

Minimising the Cost of Obtaining Development Approval

Obtaining development approval is one of the necessary first steps for completing a major renovation or new development. Delay in obtaining development consent can greatly increase holding costs and result in purchase options lapsing before approval is obtained. Given that either scenario can make or break the viability of a development it is important to minimise any such delay. This article explains some options to minimise the time taken to have a development application (“application”) determined.

The Environmental Planning and Assessment Act (NSW) 1979 (“Act”) sets out which developments may be carried out without development consent, and which developments require consent. Section 82 of the Act also provides a date on which the consent authority is deemed to have refused an application, but does not prevent the consent authority from determining an application at any time, even after the date for deemed refusal has passed.

Accordingly, some applications can languish for months or even years while the applicant waits in hope to for its application to be determined by consent.

In practice, how long a consent authority takes to determine a particular application is often dependent on the volume of other applications received by the consent authority and the persistence with which the applicant chases the consent authority for a determination. In this regard making regular contact with the consent authority can be invaluable.

However, where persistence alone fails to produce an approval before the date for a deemed determination, applicants can speed up the process by ‘appealing’ the ‘determination’ to the Land and Environment Court under section 97 of the Act.

The time for a deemed determination varies depending on the nature of the application as follows:

- 90 days for a state significant development;
- 60 days for a designated development, integrated development (except aquaculture) or development that requires concurrence; and
- 40 days for all other developments and section 96 modification applications.

The time commences from the date the application is lodged with the consent authority.

Appeals can speed things up in one of two ways. First, it is usually the case that if an appeal is filed, the consent authority will prioritise consideration of the application and will approve it, if appropriate to do so. Second, the appeal itself will likely be determined within 6-12 months of commencement if no determination is received from the consent authority in the meantime.

The benefit of this process is that for a comparatively small cost (the cost of preparing and lodging the appeal) an applicant can bring forward the date of obtaining consent by months which can make the difference between a viable development and a pipe dream.

However, any such appeal must be commenced within 3 months of the date of the deemed refusal, with no exceptions. In the case of *Simmons v Marrickville Council; Kababy Pty Limited v Marrickville Council* [2012] NSWLEC 133 (6 June 2012) the applicants filed their appeals outside the relevant time limit and their claims were dismissed on the basis that the Court does not have the authority to extend the limitation dates contained in the Act.

Accordingly, if you want to push an application through as soon as possible, be persistent in chasing the consent authority and diarise the dates for deemed determination and the 3 month cut off for filing an appeal from that determination, so that you have the option to appeal the matter if the consent authority does not determine the application in a timely manner.

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