After a development approval has been given, the Planning Act 2016 (Planning Act) allows for that development approval to be changed, cancelled or for the currency period to be extended.

The requirements and processes for changing, cancelling or extending the currency period for a development approval are largely set out in the Planning Act, however certain change processes utilise the development assessment process in the Development Assessment Rules (DA Rules).

This fact sheet provides guidance on when and how these post approval actions can be undertaken. Please note: this information is targeted at planning practitioners.

Changes during the appeal period

After a decision notice is issued, the Planning Act provides a 20 business day period in which the applicant can appeal the decision. If the development application has been approved, the Planning Act also provides the ability for an applicant to make representations to the assessment manager about changing the development approval during this period. These are called ‘change representations’.

An applicant may, for example, make change representations about a condition of the approval or a decision to give a preliminary approval instead of a development permit. Change representations can also be made to seek to change standard conditions that have resulted from a deemed approval.

An applicant cannot make change representations where:

- the assessment manager has refused the development application
- the applicant seeks to change matters that have been included in the development approval as a result of a referral agency’s response
- the applicant seeks to change development conditions that have been imposed under a direction by the Planning Minister.

Change representations cannot be made or decided after the applicants appeal period has ended, so to ensure there is adequate time for an applicant to make change representations and for the assessment manager to consider those representations, 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 gives notice suspending their appeal period, they then have up to 20 business days to make representations before the balance of their appeal period restarts. If the applicant does make change representations within this suspended appeal period, the appeal period is further suspended until:

- the applicant gives the assessment manager another notice withdrawing the change representations
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- the assessment manager gives a notice to the applicant not agreeing to the change representations
- the end of a 20 business day period after the change representations are made or a further period agreed between the applicant and the assessment manager.

This effectively means that, after receiving the change representations from the applicant, the assessment manager has 20 business days (or the further period agreed) to consider the change 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 further agreed, the balance of the applicant’s appeal period restarts.

If the assessment manager does not agree with the change representations, or the applicant withdraws the change representations, the balance remaining of the applicant's appeal period recommences. If the assessment manager has not given its decision to the applicant within the suspended appeal period, the balance of the applicants appeal period also restarts. If this occurs, the assessment manager could still decide and give notice about the change representations before the appeal period ends. A negotiated decision cannot be given after the applicants 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 can be given. The negotiated decision notice replaces the decision notice for the development application and a local government may give a replacement infrastructure charges notice to the applicant. The applicant’s appeal period starts again from the beginning on the day after the negotiated decision notice is given.

For further information about applicant appeal rights, please refer to chapter 6, part 1 of the Planning Act.
Changes after the appeal period

The Planning Act also provides the ability to change a development approval after the applicant’s appeal period has ended. An application to change a development approval is called a ‘change application’. Depending on the type of change proposed, and who may be affected by the proposed change, there are a number of things that need to be considered.

Type of changes

The Planning Act establishes two types of changes that can be made to development approvals after the appeal period. These are set out below.

- **Minor change to a development approval**
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For a change application to be considered a minor change, the change to the development approval must meet the definition of a minor change as set out in schedule 2 of the Planning Act. This definition includes the requirement that the proposed change would not result in ‘substantially different development’. See schedule 1 of the DA Rules for further information about the substantially different development.

- ‘Other’ change to a development approval

A change which is not a minor change is also able to be made to a development approval. For these ‘other’ changes, the change application is assessed and decided by following the process set out in the DA Rules.

Making a change application

The Planning Act sets out that a change application (both minor and ‘other’) must be made to the ‘responsible entity’. The responsible entity for the change application is the assessment manager of the original development application unless:

- the change application is for a minor change to a development condition that a referral agency imposed, then the responsible entity is the referral agency, or
- the change application is for a minor change, and the development approval was given because of an order of the court, and there were properly made submissions, then the responsible entity is the Planning and Environment Court.

Section 75 of the Planning Act sets out what a change application must be accompanied by in order to be considered by the responsible entity, this includes but is not limited to, the required fee, and owners consent, if relevant.

For a minor change application, the Planning Act requires that affected entities be notified about the application. An affected entity is:

- a referral agency for the development application, if the responsible entity is the assessment manager or another referral agency
- the assessment manager of the development application, if the responsible entity is a referral agency
- the assessment manager and any referral agency of the development application, if the responsible entity would be the Planning and Environment Court
- another person prescribed by regulation.
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The Planning Act also sets out that where the chief executive (SARA) was a referral agency for the development application, the chief executive is not an affected entity.

The Planning Act allows an applicant to seek a pre-request response notice from an affected entity before making their change application. See section 80 of the Planning Act for more information about how affected entities are involved in a minor change application.

Assessing and deciding a minor change application

For a minor change application, the process to be followed is prescribed in the Planning Act.

After making the change application to the responsible entity, the person making the application must give the application to affected entities. Affected entities are provided with the opportunity to assess the change application and provide a response to the responsible entity. This can either take the form of a pre-request response notice before the change application is made, or can be given as a response notice after the change application is made.

Section 81 of the Planning Act sets out how a responsible entity must assess and decide a change application for a minor change, the period of time in which to decide the change and the period in which to give a decision notice about the change.

The responsible entity must also publish a notice of decision (statement of reasons) on their website. For further information regarding the notice of decision, please refer to section 83 of the Planning Act.

Assessing and deciding an ‘other’ change application

Where a change application is not a minor change, it is considered to be an ‘other’ change application. An ‘other’ change application must be assessed and decided in accordance with the process established under the DA Rules and have regard to:

- part 2, division 2 (making or changing applications)
- part 3 (assessing and deciding development applications) excluding:
  - section 51 (making development applications)
  - section 63 (notice of decision)
  - section 64(8)(c) (application of deemed approval conditions).

For these changes the application is assessed and decided by following the process set out in the DA Rules as if:

- the responsible entity was the assessment manager
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- the change application were a development application including the change, but made when the change application was made
- with other necessary changes.

The DA Rules are to be followed for an ‘other’ change application noting:

- References in the DA Rules to section 51 of the Planning Act and ensuring an application is properly made should, for the purposes of a change application, be taken to reference section 79 of the Planning Act to ensure a change application is properly made.
- If public notification is applicable to the ‘other’ change application it must be undertaken in the way prescribed in the DA Rules unless section 82(3) of the Planning Act is applicable to the ‘other’ change application. This section establishes that public notification does not apply if the change application is only an ‘other’ change application because the application would require referral to new referral agencies or referral for additional referral requirements.
- The application must be referred to all referral agencies triggered by the development application including the change application.
- All of the features provided in the DA Rules (such as stopping a current period, further advice etc.) are able to be called on during the process of assessing and deciding an ‘other’ change application.
- References in the DA Rules to section 63 of the Planning Act and deciding the application should be taken to be a reference to section 83 of the Planning Act for the purposes of giving the decision about the change application and publishing the notice of decision (statement of reasons).

Cancelling a development approval

Section 84 of the Planning Act allows for a development approval to be cancelled. To cancel a development approval, a cancellation application must be made to the assessment manager. However, where the development application was called in by the Planning Minister, the cancellation application must be made to the original assessment manager.

For the cancellation application to be valid it must be accompanied by the required fee and, if required, owner’s consent.

If the assessment manager receives a cancellation application that complies with section 84 of the Planning Act, the assessment manager must cancel the development approval by issuing a notice of the cancellation. A cancellation application cannot be made if:

- the development has started
- there are unfilled or ongoing obligations under the approval, or
- the obligations have not been superseded under another development approval, or authority.
Extending a development approval

Section 86 of the Planning Act provides the ability for the currency period of an approval to be extended at any time before the development approval lapses. To do this, an extension application must be made to the assessment manager and be accompanied by the required fee and, if relevant, owner’s consent.

The assessment manager must decide the extension application within 20 business days, or a further period agreed, of receiving the application. The assessment manager must decide to either refuse the application or give the extension sought or alternatively extend the currency period for a period different to that which was sought in the extension application. After the assessment manager has decided the extension application, a decision notice must be given within 5 business days.

Referral agencies are not required to be involved or advised about the extension application before it has been decided.

If the extension application is approved, the development approval now lapses at the end of the extended period. However if the extension application is refused, the development application lapses on:

- the day the decision notice is given or the end of the currency period (whichever occurs last), if the applicant does not appeal the decision,
- the day the appeal is dismissed or withdrawn or the end of the currency period (whichever occur last), if the applicant appeals the decision and the appeal is dismissed or withdrawn, or
- the end of the extended period decided by court, if the applicant does appeal the decision and the appeal is allowed.

If the applicant does appeal the extension decision, the applicant may not start or carry out the development until the appeal is decided, unless allowed by the Planning and Environment Court.

Relevant sections of the Planning Act:

- Part 5, division 2, subdivision 1 – changes during the appeal period.
- Part 5, division 2, subdivision 2 – changes after the appeal period.
- Part 5, Division 3 – cancelling development approvals.
- Part 5, Division 4 – lapsing of and extending development approvals.
- Schedule 2 – Dictionary.

Further information

For any further enquiries please contact the department on bestplanning@dlgpg.qld.gov.au.