

# PUBLIC

**THE PARLIAMENTARY JOINT STANDING COMMITTEE ON SUBORDINATE LEGISLATION MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON THURSDAY 25 NOVEMBER 2021.**

**INQUIRY INTO NOTICES ISSUED UNDER SECTIONS 13, 15 AND 19 OF THE COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020 (LAND USE PLANNING AND APPROVALS ACT 1993).**

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**CRAIG LIMKIN**, DEPUTY SECRETARY, POLICY AND INTERGOVERNMENTAL RELATIONS DIVISION, AND **BRIAN RISBY**, DIRECTOR, PLANNING POLICY UNIT, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** (Ms Rattray) - Before we commence, I will introduce our members, Meg Webb, Janie Finlay, and myself Tania Rattray, Ruth Forrest and Felix Ellis. Thank you very much. As I said, we will be broadcasting and taking sworn evidence. I will ask the witnesses to please make the statutory declaration.

Thank you and welcome to these public hearings of the Joint Standing Committee on Subordinate Legislation in regard to enquiring into the notices of issues under sections 13, 15 and 19 of the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 in regard to land use planning and approvals. The evidence is protected by parliamentary privilege. I remind you that your comments made outside of this place will not be afforded the same privilege. Have you read the witness information? Thank you very much. The evidence you present will be recorded and a *Hansard* version will be published on the committee's website. Thank you very much. I invite whoever would like to make an opening statement.

**Mr RISBY** - Thank you, Chair. The three items on your agenda today relate to, as you say, notices under the COVID legislation, particularly notices that go to maintaining the business of councils and commissions and the like during the COVID period, and to extending certain time periods as well. There are three notices in particular here. They are reissued notices of those issued in 2020. There was a fourth notice issued at that time that was also reissued in April this year. That one related to approving extending permit hours for the vaccine rollout to occur in particular locations.

The three that we are examining today deal with section 13. One is an extension of time relating to the substantial commencement of developments that have an approval; currently under the normal legislation as a two-year period to substantially commence a development that has been approved and then, the capacity for a two-year extension to be approved by the planning authority, and a second extension two years to be approved by the planning authority. The notice extends that by a further six months at the end of those extension periods. That is particularly important where there were some ongoing difficulties on getting workforce and getting secondary approvals that may be required to allow the development to substantially commence.

It has been used in a few cases. We are not monitoring or aware of them. The range of cases is a matter for the councils of course. I'm aware of a particular one, a substantial golf course development at Seven Mile Beach, which required using that extension. They sought advice and negotiated with the council, I think, to get that extension.

The other notice, a section 15 notice, is ostensibly around allowing new uses and development to deal with particular aspects of managing COVID to occur without offending the planning rules that were in place. It effectively allows those particular things to pop up, like clinics or vaccination areas where normally a permit may not be approved. It also allows for those things which may be constructed. It gives them a certainty of life and they are deemed to be approved through the system at that time.

The other two notices are under section 19. They relate to establishing alternative procedures and exhibition protocols around both local council development application advertisements, but also amendments to planning schemes and around the local provision schedules process for the commission and the councils as well. They were used only on one occasion I am aware of, which was in Devonport, when the north-west was going through a lockdown. The Devonport City Council had its local provision schedule exhibition, I think just starting at that time. That one really has not been used to any great extent that I am aware of.

**CHAIR** - Thank you. I will open it up to questions. I welcome Madeleine Ogilvie to the committee. Please, for anyone watching, this is a working lunch for members, otherwise we do not get any time, so please bear with us.

**Ms FORREST** - One of the reasons we decided to inquire and look into this more fully is that sooner or later we are going to have to learn to live with COVID. We are opening our borders very soon and COVID-19 will be here, whether we want it or not.

I do not really have such a concern with some of the measures here, like the ones related to pop-up testing clinics and that sort of thing. Surely those things can happen as and where needed. But other things related to the public exhibition for LPSs and some of the other aspects, it seems that we are having a repeated renewal of these, when they are hardly used via your own evidence. I wonder if they are even relevant now. Why would we continue to extend them when, they have not been used much, and we would argue that we need to be able to deal with this as an ongoing thing now?

**Mr LIMKIN** - Thank you for the question. I agree we do need to move to a living-with-COVID-type of thing. The Government has announced a process to move forward. We have the national plan to reopen Australia to living in COVID normal. However, as the Director of Public Health has said we are going to a challenging time.

What the Government requires and councils required that all the tools in their toolbelt to be able to continue to manage that process going forward. Lockdowns are not a thing of the past at the moment. You have seen in both New South Wales and Victoria. As they have had to deal with their outbreaks and open up, there have had to be targeted and instant lockdowns to mitigate that.

This is providing councils over the next six months the ability and the option if they require it because of the decisions that are taken to keep Tasmanians safe the opportunity to continue business, to continue supporting their community and giving the community the rights and opportunities to have a say on the planning system, which is fundamental in our democracy.

**Ms FORREST** - The fact sheet you provided on the section 19 notice says:

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Section 19 notice provides alternative arrangements of public exhibition of documents for development applications and planning scheme amendments. Documents may be viewed on the council's website and hard copies may be made available on request for a fee.

Why wouldn't we make that permanent?

**Mr RISBY** - I might address that if that is okay. It is a very good question. Some of the other jurisdictions have actually gone along that line. I think at this time we would want to have a broader review of the regulations around public exhibition and notification of processes under LUPA. There's probably a need to review it, particularly in the light of the COVID-19 situation but, more broadly, in the digital age.

**Ms FORREST** - In terms of access.

**Mr RISBY** - We have conversations around these things at various times, even when legislation is being debated. There is usually a question around whether advertisements in newspapers is a relevant consideration anymore. The view we have taken is that not everyone has access to the internet and you cannot disenfranchise people.

**Ms FORREST** - But you are not removing that; you are just adding that, as an option. Hard copies can be made available. Before you had to go there and look. You could not get even get a hard copy.

**Mr RISBY** - Most councils do this anyway at the moment. Most councils do have electronic access to development applications and the like. There are potentially some issues around copyright and those sorts of things, but it is worthy of consideration at the end of this period as to whether there is a need for it. What this does though, is actually say that a digital version is enough to meet the requirements. That does leave out people who do not have access to the internet.

**Ms FORREST** - Not if a hard copy can be provided.

**Mr RISBY** - I think those are the options. Yes, that is a problem if the office is closed and so forth.

**Ms FORREST** - Sure.

**Mr RISBY** - I think there is capacity to look at. I think Queensland has rolled some of this into regular updates of their regulations. So, it is something we are monitoring across the nation.

**Ms FORREST** - So, when are these regulations up for review?

**Mr LIMKIN** - These regulations last for 12 months. In my understanding, the COVID disease bill lapses 180 days after the conclusion of the public health emergency. So, if the public health emergency finishes prior to 12 months, they will lapse 180 days after that.

As Brian said, the Government is going to review all the lessons out of COVID, to see how we continue to grow as a community and go. Queensland has looked at this. We will

look at that. The Government is working on the Tasmanian planning policies and continually looking at changes to LUPA. So, that would be considered as part of that process.

**Ms WEBB** - Just a couple of things to clarify. My understanding from what you just said is when we are contemplating potentially making it permanent that whether you make these available on hard copy or digitally is that potentially a council could say we have made it available digitally, that is all we have to do to meet the requirement. Therefore, we met it, and then back luck. So, presumably, if we were to contemplate making it permanent, we would still have to adjust that to ensure that it must be made available in a way that is accessible to everybody, either or, those things, but not in an exclusionary way.

**Mr RISBY** - Yes, I think that is right.

**Ms WEBB** - How do we word it differently to this, is what you are saying?

**Mr RISBY** - Yes, we need to be careful we are not accidentally disenfranchising people that simply do not.

**Ms WEBB** - In contemplating the premise of establishing a permanent arrangement, instead of continuing to extend a temporary arrangement, presumably, we would look to do that quite readily as part of deciding to go ahead with that process. Yes? Like that does not stop us deciding to make this permanent.

**Mr RISBY** - No.

**Ms WEBB** - Whereby you could access it either way.

**Mr RISBY** - I think the LUPA regs would be due for renewal in 2024.

**Ms WEBB** - Right.

**Ms FORREST** - That is what I was asking about.

**Mr RISBY** - Yes, I thought you might have been. I think they need to be reviewed in the digital age, as it were. They are not much more than nailing bits of paper to trees, really.

**Ms WEBB** - Can I ask a different question now? Going back to the number 13, the one about extending the time period for the substantial commencement of a development. I want to understand the why of this.

Section 53(5) of LUPA provides that there is a two-year period within which substantial commencement must occur. That can be extended twice, two further two-year periods - so six years. What we are doing here with this is saying that it could be another six months on the end of that.

I am interested to know what has prompted this? Clearly, we are nowhere near that amount of time since constrained elements of COVID circumstances have come in to play and people might have needed to contemplate extras. What has prompted us to think we need an extra six months on the end of six years?

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**Mr RISBY** - There were actual situations where developers would have extended, for one reason or another, to the end of the two-year extension period, so they are up to nearly six years.

**Ms WEBB** - They might be well through the six.

**Mr RISBY** - Yes. They had intentions to substantially commence at a certain date. Then suddenly, due to physical distancing rules or unavailability of workforce from interstate, they simply could not start, which meant the permit would have lapsed.

**Ms WEBB** - Have we set it at six as the minimum to assist with those current situations that we are aware of, anticipating that we may well then be able to add more as we go? I am trying to establish whether we are just trying to accommodate some known circumstances. Why six months? Why didn't we make it, say, another two years that could be added on? I am trying to ascertain the rationale behind it.

**Mr RISBY** - I think the six months was - you have had quite a long lead-up time. There was, at that point, an obvious problem with construction site workforce physical distancing. It is only substantial commencement; it is nothing more than a need to make a physical change. It does not need to be the entirety of the development being completed or anything like that.

I think six months was seen as enough time to overcome those short-term labour shortage, equipment sort of things without extending it forever. Six years is a long time anyway. As I say, I do not know of very many circumstances - only one I am really aware of - that clearly indicated a need for that. It was caught up with needing some other works to be done before they could access the site to do something. It just fell over.

**Ms WEBB** - Substantially, it is a just-in-case. It is the minimum that would seem functional to serve that just-in-case purpose.

**Mr RISBY** - Yes, that is right. I guess those circumstances will need to be reviewed and changed. We have seen the federal government announce that there will be changes to international arrivals, with skilled migration being able to come back in. That will change the ability for them to get these labour markets and workforces. We will continue to review this as the nation opens up and the changes happen to make sure it is appropriate and relevant for Tasmania today.

**CHAIR** - Thank you very much. We felt that it was important to have this on the public record. These are circumstances that we do not see a lot. We very much appreciate your time today. We will continue to watch with interest. Thank you on behalf of the committee.

**THE WITNESSES WITHDREW.**

**The Committee suspended at 1.23 p.m.**