

IDAS IMPLEMENTATION NOTES

Note 16

Negotiated decision notices

The *Integrated Planning Act (IPA)* provides an applicant with the opportunity to make representations to the assessment manager about a matter stated in the decision notice. This opportunity is provided during the applicant's 20 business day appeal period.

The purpose of this opportunity is to provide a mechanism for applicants and assessment managers to resolve disputes about conditions and other decision notice matters outside the formal appeal process.

However, it is not intended that the making of representations should deny an applicant the right to appeal the decision to the Planning and Environment Court.

1.0 Decision notice matters that can be negotiated

An applicant may make representations to the assessment manager about any of the following matters stated in the decision notice -

- the type of approval issued (eg. the issuing of a preliminary approval instead of a development permit);
- the length of the relevant period;
- the conditions of approval;
- the plans referred to in the approval;
- the list of other development permits necessary to allow the development to be carried out; and
- the list of codes that may need to be complied with for self-assessable development.

2.0 Decision notice matters that may not be negotiated [s3.5.17(1) of the IPA]

An applicant may not make representations about -

- a refusal; or
- a matter about which a concurrence agency told the assessment manager to include in the decision notice under section 3.3.18 of the IPA (Concurrence agency's response powers). The applicant's opportunity to make representations about matters under the jurisdiction of a concurrence agency has already passed.

The opportunity to further negotiate these matters is through an appeal to the Planning and Environment Court during the appeal period or a request to change the approval after the approval has taken effect.

In addition, the applicant cannot make representations that seek to change the purpose of the application (eg. the proposed use or works) or the aspects of development applied for, to the extent that the change would result in new assessable development. This would constitute a change to the application and therefore cannot be made after the application has been decided.

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3.0 What happens to the applicant’s appeal period while the representations are being considered?

If the applicant has made representations to the assessment manager, the applicant’s 20 business day appeal period continues unless the applicant makes a request to suspend the applicant’s appeal period, by written notice to the assessment manager under s3.5.18 of the IPA.

4.0 Suspending the applicant’s appeal period [s3.5.18 of the IPA]

If the applicant requires more time to prepare the representations for the assessment manager, the applicant may suspend their appeal period. Only one opportunity is given to suspend the applicant’s appeal period. This suspension provides the applicant with an additional **20 business days** to make the representations and suspends the original appeal period until the assessment manager -

- (i) issues a negotiated decision notice; or
- (ii) gives written notice stating that the decision notice has not been changed.

If the applicant fails to make representations within this 20 business day period, the balance of their original appeal period recommences. In this instance, the applicant may still make representations during the remainder of their appeal period, however the appeal period continues and is likely to expire prior to the assessment manager determining the representations. If the appeal period expires, it is too late to appeal the decision or issue a negotiated decision notice.

If the applicant fails to make representations within this 20 business day period and the balance of their appeal period recommences, they still have the opportunity to lodge an appeal to resolve any dispute about a matter in the decision notice. However, any appeal must be made before the applicant’s appeal period expires.

5.0 Considering the representations [s3.5.17(6) of the IPA]

When considering the representations, the assessment manager must take into account the matters considered when the original decision was made, to the extent those matters are relevant.

There is no statutory timeframe within which the assessment manager must make a decision about the representations. If the applicant suspends their appeal period, the appeal period is suspended until the assessment manager makes a decision. However at any time during this period, the applicant may lodge an appeal against the decision to the Planning and Environment Court.

Once an appeal is lodged or the applicant’s appeal period ends, a negotiated decision notice cannot be issued.

6.0 Issuing a negotiated decision notice [s3.5.17(3), (4) of the IPA]

Only one negotiated decision notice may be given.

A negotiated decision notice is issued if the assessment manager agrees with any of the applicant’s representations about a matter stated in the decision notice.

If a negotiated decision notice is issued, the negotiated decision notice replaces the decision notice previously given.

A negotiated decision notice must -

- be in the same form as the decision notice given previously; and
- state the nature of the changes.

7.0 Notification a negotiated decision notice [s3.5.17(4), (5) of the IPA]

A negotiated decision notice must be given within **5 business days** of the assessment manager agreeing with any of the representations made by the applicant.

A copy of the negotiated decision notice must be given to each of the following entities (where applicable) -

- the applicant;
- each principal submitter;
- each IDAS referral agency for the application; and
- the local government (if the assessment manager is not the local government).

Note: To prevent the appeal period expiring prior to the representations being decided, the applicant should suspend their appeal period.

Note: In considering the representations, the assessment manager may seek further information from the applicant. With the applicant’s agreement, the assessment manager may impose additional conditions to facilitate the change.

*Note: The assessment manager does not need to agree with **all** the representations mad by the applicant in order to issue a negotiated decision notice.*

If the assessment manager instead decides **not** to change the decision notice, the assessment manager has 5 business days to notify the applicant in writing that the decision notice has not been changed.

8.0 How the decision affects the applicant's appeal period

If the assessment manager agrees with the representations and therefore issues a negotiated decision notice, the applicant's 20 business day appeal period **restarts** from day one.

If the assessment manager gives a notice stating the decision notice will not be changed, the **balance** of the applicant's original 20 business day appeal period restarts.

9.0 When a submitter is notified of a decision/negotiated decision

Regardless of whether an application is approved or refused, the applicant must be notified of the assessment manager's decision about the application within 5 business days of the decision or negotiated decision being made.

However, the timeframe for notifying a submitter for an application varies depending on whether the application is approved or refused.

If the application is refused - any submitter for the application will be notified of the assessment manager's decision at the same time as the applicant (i.e. within 5 business days of the decision being made). In this instance the applicant's and submitters 20 business day appeal period run concurrently.

If the application is approved - any submitter for the application will be notified of the decision within 5 business days after the earliest of the following happens –

- (i) the applicant gives the assessment manager a written notice stating that the applicant does not intend to make representations and seek a negotiated decision notice;
- (ii) the applicant gives the assessment manager notice of the applicant's appeal; or
- (iii) the applicant's appeal period ends.

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