



COUNCIL POLICY NO:-

**SDev CP504 – AMENDMENTS AND EXTENSIONS TO EXISTING APPROVALS POLICY****GOVERNANCE INFORMATION**

<b>Procedure Link:</b>	PRO?? – or NA	<b>Administrative Policy Link:</b>	NA
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**ADMINISTRATION INFORMATION**

<b>Version:</b>	1	New CP504	OCM	30/09/20	Res: 269-20	<b>Synopsis:</b>	Policy created and endorsed by Council
<b>Version:</b>	2	SDev CP504	OCM	28/09/22	Res: 243-22	<b>Synopsis:</b>	Reviewed and adopted by Council.

**1. RESPONSIBLE DIRECTORATE**

Sustainable Development

**2. PURPOSE OR OBJECTIVE**

To provide guidance for the consideration of requests to:

- (a) amend a Development Approval to make minor modifications that do not substantially alter the approved use(s) or development;
- (b) amend or delete conditions of a Development Approval;
- (c) extend the time to substantially commence or complete an approved development or use; or
- (d) cancel a Development Approval.

**3. DEFINITIONS**

**Substantial Commencement** - is deemed to have occurred where there has been physical 'on site' development that comprises at least the preparation of the site including the construction and installation of footings or a slab. Where in a condition of approval there is a requirement to undertake further studies and investigations for submission and approval of the Shire prior to development commencing, such 'work' is not deemed to be substantial commencement.

**4. POLICY****Amendment of a Development Approval**

- 4.1. In determining whether to allow the amendment of a Development Approval, the Shire shall consider whether the nature and extent of the proposed amendment is such that the use or development the subject of the planning approval:
  - (a) Remains, in substance, the same; or
  - (b) Is changed so a new and/or different use or development is proposed or included.
- 4.2 If the nature and extent of the proposed amendments is such that it introduces a new, different, or additional use to that approved, other than a permitted or ancillary use, the Shire may refuse to allow amendment of the development approval and require the submission of a new development application.
- 4.3 If the Development Approval that is the subject of the amendment has expired, or is likely to expire before the amendment request will be determined, the Shire shall not approve any amendment to the Development Approval. In such circumstances a new application for Development Approval would be required, or any extension to the term of approval will need to be sought.
- 4.4 Where an amendment of any Development Approval is determined to be, in substance, the same as the original approval, the amended proposal will only be advertised if required to comply with clause 64 of the Deemed Provisions and any Local Planning Policy.
- 4.5 If an application to amend Development Approval is refused, nothing in this Policy shall preclude the applicant from making, and the Shire from determining, a new application for development approval for the same use or development.

- 4.6 Where a request to amend a Development Approval is approved, a letter will be issued advising the applicant of the details of the amendments to the original approval that are approved. An amended Development Approval (determination) will be issued which retains all of the original conditions, subject to any approved amendments.

#### **Extension of the Term of Approval**

- 4.7 If the Development Approval that is the subject of the extension of time request has expired, the Shire shall not approve any extension to the Development Approval. In such circumstances a new application for Development Approval would be required, and would be considered under the current planning provisions and legislation.
- 4.8 Where an extension of time to the term of the Development Approval is granted, a period of up to a further two years only may be granted.
- 4.9 Only one extension of the term of a development approval shall be granted, after which a new development application will be required.
- 4.10 In considering a request for an extension to the term of a Development Approval, the Shire is to have regard to the following factors:
- Whether there has been a significant change of planning policy that would impact the acceptability of the approved use and/or development, under current conditions;
  - Whether the land owner is seeking to 'warehouse' the permit (i.e. to retain the original permission granted in order to increase property value or for other financial gain);
  - Any intervening circumstances which bear upon the grant or refusal of the extension request;
  - The economic burden imposed on the land owner by the permit;
  - The probability of a permit issuing should a fresh application be made.
- 4.11 Where a request to extend the term of a development approval is approved, a letter will be issued advising of the extension of the term of approval and all other conditions of the approval will remain unchanged. No new development approval will be issued where the request is for an extension of time only, as the extension of time is considered to be an extension of the term of the original approval and its conditions and does not alter any other condition.

#### **Administrative Corrections ('Slip Rule')**

- 4.12 Where a correction/amendment to a Development Approval is required in order to correct a clerical mistake, or an error arising from an accidental slip or omission, and doing so does not change the nature of the approval, the following will apply:
- (a) a request in writing may be made by any applicant and must be signed and dated by current the owner of the subject land; or
  - (b) the Shire itself may decide to make the amendment to correct the error; and
  - (c) no fee is payable for the request to correct/amend the Development Approval;
  - (d) advertising of the amendment is not required;
  - (e) where the original decision was made by the Council (or by the State Administrative Tribunal 'standing in the shoes' of the Council), rather than by an officer under delegation, it is not required to be returned to Council for further consideration of the modification; and
  - (f) An amended Development Approval (determination) will be issued which retains all of the original conditions, subject to any approved amendments. All approved amendments will be detailed in a covering letter and in the Advice Notes on the Development Approval.
- 4.13 Modifications under this section are to be considered, and may be approved, in accordance with Schedule 2, clauses 77(1)(c) and 77(3) of the *Planning and Development (Local Planning Schemes) Regulations, 2015*.

## **6. APPLICATION**

This policy applies to all Development Approvals within the Shire whether granted by officers under delegation, by the Council, or the State Administrative Tribunal.

**7. REFERENCE DOCUMENTS**

Planning and Development Act, 2005

Planning and Development (Local Planning Schemes) Regulations, 2015

Shire of Dardanup Local Planning Scheme No.3

Kantor v Murrindindi Shire Council (1997) 18 AATR 285 (Supreme Court) – know as the ‘Kantor Test’