This fact sheet explains the concept of change representations under the new Planning Act 2016, which will commence on 3 July 2017. It has been developed for planning practitioners and provides several scenarios to show how the new timeframes are applied under the Planning Act.

What are change representations?
Change representations are when an applicant applies to their assessment manager to make a change to their development approval before their appeal period has ended.

Change representations are not a new concept, with an equivalent option available under the current Sustainable Planning Act 2009 (SPA) (chapter 6, part 8, division 1). However unlike SPA, the Planning Act introduces a timeframe in which change representations must be decided and a decision issued.

Sections 74 to 76 of the Planning Act prescribe when and how change representations may be made, considered and decided.

Making change representations (section 75 of the Planning Act)
After a decision notice is given to an applicant by the assessment manager, the Planning Act provides a 20 business day period (the applicant appeal period) in which the applicant can:

- appeal the decision
- make a change representation (if the application is approved or deemed approved).

An applicant may make change representations about a matter in the development approval or the standard conditions of a deemed approval. This includes, for example, the conditions of the approval, or a decision to give a preliminary approval instead of a development permit.

As change representations are only relevant to a development approval, an applicant cannot make change representations if the development application was refused. Also, under section 75(1)(a)(i) and (ii), an applicant cannot make change representations when they seek to change:

- matters that have been included in the development approval as a result of a referral agency’s response
- development conditions imposed under a direction by the Planning Minister.

Suspending the appeal period – an important step
Change representations cannot be made or decided after the applicant's appeal period has ended. To ensure there is adequate time for an applicant to make change representations and for the assessment manager to consider them, the Planning Act provides the ability for the applicant to suspend their appeal period by giving notice to the assessment manager. An applicant may only do this once.

If the applicant does not suspend their appeal period and decides to make change representations, any negotiated decision notice would need to be given before the applicant’s appeal period ends. In this instance, there is no opportunity for the assessment manager to negotiate an extension of time to consider the representations (shown in scenario 1).
Therefore, when the applicant suspends the appeal period, the Planning Act provides additional time for the applicant to make change representations and for the assessment manager to consider and make a decision about the change representations.

**What happens if the appeal period is suspended?**
If an applicant gives notice to suspend the appeal period, they have up to 20 business days to make the representations from the day the notice is given to the assessment manager.

If the applicant does not make representations during that suspended period, the balance of the applicant's appeal period restarts at the end of the 20 business days (shown in scenario 2).

If the applicant does make change representations during the suspended period, the appeal period is suspended for a further 20 business days. These 20 business days end when the:
- applicant gives the assessment manager another notice withdrawing the original notice which suspended the appeal period
- assessment manager gives a notice to the applicant not agreeing to the change representations
- time period (or a further period agreed between the applicant and the assessment manager) ends.

**Making a decision on change representations**
Where the applicant appeal period has been suspended (after receiving the change representations from the applicant) the assessment manager has 20 business days (or the further period agreed) to consider the representations. If the assessment manager has not given a decision notice about the change representations within this 20 business day period, or within the time agreed, the balance of the applicant’s appeal period restarts (shown in scenario 3).

In accordance with section 76 of the Planning Act, the assessment manager must assess the change representations against, and having regard to, the matters that must be considered when assessing a development application to the extent that those matters are relevant to the change representations.

If the assessment manager does not agree with the change representations, or the applicant withdraws the change representations, the remaining balance of the applicant’s appeal period restarts.

If the assessment manager does not give a decision to the applicant within the suspended appeal period, the balance of the applicants appeal period will restart. If this occurs, the assessment manager may still make a decision and give notice about the change representations before the applicants appeal period ends. A negotiated decision cannot be given after the applicant’s appeal period has ended.

If the assessment manager agrees to the change representations, they must issue a negotiated decision notice. Only one negotiated decision notice may be given.
The negotiated decision notice replaces the original decision notice for the development application and a local government may also give a replacement infrastructure charges notice to the applicant. The applicant’s appeal period starts again the day after the negotiated decision notice is given.

**Frequently asked questions**

**Can an application decided under the SPA use the Planning Act’s change representations process?**

No. Applications assessed and decided under the SPA will continue to follow the change representations process under the SPA. Only applications assessed and decided under the Planning Act may utilise the Planning Act’s change representations provisions.

**Can the applicant suspend the appeal period and make representations at the same time?**

Yes. Under the Planning Act, the applicant may undertake these two actions at the same time.

**What is the implication for an application when the applicant has suspended the appeal period and an assessment manager does not make a decision about a change representation or give the negotiated decision notice request before the end of the applicant’s appeal period?**

If the assessment manager does not decide the change representations in the time provided under the Planning Act (or further agreed period), the applicant’s remaining appeal period restarts.

A negotiated decision notice cannot be given outside the applicant’s appeal period. Therefore, any decision notice given after the appeal period ends would not be a negotiated decision notice and would have no effect.

These provisions only relate to changing development approvals during the appeal period, as described in section 74 of the Planning Act. To change an approval outside the applicant’s appeal period, the change application provisions under the Planning Act apply (chapter 3, subdivision 2 of division 2). More information can be found in the fact sheet about change approvals.

**Does the assessment manager still need to receive, assess and decide the representations within 20 business days if the applicant does not suspend the appeal period beforehand?**

If the applicant does not suspend the appeal period, the representations must be made, considered and decided within the 20 business days appeal period. This is likely to result in the applicant needing to suspend their appeal period, as there is insufficient time for the assessment manager to receive, assess, and potentially give a negotiated decision notice. Also, there is no ability for the assessment manager to seek an extension of time.

This is particularly important for applicants to note when utilising the change representations process.

**For the appeal period, what is the difference between ‘starts again’ and ‘restarts’?**

‘Starts again’ is used when the full 20 business days appeal period starts again from the beginning.
'Restart' is used when the remaining balance of the appeal period recommences from when it was suspended.

**Scenarios**
The following flow charts explain some of the possible scenarios that could arise and how change representations will operate under the Planning Act.

- Scenario 1: The applicant makes representations but does not suspend the appeal period.
- Scenario 2: The applicant suspends the appeal period but does not make representations.
- Scenario 3: The applicant suspends the appeal period and makes representations.

Scenario 1: The applicant makes representations but does not suspend the appeal period

In this scenario, the applicant submits representations but does not request that the appeal period be suspended. The process flowchart illustrates the steps involved in handling such representations:

1. **Recipient decision**
   - If the decision is made, the process moves forward.
   - If not, the process returns to the Assessment Manager.

2. **Make representations**
   - The applicant makes their representations.
   - If representations are made, the process continues.
   - If not, the process returns to the Assessment Manager.

3. **Wait process**
   - If the appeal period is not suspended, a period of time is waited.
   - If the appeal period is suspended, the process continues.

4. **Receive notice of decision**
   - If the decision is not to grant the representations, the process moves on.
   - If the decision is to grant the representations, the Assessment Manager must give notice of the decision.

5. **Agree with representations?**
   - If the Assessment Manager agrees with the representations, the process continues.
   - If not, the process returns to the applicant.

6. **Give negotiated decision notice**
   - If a negotiated decision notice is given, the process concludes.
   - If not, the process returns to the Assessment Manager.

7. **Nominated decision notice cannot be given outside appeal period**
   - If a negotiated decision notice cannot be given, the process concludes.

8. **End**
   - The process concludes.

Notes:
- Where the applicant makes representations but does not suspend the appeal period, there is no additional time provided by the assessment manager to consider the representations. A negotiated decision is to be given if it must be given before the end of the applicant's appeal period.
Scenario 2: The applicant suspends the appeal period but does not make representations
Scenario 3: The applicant suspends the appeal period and makes representations

Change representations – applicant suspends the appeal period and makes representations:

- Applicant’s appeal period is suspended for up to 20 b.d. (this cannot be extended)
- Applicant’s appeal period remains suspended for up to 20 b.d. (can be extended by agreement)

- Receive notice suspending appeal period
- Issue notice to Assessment Manager
- Receive representations
- Circulate representations
- Agree with representations
- Issue appeal period
- Give notice of decision not to agree to representations
- Make representations
- Give negotiated decision notice

Note:
1. Where a negotiated decision notice is to be given, the b.d. period provided in the Planning Act under section 436(1) generally will need to be factored into this 20 b.d. period (including any extensions). Regardless of when the decision is made, the suspension of the applicant’s appeal period ends at the end of this period. Following this, whether or not a negotiated decision could be issued is completely dependent on the amount of time remaining in the balance of the applicant’s appeal period.