

TITLE: DEVELOPMENT APPROVALS – AMENDMENTS/EXTENSIONS TO TERM OF APPROVAL AND REQUESTS FOR FURTHER INFORMATION

ADOPTED: OMC 19 April 2012

REVIEWED: OMC 30 July 2015 – Pages 28 – 40
 OMC 17 December 2015 – Pages 110 – 121
 OMC 25 May 2017 – Pages 85 – 260
 OMC 14 December 2017 – Pages 1030 - 1043

ASSOCIATED LEGISLATION: Planning and Development Act 2005
 Local Planning Scheme No 6 (LPS6)

ASSOCIATED DOCUMENTS:

REVIEW RESPONSIBILITY: Director Development Services

DELEGATION: Delegations are exercised in accordance with delegation granted in terms of Section 5.42 of the Local Government Act 1995 as amended or other statutes as applicable to specified officers.

APPLICATION: This policy applies to the LPS6 area

Previous Policy Number 8.15

Background:

This Policy provides clarity and guidance with regards to: amending of a planning approval;

- 1. setting the term of planning approval;
- 2. seeking an extension to a planning approval; and
- 3. requiring information regarding a planning application

Clause 77 of the Deemed Provisions empowers the Local Government , on receipt of a written application from the owner of land in respect of which development approval has been granted, to cancel, amend or delete any condition to which the approval is subject or amend the development approval.

Clause 63 of the Deemed Provisions provides a detailed description of the accompanying material that Local Government requires in support of a development application.

Clause 63(3) of the Deemed Provisions provides a description of the material required, in addition to the material as outlined in clause 63 of the Deemed Provisions, for applications where the proposed development relates to a place on the Heritage List or within a Heritage area.

Clause 71 of the Deemed Provisions provides that a development approval lapses in the event that the development is not substantially commenced within the term of that approval. The Scheme specifies a period of 2 years from the date of determination as the term, unless another time period is specified in the approval.

Clause 77 of the Deemed Provisions provides that a written request may be made for an extension of the term of a development approval at any time prior to the expiry of the approval period.

Objective:

To provide guidance for the consideration of:

1. requests for an amendment to a planning approval;
2. the period of time given to a planning approval;
3. extension of time to a planning approval; and
4. to set out a process for the request of further information to assist the Shire in considering a planning application.

Definitions:

In this policy, the term

'Substantial Commencement': is (as per the definition in Schedule 1 to the Shire of Broome LPS6 and as further defined) deemed to have occurred where there has been physical 'on site' development that comprises more—than the mere preparation of the site and the placing of footings and slab. Where a condition of approval there is a requirement to undertake further studies and investigations for submission and approval of the Shire prior to development commencing, such 'work' is not deemed to be substantial commencement.

Where no construction is required as part of a planning approval, proof that the current use has commenced has to be provided.

Policy:

1. Amendment of a Planning Approval (Clause 77 Deemed Provisions)

1.1 In determining, pursuant to clause 77 of the Deemed Provisions, whether to allow the amendment of a development approval, the Shire shall consider whether the nature and extent of the proposed amendment is such that the use or development the subject of the planning approval:

- a) remains, in substance, the same; or
- b) is changed so a new and/or different use or development is proposed.

1.2 If the nature and extent of the proposed amendments is such that there is a new and/or different use or development to that which was the subject of the development approval, the Shire may refuse to allow amendment of the development approval and require the submission of a new development application.

- 1.3 Where an amendment of any Approval is determined to be, in substance, the same as the original approval, the Shire will follow the same procedure as was followed for the original application, unless the amendment now requires advertising, in which case the amendment application will be advertised in accordance with clause 64 of the Deemed Provisions and Local Planning Policy.
- 1.4 If an application to amend development approval is refused, nothing in this Policy shall preclude the applicant from making, and the Shire from determining, a new application for development approval for the same use or development.
- 1.5 Where a request to amend a development approval is approved, a letter will be issued advising the applicant of this. The original development approval (including the terms and conditions) will remain operative, subject to any amendments approved.

2. Term of Planning Approval (Clause 71 of the Deemed Provisions)

- 2.1 Where the Shire grants development approval the development is to be substantially commenced within two years of the date of issue of the approval.
- 2.2 Where in the opinion of the Shire the planning framework (which includes the Scheme and planning policies) under which the planning approval is to be granted is reasonably likely to materially change in the foreseeable future † the Shire may specify a period of one year.

3. Extension of the Term of Approval (Clause 77 of the Deemed Provisions)

- 3.1 For the purposes of Clause 77 of the Deemed Provisions the written request to extend the term of a development approval must be received prior to the close of business on the day of which the term is due to lapse (i.e. if the approval was issued on 24 January 2010 then it will be considered to have lapsed after 4pm on 23 January 2012).
- 3.2 Where an extension is granted, a period of up to a further two years may be granted.
- 3.3 Only one extension of the term of a development approval shall be granted, after which a new development application will be required.
- 3.4 In considering a request for an extension to the term of a development approval under clause 77 of the Deemed Provisions, the Shire is to have regard to the following factors;
 - a) whether the scheme (including any new scheme), relevant planning policy or planning framework has changed in a material way since the development approval was granted;
 - b) the level of discretion (if any) that was exercised in relation to the Scheme or policy requirements in granting approval; or
 - c) whether a material change has occurred to either the site to which the development approval relates or the surrounding locality since the planning approval was granted.

3.5 Where a request to extend the term of a development approval is approved, a letter will be issued advising of the extension of the term of approval and all other conditions of the approval will remain unchanged. No new development approval will be issued as the extension of time is an extension of the term of the original approval and its conditions.

4. Further Information Requests

4.1 Where the Shire having regard to clause 63 of the Deemed Provisions is of the opinion that the material provided with a development application is insufficient for a proper planning evaluation to be made in regard to the Scheme, the Shire, shall notify the applicant in writing that additional information is required, specifying the type and form of the information to be submitted and requesting that such information be provided within 21 days of the date of the letter unless the type of information warrants more time.

5. Fees

An application fee will be charged for requests for an amendment to, and extension of the term of a Planning Approval as specified in the Schedule of Fee's and Charges.

SHIRE OF BROOME LOCAL PLANNING SCHEME No. 6 (LPS6) – LOCAL PLANNING POLICIES

This Policy is a Local Planning Policy adopted under the provisions of Clause 2.4 of LPS6. LPS6 is administered by the Shire of Broome as the responsible authority under the Scheme. LPS6 was gazetted and came into operation on the 30 January 2015.

Planning policies adopted under LPS6 may be amended or rescinded after the procedures set out in Clause 2.4 and 2.5 have been completed.