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Astute Advantage

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

Lapsed approvals or when lapse is looming - What are the options?

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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.

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*
- Options for approvals that are about to lapse or have lapsed
- Pre-*Integrated Planning Act 1997* approvals currency periods

The series is available on our website.

WHEN MORE TIME IS NEEDED

Our earlier Insights in this series explained how to work out a development approval's currency period and completion period (if any), and the action that must happen before each ends to keep the approval alive.

This fourth Insight in our series turns to the practical question that follows: What can be done when the required action will not happen in time, or when the approval has already lapsed?

The options, and who decides them, depend on three things: whether it is the currency period or completion period that's in issue, whether the approval is still current or has already lapsed, and whether the approval was given by the assessment manager (usually the local government), the Minister or by the Planning and Environment Court. The table at the end of this Insight summarises the pathways.

Once an approval has lapsed, there is no simple statutory "undo". The Court's power to assist is real but constrained, and as we explain in this Insight, the language of "revival" overstates what the Court can, and will in practice, do.

Before the approval lapses

While the approval is still current, the statutory path to create more time depends on whether it is the currency period or completion period in issue.

1 **Extension application (to extend the currency period)**

Section 86 of the *Planning Act 2016* enables a person to apply to the assessment manager to extend the currency period of a development approval, but only before the approval lapses.

The application must be in the approved form (or by notice) and accompanied by the required fee, and, where the applicant is not the owner, the owner's written consent for a material change of use, reconfiguration, or certain tidal works.



KEY PROPOSITIONS

- Act before the approval lapses. The statutory pathways for more time are only available while the approval remains current. For a currency period, apply for an extension before the approval lapses. A completion period cannot be the subject of an extension application. Use a change application to change or delete the relevant condition.

In deciding the application, the assessment manager may consider *any matter it considers relevant*, even a matter that was not relevant to assessing the original development application, and must decide within 20 business days (or longer agreed period) whether to grant, refuse, or grant a different extension. Importantly, the assessment manager (usually the local government) is the deciding entity for the extension application even if the development approval was given by the Planning and Environment Court on appeal or the Minister following a call-in. If the extension is granted, the approval lapses at the end of the extended period instead.

2 Change application (to change or delete a completion condition)

Where the pressure point is a *completion period* rather than the currency period, the appropriate tool for obtaining more time is a change application. Unlike currency periods, not all development approvals are subject to a completion period. As discussed in our earlier Insight, a development approval lapses to the extent development is not completed within the period required by a development condition specifying a completion period (or for certain preliminary approvals including a variation approval, the default completion period if there is no condition).

Section 88 of the *Planning Act 2016* does not provide for extending a completion period. The way to adjust it is a change application under section 78 to change or delete the completion period condition.

The responsible entity for deciding the change application is specified in section 78A of the *Planning Act 2016*.

After the approval has lapsed

This is where we find expections most often need tempering.

The *Planning Act 2016* contains no provision that reinstates a lapsed approval. Lapsing under sections 85 and 88 is automatic and the only statutory relief via the assessment manager or responsible entity, a pre-lapse extension application or a change application to change a completion condition,



KEY PROPOSITIONS

- There is no statutory 'undo'. Once an approval lapses, the *Planning Act 2016* contains no provision reinstating a lapsed approval, and lapsing is automatic. Once lapsed, only the Planning and Environment Court can assist.
- The P&E Court may excuse the failure to apply for an extension in time, but cannot put the applicant in a better position than if it had complied.

assumes the approval is still alive. After an approval has lapsed, the only entity who can provide relief is the Planning and Environment Court.

What the Court can do is excuse the non-compliance. The Planning and Environment Court has a broad discretion under section 37 of the *Planning and Environment Court Act 2016*, where it finds a non-compliance with a provision of the Act or an enabling Act, to deal with the matter in the way it considers appropriate. That power expressly applies to a development approval that has lapsed, and is not limited to current Court proceedings or to provisions imposing a positive obligation. The section both grants the power and confers jurisdiction, so an originating application can be commenced for the purpose of dealing with the lapse-related non-compliance (*Brassgrove KB Pty Ltd v Brisbane City Council* [2019] QPEC 42).

The relevant non-compliance is the failure to make an extension application before the approval lapsed. Crucially, the applicant must be able to point to such a non-compliance; section 37 is not a free-standing power to re-enliven a lapsed approval at large (*Monaco Street Pty Ltd v Ipswich City Council* [2020] QPEC 21). The relief is applied for by making an originating application to the Court.

But the Court cannot confer a windfall. This binding constraint comes from the Court of Appeal decision in *Metrostar Pty Ltd v Gold Coast City Council* [2006] QCA 410.

Construing the excusatory power in section 4.1.5A of the *Integrated Planning Act 1997*, the Court held that it is ordinarily exercised by orders placing the defaulting party in the same, or no worse, position than if there had been compliance, and does not extend to orders giving a party '*a significant advantage it would not have had*' but for its non-compliance. That principle remains apt for section 37 today.

The Planning and Environment Court applied that principle only last week in *Dixon v Ipswich City Council* [2026] QPEC 42. The Court refused the primary relief because it would have placed the applicant in a better position than if he had complied, bypassing the extension process the



KEY PROPOSITIONS

- The Court does not itself 'revive' the approval. The usual relief is to allow a late extension application to be treated as validly made (as to time). The assessment manager then decides the extension application on its merits.
- A fresh development application always remains available at any time as an option, but it will be assessed against the current planning framework.

Planning Act 2016 entrusts to the assessment manager. Her Honour Judge Kefford emphasised that whether an extension should be granted involves an evaluative merits judgment for the assessement manager (in this case, the Council), which information-gathering opportunities and processes (including a right of appeal) that the Court, confidend to the evidence of the parties, does not.

In practice, the usual order is to excuse and send back to the local government. The Court excuses the failure to apply in time and orders that any section 86 extension application within a short, specified window (commonly four weeks from the date of the order) be treated as a valid extension application (in respect of time), leaving the merits of the extension to the assessment manager. That is exactly what happened in *Dixon*.

While some judgments do use the word "revived" in their orders (for example, in *Precedent Nominees No. 48 Pty Ltd v Tablelands Regional Council* [2023] QPEC 21; *Vancard Pty Limited v Central Highlands Regional Council* [2020] QPEC 12), the safer framing when applying for relief from the Court and the one that aligns with *Metrostar* and now *Dixon* is that the Court excuses a non-compliance to let a late extension application proceed. Properly understood, it does not revive or resurrect a dead approval on its own terms.

Start again with a fresh development application. The option that is always open, and that avoids these jurisdictional questions entirely, is to make a new development application for the development.

The trade-off is that the new application is assessed against the current planning scheme and assessment benchmarks, so conditions, infrastructure charges and even the outcome may differ from the lapsed approval.



KEY PROPOSITIONS

- Diarise the lapse date and act early. If the approval has lapsed, move quickly.
- Court relief is discretionary and the evidence explaining the lapse and supporting the exercise of that discretion matters.
- Weigh the prospects and consequences of a fresh development application against seeking Court relief.

Our practical tips

Diarise the lapse date and act early.
The single most valuable step for consultants and development managers is identifying the currency and completion dates (using the methodology in our earlier Insights) and acting well before them.

If lapse is looming, lodge the extension application before the date.
The pre-lapse precondition in section 86 of the *Planning Act 2016* is strict; a day late changes the problem from an administrative one into a Court application.

If the approval has lapsed, move quickly and don't expect 'revival'
The realistic outcome is usually an excusal that lates a let extension application be assessed by the assessment manager (usually the local government) on its merits, as the Court confirmed in *Dixon*.

Assemble the evidence that matters to the exercise of the Court's discretion. In our experience, this includes evidencing:

- the explanation for the delay;
- what has happened to date in implementing the development approval, including works and expense incurred;
- whether the planning scheme has changed and what are the implications if it has;
- the assessment manager's position;
- how diligently the applicant has acted on becoming aware the approval has lapsed.

Dixon is a reminder that this evidence must be properly exposed: the Court accepted five of the applicant's six grounds but declined to act on the planner's comparison of the old and current planning schemes because the basis for those opinions was not adequately explained.

Weigh the prospects and consequences of a fresh development application.



The table below summarises the pathways and the relevant decision-maker. Our Planning and Environment experts can help navigate the appropriate pathway.

APPLICATION TYPE	ENTITY TO WHOM IT IS TO BE MADE	
Before the development approval lapses		
Extension application to extend **currency period**	**Council** (as assessment manager) – irrespective of whether the Council, the Court or the Minister approved the DA	
Change application to change or delete **completion condition**	**Council**	if Council approved the DA, or the Court approved it and there were no submissions
	Planning and Environment Court	if the Court approved the DA and and there were submissions
	Minister	if the Minister approved the DA following a call-in
After the development approval has lapsed		
Originating application for **excusal** to make late extension application	**Planning and Environment Court**	
+ Subsequent extension application	**Council**	
Any time		
New development application	**Council**	



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

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OUR PLANNING AND ENVIRONMENT | REGULATORY TEAM CONTACTS



Michelle Pennicott
Partner
+61 418716 537
michelle.pennicott@redemont.com



Vanessa Walsh
NSW Planning Practice Leader
Special Counsel
+61 407 279 145
vanessa.walsh@redemont.com



Taylor Doyle
Associate
+61 493 898 831
taylor.doyle@redemont.com



Daria Chernova
Law Clerk
+61 7 5553 9479
daria.chernova@redemont.com



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



Steven Warrington
Graduate
+61 5553 9450
steven.warrington@redemont.com



Ashaya McHenry
Law Clerk
+61 5553 9574
ashaya.mchenry@redemont.com



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

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