

Amendments to WA's Planning Regulations in response to COVID-19

07 April 2020

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Worthwhile read for: Developers

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Key issues

- On 3 April 2020, the Minister for Planning announced amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015 (LPS Regulations)*.
- The amendments to the LPS Regulations give the Minister for Planning the authority to override certain local planning scheme and development approval requirements including:
 - an extension in time to 'substantially commence' developments;
 - amending development approval conditions; and
 - permissibility of land uses.
- Pursuant to the LPS Regulations, landowners or developers may apply to the relevant local government to amend the conditions of development approval or to extend the time in which approved development must be 'substantially commenced.'

In response to the COVID-19 pandemic Western Australia's (WA) Minister for Emergency Services declared on 15 March 2020, pursuant to the *Emergency Management Act 2005*, that from 16 March 2020 the whole of WA is in a state of emergency and on 16 March 2020, the WA Minister for Health declared, pursuant to the *Public Health Act 2016*, the same. As a result of the state of emergency, the WA government has issued a number of directions resulting in the closure of what is deemed as 'non-essential services' which have impacted every aspect of life, including planning.

Discussion

As a result of the state of emergency, development and construction companies are expected to face difficulties in operating, including the sourcing of construction materials, decreased skilled labour from personal choice to stay at home, and due to inter and intra state travel restrictions. As a result, landowners and developers may struggle to comply with the conditions of development approvals.

In the ordinary course, a development which has not 'substantially commenced' within the time directed under the development approval (or within 2 years pursuant to clause 71 of the Deemed Provisions in schedule 2 of the LPS Regulations (**Deemed Provisions**)), the development approval will lapse and the landowner or developer will be required to begin the development approval process again.

Pursuant to clause 77 of the Deemed Provisions, a local government may amend a development approval so as to extend the period within which any development must be substantially commenced, amend or delete a condition, amend an aspect of the approval or cancel the approval. Therefore, on application, a local government may amend development approvals to mitigate against the adverse impacts on the development and construction industries during these unprecedented times.

Amendments to the LPS Regulations

On 3 April 2020, the Minister for Planning (WA), announced that amendments to the Deemed Provisions would allow the Minister to temporarily override planning requirements and conditions set

out in a local planning scheme and existing planning approvals for the 'purpose of facilitating a response to or recovery from' circumstances arising from the state of emergency under the *State of Emergency Management Act 2005* (**exemptions**). These exemptions may extend to:

1. a requirement to obtain development approval;
2. a condition of a development approval;
3. the permissibility of uses of land;
4. works; and/or
5. consultation, advertising, applications, time limits or forms.

These exemptions may apply generally to land or classes of land. However, the above exemptions are invoked when the Minister for Planning publishes a notice of the exemption in the *Gazette* and they may only apply in particular circumstances. Whether the Minister approves a broad brush exemption, similar to that in New South Wales (via amendments to the *Environmental Planning and Assessment Act 1979* (NSW)) allowing for development without normal approvals if necessary to protect the 'health, safety and welfare' of the public, is yet to be seen as to date, no exemptions have been published under the new LPS Regulations amendments.

Consider applying for a deferral of Developer Contributions

While the issue of the payment of developer contributions is not one contemplated by the exemption, developers should turn their minds to applying to local government for relief from the obligation by way of deferral during the COVID-19 pandemic. This will free up cash reserves which can be better utilised to source materials and pay workers during this difficult period in return for security for the deferral providing comfort that the obligation will be met at a point in the future. This is successfully negotiated with local government in ordinary economic conditions and as, in the current climate, local government is doing its best to support all facets of industry should pose no problems for developers.

We will keep you informed on any further amendments to the LPS Regulations as a result of the COVID-19 pandemic.

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