

## IDAS IMPLEMENTATION NOTES

*Note 14*

# Conditioning a development approval

The *Integrated Planning Act* provides assessment managers and concurrence agencies with the power to impose conditions on development approvals. Conditions are intended to minimise and manage any impacts associated with -

- construction activities; and
- the on-going operation of the activity.

The power of the assessment manager and concurrence agencies to impose conditions is bounded by certain legislative requirements and common law tests.

## 1.0 Legislative requirements

Conditions **must** [s3.5.30 of the IPA] -

- (i) be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development; or
- (ii) be reasonably required in respect of the development or use of premises as a consequence of the development.

For a condition to stand the test of being **relevant**, there must be a clear relationship between the proposed development and the condition.

For a condition to be **reasonable** it must be defensible as reasonably imposed in the interest of the rational development of the area.

Conditions **may** [s3.5.31 of the IPA]-

- (i) place time limits on how long a lawful use may continue or works may remain in place; or
- (ii) make the start of a development subject to the issue of other development permits, or the substantial start or completion of other development, with respect to the same premises.

Conditions **must not** [s3.5.32 of the IPA] -

- (i) be inconsistent with a condition of an earlier development approval still in effect for the development (eg. a preliminary approval for the development);
- (ii) require a monetary payment for the capital, operating and maintenance costs of, or works to be carried out for, community infrastructure. (This provision does not apply under transitional provisions);
- (iii) state that works required to be carried out for a development must be undertaken by an entity other than the applicant;
- (iv) require an access restriction strip; or
- (v) limit the time a development approval has effect for a use or work for community infrastructure (other than State owned or State controlled transport infrastructure).

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## 2.0 Common law requirements for conditions

There are a range of common law limitations on the power to impose a condition, including -

- **Certainty** – for a condition to have certainty it must not prejudice the completeness of the approval and must lawfully identify the applicant’s rights and responsibilities;
- **Finality** – for a condition to have finality it must be definitive or irrevocable so that undertaking the development does not depend on the making of further discretionary decisions; and
- the condition must not result in a materially different proposal.

In deciding to approve a development application, an assessment manager is bound to determine an application fully and finally (i.e. it must not defer its decision on a key aspect of the proposal). (*Mt Morrow Blue Metal Quarries v. Moreton Shire Council* 85 LGERA 408 at 411).

## 3.0 Conditions for staged and integrated applications

If a development application identifies development in stages, the conditions should be clearly separated into -

- conditions which apply to the entire development; and
- conditions which apply to a particular stage of the development.

If a development application is for an integrated proposal incorporating several discrete activities, the conditions should be clearly separated into -

- conditions which apply to the entire development; and
- conditions which apply to a particular activity.

## 4.0 Conditions imposed by a concurrence agency [s3.3.18(1)(a), 3.5.11(1), 3.5.15(2)(d)]

The assessment manager must attach to the decision notice for an application, in the exact form given by the concurrence agency, all of the concurrence agency’s conditions.

The concurrence agency’s conditions must be included whether the assessment manager is approving all or part of the application and must be clearly distinguishable from the assessment manager’s conditions.

It is necessary to identify the entity who imposed the condition so that responsibility for the condition is clear. This is particularly relevant for enforcement procedures, or in the event of an appeal or where the applicant requests a change to the conditions.

## 5.0 Making representations to a referral agency about the agency’s response [s3.5.9 of the IPA]

The IPA provides an applicant with the ability to stop the decision making period in order to make representations to a referral agency about its response (including a concurrence agency’s conditions).

The applicant must make these representations to the referral agency **prior** to the decision being made by the assessment manager.

To enable time for these representations to be made and considered by the referral agency, the applicant must give written notice to the assessment manager, stopping the decision-making period for up to a maximum of **3 months**.

If the dispute is able to be resolved by the parties and a change to the response is agreed to by the applicant, the referral agency may use its powers under s3.3.17 of the IPA to change its response.

The assessment managers’s decision making period restarts the day after the changed referral agency response is received by the assessment manager [s3.5.8(a) of the IPA].

*Note: The power of the Chief Executive to alter concurrence agency responses is limited to the situation where responses are inconsistent.*

*Note: Applicants cannot make representations to the assessment manager about a refusal of an application. It is more appropriate that a dispute about a refusal be resolved through the appeal process in chapter 4 of the IPA.*

*Note: The conditions imposed by the concurrence agency cannot be reconsidered /changed at this stage. The opportunity to amend concurrence agency conditions is provided for under sections 3.3.17 and 3.5.9- see section 5.0.*

## **6.0 Seeking assistance from the Chief Executive to resolve conflicting conditions [s3.5.10 of the IPA]**

An applicant can seek assistance from the Chief Executive, Department of Local Government, Planning, Sport and Recreation to resolve two (2) or more concurrence agency responses containing conditions the applicant considers to be inconsistent.

If the applicant is seeking assistance in this manner from the Chief Executive, they may also stop the decision making period for up to **3 months**, by giving written notice to the assessment manager. This allows time for the chief executive to consider the representations.

The Chief Executive may reissue one or more concurrence agency responses to address any inconsistency.

## **7.0 Negotiating the assessment manager's conditions [s3.5.17 & 18 of the IPA]**

The IPA enables an applicant who disagrees with the conditions imposed by the assessment manager on an approval, to make representations to the assessment manager requesting the reconsideration of the conditions. This provides a mechanism for applicants and assessment managers to resolve disputes about conditions outside of the formal appeal process. However, it is not intended that the making of representations under this section of the IPA should deny an applicant the right to appeal the decision.

Such representation must be made **during** the applicant's 20 business day appeal period. The applicant may suspend their appeal period for a period of up to a further 20 business days, by giving written notice to the assessment manager, to allow more time to make these representations and have them considered by the assessment manager. If the representations are not made in this additional period, or the applicant withdraws the notice to suspend the applicant's appeal period, the balance of the applicant's original 20 business day appeal period restarts.

If the assessment manager agrees with the representations and therefore decides to issue a new decision notice, this notice is called a **negotiated decision notice** [s3.5.17(2) of the IPA].

If representations are made within time, and –

- (i) the assessment manager **agrees** to issue a negotiated decision notice, the applicant is given a new 20 business day appeal period which starts from the day after the negotiated decision notice is given;
- (ii) the assessment manager does not agree with the representations and gives the applicant a written notice stating their decision about the representations - the balance of the applicant's original 20 business day appeal period applies [s3.5.18(4)(b) of the IPA].

## **8.0 Changing the conditions of a development approval [s3.5.33 of the IPA]**

At any time after a development approval has taken effect, the applicant may request to change or cancel any of the conditions (i.e. a condition imposed by either the assessment manager or a concurrence agency) provided no assessable development would arise from the change or cancellation.

A request to change a condition of a development approval must be made on the Integrated Development Assessment System (IDAS) Form 2 *Request to change an existing approval*, available to download and print from the [IPA website](#) or to complete and lodge online through the Smart electronic Development Assessment (SeDA) exchange. The request must be made to the entity with the jurisdiction for imposing the condition, either the assessment manager, a concurrence agency, or the Court if the approval has been issued by the Court as the result of an appeal.

## **9.0 Development conditions on leases issued under the Land Title Act 1994**

The Department of Natural Resources and Water (NRW) issues leases over State land. Utilising section 203 of the *Land Act 1994*, it has been common practice for NRW, on behalf of other State government agencies and local government, to include development related conditions as part of a lease.

This created potential for conflicting development related conditions to apply to land - those applied by the State on the lease and those applied by the local government under any rezoning or planning approvals that needed to be obtained.

NRW has reviewed lease conditions issued under the *Land Act 1994* to remove any conditions that may conflict with IDAS. Leases issued by NRW now include generic conditions as set out in its Tenure Administration System including “The lessee shall ensure that the use and development of the leased land conforms to the Planning Scheme, Local laws and requirements of the relevant Local Government, binding on the lessee”.

### Commonly Asked Questions

#### 1. *Can an advice agency impose conditions?*

No, advice agencies may only recommend that the assessment manager impose certain conditions. However, an advice agency can make a submission about an application that is publicly notified.

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