

# COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020

## EMERGENCY PROVISIONS RELATING TO TASMANIA'S LAND USE PLANNING SYSTEM

### Overview

We are currently experiencing unprecedented circumstances as a result of the COVID-19 pandemic. The pandemic is causing significant disruptions to everyday life, including business, industries and the public service in Tasmania, with similar impacts being felt around the world.

Among the many things being impacted is the effective performance and exercise of the judicial, administrative and legislative functions of Tasmania's land use planning system. There is also the need to provide both temporary and emergency relief from some planning requirements, such as planning scheme requirements and current planning permit conditions to allow for the delivery of essential services, meet increased demands, and comply with new requirements and protocols.

The *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the COVID-19 Act) makes provision for a number of measures to deal with the impacts of COVID-19 on Tasmania's land use planning system.

### What emergency measures does the COVID-19 Act provide for land use planning matters?

The COVID-19 Act provides a range of measures relating to the functions and powers of planning authorities, the Tasmanian Planning Commission (the TPC), the Resource Management and Planning Appeal Tribunal (the RMPAT) and other entities that operate within Tasmania's land use planning system. These include providing for:

- extensions to statutory time periods, including those under the *Land Use Planning and Approvals Act 1993* (the LUPA Act) and other associated legislation;
- alternative ways to take physical action, such as providing signatures, the personal serving of documents, or delivery of hardcopy documents;
- alternative meeting arrangements for local councils acting as planning authorities;

- alternative hearing procedures for the TPC and RMPAT; and
- alternative arrangements for public exhibition of documents under the LUPA Act;

It also provides the ability for temporary relief from planning scheme requirements and existing planning permit conditions to assist with our response efforts to COVID-19, including:

- modifications to planning permit conditions to allow for the delivery of essential services;
- exemptions from planning scheme requirements in order to implement a requirement, direction or authorisation under the *Emergency Management Act 2006* or the *Public Health Act 1997*.

## How will these emergency measures be implemented?

The COVID-19 Act provides for the issuing of a notice by the relevant Minister to deliver the various emergency measures. Most notices can only be issued with the approval of the 'emergency manager'<sup>1</sup>.

A notice may be issued if the Minister is satisfied that it is necessary or desirable due to:

- the presence of COVID-19 in the State;
- the risks to people contracting COVID-19;
- restrictions imposed on the movement of people due to COVID-19;
- reduction in people available to carry out particular activities due to COVID-19; or
- the desirability of ensuring the supply of goods and services which may be hindered by COVID-19.

The notice must provide details on the scope of the measures and alternative arrangements that will be in place for the defined period.

A notice must be laid before both Houses of Parliament after it is issued, and it comes into effect on the date of publishing in the *Tasmanian Gazette*, or later specified date. A notice may be disallowed by Parliament after issue, similar to regulations.

A notice remains in effect for a period of 12 months, or a shorter period as specified in the notice, unless it is otherwise revoked. A notice is automatically revoked 60 days

---

<sup>1</sup> The 'emergency manager' is the State Controller as defined in the *Emergency Management Act 2006* if a state of emergency has been declared. For any other cases, the 'emergency manager' is the Director of Public Health as appointed under the *Public Health Act 1997*.

after the 'emergency cessation day'<sup>2</sup> specified in the COVID-19 Act.

## What time periods may be extended under the COVID-19 Act?

Section 13 of the COVID-19 Act provides for the issuing of a notice to extend the statutory time periods specified in any legislation identified in that notice.

This could include any of the statutory time periods for local councils to assess development applications under the LUPA Act, and any time periods for other entities involved in that assessment, such as TasWater, the Environment Protection Authority, and the Tasmanian Heritage Council.

It could also relate to any statutory time periods in the LUPA Act and associated legislation relating to planning scheme amendments, draft Local Provisions Schedules, planning appeals and enforcement.

## What alternate meeting arrangements are available for local councils acting as planning authorities?

Under the *Local Government Act 1993*, local councils, acting as planning authorities, are required to conduct face-to-face meetings.

Section 18 of the COVID-19 Act provides for meetings to occur by alternative arrangements including, for example, by teleconference or electronic communications (e.g. by Skype).

The issue of a notice under section 18 of the COVID-19 Act can also provide for altering the number of members that constitute a quorum and the use of proxies at that meeting.

The notice can also provide for different processes if the meeting is normally required to be held in public, such as setting out the conditions that must be adhered to if the meeting proceeds or specifying that the meeting does not need to be held in public.

## What alternatives are available for the TPC or RMPAT to hold meetings and hearings?

The alternative meeting procedures available to local councils under section 18 of the COVID-19 Act also apply to the TPC and RMPAT to allow for these bodies to conduct their business in alternative ways.

Section 20 of the COVID-19 Act provides that where hearings are normally required to be conducted in public, the Attorney General can declare by notice that any hearing can be conducted in a manner specified in the notice.

The Attorney General can only issue such a notice if requested by the Chair of the

---

<sup>2</sup> The 'emergency cessation day' is the day declared by the Premier.

RMPAT or the person nominated by the Commission.

### What options are available for the public exhibition of documents if the council office is closed to the public?

Under various parts of the LUPA Act and associated regulations, there are requirements for certain documents to be exhibited and made readily available to the public, such as development applications, planning scheme amendments, and draft Local Provisions Schedules. In many cases these include requirements for exhibition in a local council office.

Section 19 of the COVID-19 Act provides for alternative public exhibition in an approved manner. This includes changing the place and manner of the exhibition and must allow for the electronic viewing of documents and then the making of submissions by electronic means or by delivering such a submission to a specified place.

### What modifications to planning permits could be allowed under the COVID-19 Act?

Section 14 of the COVID-19 Act provides for any provision of a planning permit, such as a condition or restriction, to be varied only for the period and in the manner specified in that notice. This can apply to a specific permit or a range of permits of a certain type.

This could provide for altered hours of operation for shops, delivery vehicles, manufacturing, and even some local health services to meet demands and response efforts to COVID-19. It may also provide for variations to activities conducted on the site.

If this option is not available, the required extension of hours or variation of activity would be technically illegal and subject to enforcement and fines.

### What planning scheme exemptions could be allowed under the COVID-19 Act?

Section 15 of the COVID-19 Act provides for the setting aside of the requirements of the LUPA Act in relation to certain use or development for circumstances where a notice has been issued in response to a state of emergency. This applies to use or development that is necessary to implement a requirement, direction or authorisation under the *Emergency Management Act 2006* or the *Public Health Act 1997*.

If a notice is issued for these purposes, a planning permit is not required for the specified use or development. This may also include the subsequent demolition of a structure related to that use or development.

Section 15(3) of the COVID-19 Act also specifies that any development referred to in a notice is taken to have been authorised under the LUPA Act once the notice is revoked, unless the Minister determines otherwise.

## Where can I view a copy of the COVID-19 Act?

A copy of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* is available on the Tasmanian Government's legislation website: <https://www.legislation.tas.gov.au/>

## Enquiries

Any enquiries relating to the measures relating to the land use planning under the COVID-19 Act can be directed to the Planning Policy Unit within the Department of Justice at [Planning.Unit@justice.tas.gov.au](mailto:Planning.Unit@justice.tas.gov.au) or by telephoning (03) 6166 1429.

April 2020