

IDAS IMPLEMENTATION NOTES

Note 18

Changing an existing approval

There are four (4) possible ways to change an approval under the *Integrated Planning Act (IPA)* -

1. changing a development approval (other than a change of a condition);
2. changing or cancelling a condition of approval;
3. extending the relevant period for an approval; and
4. changing conditions of a rezoning approval given under the *Planning & Environment Act (P&E Act)*.

These requests are not an application under the Integrated Development Assessment System (IDAS). They are a request and each have different processes, timeframes and assessment criteria, and potentially different assessment managers/entities responsible for assessing and deciding the requests. There is no requirement to issue an acknowledgment notice and no formal information request process. However, there is nothing preventing the assessment manager/entity from acknowledging receipt of the request as a courtesy, or asking the person to supply further information.

The applicable processes, timeframes, criteria and responsibilities for each type of request are outlined in this implementation note.

1.0 Changing a development approval (other than a change of a condition) [s3.5.24 & 25 of the IPA]

A person may request the assessment manager to change a development approval, however the proposed change must fall within the definition of “**minor change**” [Sch 10 of the IPA]. This request cannot be used to change a condition included in a development approval.

The term minor change is defined in the IPA as a change that would **not** -

- trigger referral to an additional concurrence agency;
- cause the development to require impact assessment when it would previously have required only code assessment; or
- be likely to cause a person to object to the proposal (where the original application followed the impact assessment process).

Process for changing a development approval -

1. A person, with the consent of the owner, lodges **Form 2 Request to change an existing approval** together with the applicable fee, and a copy of the advice given to any concurrence or building referral agency for the application, with the assessment manager;
2. The person must also advise any concurrence agencies or building referral agencies for the original application, of the request¹;
3. If the approval involves a State resource prescribed under the *Integrated Planning Regulation 1998* (IP Reg), and evidence of resource allocation or entitlement would be required for an application for the development, the request must be accompanied by the written agreement of the chief executive of the Department that provides the evidence;

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¹ At about the same time the request is made to the assessment manager.

Note: The assessment manager may change the development approval, even where the Planning and Environment Court (the Court) granted the development approval.

Note: The key test is that no new assessable aspect of development would arise from the change of conditions.

4. If there were no concurrence agencies or building referral agencies for the application, the assessment manager must decide the request within **30 business days** from lodgement of the request to change the approval (unless extended by agreement);
5. If there were concurrence agencies or building referral agencies, these agencies have **20 business days** in which to advise the assessment manager whether or not they object to the change. The assessment manager cannot make the decision within these first 20 business days. If the assessment manager does not receive a response from the agency within this timeframe, the agency is considered to have no objection. If a response is received, the assessment manager must decide the request having regard to the referral agency's advice, within **30 business days** from lodgement (unless extended by agreement);
6. The assessment manager may either approve or refuse the request, and must give written notice of the decision to the person requesting the change, and to any applicable referral agencies or building referral agencies.

Scenario: A development permit for a material change of use for a child care centre has been issued. The new owner wishes to amend the approved plan of layout by changing the front boundary setback and front facade. The owner therefore requests a change to the development approval to reflect the revised plan of layout. The assessment manager decides that the proposed change is minor as it does not trigger additional concurrence agencies, does not change the application from code to impact assessment, and in the assessment manager's opinion is unlikely to cause a person to object, and would not involve a change to a condition (as the approved plans were not referred to in the conditions of approval).

2.0 Changing or cancelling a condition of approval [s3.5.33 of the IPA]

A person may request the **entity that required a condition to be imposed** to change or cancel the condition/s. For the request to be considered, the proposed change must **not** constitute assessable development.

Who is the entity that required the condition to be imposed—

A condition may be imposed by the assessment manager, a concurrence agency or the Planning and Environment Court (the Court).

For the purposes of s4.1.54 of the IPA, the Court is considered to be the entity that imposed the condition if the Court –

- changed the decision appealed against; or
- set aside the decision appealed against and made a decision replacing the decision set aside.

[The Court is not the entity that imposed the condition if the Court confirmed the decision appealed against (i.e. dismissed the appeal)].

Process for changing or cancelling conditions –

1. A person, with the consent of the owner, lodges **Form 2 Request to change an existing approval** together with the applicable fee, with the entity who decided the condition or required the condition to be imposed;
2. The assessment manager or concurrence agency must decide the request in **20 business days** from lodgement. This timeframe can be extended with the agreement of the entity and the person making the request. If the request is made to the Court, the Court is not bound by these timeframes;
3. The entity must assess and decide the request having regard to –
 - the matters that would be considered if the request was a development application; and
 - any submissions that were made to the original application;
4. The entity must give the person written notice of the decision. If the entity is a concurrence agency or the court, written notice of any change or cancellation of conditions **must** also be forwarded to the assessment manager for the original application.
5. The changed or cancelled condition takes effect from the day the notice is given.

Scenario: A person has received a development permit for material change of use for a shopping centre including a restaurant. The original application followed the code assessment process. The assessment manager included a condition limiting opening hours. The restaurant owner now proposes to extend the opening hours, and requests the assessment manager to change this condition.

3.0 Request to extend the relevant period [s3.5.22 of the IPA]

At any time before the relevant period of the approval expires, a person may request an extension from the assessment manager. Provided the request to the assessment manager and the notice to relevant concurrence agencies (if applicable) are made before the end of the relevant period for the approval, the development approval does not lapse (despite s.3.5.21 of IPA) until the assessment manager decides the request.

Process for extending the relevant period –

1. A person, with the consent of the owner, lodges **Form 2 Request to change an existing approval** together with the applicable fee, and a copy of the advice given to any concurrence or building referral agency for the application, with the assessment manager;
2. The person must also advise any concurrence agencies for the original application of the request²;
3. If the approval involves a State resource prescribed under the *Integrated Planning Regulation 1998* (IP Reg), and evidence of resource allocation or entitlement would be required for an application for the development, the request must be accompanied by the written agreement of the chief executive of the Department that provides the evidence;
4. If there were no concurrence agencies, the assessment manager must decide the request within **30 business days** from lodgement (unless extended by agreement);
5. If there were concurrence agencies, these agencies have **20 business days** to advise the assessment manager whether or not they object to the extension. The assessment manager cannot make a decision within these first 20 business days. If the assessment manager does not receive a response from the concurrence agency within this timeframe, the agency is taken to have no objection. However, if the concurrence agency specifically included a condition about the relevant period in the original approval, the assessment manager must **not** approve the request unless they receive advice from the concurrence agency indicating no objection. Having regard to the concurrence agencies' advice, the assessment manager must decide the request within 30 business days from lodgement (unless extended by agreement). The assessment manager may extend the relevant period, even if the development approval was granted by the court;
6. The assessment manager may either approve or refuse the request. There is no opportunity for the assessment manager to approve the request subject to new conditions³.
7. The request may not be withdrawn.

4.0 Changing conditions of an approval issued under the *Local Government (Planning and Environment) Act 1990* (P&E Act)

Approvals issued under the P&E Act become continuing approvals under the IPA, with the exception of rezoning approvals. Continuing approvals can be changed in any of the three ways outlined above.

5.0 Changing conditions of a rezoning approval issued under the P&E Act [s6.1.35A of the IPA]

A person who wishes to change a condition of a rezoning approval may -

- Make a development application under IDAS to achieve the change; or
- Apply under s.4.3(1) or 4.15(1) of the repealed P&E Act. In this instance, the applicant proceeds as if the P&E Act had not been repealed.

Making a change that is not minor or involves assessable development

If a person wants to modify an approval in such a way that the change could not be considered minor or the change to conditions would constitute assessable development, the applicant must lodge a new development application. This application will follow the IDAS process.

Scenario: An approval exists for the subdivision of land into 20 lots. The applicant proposes to modify the approval to provide for an additional 10 lots. The assessment manager considers that the

² At about the same time as the request is made to the assessment manager

³ Unless a request to change conditions has also been made.

proposed change would constitute assessable development and could not be considered minor as it would be likely to cause persons to object due to the reduced size of the lots, increased number of lots and traffic generation. Therefore a new application would be required.

Commonly Asked Questions

1. *Is a new decision notice issued?*

No, the assessment manager/entity deciding the request is required to give a written notice of the decision. This does not replace the original decision notice or negotiated decision notice. If the decision on the request results in a changed approval, the decision applies in the context of the original decision notice or negotiated decision notice.

2. *Does a change to the approval restart the relevant period for the approval?*

The issuing of a changed approval or changed conditions **does not restart or extend the relevant period for the original application**, as the relevant period applies from when the approval takes effect, which relates to when the original decision notice or negotiated decision notice was given.

3. *What happens when the change involves two or more of these requests?*

When the proposed change involves a change to the approval, the conditions and/or the relevant period the applicant must specify each request being sought. If all requests are made to a single entity (i.e. the assessment manager), the requests can be processed in an integrated manner. However, if the change to conditions is about a condition imposed by another entity, a separate request must be given to that entity.

4. *Can the applicant appeal the decision?*

A person who receives a notice giving a decision on a request to change the development approval, change or cancel conditions or extend the relevant period may appeal to the court against the decision. The appeal must be lodged within **20 business days** of the decision being given to the applicant.

Note: Appeal rights are not available on decisions about an extension to the relevant period for an approval of a development application (superseded planning scheme). (See Implementation Note 3 – Development Applications under a superseded planning scheme)

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