

## Determining Abandonment of a Lawful Use

### Date of Council Resolution

These guidelines were adopted by Council on 14 December 2005, and take effect on 23 January 2006, in accordance with section 2.3(2) of the Planning Scheme.

### Purpose of the Guideline

The Integrated Planning Act (IPA) does not clearly outline what happens if a use is discontinued.

The fact that 'time period limitations on uses' have not been defined within the IPA has created uncertainty in assessing whether or not lawful use rights still exist when a use may give the appearance of discontinuance or abandonment but an owner or operator argues that the use is in abeyance or is temporarily suspended.

This Implementation Guideline provides a checklist to assist in determining whether a use is still continuing or has been abandoned.

Council's Implementation Guidelines are intended to apply a standard approach to the interpretation and implementation of relevant aspects of the Planning Scheme. They offer a degree of certainty and formality to applicants, Council and the community. Where an applicant is proposing a variation to the guidelines the onus is on the applicant to demonstrate the facts and circumstances to support the variation.

### Guideline for Determining Abandonment of a Lawful Use

The checklist as set out below is to be used as a guideline to assess whether a use has been abandoned and that Lawful Use Rights have ceased.

Checklist for Determining Abandonment of a Lawful Use	
Key Tests for Determining Abandonment	Comments / Details
<b>1. CURRENT SITE USE / CONDITIONS</b>	
(1) Date and time of inspection.	
(2) What was the site (and any buildings located thereon) being used for at the time of the site inspection?	
(a) Is the site or any buildings on site occupied? <b>NOTE</b> If the site is occupied attempt to complete an occupier interview as per item 3 below.	<input type="checkbox"/> Y <input type="checkbox"/> N (List details)
(b) Is there any physical evidence of occupation (e.g. personal effects, business equipment, goods for sale or storage)?	<input type="checkbox"/> Y <input type="checkbox"/> N (List details)
(c) What activities were observed being undertaken on site (e.g. none, use of machinery or other business related activities)?	
(3) What is the physical condition of the site?	
(a) What is the state of site maintenance and repair (e.g. condition of building surfaces, doors, windows, signage and grounds)?	
(b) Is there any evidence of abandonment or neglect (e.g. graffiti, vandalism, broken windows, weed growth or neglected lawns and gardens)?	
(c) What is the likely impact of the condition of the site on the amenity of nearby properties (e.g. unsightly, harbouring weeds or vermin, public safety or crime prevention concerns, or possible damage to other property in the event of a fire or storm)?	

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<p><b>2. ARE THE CURRENT USES LAWFUL?</b></p> <p>(1) Do the current (or discontinued) uses constitute exempt or self assessable development under the planning scheme?</p> <p><b>NOTE</b> If the answer is yes, then it is largely irrelevant whether or not the use has been discontinued.</p>	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
(2) Do the current (or discontinued) uses constitute code or impact assessable development under the planning scheme?	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
(3) Is there any documentary evidence of a prior approval for the use(s) under the current planning scheme or a former planning scheme or interim development by-law?	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
(4) Do the current activities being conducted on site conform to the requirements of the relevant approval?	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
(5) Is there any additional evidence to support the existence of a continuing, lawful use of the site (e.g. aerial photographs, 'historic' photographs, statutory declarations)?				
<p><b>3. INTERVIEW WITH SITE OCCUPIER (OR OWNER / OCCUPIER)</b></p> <p>(1) Person's name, postal address and phone number.</p>				
(2) Person's relationship to the site (e.g. business owner/operator, manager/supervisor, employee, caretaker, resident).				
(3) Who are the principal occupiers of the site?				
(4) What activities are being undertaken on the site?				
(5) When were these activities last undertaken?				
(6) What is the normal pattern of activities?				
(7) What has been the pattern of activities over the past 6 to 12 months?				
(8) Have any 'new' or different uses been commenced during the period in which previous uses have ceased?	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
(9) What is the occupier's intention regarding the site in terms of future use and timetable (i.e. has the use been 'finally abandoned' or has it been suspended with the intent to recommence at a later date)?				
<p><b>4. INTERVIEW WITH PROPERTY OWNER</b> (Where the owner is not an owner/occupier).</p> <p>(1) Person's name, postal address and phone number.</p>				
(2) Who are the principal occupiers of the site?				
(3) What activities are being undertaken on the site?				



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(4) When were these activities last undertaken?				
(5) What is the normal pattern of activities?				
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(7) Have any 'new' or different uses been commenced during the period in which previous uses have ceased?	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
(8) What is the owner's intention regarding the site in terms of future use and timetable (i.e. has the use been 'finally abandoned' or has it been suspended with the intent to recommence at a later date)?				
<b>5. INTERVIEW WITH ADJOINING/NEARBY OWNERS/OPERATORS</b>				
(1) Person's name, postal address and phone number.				
(2) What are the activities normally undertaken on the site?				
(3) When was the last time these activities were observed being undertaken from the site?				
(4) What is the normal pattern of activity?				
(5) What has been the pattern of activity over the past 6 to 12 months?				
(6) Have any 'new' or different uses been commenced during the period in which previous uses have ceased?	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
<b>6. SUMMARY OF KEY POINTS</b>				
(1) Is the use lawful?	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
(2) How long has it been since activities associated with the use have ceased?				
(3) Is the use an intermittent activity in which it is normal practice for the use to be in abeyance or temporarily suspended? <b>NOTE</b> If this is the case then the use may not have been abandoned and lawful use rights may not have ceased.	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
(4) Is there any strong physical or other evidence to indicate that the use has been finally abandoned?	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
Y	N	(List details)		
(5) Do the owner's/occupier's intentions indicate that the use has been abandoned?	<table border="1"> <tr> <td>Y</td> <td>N</td> <td>(List details)</td> </tr> </table>	Y	N	(List details)
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