



PROFESSIONAL PRACTICE:

Closing of Development Application Files

It has come to the attention of Planning SA that some files on development applications are remaining open for inordinately long periods of time. A relevant authority (council) has a responsibility to effectively and efficiently administer the provisions of the Development Act and it could be argued that failing to properly close files on applications is a breach of their duty of care. This Advisory Notice provides guidance on appropriate practices for the effective and efficient management of development applications that will result in the timely closure of files.

BACKGROUND

For a development approval to remain valid regulation 48 requires substantial work to be commenced within 12 months of the operative date of the approval. If work has not substantially commenced by then, the development approval lapses. The determination of what constitutes substantial commencement can be difficult, and may require legal advice, but typically the pouring of concrete footings for the main building work can be taken as substantial commencement.

If the work has substantially commenced within 12 months then the development approval remains valid for a further 24 months (i.e. 3 years from the operative date of the approval).

These time limits may be extended by a relevant authority and section 40 (3) of the *Development Act* allows such extensions to be given by the relevant authority either on its own initiative or in response to a specific application for an extension of time from the person having the benefit of the approval.

DISCUSSION

Once it has been determined that the work contained in a development approval has been satisfactorily completed by the existence of relevant prescribed documentation (such as a Certificate of Occupancy, Statements of Compliance, Form 2 for Essential Safety Provisions), and that there are no outstanding issues of compliance, then the file on a development application should be closed immediately.

However, it is not always known what the progress of the work is or whether the approval has lapsed.

In general, once the application has lapsed there is no reason why the file for a development application should remain open.

Accordingly the opportunity for closing a file on a development application occurs at the following points:

12 months after the date of approval if work has not substantially commenced.

3 years after the date of approval if the work was substantially commenced within 12 months.

At the expiry of any extension of time given by the relevant authority.

At any other intermediate time once it has been established that work has been satisfactorily completed.

In the absence of other information the statutory 12-month and the 3 year periods provide important check points in the administration of the application and enforcement processes.

It is suggested that the following actions be taken **one month before these key times**:

A. Expiry of 12 Months

The determination of whether work has substantially commenced will typically have two steps

Are there any reports of notifications (such as intention to pour concrete for footings, or inspection reports) to indicate that work has commenced.

Undertake an inspection to determine the status of the work. If there is no sign of any work being undertaken on the site, the development approval is about to lapse and the relevant authority will then be in a position to close the file. Accordingly the applicant should be advised that the development approval is about to lapse and advice should be sought on the likelihood of an imminent commencement of the work.

Depending on the advice from the applicant a decision can then be made whether to close the file on the application or whether to provide an extension of time.

B. Expiry of 3 Years

The lapsing of a development application after 3 years effectively means that there is 3 years in which to complete the work. Accordingly, it will be necessary to:

Check to see if a Certificate of Occupancy has been issued or a Statement of Compliance has been received, together with any inspection reports. If they have and there are no outstanding matters, then the file can be closed.

If there is no indication on the file that the work has been completed then it may be necessary to ask the private certifier (where applicable) if they have received any Statements of Compliance or issued a Certificate of Occupancy.

An inspection will be necessary to determine the status of the work if none of these enquiries indicate that the work has been completed:

If the work has not progressed much beyond that at the 12-month point, then the applicant should be advised that the development approval is about to lapse and advice should be sought on the circumstances and likely completion of the work.

If the work has actually been completed and occupied there may be a breach of the Act and enforcement action can be considered. In particular any prescribed documentation should be pursued.

SUMMARY

The file on any development application should not be still open after 3 years from the date of development approval unless there has either been a specific extension of time given by the relevant authority or there are outstanding issues of compliance that are being resolved (i.e. enforcement action).

In closing a file on a development application a relevant authority needs to be certain that either:

The work has not been undertaken, OR

The work has stopped and is unlikely to recommence, and if work did recommence then a new development approval will be required, OR

The work has been completed and all the necessary documentation to indicate completion has been received (such as Certificate of Occupancy, Statements of Compliance, Form 2 for Essential Safety Provisions).

Further information

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