

COVID-19 Update: Construction hours for development and infrastructure projects expanded to include Saturdays, Sundays and public holidays

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As noted in Addisons' Focus Paper on 27 March 2020,¹ the New South Wales Minister for Planning may make an order that authorises development without approval under the *Environmental Planning and Assessment Act 1979 (EPA Act)*.²

Two orders have been made with the aim of facilitating social distancing on development and infrastructure construction sites.

Both the *Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020* (made on 2 April 2020) (**Development Construction Order**) and the *Environmental Planning and Assessment (COVID-19 Development – Infrastructure Construction Work Days) Order 2020* (made on 9 April 2020) (**Infrastructure Construction Order**) allow demolition and construction work to be carried out on Saturdays, Sundays and public holidays, without any further approval.³ The orders remain in force for 6 months from the date each were made.

The intention of both orders is to facilitate social distancing on development and infrastructure construction sites by spreading construction work over the week⁴. The order also assists in keeping the construction industry, a significant contributor to the NSW economy, going.

The expanded construction hours apply to:

- Development that is the subject of a development consent granted before 2 April 2020⁵
- Development that is the subject of a State infrastructure approval granted before 9 April 2020⁶
- Development that is the subject of an approval under Division 5.1 of the EPA Act granted before 9 April 2020⁷
- An authorisation under Part 3 of the *Water Supply (Critical Needs) Act 2019* granted before 9 April 2020⁸.

¹ <https://addisons.com/knowledge/insights/covid-19-update-new-powers-for-nsw-planning-minister-to-permit-development-without-consent-during-the-covid-19-pandemic/>

² Section 10.17, EPA Act.

³ Provided the conditions specified in the order are complied with: cl. 5, Development Construction Order.

⁴ It is noted however that construction sites are listed as an essential gathering in Schedule 2 of the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order* made on 30 March 2020 and amended on 4 April 2020.

⁵ Cl. 6(2)(a), Development Construction Order.

⁶ Cl. 6(2)(a), (3)(a) Infrastructure Construction Order.

⁷ Cl. 6(2)(a), (3)(b) Infrastructure Construction Order.

⁸ Cl. 6(2)(a), (3)(c) Infrastructure Construction Order.

The orders require that:

- All other conditions/limitations of the development consent or approval, as the case may be, must be complied with⁹
- All conditions/limitations on the hours of construction and operation on those other days apply on Saturdays, Sundays and public holidays¹⁰
- Work involving rock breaking, rock hammering, sheet piling, pile driving and similar noisy activities cannot be carried out on Saturdays, Sundays and public holidays if, but for the order, the expanded hours of work would not otherwise be permitted¹¹
- All feasible and reasonable steps must be taken to minimise noise¹².

The expanded construction hours are allowed notwithstanding:

- Any agreement or covenant that restricts the carrying out of the development or infrastructure project¹³
- Any condition or requirement to the contrary in an environment protection licence issued under the Protection of the Environment Operations Act 1997 before the relevant order commenced.¹⁴

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⁹ Cl.6(2)(b), Development Construction Order; cl. 6(2)(b), Infrastructure Construction Order.

¹⁰ Cl.6(2)(c)(i), Development Construction Order; cl. 6(2)(c)(i), Infrastructure Construction Order.

¹¹ Cl.6(2)(c)(ii), Development Construction Order; cl. 6(2)(c)(ii), Infrastructure Construction Order.

¹² Cl.6(2)(c)(iii), Development Construction Order; cl. 6(2)(c)(iii), Infrastructure Construction Order.

¹³ Cl.7(1)(a), Development Construction Order; cl. 7(1)(a), Infrastructure Construction Order.

¹⁴ Cl.7(1)(b), Development Construction Order; cl. 7(1)(b), Infrastructure Construction Order.



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