

Director's Determination - Special circumstances when expired approvals may be extended

I, Andrew Timothy Goldsworthy, in my capacity as Acting Director of Building Control, and acting pursuant to the *Building Act 2016* hereby make the following Determination:

Title	Director's Determination - Special circumstances when expired approvals may be extended
Description	<p>This Determination establishes the special circumstances when applications for extending an approval of work may be accepted, after an expiry of the previous approval. Applicable sections of <i>Building Act 2016</i> are:</p> <ul style="list-style-type: none"> • 99(4A) notifiable building work • 110(4A) notifiable plumbing work • 122(4A) notifiable demolition work • 147(1A) building permit • 173(1A) plumbing permit • 197(1A) demolition permit • 263A permit of substantial compliance
Version	Version 1.0 (August 2019)
Application	This Determination applies from the date of its approval until its amendment or revocation.
Approval date	15 August 2019



Andrew Timothy Goldsworthy
Acting Director of Building Control
 Consumer, Building and Occupational Services
 Department of Justice

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Definitions of terms used in this Determination

“**Act**” means the *Building Act 2016*.

“**approval provider**” means the person who granted the original work approval, or is in the position of being able to extend that approval.

For the purposes of the Act, this person is either:

- the building surveyor engaged by the owner or their agent; or
- the permit authority appointed by the council general manager.

Note that a person includes a body corporate – inclusive of a municipal corporation (a council) or an organisation (e.g. a building surveying business).

“**expired approval**” means: -

- a work approval had been granted; and
- an application to extend the duration of that work approval had not been applied for at least five business days before the expiry date; and
- the duration of that work approval has expired; and
- that work is incomplete, or an application for a Certificate of Completion for that work has not been lodged.

“**work approval**” means an approval granted to perform these types of work:

- For Notifiable Building or Demolition Work, a certificate of likely compliance, or a certificate of substantial compliance, granted by a licensed building surveyor for:
 - (i) Building work; or
 - (ii) Demolition work.
- For Notifiable Plumbing Work, a certificate of likely compliance granted by the permit authority;
- For Permit Work, a permit granted by a licensed permit authority of these types:
 - (i) A building permit
 - (ii) A permit of substantial compliance
 - (iii) A demolition permit
 - (iv) A plumbing permit.

“**work**” means the performance of either building, plumbing or demolition work.

Special circumstances when expired approvals may be extended by the approval provider

It is determined that if any of the circumstances in clauses 1 – 4 can be established, an application for an extension of a work approval may be accepted by the approval provider, despite the expiry of the previous work approval, without the need to apply for a new work approval.

- Applications can only be made for work that has been started.
- Applications may be made by the owner or their agent.

I. Imminent, or recent expiry of an approval

- 1) Where a person had applied for an extension of a work approval before its expiry, but the application was not granted before the expiry date; or
- 2) An application for an extension of a work approval that is made:
 - (i) less than 5 days before expiry of a current work approval; or
 - (ii) within 14 days of the expiry of the previous work approval;

may be accepted and an extension granted without the applicant relying on any of the circumstances in clauses 2 – 4 of this Determination.

2 Work related circumstances:

Any of the following apply:

- (a) the work has progressed through the majority of the required inspection stages and requires only a short extension of the work approval to enable all work to be completed; or

Note: evidence of inspections of the stages by the building surveyor, or a recent site inspection of the project, should be provided as evidence.

- (b) the approved work has been physically completed but only the inspection and certification of that work is required; or

Example: where all prior inspections have been performed prior to an approval expiring, the owner can make an application to the building surveyor for an occupancy permit and a certificate of final inspection.

- (c) expiry of an approval for building work was caused by a failure to complete associated plumbing work on time that affected the construction schedule.

Note: the work approval for the incomplete plumbing work should still be in effect or it has been extended.

3 Contractor related circumstances:

- (a) The person responsible for the work (the licensed builder, plumber, or demolisher engaged by the owner) has ceased to perform approved work due to any of the following:
 - (i) termination of the contract for the work; or
 - (ii) bankruptcy or insolvency of that contractor; or
 - (iii) the contractor has died, is not locatable, or is not capable of continuing with the work; or
 - (iv) the owner and contractor have had a significant commercial relationship breakdown that impacted on the construction schedule; or

- (v) the contractor has engaged in a pattern of unjustifiable non-performance or unsatisfactory performance; or
 - (vi) the contractor has unjustifiably failed to meet the statutory requirements imposed by relevant legislation; or
 - (vii) the contractor, as the agent of the owner, has let the work approval expire without the owner's knowledge or consent.
- (b) The contractor has not installed infrastructure on premises in accordance with approved TasWater design requirements and did not arrange for an extension to cover the extra time needed for required rectification work.

4 Owner related circumstances:

Any of the following apply:

- (a) External circumstances that significantly impacted on the construction schedule, beyond the owner's control, such as illness, injury or an unfortunate incident directly affecting the owner or a close family member, or loss of employment of the owner, including redundancy;
- (b) Occurrences of natural hazards such as a bushfires, floods or storms that have significantly impacted on the work schedule;
- (c) A recent change to the ownership, governance or control of the premises where approved work has taken place, that significantly impacted on the construction schedule.

5 Statement by approval provider of reasons for extension

If an application for an extension is accepted and granted, the approval provider must provide a statement to the applicant supporting the extension of the expired approval.

The statement is to provide reasons for an extension and the risks of extending that approval.

Explanatory information

Background

Amendments to the *Building Act 2016* made in December 2018 allowed the Director of Building Control to make a Determination, that in certain “special circumstances” an extension of an expired approval for work was permissible.

- The Determination relates to the acceptance of an application for an extension of an approval, that otherwise would be rejected due to an expiry of the current approval.
- This Determination establishes what those specific circumstances are. If those circumstances exist, the approval provider (the body or person who granted the work approval, such as the Permit Authority, or the responsible building surveyor) may accept the application. They are to consider these circumstances and rely on this Determination when making their decision to accept an application to extend an expired approval.

As an example of its application, the majority of required building work had progressed through most inspection stages and required only a short extension to enable all work to be completed.

- It only applies where there has been a prior approval of work in place. It does not apply to completely new applications.
- Acceptance of an application relying on these circumstances, is not an assurance that the approval provider will always grant an extension for the work. For example, the nature of the work may have been changed (from Notifiable Work to Permit Work) or the work is subject to a Building Order for non-compliance, or otherwise the work may not be performed in compliance with the Act.
- Under the Act, approvals of work provide for a specific period during which each approval applies. The usual limit is two years (sometimes permits may be granted for longer periods if the Permit Authority agrees).
 - If work cannot be finished on time, it is the responsibility of an owner or their agent to seek an extension of time, and to make an application to the person or body that granted the approval, at least five days before that approval is due to expire.
 - A failure to extend an approval before the due date will mean that it expires and ceases to have any legal effect. All work must then cease until the person applies for a replacement approval to continue (such as a new permit to complete the unfinished parts of the work).
- If the approval expires but work continues, that work then becomes illegal and the approval provider should issue an order to stop work.

Excluded circumstance

No work started within 12 months after an approval was first granted. The approval will then no longer be valid, due to no work starting within the specified time period (for example, see section 146(1)(a) or (b)) of the Act). That approval cannot then be extended by making an application under s.147(1) or (1A) of the Act.

Note: If an owner is seeking to 'warehouse' a permit (in other words, they have applied for the permit but do not intend to start any work) that does not warrant its extension

Evidence supporting extension application

The approval provider may require written evidence from the applicant that the circumstances relied upon have occurred, the manner in which those circumstances have delayed the completion of approved works, or the effect it had upon their ability to apply within time for an extension of the works approval.

As an example, if the contractor is bankrupt, the applicant is to provide documentary evidence of those circumstances. It is not the responsibility of the work approval provider to conduct external searches.

Statement by approval provider of reasons for extension

The approval provider may grant an extension if it considers that the extent and nature of the work warrants an extension.

A statement of reasons by the approval provider for that extension is to include information on:

1. the reasons for the extension, including the special circumstances relied on by the applicant
2. the scale of the project, including any advice received from a building surveyor on the amount of building work yet to be completed
3. the extent of the delay before expected completion of the work.

Note: Examples of reasons the approval provider may take into account whether to approve an extension application include:

- the total time elapsed between issuing the approval and the request for an extension
- the extent of the building work warrants an extension.
- the number of mandatory inspections that have been completed (or only an inspection of the final mandatory notification stage is outstanding)
- whether the time limit originally granted was appropriate for the scale of the project
- whether it was a staged permit
- intervening circumstances that bear upon granting or refusing the request
- whether there has been a change of Government policy that has affected the work

Risks of extending an approval

In considering an extension, the approval provider is to take into account the risks of the owner's failure to complete the work within the specified time and the consequent impacts on modern building or plumbing requirements.

Successive extensions of an approval may lead to a conflict with the policy of the Act that new work is to meet contemporary requirements. Once completed, a much-delayed project may not comply with the standards of work required by the National Construction Code, or Director's Determinations.

For example, bushfire requirements may have changed since the approval was first granted, and to ensure occupant safety of a new dwelling, additional bushfire mitigation measures may be required before its completion.

Work not to continue until extension approved

An owner or their agent making an application for an extension of an expired work approval is undertaking that the work shall cease from the date on which the approval expired, and no further work is to happen until an extension has been granted.

Fees for extensions of an approval

For an extension or a renewal of an approval, additional fees may need to be paid. This is a matter to be agreed between the applicant and the approval provider.

Conditions of approval

The approval provider may impose on each approval granted, any reasonable and relevant conditions, including conditions on any further extension of an approval.

Refusal of extension can be appealed

Like other decisions made by approval providers under the Act, the refusal of an extension of a work approval can be appealed to the Resource Management Planning Appeals Tribunal. Therefore decisions should be supported by information about how that decision had correctly applied the Act and this Determination.

Appendix I

References to sections of the *Building Act 2016* relevant to when “special circumstances” may be taken into account:

Notifiable building work

Section 99(4A) the building surveyor may still accept an extension application, when special circumstances exist as determined by the Director of Building Control.

Notifiable plumbing work

Section 110(4A) the permit authority may still accept an extension application when special circumstances exist as determined by the Director of Building Control.

Notifiable demolition work

Section 122(4A) the building surveyor may still accept an extension application, when special circumstances exist as determined by the Director of Building Control.

Building permit

Section 147(1A) the permit authority may still accept an extension application when special circumstances exist as determined by the Director of Building Control.

Plumbing permit

Section 173(1A) the permit authority may still accept an extension application when special circumstances exist as determined by the Director of Building Control.

Demolition permit

Section 197(1A) the permit authority may still accept an extension application when special circumstances exist as determined by the Director of Building Control.

Permit of substantial compliance

Section 263A the permit authority may still accept an extension application when special circumstances exist as determined by the Director of Building Control.