



FACT SHEET (NO 4)

UPDATE – COVID-19 AND PLANNING & DEVELOPMENT

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1. INTRODUCTION

In response to COVID-19, the State Government has implemented changes to the planning and development process with the objective of removing barriers and allowing local governments and businesses to adapt to the COVID-19 pandemic and assisting job-creating projects and economic recovery following the COVID-19 pandemic.

The purpose of this fact sheet (**Fact Sheet 4**) is to provide an update on temporary exemptions to local planning requirements announced by the State Government on 11 April 2020 and subsequent long-term reform announced by the State Government on 20 May 2020.

For any businesses operating in the planning and development space, these changes may offer opportunity to fast track current and/or prospective projects.

2. PLANNING AND DEVELOPMENT (LOCAL PLANNING SCHEMES) AMENDMENT REGULATIONS 2020

The below detailed exemptions have been issued under recently enacted amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015*. These amendments allow the relevant Minister to issue exemptions (by way of written notice) from planning requirements under local planning schemes during a state of emergency, provided such exemptions are necessary for responding to or recovering from the COVID-19 pandemic.

2.1. LIMITATIONS

The following limitations and conditions should be noted:

- The Minister **cannot** issue an exemption from environmental conditions applying to local planning schemes as a result of an assessment carried out under the *Environmental Protection Act 1986* (WA);
- The Minister **cannot** issue an exemption with an expiry date more than 5 years from the date of commencement; and
- The Minister **must** revoke the exemption if it is 'no longer necessary', irrespective of the expiry date detailed in the relevant notice of exemption.

2.2. NOTICE OF EXEMPTION ISSUED 8 APRIL 2020

On 8 April 2020, the Planning Minister issued a Notice of Exemption (**Notice**) for the purposes of:

- Removing barriers and allowing local governments and businesses to adapt to the COVID-19 pandemic; and
- Assisting job-creating projects and economic recovery following the COVID-19 pandemic.

The Notice details the following exemptions:

2.2.1. Extension on Substantial Commencement Date

For all development approvals issued on or before the day the declaration of state of emergency relating to the COVID-19 pandemic ceases to have effect or is revoked:

- The proponent is exempted from the original deadline for substantial commencement; and
- The original deadline for substantial commencement is extended by a period of 2 years.

2.2.2. Exemption on Requirement to Obtain Approval (Medical Works)

Proponents are exempted from the requirement for development approval for the use of, and undertaking works on, land where such use or works related to medical or health related works directly related to COVID-19 pandemic.

Conditions

This exemption is conditional on the Public Authority/ local government must identifying the relevant medical or health related activities as necessary in response to the COVID-19 pandemic.

Expiry

This exemption expires 90 days after the date the state of emergency declaration ceases to have effect or is revoked.

2.2.3. Exemption on Requirement to Obtain Approval (Hospitality & Commercial)

Proponents are exempted from the requirement for development approval for the following uses, and temporary works, associated with:

- Shops;
- Restaurants/ cafes;
- Convenience stores (excluding those selling petroleum products);
- Consulting rooms;
- Offices.

This exemption does not apply to heritage protected places.

Conditions

This exemption only applies if:

- The relevant land is located in a commercial, centre and/ or mixed use zone;
- The relevant use not is not prohibited by the scheme;
- No new permanent structures are required (with the exception that car parking bays are permitted);
- The relevant land is connected to all reticulated utility services and does not depend on any onsite effluent disposal; and

- The proponent notifies the local government that use is being undertaken within 7 days of commencing use.

Expiry

This exemption expires 90 days after the date the state of emergency declaration ceases to have effect or is revoked.

2.2.4. Exemption on Requirement to Obtain Approval (Industry)

Proponents are exempted from the requirement for development approval for the following uses, and temporary works, associated with:

- Industry;
- Industry light;
- Trade supplies;
- Warehouse/ storage; and
- Transport depot.

This exemption does not apply to heritage protected places.

Conditions

This exemption only applies if:

- The relevant land is located in an industrial zone;
- The relevant use is not prohibited by the Scheme;
- The relevant land is connected to all reticulated utility services and does not depend on any onsite effluent disposal; and
- Either:
 - No new permanent structures are required; or
 - Any structures required to facilitate the use are deemed temporarily approved for a period of no more than 2 years, from the date which the use commences, after which the structures must be removed.

Expiry

This exemption expires 90 days after the date the state of emergency declaration ceases to have effect or is revoked.

2.2.5. Exemption on Requirement to Obtain Approval (Home Business)

Proponents are exempted from the requirement of development approval for the following uses, and temporary works, associated with:

- Home business; and
- Home occupation.

Conditions

This exemption only applies if:

- The relevant land is located in a residential zone or where a dwelling, grouped dwelling or multiple dwelling is a permitted use; and
- The proponent notifies the local government that the use is being undertaken within 7 days of commencing the use.

Expiry

This exemption expires 90 days after the date the state of emergency declaration ceases to have effect or is revoked.

2.2.6. Exemption on Requirement to Obtain Approval (Commercial Vehicle Parking)

Proponents are exempted from the requirement of development approval for uses and temporary works associated with commercial vehicle parking.

Conditions

This exemption only applies if the proponent notifies the local government that the use is being undertaken within 7 days of commencing the use.

Expiry

This exemption expires 90 days after the date the state of emergency declaration ceases to have effect or is revoked.

2.2.7. Exemption on Requirement to Obtain Approval (Temporary Worker's Accommodation)

Proponents are exempted from the requirement of development approval for the use of, or undertaking of works, on land where such use or works concern temporary worker's accommodation.

Conditions

This exemption only applies if:

- The temporary workers' accommodation applies to a workforce necessary for the installation of, or construction of, and maintenance of, essential services such as (but not limited to) power stations, water, desalination plants or sewer treatment facilities; and
- The proponent notifies the local government that the use is being undertaken within 7 days of commencing the use.

Expiry

This exemption expires 90 days after the date the state of emergency declaration ceases to have effect or is revoked.

2.2.8. Exemption on Car Parking Facilities

Proponents are exempted from any requirement to provide car parking facilities (and cash-in lieu payments as an alternative to providing car parking facilities) under any development approval.

Conditions

This exemption only applies to:

- Non-residential development; and
- Where proponent provides less than the the required number of parking bays for the relevant use, the shortfall is 10 parking bays or less.

Expiry

This exemption expires 90 days after the date the state of emergency declaration ceases to have effect or is

2.2.9. Exemption on Changes to Existing Signage

Proponents are exempted from any requirement to obtain approval to changes to existing approved signage.

This exemption does not apply to heritage protected places.

Conditions

This exemption only applies if such signage:

- Is not in a residential zone;
- Relates only to the business conducted on the premises; and
- The changes to the approved signage to not alter the size of the approved sign or contain any illumination, animation, movement, reflective or fluorescent materials in its design structure.

Expiry

This exemption expires 90 days after the date the state of emergency declaration ceases to have effect or is

2.3. TEMPORARY WORKS/ USES

Reference to temporary works/ uses in the Notice means any temporary structure or building that is able to be removed at the end of the Notice period.

As such, any permanent structure (brick-and-mortar buildings) is not be covered by the exemptions under the Notice.

2.4. EXPIRY

The Notice expires on 1 May 2023 unless otherwise extended or revoked by the Planning Minister (**see: 2.1.**).

Once the Notice expires or is revoked, the existing planning framework requirements, including existing conditions of approval, will apply. This means that any proponent who has been exempted from obtaining development approval, and who wishes to continue use following the COVID-19 pandemic, will need to seek approval via the ordinary processes in the lead up to the expiry of the exemption.

The 90-day expiry period following the cessation or revocation of the state of emergency relating to the COVID-19 pandemic is intended to be a 'transitional period' during which the necessary approvals and other requirements can be obtained.

However, the Notice itself does not prevent an application for development approval or otherwise from being lodged at any time while the Notice is in force.

3. PLANNING AND DEVELOPMENT AMENDMENT BILL 2020

The Bill, which has not yet passed, introduces Phase One of the State Government's two-phase plan to both temporarily and permanently reform planning and development laws to support economic recovery amidst the COVID-19 Pandemic.

Phase One introduces interim and immediate measures and a number of administrative changes which provide the foundation for substantive changes that will be confirmed through regulations and introduced in Phase Two.

The two-phase plan will be progressively implemented through legislative, regulatory and police changes.

The reforms proposed by the Bill are detailed below.

3.1. Extensions

An automatic two-year extension will be granted for all subdivision applications submitted or approved (but not yet lapsed) before 16 March 2020.

3.2. Streamlined Approval for "Significant Developments"

Significant Developments are projects with an estimated cost of at least \$30 million and are either:

- A residential development 100 or more dwellings; or
- A commercial development with minimum of 20,000m² net lettable area (excluding warehousing).

The Premier (on recommendation of the Minister of Planning) can deem any proposal that does not meet the above criteria a Significant Development.

The Western Australian Planning Commission (**WAPC**) will temporarily serve as the decision-making authority for proposals for Significant Developments and will have significant and unfettered powers to expedite approval, as detailed below.

- The WAPC will have broad discretion; in exercising discretion, they are not limited to planning considerations and can have regard to any 'matter affecting the public interest' including the economic impact of COVID-19.
- The Minister for Planning may direct another body to grant an approval that is otherwise delaying or holding up WAPC approval.

Streamlined approval for Significant Developments will commence on assent and expire after a period of 18 months, following which a Special Matter Development Assessment Panel (discussed below) will be established to deal with Significant Developments.

3.3. Special Matters Development Assessment Panel

The current Joint Development Assessment Panels and Local Development Assessment Panel will be replaced by:

- District Development Assessment Panels (District DAPs); and
- A new concept of Special Matter DAPs.

Under the Bill, a Special Matter DAP can be established for a project, area or class or kind of area which the Minister considers to be of State or regional importance.

These changes will be confirmed and built upon via regulations in Phase Two.

3.4. Red Tape Reforms

The Bill proposes a number of administrative changes that remove red tape or signal its removal in Phase Two, including but not limited to:

- Expansion of the definition of a "public work" to broaden scope of the public works exemption to planning approval;
- Introduction of 'planning codes' to replace State Planning Policies which are prescriptive and onerous;
- Amendment to allow subdivision approval conditions to require an area to be set aside for public open space or a cash-in-lieu payment.
- Automatic 2 year extension of time to lodge a 'certified correct' diagram or survey of subdivision;
- Electronic versions of scheme maps may be classified as original maps;

- Provision for a responsible authority to purchase (compulsorily or by agreement) all of a lot where only part is impacted by a planning scheme (e.g. a reservation or improvement plan), to prevent the sterilisation of part lots.

4. PHASE TWO REFORMS

Phase 2, which is likely to be implemented progressively over the coming months, will include, among other changes:

- Streamlined approval process for simple development applications;
- Approval exemptions for small residential projects (e.g. carports, pergolas etc.).
- Expansion of deemed compliance provisions under R-Codes to ensure more single residential homes will not require planning approval;
- Change of use applications to be abolished for a number of different uses to support small businesses wishing to establish or change their operations;
- “Cash-in-lieu” payments in place of on-site car parking requirements and shortfalls up to 10 car bays to be waived.

The State Government has indicated that some temporary exemptions will be made permanent under Phase Two.

5. CONCLUSION

For all your queries and concerns about the impact of COVID-19 on planning and approval and how these changes may offer opportunity to fast track current and/or prospective projects, call Janette Tavelli (0417 926 155), Michael Sontner (0419 900 299), or another team member on 08 9218 8588.

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