

Environmental Planning and Assessment Regulation 2000 Repeal Postponed

Date : June 19, 2020

The *Environmental Planning and Assessment Regulations 2000* (NSW)(**EP&A Reg**) has been delayed in its repeal and replacement on 1 March 2021, pushing the date back a year to the 1 March 2022. This delay allows appropriate consultation time for further reviewing of the provisions and preparing a replacement regulation once the pandemic has subsided.

The current requirements in the EP&A Reg will continue to apply for an additional 12 months – but what does this mean?

Changes to lapsing dates for Development Consents and Deferred Commencement Consents

All lapsing dates have changed for development consents and deferred commencement consents. They have been changed so that:

- Both consents granted within the 2 year period from 25 March 2020 will have a five-year lapsing period that cannot be reduced,
- Consents granted prior to 25 March 2020 that have not already lapsed will be extended by 2 years, and
- The lapsing date has been extended for 2 years consents that have lapsed since 25 March 2020.

These changes are a result of secure project finance as the disruption to the supply chain of construction material has limited the capabilities to complete work. This means that there is a greater chance for development consents to lapse before physical work can even be commenced. The time extensions for development consents and deferred commencement consents will provide greater flexibility to applicants and developments.

NB: These amendments are not permanent. The ability for consent authorities to grant development consents with lapsing periods that are less than 5 years will resume on 25 March 2022.

Extension of Merit Appeal Periods to the Land and Environment Court

Extensions have been made to the period of time an applicant has to make an appeal to the NSW Land and Environment Court from 6 months to 12 months. This change applies to determinations made from 6 months before 25 March 2020 and 2 years after.

Similarly, the objectors period of time has been extended to make an appeal to the NSW Land and Environment Court from 28 days to 56 days. This change applies to determinations made from 28 days before 25 March 2020 and 2 years after.

These changes provide further flexibility for developers and more time for objectors, and further enabling the NSW Land and Environment Court more time to manage the backlog of cases due to the pandemic restrictions.

NB: These amendments are not permanent, only applying for the 2 years from 25 March 2020, reverting back to 6 month application periods and 28 day objection periods.

Extension of abandonment period for existing and continuing use rights

The period to which an existing or other lawful use is considered abandoned is extended from 1 year to 3 years. This change accounts for the current economic climate in Australia as many property owners may find it difficult to continue to operate. This could result in businesses being required to shut down during this pandemic period and will make it more difficult to attract new tenants. This extension permits property owners to abandon the use for up to 3 years, giving more time for the economic conditions to improve.

NB: These amendments are not permanent, only being in place after the 2 year period from 25 March 2020.

Extension of Powers of compliance officers

The required social distancing and lockdown requirements during the pandemic has made it difficult for investigating officers to conduct interviews and gather evidence about potential offences. The following Acts have been amended to allow compliance officers to conduct questions and receive answers via audio- or audio-visual links:

- *Biodiversity Conservation Act 2016*
- *Crown Land Management Act 2016*
- *Environmental Planning and Assessment Act 1979*
- *Protection of the Environment Operations Act 1997*
- *Water Management Act 2000.*

NB: These amendments are not permanent, only being in place for six months from their commencement.