

Lapsing periods - a summary of the COVID-19 Environmental Planning and Assessments Act amendments

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July 2020

Recent legislation has changed some lapsing periods, appeal periods and existing use rights lapsing periods.

For your convenience, we have created a ready reckoner summary table of the time limit and other amendments made by the *COVID-19 Legislative Amendments (Emergency Measures – Miscellaneous) Act 2020*.

The amendments:

- Extend some development consent lapsing periods
- Extend existing and continuing use rights
- Extend some appeal periods
- Narrow the test for works that constitute physical commencement

COVID-19 Environmental Planning and Assessments Act timeframe amendments as at 1 June 2020

Environmental Planning and Assessment Act 1979

Section 4.53(1) — (3A) Lapsing of consent

Date consent commences operation	Lapsing date	Can it be reduced by consent authority?	Qualifications
After 25 March 2022	Five years after date from which it operates [s4.53(1)(a)]	Yes [s4.53(2)] But*	*Reduction not authorised if it would cause a development consent to erect or demolish a building or to subdivide land to lapse within two years after the date from which the consent operates [s4.53(3)(b)(i)]
Between 25 March 2020 and 25 March 2022	Five years after date from which it operates [s4.53(1)(b)]	No, if it would cause the consent to lapse within five years after date on which it operates [s4.53(3)(b)(ii)] And* (note inconsistency)	*Reduction not authorised if it would cause a development consent to erect or demolish a building or to subdivide land to lapse within two years after the date from which the consent operates [s4.53(3)(b)(i)]
Before 25 March 2020 (and had not lapsed at that date)	Two years after date on which it would otherwise lapse [s4.53(1)(c)]	No (already commenced)	
Before 25 March 2020 and was operational But *	* Lapsed between 25 March 2020 and 14 May 2020, taken not to have lapsed [s4.53(1)(c)] and is extended for two years from date it lapsed [s4.53(3A)]	No	

Section 4.53(6) – (6C) Lapsing of consent subject to deferred commencement condition

Date consent commences operation	Lapsing date (where deferred commencement condition is not satisfied)	Can it be reduced by consent authority?	Qualifications
After 25 March 2022	Five years after the date consent was granted [s4.53(6)(a)]	Yes [s4.53(6A)] But*	*Reduction not authorised if it would cause a development consent granted between 25 March 2020 and 25 March 2022 to lapse within five years after the date it was granted [s4.53(6B)]
Between 25 March 2020 and 25 March 2022	Five years after the date consent was granted [s4.53(6)(b)]	Yes [s4.53(6A)] But*	*Reduction not authorised if it would cause a development consent granted between 25 March 2020 and 25 March 2022 to lapse within five years after the date it was granted [s4.53(6B)]
Before 25 March 2020 (and had not lapsed at that date)	Two years after the date on which it would have lapsed [s4.53(6)(c)]	No	
Before 25 March 2020	If lapsed between 25 March 2020 and 14 May 2020; consent is taken to have not lapsed [s4.53(6C)(a)] and is extended for two years from the date it lapsed [s4.53(6)(c)]	No	

Section 4.66(4) Continuance of and limitations on existing uses

Relevant date	Continuous period to establish abandonment	Qualification
Before 25 March 2020	Continuous period of 12 months*	*Where existing use continues unless the use is abandoned [s4.66(2)(e)]; abandonment is established if the existing use ceases to be used for a continuous period of 12 months [s4.66(3)]
Between 25 March 2020 and 25 March 2022	Continuous period of three years*	*During the period from 25 March 2020 to 25 March 2022, abandonment of an existing use is established where the existing use ceases to be used for a continuous period of three years [s4.66(4)]
After 25 March 2022	Continuous period of 12 months*	*Where existing use continues unless the use is abandoned [s4.66(2)(e)]; abandonment is established if the existing use ceases to be used for a continuous period of 12 months [s4.66(3)]

Section 4.68(4) Continuance of and limitations on other lawful uses

Relevant date	Period to establish abandonment	Qualification
Before 25 March 2020	Continuous period of 12 months* [s4.68(3)]	*Where use of a building, work or land for a lawful purpose continues, unless the use is abandoned [s4.68(2)(e)]; abandonment is established if the use ceases for a continuous period of 12 months
Between 25 March 2020 and 25 March 2022	Continuous period of three years* [s4.68(4)]	*Between 25 March 2020 and 25 March 2022, abandonment of a continuous use is established where use ceases for a continuous period of three years
After 25 March 2022	Continuous period of 12 months* [s4.68(3)]	*Where use of a building, work or land for a lawful purpose continues unless the use is abandoned [s4.68(2)(e)]; abandonment is established if the use ceases for a continuous period of 12 months

Section 8.10 Time within which appeals maybe made

Who	When	Window to appeal	Qualification
Applicant for development consent or modification of development consent	Between 25 September 2019 and 25 March 2022	12 months* [s8.10(1)(b)]	*Following notification of the decision or date of deemed refusal
	After 25 March 2022	Six months* [s8.10(1)(a)]	*Following notification of the decision or date of deemed refusal
A person who submitted an objection to an application for designated development	Between 26 February 2020 and 25 March 2022	56 days*	*Following the date the objector receives notification of the decision
	After 25 March 2022	28 days*	*Following the date the objector receives notification of the decision

Environmental Planning and Assessment Regulation 2000

Clause 124AA When work is physically commenced

Clause 124 AA narrows the scope of preparatory works that constitute physical commencement. For the purposes of s 4.53(7) of the Act, the following preparatory works do not constitute physical commencement:

- (a) Creating a bore hole for soil testing
- (b) Removing water or soil for testing
- (c) Carrying out survey work, including the placing of pegs or other survey equipment
- (d) Acoustic testing
- (e) Removing vegetation as an ancillary activity
- (f) Marking the ground to indicate how land is to be developed

Clause 124AA only applies to works in relation to development consents issued from 15 May 2020.

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CSBrand-31401-COVID-19-PEG-Environmental-planning-flyer_03 — 20/07/2020