

# Navigating COVID-19: Planning Exemptions

1 May 2020



**Local governments need to manage the oversight of their planning responsibilities in light of the State Government response to the COVID-19 pandemic.**

The State Government declared a state of emergency on 15 March 2020<sup>1</sup>.

On 3 April 2020 an amendment to Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) was published in the Government Gazette.

This amendment, which came into effect on 4 April 2020, involved the insertion of Part 10B, titled 'Exemptions from planning requirements for state of emergency'. The purpose of this amendment is to facilitate the response to, or recovery from, the emergency to which the state of emergency declaration relates.

Under Part 10B, the Hon Rita Saffioti, Minister for Transport; Planning WA, signed a Notice of Exemption (**Notice**) on 8 April 2020. This Notice allows exemptions from certain planning requirements in order to help businesses adapt to the new circumstances and to provide essential community services.

The Notice relates to applicable planning requirements only, and does not exempt other requirements that might apply under any other law. The exemptions also do not apply to heritage-protected places.

The majority of the exemptions under the Notice will expire 90 days after the date upon which the state of emergency declaration ceases to have effect or is revoked.

## What are the exemptions?

The aim of the exemptions is to allow enterprises to make the rapid adjustments necessary to cope with the state of emergency.

They relate to certain 'planning requirements', including but not limited to a requirement:

- to obtain development approvals for a change of use or temporary works for certain businesses;
- to satisfy certain conditions of development approval;
- relating to the permissibility of land use;
- regarding non-conforming uses;
- relating to the consultation and advertisement process, time limits or the lodgement of forms.

## 7 Day Notice Period

Although the Notice refers to the requirement that proponents notify the relevant local government within 7 days of commencing the use and/or undertaking the works, there does not appear to be any specific requirements for what happens if this 7 day notice period is not complied with.

Local governments may wish to consider ways to formalise a procedure for compliance and ways to deal with possible non-compliance.

## Exemptions for medical or health related activities

Proponents are exempt from the requirement to obtain development approval where the use or works relate to medical or health-related activities associated with a response to the COVID-19 Pandemic.

As a condition of this exemption, a local government, or public authority, is required to identify that the medical or health-related activity is a necessary response.

An example of this may be a private medical practice being exempt from needing to obtain formal approval to expand its medical rooms in order to adhere to social distancing measures or to accommodate a potentially larger pool of patients.

Supermarkets may also be permitted to expand their delivery hours to accommodate the higher-than-usual demand for delivery service in order to reduce the number of customers simultaneously shopping in-store.

### **Exemption from approval for certain land uses and temporary works**

Proponents are also exempt from the requirement to obtain development approval for uses, and temporary works, associated with shops, restaurants/cafes, convenience stores (excluding those selling petroleum products), consulting rooms and offices.

The conditions attached to this exemption include but are not limited to:

- the land to be used is located in a commercial, centre and/or mixed use zone;
- the use is not prohibited by the scheme;
- no new permanent structures are required (with the exception that car parking bays are permitted);
- for shop uses, the net lettable area for shop uses not exceeding 400m<sup>2</sup>.

These exemptions are temporary only, and the use will either need to cease, or the proponent will need to seek development approval, to continue such use after 90 days of the lifting of the state of emergency declaration.

This exemption has the potential to benefit landowners and tenants wishing to use land for certain purposes without the usual advertising, assessment and formal approval process by local governments.

An example is where premises that have been approved for use as a hotel, tavern, restaurant/café or other similar use be permitted to adjust their operation by offering take-away and/or home delivery, in order to comply with current social distancing measures.

The above includes an exemption from the need to obtain approval for minor, temporary works that are necessary to adapt the existing premises to facilitate this new operation. Such an exemption is allowed provided that, among other things, no new permanent structures are required.

When determining whether a structure is temporary, local governments may need to consider whether it can easily be removed. For example, the Frequently Asked Questions page on the Department of Planning, Lands and Heritage website notes that a traditional bricks-and-mortar building on a concrete pad could not be covered by the Notice as it could not easily be removed.

Approval for structures required to facilitate industrial-type land uses are deemed temporarily approved for 2 years from the date the use commences, after which the structures must be removed.



### **Exemptions from the requirement to provide car parking bays or cash-in-lieu**

The Notice exempts proponents from the requirement to provide, in respect of non-residential developments:

- the usual number of parking bays required for the use, provided that the shortfall is 10 parking bays or less; and
- a cash-in-lieu payment as an alternative to providing car parking facilities.

### **Extension to the duration of development approval**

The timeframe for substantially commencing development has been increased by 2 years without requiring the holder of the approval to apply for or document the extension.

## What does this mean for local governments?

The Notice reflects a common-sense approach to the adjustment of planning requirements in the short-term to accommodate these unprecedented times.

However, every local government would still need to take appropriate steps to monitor compliance with these new, temporary rules.

The following are some examples of compliance monitoring activities:

- checking that notice was received within 7 days of commencement;
- confirming whether an activity is medical or health-related, when that is suggested by a proponent;
- inspecting relevant works to see if they are of a temporary nature; and
- analysing changed parking bay ratios where appropriate.

Local governments should strive to be accommodating, in keeping with the approach taken in the Notice. But they should still seek to ensure the good government of their districts, even as these exemptions create this relaxed planning environment, however temporary it might be.

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<sup>i</sup> *Emergency Management Act 2005 (WA)*

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