



CHANGE REPRESENTATIONS

An applicant can make representations to the assessment manager about changing a development approval, after receiving a decision notice for a development application that has been approved. These are called ‘change representations’.

The *Planning Act 2016* (Planning Act) prescribes when and how change representations may be made, considered and decided, including the relevant timeframes. Change representations must be made during the applicant appeal period, which is a 20 business day period following the assessment manager giving the applicant a decision notice. Change representations cannot be made or decided after the applicant’s appeal period has ended.

An applicant may make change representations about a matter in a development approval or the standard conditions of a deemed approval. They can also be made about a matter in a change application, except if the change application is for a minor change. This includes, for example:

- › the conditions of the development approval, or
- › a decision to give a preliminary approval instead of a development permit.

Once the assessment manager has considered the change representations, if still within the applicant’s appeal period they either:

- › agree with the change representations and give a negotiated decision notice; or
- › not agree with the change representations and advise the applicant about this decision.

As change representations are about a development approval, an applicant cannot make change representations

if the assessment manager has refused the development application.

Under section 75(1)(a)(i) and (ii) of the Planning Act, an applicant also cannot make change representations related to:

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

Suspending the appeal period – a very important step

Change representations cannot be made or decided after the applicant's appeal period has ended.

To allow adequate time for an applicant to make change representations, and for the assessment manager to consider those representations, the applicant can suspend their appeal period. This is done by giving notice to the assessment manager and may only be performed once. The applicant may undertake the two actions of suspending the appeal period and making change representations at the same time.

When the applicant suspends the appeal period, additional time is provided for the applicant to make the change representations and for the assessment manager to consider and make a decision about the change representations.

Scenarios

The department has prepared the following three scenarios and flowcharts to illustrate how applicants may make change representations and the impact on the associated appeal period:

- › **Scenario 1:** Makes change representations but does not suspend the appeal period.
- › **Scenario 2:** Suspends the appeal period and makes change representations.
- › **Scenario 3:** Suspends the appeal period but does not make change representations.

Make change representations but does not suspend the appeal period (Scenario 1)

If the applicant does not suspend their appeal period and makes change representations, the representations must be made, considered and decided within the applicant's 20 business day appeal period. A negotiated decision notice needs to be given by the assessment manager before the applicant's appeal period ends.

Time taken in preparing and making the change representations is deducted from the 20 business day timeframe, leaving the remainder for the timeframe for the assessment manager's consideration. Therefore, it is good practice to

suspend the appeal period, as there is likely to be insufficient time for the assessment manager to receive, assess, and potentially give a negotiated decision notice.

In this instance, there is no opportunity for the assessment manager to negotiate an extension of time to consider the change representations. This is depicted in scenario 1.

Suspends the appeal period and makes change representations (Scenario 2)

If an applicant gives notice to suspend the appeal period, they then have up to 20 business days to make change representations.

If the change representations are made during the suspended appeal period, the appeal period is further suspended for an additional period of 20 business days. This allows the assessment manager 20 business days (or the further period agreed) to consider the change representations.

The further suspended 20 business day period ends when:

- › the applicant gives the assessment manager another notice withdrawing the notice that suspended the appeal period; or
- › the assessment manager gives a notice to the applicant not agreeing to the change representations; or
- › the assessment manager gives a negotiated decision notice agreeing to the change representations; or
- › the period (or a further period agreed between the applicant and the assessment manager) ends.

Assessment manager agrees with the change representations

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 20 business day appeal period starts again from the beginning, on the day after the negotiated decision notice is given.

Assessment manager does not agree with the change representations or the suspended period ends

- In the instances where the assessment manager:
- > does not agree with the change representations and issues a decision notice; or
 - > the period (or a further period agreed between the applicant and the assessment manager) ends without giving a decision notice about the change representations; or
 - > the applicant withdraws the change representations
 - > the balance remaining of the applicant’s appeal period restarts. For example, if the applicant suspended the appeal period on day five, the period being the balance of the applicant’s appeal period would be 15 business days.

Suspends the appeal period but does not make change representations (Scenario 3)

If an applicant gives notice to suspend the appeal period, they then have up to 20 business days to make representations.

If the applicant suspends the appeal period and then does not make change representations during that suspended period, the balance of the applicant’s appeal period restarts at the end of the 20 business day period.

Changing an approval outside the applicant’s appeal period

Change representations and an associated negotiated decision notice cannot be given outside the applicant’s appeal period. The Planning Act provides a different way for changes to be made to a development approval after the applicant’s appeal period has ended. See the factsheet ‘Changing, cancelling and extending development approvals’.

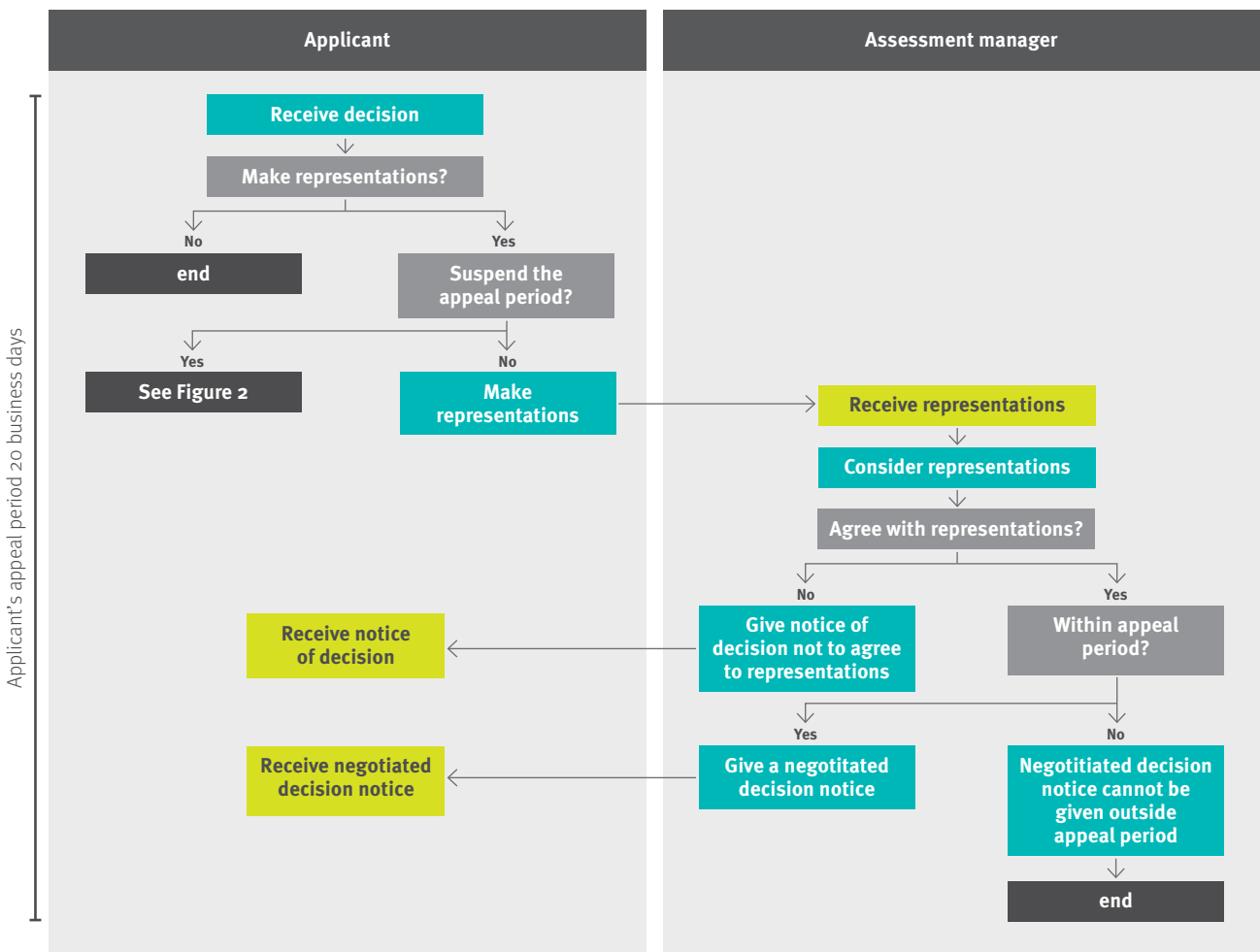


Figure 1: Change representations – applicant makes representations but does not suspend the appeal period

* Where the applicant makes representations but does not suspend the appeal period, there is no additional time provided for the assessment manager to consider the representation. If a negotiated decision is to be given it must be given before the end of the applicants appeal period.

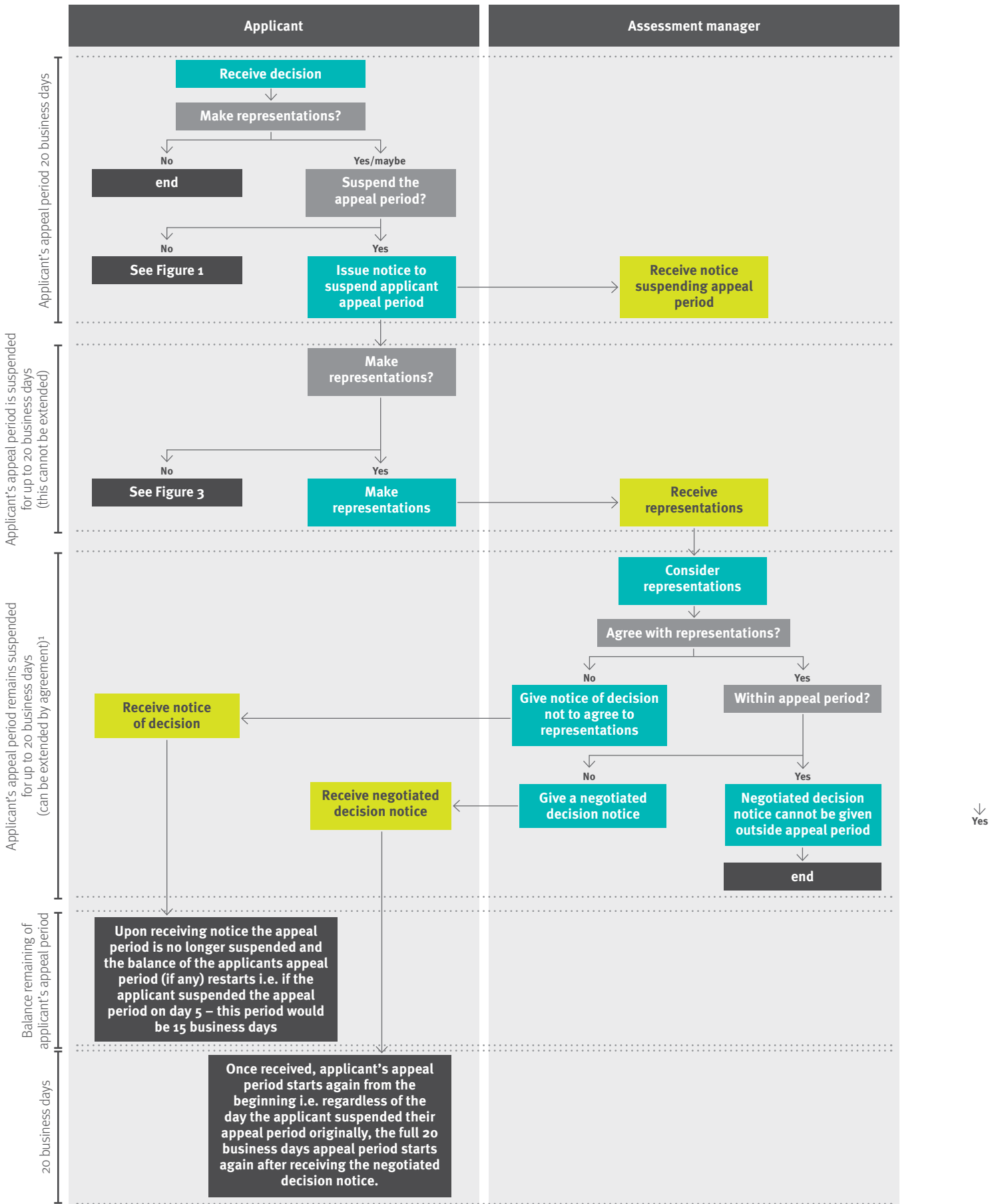


Figure 2: Change representations – applicant suspends the appeal period and makes representations

¹ Where a negotiated decision notice is to be given, the five business days provided in the Planning Act under section 76(2) generally will need to be factored into this 20 business day period (including any extensions). As 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.

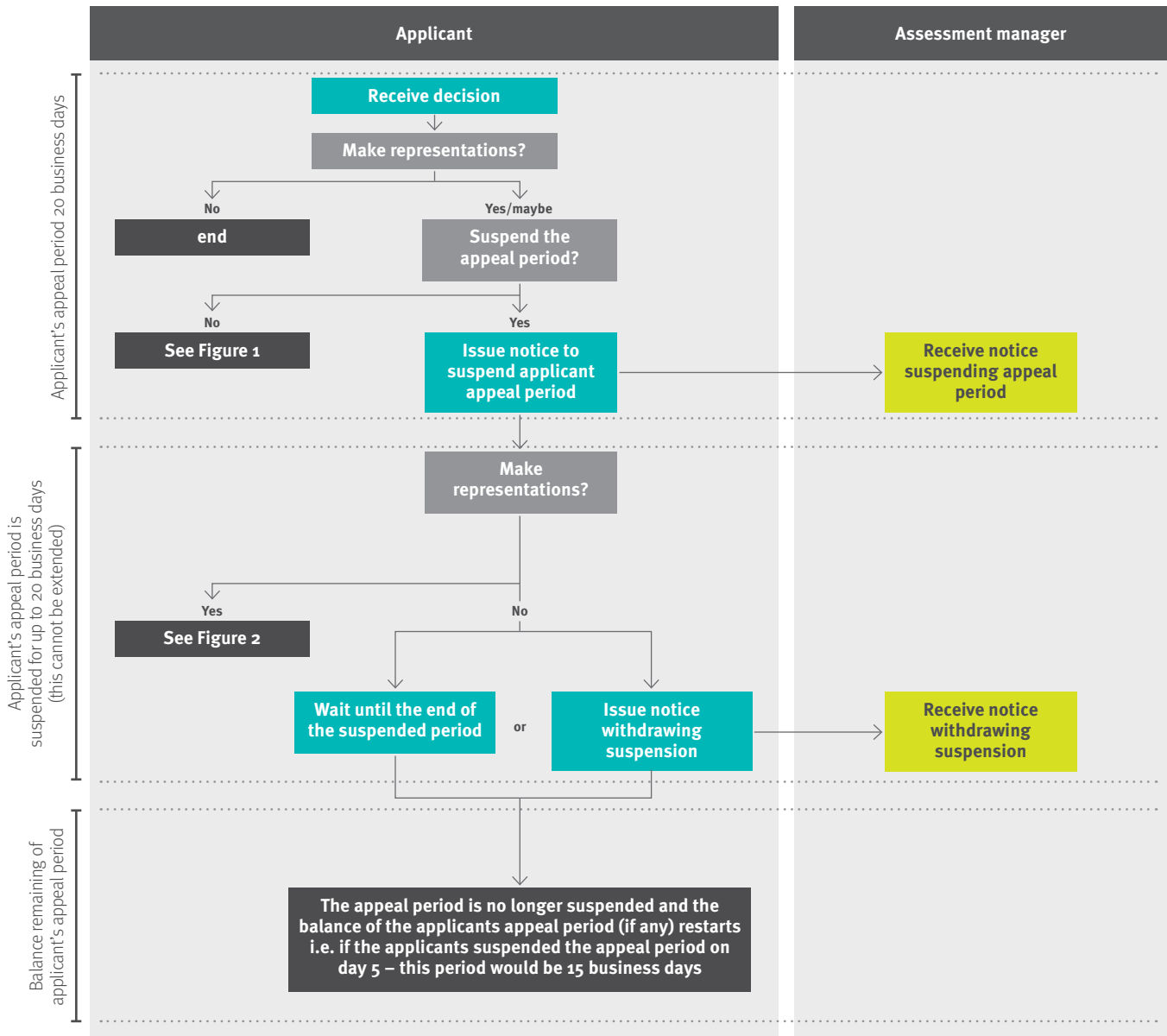


Figure 3: Change representations – applicant suspends the appeal period but does not make representations