



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE COVID-19 PANDEMIC RESPONSE

Mr Alistair Coe MLA (Chair), Ms Tara Cheyne MLA (Deputy Chair), Mrs Vicki Dunne MLA,
Mr Michael Pettersson MLA, Ms Caroline Le Couteur MLA

ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

Asked by ALISTAIR COE MLA and VICKI DUNNE MLA on 3 July 2020: ANDREW BARR MLA took on notice the following question(s):

Ref: Hansard Transcript 3 July 2020 PAGE P446

In relation to:

MRS DUNNE: Is this another definitional question as to what “commencement” means?

Mr Nicol: Yes.

Mr Barr: Yes, there are important issues in that regard.

Mr Salisbury: On the EPSDD website I understand there is some guidance on what commencement will look like. The final details of that have not been settled at this point. Again we are working with treasury and the Government Solicitor’s office to finalise that definition. There is some guidance on the general approach on the EPSDD website. We continue to work on that.

MRS DUNNE: We have not hitherto needed a definition of “commence”? Is that what we are learning?

Mr Barr: The issue has been that previously commencement has involved putting a fence around a building site or putting appropriate signs up. I think this experience, in terms of when the policy objective is fast-tracking and actually getting construction underway, shows that a more robust definition is required. This issue arises, obviously, in the context of HomeBuilder, as it does in a number of these obviously well-intentioned policy interventions to try and bring forward activity. Obviously, the compliance questions and ensuring that activity is genuinely brought forward are of equal public policy importance. All of these stimulus measures, like HomeBuilder and the LVC, have really short time frames, although we extended ours to the end of March because we thought that just going to December, like HomeBuilder, was not quite long enough. I asked the commonwealth to extend HomeBuilder to 31 March as well, but I did not have any luck on that one. You never know; once it gets towards the end of the year, they might keep it going for a bit longer. David, do you have something to add?

Mr Nicol: On commencement, it is quite challenging from different points of view. There is a notion of commencement from a planning point of view and from a contract construction point of view. You also might think of something slightly different in terms of a policy objective of a scheme like the ones we are talking about.

With commencement, the objective for these schemes is to ensure that we have economic activity underway in a relatively short period of time. So we are very keen not to set up a

scheme where someone, as the Treasurer said, sticks a fence around a block and says, “We’ve commenced,” then does not do any work for another two years. That would defeat the purpose of an economic stimulus package.

We are, in a sense, trying to develop, using, as much as we can, existing definitions and existing requirements so that we do not invent a new regulatory exercise. We are trying to pick the best measure to say that commencement has started, for the purposes of actually getting economic activity underway.

THE CHAIR: When did you start this work?

Mr Nicol: I am thinking back. It has certainly been post COVID. The work on the definition of “commencement” for the HomeBuilder was post the announcement of the commonwealth’s HomeBuilder scheme, in the last few weeks.

THE CHAIR: I am talking about the LVC.

Mr Nicol: With the LVC, I can take on notice the exact dates. It has probably been over the last three to four weeks that we have been developing this definition, alongside the other work that the government has commissioned us to do on developing the LVC proposal for them to consider.

THE CHAIR: Unlike HomeBuilder, which is obviously a commonwealth initiative, this is an ACT initiative that was announced by the Chief Minister a few weeks ago, or a couple of weeks ago. Did you not have this ironed out before making the commitment?

Mr Nicol: As Mr Salisbury said, it is part of the proposal that we are working on to get right.

THE CHAIR: It is not a new policy. It is already a policy. It has already been announced by the Chief Minister.

Mr Nicol: I think the government was very keen to announce it so that the market knew what was happening, and so that they can get their plans underway and work on taking this up. We could have delayed the announcement to get every detail settled. The government chose to go out with an earlier announcement.

THE CHAIR: With regard to the crux of Mrs Dunne’s question about the LVC payments, if you seek to vary your lease and you are doing that before submitting a DA for the new purpose, in order to get that new lease you have to have either made the payment or signed up to the deferral. If you have made the payment, are you then going to be issuing \$250,000 refunds if they are otherwise eligible?

Mr Nicol: I will ask Kim to comment on that. We would have to look at the exact circumstances of the case.

THE CHAIR: Whilst there are some options to do some concurrent DAs—a DA for the LVC and a DA for the actual construction—they are not necessarily done concurrently. They could be consequential, in which case the payment would have already gone through before you could actually verify that construction had commenced. I do not know how you are going to charge less if the earlier payment is dependent upon a downstream activity.

MRS DUNNE: Also, it seems that the idea is to promote economic activity. Even if somebody has paid the LVC but now uses this initiative to perhaps get a building underway, that would raise the question of whether or not there would be a refund on the LVC. Does this scheme envisage a refund on the LVC?

Mr Nicol: I can try and answer that question. If a developer is entitled to the 50 per cent remission, according to the DA process and the commencement of construction, and that construction has to commence after the announcement, and if they have paid their LVC — which I think would be in a minority of cases because most developers now take advantage of the deferral option—then their obligation would be the 50 per cent of the LVC.

If that required a refund then I can envisage that a refund would be provided. I would have to look at the exact case. I am very wary about talking about generalities of particular entitlements without knowing exactly what the situation is and when the DA was approved, when the LVC payment was made and when construction—

THE CHAIR: In terms of the commencement date of the scheme, is it from the date that the Chief Minister made the announcement?

Mr Nicol: Yes.

THE CHAIR: You are saying that it could be for a lease variation that had been approved before that date—

Mr Nicol: Yes.

THE CHAIR: but commencement had not yet occurred?

Mr Nicol: That is correct. So the purpose of—

THE CHAIR: Especially if they were in the old scheme, the old scheme being before you had the deferral option, and that could well be a lease variation that was made years ago—

MRS DUNNE: Years ago.

THE CHAIR: they could well be eligible for a \$250,000 refund if they start now?

Mr Nicol: Potentially, yes. The purpose of this proposal is to bring forward activity of construction. It was quite challenging to design because there will obviously be developments that would have occurred, anyway; they would not have been delayed by COVID. We will not be able to tell which developments that occurred would be in that category and which ones would have been otherwise deferred for longer because of COVID. The government took the decision to apply it to all of those developments where construction occurred before 31 March next year.

ANDREW BARR MLA: The answer to the Member's question is as follows:—

The Government began considering an appropriate definition of 'commence construction' to ensure construction activity actually occurs under the Lease Variation Charge (LVC) economic recovery initiative in late May 2020. Following announcement of the Commonwealth HomeBuilder Scheme in June 2020, the Government has worked collaboratively across relevant directorates to finalise the definition of 'commence construction' to ensure as much consistency as possible between the LVC proposal and the Commonwealth's HomeBuilder scheme.

Approved for circulation to the Select Committee on the COVID-19 pandemic response

Signature: 

Date: 24.7.20

By the Treasurer, Andrew Barr MLA