

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

# Development approval currency periods under the Planning Act 2016



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## 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

## CURRENCY IS CRITICAL

The life of a development approval is of critical value. It is controlled necessarily, by its ‘currency period’. Being able to accurately determine whether an approval is still current affects all development stakeholders. This includes assessing authorities in exercising development assessment functions (having regard to a development approval for the premises or adjacent premises), development compliance functions and planning and development certificates functions.

A development approval may also be subject to a ‘completion period’. It is important not to confuse the two, as they have different effect. This second Insight in our series focuses on **currency periods**; the next will be on completion periods.

The terminology ‘currency period’ was introduced by the *Integrated Planning Act 1997 (IPA)*. In 2006 this was changed in IPA to ‘relevant period’ and that term persisted for the life of the *Sustainable Planning Act 2009 (SPA)*. The *Planning Act 2016 (Planning Act)* has reverted back to ‘currency period’ and has a transitional provision which says that a reference to the ‘relevant period’ is taken to be the ‘currency period’.

### How do you identify the currency period?

Whether a development approval was given under the Planning Act or the repealed IPA or SPA, there is a common methodology to identify its currency period—

- 1 Look first to the development approval to see if it states a currency period. Be aware that a currency period is not a condition *per se* (although some local governments express it as a condition), so check the entire decision notice to see if a currency period is stated. If the development approval does state a currency period, then that is the currency period.
- 2 If the approval *doesn't* state a currency period, then the ‘default’ currency period under the relevant Act applies—
  - For development approvals applied for **since** 3 July 2017 (when the Planning Act commenced), s85 of the Planning Act is the source for determining the default currency period.
  - For development approvals applied for **before** 3 July 2017, the effect of Planning Act transitional arrangements is that s341 of SPA is the source for determining the default currency period.



### KEY PROPOSITIONS

- ▮ The currency period of a development approval is the period stated in the approval or, if no period is stated, the 'default' period in the applicable Act.
- ▮ Development approvals applied for under IPA and SPA before 3 July 2017 are subject to some shorter default currency periods than for approvals applied for under the Planning Act, but their currency periods could be 'rolled forward' by 'related approvals'.

### How long is the currency period?

If the development approval states a currency period, then the length is the period stated.

In the absence of such a statement in the approval, the length of the default currency period depends on:

- the aspect of development (material change of use, reconfiguring a lot, operational work or building work); and
- whether the development approval was applied for before or after 3 July 2017.

This is summarised in the figure below.

#### 2 If no period is stated – the default currency period under the Act:

#### Determining currency period length

		DA applied for before 3 July 2017 (ie. under IPA or SPA)	DA applied for since 3 July 2017 (ie. under the Planning Act)
Material change of use (MCU)	<b>1 The period stated in the approval</b>	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 work – otherwise 2 years Can be 'rolled forward' by one or more related approvals'	4 years (irrespective of whether or not operational work is required)
Operational work		2 years	2 years
Building work		2 years	2 years
Building work demolition / removal or rebuild after removal	N/A	2 months (Building Act 1975)	2 months (Building Act 1975)



**KEY PROPOSITIONS**

- ▮ The currency period starts from the day the development approval ‘takes effect’.
  
- ▮ The start of the currency period for MCU and ROL approvals applied for before 3 July 2017 could/can be ‘rolled forward’ by ‘related approvals’.

**When does the currency period start?**

The currency period starts from the day the development approval takes effect, being—

<b>If there is no submitter or no appeal</b>	when the decision notice or negotiated decision notice is <i>given</i> , or taken to have been given, to the applicant
<b>If there was one or more submitter/s</b>	when the last submitter gives a waiver notice or the last submitter appeal period ends
<b>If there is an appeal</b>	(subject to the outcome of the appeal) when the appeal is finally decided or withdrawn

The date when the decision notice is given to the applicant is often later than the date a development application is approved (by local government resolution or under delegated authority).

Where there is an appeal, it may be possible to obtain an order from the Court for permission to commence aspects of development that would not affect the outcome of the appeal.

**Rolling forward the start of the currency period of pre-Planning Act development approvals by related approvals**

For 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. IPA and SPA specified 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);
- it must be ‘necessary for’ the MCU or ‘related to’ the reconfiguration.

It is instructive to look to the conditions of the MCU or ROL approval for indicators of what work is ‘necessary’ or ‘related’.

The following table summarises possible related approvals.



Possible related approvals

Earlier approval	First related approval	Further related approval <small>Must be applied for within 2 years of the First related approval taking effect</small>
MCU preliminary approval	Development permit for MCU	Each development permit for OPW or building work necessary for the MCU
IPA s3.1.6 / SPA s242 preliminary approval which makes MCU self-assessable or exempt	Development permit for OPW or building work necessary for the MCU	Each subsequent development permit for OPW or building work necessary for the MCU
MCU development permit	Development permit for OPW or building work necessary for the MCU	Each subsequent development permit for OPW or building work necessary for the MCU
ROL preliminary approval	Development permit for ROL	Each development permit for OPW related to the ROL
ROL development permit	Development permit for OPW related to the ROL	Each subsequent development permit for OPW related to the ROL

When the Planning Act commenced on 3 July 2017, things were simplified to remove the ‘roll forward’ regime and instead simply provide more generous default currency periods for MCU and ROL across the board.

Planning Act transitional arrangements still make it possible for applications for related approvals to be made under the Planning Act that can have the effect of rolling forward the start of the currency period for a pre-Planning Act MCU or ROL development approval.



**KEY PROPOSITIONS**

- A 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 development approvals across Queensland.
- Depending on when the development approval was in effect or came into effect, it may be the beneficiary of an extra 24 months added to the currency period.
- A local government decision agreeing to apply a superseded planning scheme to the carrying out of development that was accepted development under the superseded planning scheme is treated as a development approval for the purpose of the currency and extension application provisions.

**Effect of the COVID-19 Ministerial extensions on currency periods**

The Planning 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 (for all of Queensland) a development approval’s currency period, as follows—

<p>If the approval was in effect on 8 July 2020 or came into effect by 31 October 2020</p>	<p>A further <b>6 months</b> was automatically added to the approval’s currency period</p>
<p>If the approval was in effect on 1 September 2021 or came into effect by 30 September 2021</p>	<p>A further <b>6 months</b> was automatically added to the approval’s currency period</p>
<p>If the approval was in effect on 29 April 2022 or came into effect by 24 June 2022</p>	<p>A further <b>12 months</b> was automatically added to the approval’s currency period</p>

Provided the 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 development approval to have up to 24 months automatically added to its currency period.

The Ministerial extensions do not apply to building work approvals for demolition / removal / rebuilding.

**Superseded planning scheme request decisions**

A local government’s decision agreeing to a request to *apply* a superseded planning scheme to the carrying out of development that was *accepted* development under a superseded scheme is taken to be a development approval for the purpose of the Planning Act’s lapsing and extension provisions.

Such decisions also benefit from the Ministerial extensions.



**KEY PROPOSITIONS**

- ▮ The required action must occur before the end of the currency period to avoid a development approval lapsing.
- ▮ The Act specifies the required action, which differs for each aspect of development.

**What has to be done within the currency period?**

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

<b>For development that is material change of use (MCU)</b>	the <b>first</b> change of use must happen
<b>For development that is reconfiguring a lot (ROL)</b>	<b>a</b> plan for reconfiguration for the reconfiguration must be given to the local government for approval
<b>For operational work and building work</b>	the development must <b>substantially</b> start
<i>For building work that is demolition/removal/rebuild</i>	<i>the work must substantially start within 2 months and be completed within 1 year</i>

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).

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

As to the threshold of ‘substantially start’ for operational work and building work, there is no hard and fast percentage threshold. It is a question of degree - as described by the High Court what is required is ‘*an objective commitment of resources, relative to the approved project scale, so as to carry the assurance that the work has really commenced*’.



## KEY PROPOSITIONS

▮ The options for dealing with a development approval that is about to lapse or that has lapsed will be canvassed in the final Insight in this series.

### What are the options if more time is needed?

The final Insight in this series will canvas the available options if more time is needed to start the development—

- where it is apparent that the required action will not be able to be done before the currency period is due to end—making an extension application to the assessment manager before the development approval lapses;
- when faced with the predicament of development approval that has already lapsed—seeking excusal from the Planning and Environment Court to enable the subsequent making of a (late) extension application to the assessment manager.

If you need assistance in managing the implications of lapsing of development approvals, contact our [Planning and Environment experts](#) who have been at the forefront in assisting public sector and private sector clients in this space over the last 20 years.



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