

Minor Changes to Approvals

The process for making a change application under the Act is set out in sections 77 to 83, which includes the process for 'minor change' and 'other change' applications.

WHO IS THE RESPONSIBLE ENTITY FOR ASSESSING A CHANGE APPLICATION? (SECTION 78A)

The 'responsible entity' for assessing a change application is:

- a) if the change is a minor change to a condition that a referral agency imposes – the referral agency; or
- b) the Planning and Environment Court if:
 - i. the application is for a minor change; and
 - ii. the development approval was given because of an order of the court; and
 - iii. there were any properly made submissions for the development application; or
- c) otherwise – the assessment manager.

Note: Unlike SPA, the Act allows a person to apply to the assessment manager to make a minor change to a court ordered approval, except in the specific circumstance listed above. This means that a number of permissible change applications that were previously required to go through the court can now be made directly to the assessment manager.

IS THE CHANGE A MINOR CHANGE?

"Minor change" for development approvals is defined in Schedule 2 as a change that:

- (i) **would not result in substantially different development; and**

The phrase 'substantially different development' is not defined in the Act.

Whether a proposed change is a "minor change" is a matter of fact and degree and should be considered broadly and fairly, with guidance found in Schedule 1 of the *Development Assessment Rules*.

- (a) Schedule 1 of the *Development Assessment Rules* states that a change may be considered to result in substantially different development if any of the following apply to the proposed change:
 - involves a new use; or
- (b) results in the application applying to a new parcel of land; or
- (c) dramatically changes the built form in terms of scale, bulk and appearance; or
- (d) changes the ability of the proposed development to operate as intended; or
- (e) removes a component that is integral to the operation of the development; or
- (f) significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or
- (g) introduces new impacts or increases the severity of known impacts; or
- (h) removes an incentive or offset component that would have balanced a negative impact of the development; or
- (i) impacts on infrastructure provisions.

Whilst each application for a minor change must be assessed having regard to individual circumstances, there is a large body of cases that provide guidance about the types of changes that are likely to be considered as minor.

(ii) if a development application for the development, including the change, were made when the change application is made - would not cause—

- A. the inclusion of prohibited development in the application; or
- B. referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or
- C. referral to extra referral agencies, other than to the chief executive; or
- D. referral agency, in assessing the application under section 55(2), to assess the application against, or have regard to, a matter, other than a matter the referral agency must have assessed the application against, or had regard to, when the application was made; or
- E. public notification if public notification was not required for the development application.

This is a matter of comparing the original application with a hypothetical development application for the changed development. If the changed application would cause any of the matters listed in A – E, the change would not be a minor change. The focus here is the consequence of the change giving rise to A-E, rather than any changes in law that may cause the circumstances in A-E to arise.

SHOULD THE APPLICATION BE APPROVED? (SECTION 81)

Section 81 sets out the assessment and decision process for minor changes to development approvals.

The application can be refused or approved (with or without imposing new conditions or amending conditions relating to the change). In making this decision, the responsible entity must consider:

- (a) The information included in the application.

This material should include a comprehensive description of the proposed change and any consequential changes to the development. A 'before and after' comparison in a table or plans is useful. Specialist advice or reports may be necessary to address any impacts (or absence thereof) associated with the change.

Town planning advice will be required to consider the changes against the relevant planning instruments.

- (b) Any submissions about the original application, if there are any (if the responsible entity is the assessment manager).

Particular attention should be paid to submissions that relate to the subject change.

- (c) Any pre-request response notice or response notice.

Pre-request response notices are generally very valuable to expeditiously deal with matters within the jurisdiction of a referral agency, or where the application must be made to the court, the assessment manager.

- (d) All matters the responsible entity would or may assess against and have regard to, if the change application were a development application.

This requires the responsible entity to assess the change against the assessment criteria that applied when the original development application was made but permits the responsible entity to also assess the change against, or have regard to, the matters that apply when the change application was made.

- (e) Another matter that the responsible entity considers appropriate.

This is broad and may include the reason for the change.



All references to legislation are references to the Planning Act 2016 as at 13 October 2021.

This is general advice only. Specific advice should be sought in each instance.

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