman cannot amend or revoke consents or recommend the council do so. Only the Land and Environment Court can grant, amend or revoke a development consent.

The Ombudsman is not permitted to investigate complaints about councils if there is a right of appeal or review unless there are special circumstances. Unfortunately, the high cost of legal action is not of itself a special circumstance in most cases.

If a council does not comply with the relevant legal requirements when it approves a development application, anyone can go to the Land and Environment Court and ask the court to quash the consent. This is a right of review.

The Ombudsman must also respect the right of councils to judge for themselves the merits of development applications. Councils are independent, self governing bodies that are elected by and are accountable to the residents of their council area. They must consider a range of factors when assessing development applications and do so drawing on the advice of expert staff.

It is important to realise that the existence of objections is of itself not a reason to refuse a development application. Granting development consent despite objections is not of itself unreasonable or improper.

If you are unhappy with the conduct of an accredited certifier, you should first complain to the Building Professionals Board who is responsible for their accreditation. They can investigate and take disciplinary action over complaints about the professional conduct of the accredited certifier.

If you have evidence of corrupt conduct, this should be forwarded to the Independent Commission Against Corruption. If you are concerned that councillors or staff have not declared a financial interest in a development application, you should refer these concerns to the Division of Local Government.

The Ombudsman can intervene if there is evidence the council's procedures for assessing applications (including notification processes) are seriously deficient. The Ombudsman can also intervene in complaints about poor customer service or where there is evidence of the council acting in bad faith or otherwise improperly.

Acknowledgment

In the preparation of this document, the authors made use of the *Environmental Law Tool Kit (1996)* and the *Environmental Law Fact Sheet Book 2 (1997)*, both prepared by the Environmental Defender's Office.

Other assistance

Complaints about the general administrative conduct of councils, councillors and council staff can also be made to the Department of Premier and Cabinet's Division of Local Government (DLG):

Chief Executive, Local Government
Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

Phone: 02 4428 4100
Email: dlg@dlg.nsw.gov.au

Complaints about alleged corrupt conduct of councillors or council staff can be made to the Independent Commission Against Corruption (ICAC):

Commissioner
Independent Commission Against Corruption
Level 21, 133 Castlereagh Street
Sydney, New South Wales, 2000

GPO Box 500
Sydney, New South Wales, 2001

Phone: 02 8281 5999
Email: icac@icac.nsw.gov.au

Unhappy about a proposed development?

Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street
Sydney NSW 2000

Email nswombo@ombo.nsw.gov.au

Web www.ombo.nsw.gov.au

General inquiries 02 9286 1000

Facsimile 02 9283 2911

Toll free (outside Sydney metro) 1800 451 524

Tel. typewriter (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450

We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.