

Series | Dead or alive, extended or revived? Lapsing of development approvals

Priority development area approvals

21 February 2025

THIS SERIES

With the pressure to bring housing supply to market, achieve better infrastructure sequencing and stimulate economic development, there is a timely spotlight on “land banking” and sitting on development approvals without enacting them.

Queensland planning legislation has long contained a ‘use it or lose it’ regime that sees an approval lapse if the requisite action hasn’t happened within the currency period. Over the years this regime has become more complicated to navigate, with differences in default currency periods under different Acts, roll-forward-by-related-approvals provisions in previous legislation, the operation of completion periods and automatic Ministerial extensions for the COVID-19 applicable events.

Our team has been at the forefront in dealing with lapsing of development approvals. In this five-part series **Dead or alive, extended or revived? Lapsing of development approvals** we share our insight on—

-  Priority development area approval currency periods
-  Development approval currency periods under the *Planning Act 2016*
-  Development approval completion periods under the *Planning Act 2016*
-  Pre-*Integrated Planning Act 1997* approvals currency periods
-  Options for approvals that are about to lapse or have lapsed

LAPSING OF PRIORITY DEVELOPMENT AREA APPROVALS

Given their name, starting with priority development area (PDA) development approvals under the *Economic Development Act 2012 (ED Act)* seems a pertinent place to start this series.

The main purpose of the ED Act is to facilitate in Queensland economic development, development for community purposes, the provision of diverse housing and the provision of premises for commercial or industrial uses. This is to be achieved by, among other things, providing for a streamlined planning and development framework. This framework applies to development in PDAs, with the consequence that the ‘mainstream’ *Planning Act 2016* does not apply. The streamlined processes are intentionally directed at ensuring economic development and development for community purposes is completed in a timely manner.

The ED Act has some nuances regarding lapsing that differ from those applying to ‘mainstream’ development approvals under the *Planning Act 2016*, so there are some traps for developers, owners, financiers and assessing authorities alike.

For most of the current 34 declared PDAs, development assessment and decision making is by the Minister for Economic Development Queensland (MEDQ). However, in the following nine PDAs, MEDQ’s function is delegated under s169 to the local government pursuant to instruments of delegation and direction—

PDA

Blackwater
Blackwater East
Mackay Waterfront
Ripley Valley
Southport
The Mill at Moreton Bay
Toowoomba Railway Parklands
Townsville City Waterfront
Warraba

Local government delegate

Central Highlands Regional Council
Central Highlands Regional Council
Mackay Regional Council
Ipswich City Council
Council of the City of Gold Coast
Moreton Bay Regional Council
Toowoomba Regional Council
Townsville City Council
Moreton Bay Regional Council



KEY PROPOSITIONS

- ▮ The currency period of a PDA development approval is the period stated in the approval or if no period is stated, the ‘default’ period in s100 of the ED Act.
- ▮ PDA development approvals given before 3 July 2017 are subject to some shorter default currency periods than for approvals given since 3 July 2017, but their currency periods could be ‘rolled forward’ by ‘related approvals’.

How long is the currency period for PDA development approvals?

The approval *may* state a currency period. If it does *not* state a period, then the ‘default’ currency periods in s100 of the ED Act apply. If the assessing authority chooses to state a currency period in the approval, it can state any period. So, for example, some PDA development approvals have been given with double digit currency periods stated.

Default currency periods for PDA development approvals

	PDA development approval given before 3 July 2017	PDA development approval given on/after 3 July 2017
Material change of use (MCU)	4 years Can be ‘rolled forward’ by one or more related approvals	6 years
Reconfiguring a lot (ROL)	4 years if the ROL requires operational works – otherwise 2 years Can be ‘rolled forward’ by one or more related approvals’	4 years
For development that is not MCU or ROL	2 years	2 years

The currency period starts from the day the PDA development approval takes effect, being when the decision notice is *given* (to the applicant).

For PDA development approvals given **before** 3 July 2017, the start of the currency period for MCU and ROL approvals could be ‘rolled forward’ to align with the date the latest ‘related approval’ takes effect. The ED Act specifies what qualifies as a ‘related approval’, including that the approval must be applied for within 2 years of the start of the MCU or ROL approval currency period (and for each subsequent related approval, within 2 years of the start of the earlier related approval’s currency period).

This roll forward ability also existed in the counterpart mainstream planning legislation (the *Sustainable Planning Act 2009*) but when the



KEY PROPOSITIONS

- ▮ The requisite action must occur before the end of the currency period to avoid a PDA development approval lapsing.
- ▮ The ED Act specifies the requisite action – this differs for each aspect of development. There are also important language differences between the ED Act and Planning Act, which result in more having to be done for a PDA development approval for mixed use development or staged material change of use or ROL.

Planning Act commenced on 3 July 2017, things were simplified in both the Planning Act and the ED Act to remove the ‘roll forward’ regime and instead simply provide more generous default currency periods.

What has to be done within the currency period?

To avoid the approval lapsing, the following must be done before the end of the currency period—

For development that is material change of use (MCU)	the change of use happens before the currency period ends
For development that is reconfiguring a lot (ROL)	the plan for reconfiguration is given to MEDQ / local government delegate for approval before the currency period ends
For development that is not MCU or ROL	development under the approval substantially starts before the currency period ends

There are some subtle but important language nuances in the ED Act. For example, under the ED Act, to keep an MCU approval alive ‘**the** change of use’ must happen before the currency period ends, in contrast to the Planning Act which requires that ‘the **first** change of use’ must happen before the currency period ends. Similarly, there is notable difference in the language for ROL, in the ED Act it is ‘**the** plan for reconfiguration’ in contrast to the Planning Act’s ‘**a** plan for the reconfiguration’.

To illustrate the effect of the nuances – under the Planning Act , for a mixed use development or multi-stage development, it is only the *first* change of use that must happen before the currency period ends to keep the development approval alive for the other approved material changes of use or stages (unless there is a completion period). In contrast, for a mixed use or multi-stage PDA development approval, *all* must happen before the currency period ends. This consequence of the language difference also explains why, unlike the Planning Act, the ED Act does not expressly contemplate completion period conditioning.



KEY PROPOSITIONS

- ▮ A PDA development approval may potentially benefit from up to three Ministerial extension notices issued during the COVID-19 applicable event. These extension notices automatically extended the currency period of PDA development approvals across Queensland.

- ▮ Depending on when the PDA development approval was or came into effect, it may be the beneficiary of an extra 24 months added to the currency period.

For a material change of use to ‘happen’, carrying out of works and mere erection of buildings is not enough – judicial authority is that the particular use must be established.

Effect of the COVID-19 Ministerial extensions

The ED Act empowers the Minister to extend a period for the doing of a thing if the Minister is satisfied it is necessary to do so because of an ‘applicable event’. This power was exercised for the COVID-19 public health emergency in 2020 – 2022. Three Ministerial extension notices were issued, which had the effect of *automatically* extending a PDA development approval’s currency period, as follows—

If the PDA development approval was in effect on 21 July 2020 or came into effect by 31 October 2020	A further 6 months was automatically added to the approval’s currency period
If the PDA development approval was in effect on 1 September 2021 or came into effect by 30 September 2021	A further 6 months was automatically added to the approval’s currency period
If the PDA development approval was in effect on 29 April 2022 or came into effect by 24 June 2022	A further 12 months was automatically added to the approval’s currency period

Provided the PDA development approval was in effect or came into effect in the date range in the left column, it benefits from the automatic extension on the right. It is therefore possible for a PDA development approval to have up to 24 months automatically added to its currency period.

Unlike Ministerial extension notices given under the Planning Act which extended currency periods and *completion* periods for development approvals under the Planning Act, the extension notices given under the ED Act for PDA development approvals only extended currency periods. This is because, as discussed earlier, the ED Act does not expressly contemplate completion period conditions.



KEY PROPOSITIONS

- An application to extend a PDA development approval's currency period can be made before the approval lapses.
- The decision-making discretion is broad. For local government delegates, the instrument of delegation and direction may require notification to EDQ if the delegate is considering refusal and consequent compliance with MEDQ directions.
- There is no ability to appeal a PDA extension application decision.

PDA development approval extension applications

An application to extend a PDA development approval currency period may be made by a person having an interest in the relevant land. The extension application must be made *before* the currency period ends. An extension application must be decided within 20 business days or agreed longer period. A PDA development approval does not lapse until the applicant is given notice of the extension application decision.

The ED Act does not specify any criteria for assessing and deciding extension applications. The discretion would certainly be as broad as it is under the Planning Act, which includes that the assessment manager may consider any matter that the assessment manager considers relevant, even if was not relevant to assessing the development application. The exercise of the discretion should be informed by the MEDQ (or local government delegate) function being to give effect to the main purpose of the ED Act.

The delegations from MEDQ to local government can be subject to MEDQ's direction. For example, the Instrument of Delegation and Direction for the Southport PDA delegates MEDQ's function to decide an extension application to the City of Gold Coast, but requires that if the City is considering refusal, it must notify EDQ in writing before any final refusal decision is made and comply with any further directions from MEDQ.

Unlike under the Planning Act, there is no ability to appeal a PDA extension application decision. The ED Act requires that if the extension application is refused, the notice of decision must state the reasons for the refusal. While there are judicial review rights, a dissatisfied applicant would have to establish that no reasonable decision maker would have arrived at the decision or some administrative decision-making error.



AUTHOR

Carolyn Salam
Partner
+61 419 716 539
carolyn.salam@redemont.com

OUR PLANNING AND ENVIRONMENT TEAM CONTACTS



Michelle Pennicott
Partner
+61 418 716 537
michelle.pennicott@redemont.com



Carolyn Salam
Partner
+61 419 716 539
carolyn.salam@redemont.com



Tammy Tye
Special Counsel
+61 432 151 109
tammy.tye@redemont.com



Vanessa Walsh
Special Counsel
+61 407 279 145
vanessa.walsh@redemont.com



Chantelle Martin
Associate
+61 455 022 283
chantelle.martin@redemont.com



Piper Fraser
Associate
+61 447 310 583
piper.fraser@redemont.com



Kalani Sweeney
Law Clerk
+61 7 5553 9587
kalani.sweeney@redemont.com



Haze Tiraa
Legal Assistant
+61 7 5553 9450
haze.tiraa@redemont.com



Julie Bell
Legal Assistant
+61 5553 9419
julie.bell@redemont.com



Christina Geles
Legal Assistant
+61 5553 9595
christina.geles@redemont.com



Steve Amundsen
Consultant
+61 410 610 925
steve.amundsen@redemont.com

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