

NEWS FLASH NEWS FLASH NEWS FLASH NEWS**PLANNING AND ENVIRONMENT (GENERAL AMENDMENT) ACT 2004**

The Planning and Environment (General Amendment) Act 2004 was proclaimed today, Monday 23 May 2005. A range of changes to the Planning and Environment Act are now law.

From today, the process for the preparation of planning scheme amendments (such as rezonings) and certain aspects of planning permit applications has changed. The changes are part of the State government's implementation of the Better Decisions Faster 'reform' of the planning process.

In September last year the then Minister for Planning, Mary Delahunty, said in her Second Reading speech to Parliament that the changes will "improve the efficiency of the planning permit process and the planning scheme amendment process and promote better outcomes from planning decisions for the community".

The Planning and Environment (General Amendment) Act 2004 deals primarily with:

- planning scheme amendments;
- amendments to planning permit applications and planning permits;
- requests for further information;
- review of planning schemes.

A summary of some of the key changes is presented below.

PLANNING SCHEME AMENDMENTS**Key Changes**

A municipal council must now obtain the authorisation of the Minister for Planning to prepare a planning scheme amendment.

The Minister may authorise a planning authority to approve an amendment to a planning scheme.

If a planning authority is authorised to approve an amendment, it must, after adopting the amendment, refer it to the Secretary of the Department of Sustainability and Environment (DSE) for 'certification' before it approves the amendment.

Comments

Authorisation to prepare an amendment adds a new step in the process. The intention is to ensure that the proposed amendment to the planning scheme is properly formatted, soundly based and consistent with State government policy. This should prevent amendments from being exhibited that have no chance of ever being approved by the Minister for Planning.

Whilst the early scrutiny of a proposed amendment by DSE may be advantageous, a number of questions are raised.

- *How much information about the amendment is required to be provided to DSE to obtain authorisation?*
- *Who at DSE will need to review the proposed amendment?*
- *How long will it take for DSE to authorise the preparation of an amendment?*

DSE will need to ensure the timely assessment and authorisation of proposed amendments if this additional step in the process is to be of any real benefit. The Act makes no provision or requirement for DSE to respond to these matters within specified time limits.

Up until now, the Minister for Planning has been the only person who could approve an amendment to a planning scheme. The delegation of approval of relatively simple and straightforward amendments to local councils should, in theory, speed up the process. On the other hand, the requirement to have such amendments certified by DSE before a council approves the amendment may negate any efficiency of delegation. The Act does not require the Secretary of DSE to respond within any specified time limit.

AMENDMENTS TO A PLANNING PERMIT APPLICATION

Key Changes

An applicant may request the responsible authority to amend a planning permit application before or after notice of the application is first given.

The responsible authority may refuse to amend an application if it considers that an amendment is “so substantial” that a new application for a permit should be made.

Comments

The changes formalise a process that many councils follow currently informally. Significantly though, the “so substantial” test is very subjective and there is uncertainty about review rights to VCAT if a council deems that a new application is required. A fresh application may result in additional fees payable to the responsible authority.

Further, it should be remembered that if an amendment to an application is made, an additional fee will be payable and the ‘60 day clock’ restarts from zero when the request is received by the responsible authority. The responsible authority must decide whether notice should be given of an amended application.

Whilst the changes should help reduce the number of applications that are ‘ambit claims’, applicants need to consider carefully the most appropriate process to amend plans to satisfy the concerns of objectors without significant time penalties. To this end, we recommend that applicants continue to negotiate changes to an application through conditions on the permit (requiring the submission of amended plans and so on) rather than through a formal amended application.

AMENDMENTS TO A PLANNING PERMIT

Key Changes

An amendment to a planning permit now follows a similar process to a permit application.

The responsible authority must decide whether notice should be given. An application to amend a planning permit must be sent to relevant referral authorities.

Applications for review of the decision regarding an application to amend a permit can be lodged by the applicant and objectors.

Comments

The process for amending permits has, up until now, been vague and inconsistent. The process is now clearer and provides more certainty.

It is likely that amendments to permits will now be advertised. Applicants should be aware of the review rights that are now provided to objectors.

REQUESTS FOR FURTHER INFORMATION

Key Changes

If a responsible authority seeks further information (within the prescribed time) from an applicant about an application then it must now also specify a date by which the information must be received. An application is deemed to have lapsed if the information is not provided within the specified time. Once an application has lapsed it cannot be recommenced. A fresh application will need to be lodged.

The lapse date must be a day not less than 30 days after the giving of the notice.

An applicant may apply to the responsible authority for an extension of time to provide the further information. A request to extend the time must be made before the lapse date. An applicant may apply to VCAT for a review of a decision of a responsible authority to refuse to extend the time.

Comments

This is an entirely new process in the planning system. The changes would appear designed to enhance the processing time statistics of permit applications at Councils rather than serve the needs of the applicant. It will enable officers to delete 'slow' applications from their system and thus reduce the number of applications that are taking a long time to resolve. Any future empirical data that suggests improvements in the processing time of applications may in fact be a result of many applications lapsing, rather than a quicker decision to approve or refuse the proposal.

Applicants need to watch carefully the lapse date and ensure that either the information is provided within the required time, or request an extension of time before the lapse date.

REVIEW OF PLANNING SCHEMES

Key Changes

A planning authority that is a municipal council must review its planning scheme at least once every three years.

Comments

Up until now, councils have been required to review their Municipal Strategic Statement every three years. This change extends the scope to include the entire planning scheme. In theory, it ensures that a planning scheme is kept up to date however, it is uncertain how already under-resourced councils will be able to resource adequately such a requirement.

FURTHER INFORMATION

Got any questions? Are you uncertain how these changes may impact on your proposal? Collie would be happy to elaborate on the changes to the Planning and Environment Act in more detail, if required. Please give one of our Project Directors a call on 9686 9177 or email them at the address below.

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