



Fact sheet: Change representations

This fact sheet provides planning practitioners with more detailed guidance on when and how change representations can be made under the *Planning Act 2016*.

After a decision notice is given to an applicant by the assessment manager, 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 allows an applicant to make representations to the assessment manager about changing the development approval during this period. These are called 'change representations'. Sections 74 to 76 of the Planning Act prescribe when and how change representations may be made, considered and decided.

Change representations are not a new concept. There was an equivalent process under the *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. This timeframe has important implications for how the process will operate for development applications made and decided under the Planning Act.

Making change representations (section 75 of the Planning Act)

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.

Under section 75(1)(a)(i) and (ii), an applicant cannot make change representations where:

- 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.

As change representations are about a development approval, an applicant cannot make change representations if the assessment manager has refused the development application.

Suspending the appeal period – a very 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 those representations, the Planning Act allows 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. This is depicted in scenario 1 below. Therefore, when the applicant suspends the appeal period, the Planning Act provides additional time for the applicant to make the 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 then have up to 20 business days to make representations.

If the applicant suspends the appeal period and then **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.

If the applicant **does** make change representations during the suspended period, the appeal period is further suspended for a period of 20 business days. This 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 period (or a further period agreed between the applicant and the assessment manager) ends.

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 applicant's 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 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 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.

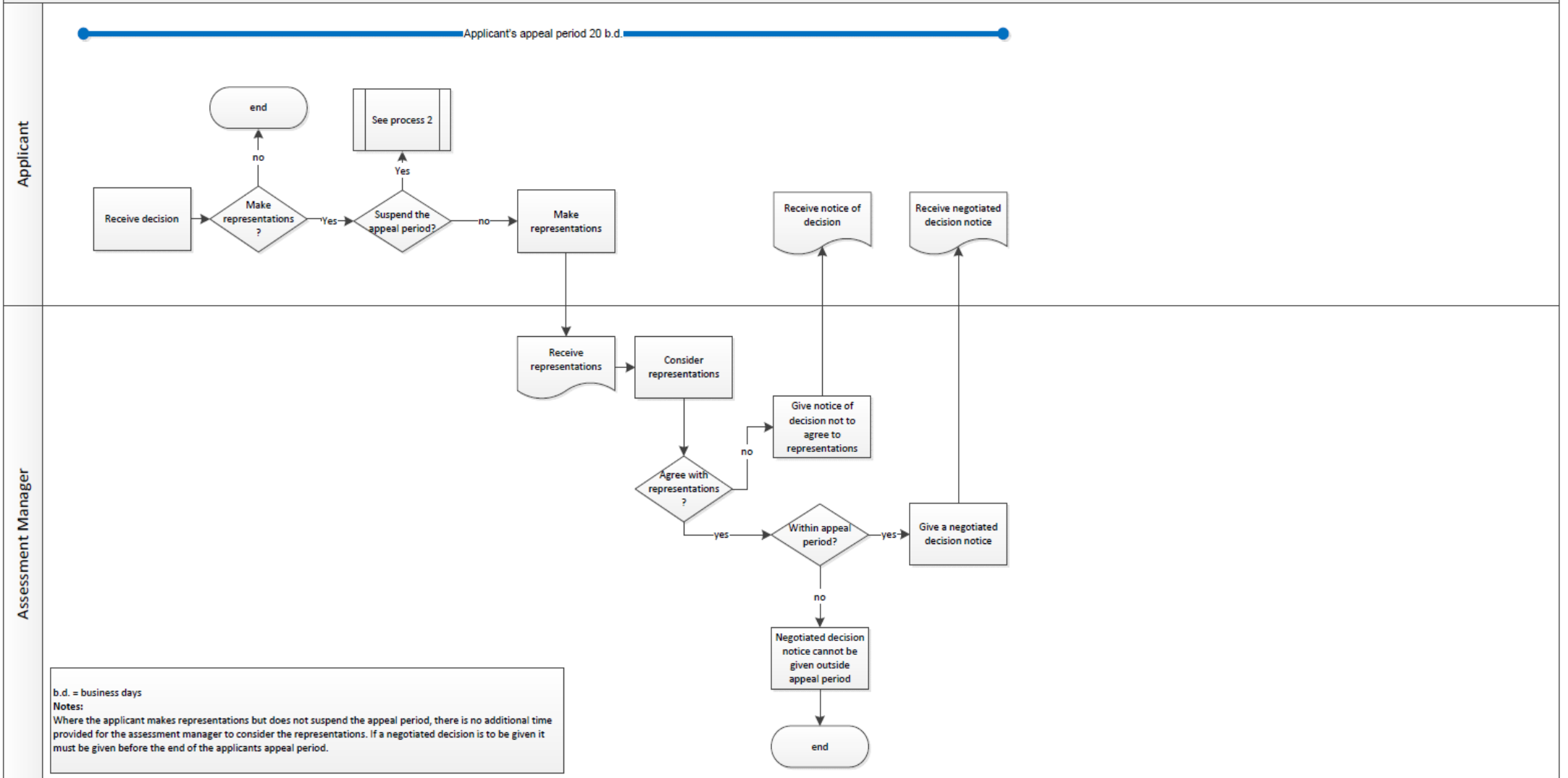
Scenarios

To illustrate how this will work in practice, the department has prepared the following three flowcharts, which cover the possible scenarios that could arise during the applicant's appeal period:

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

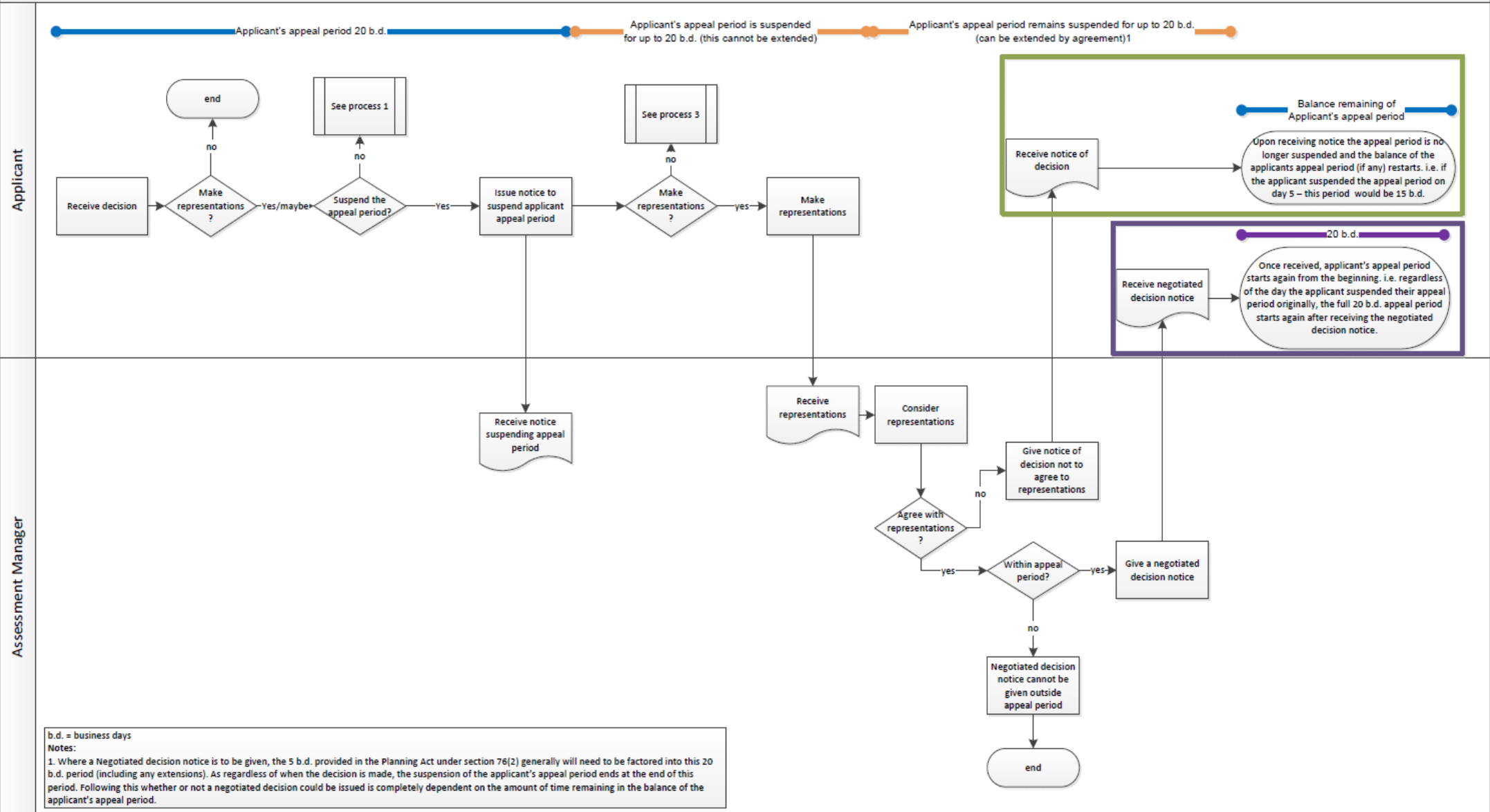
Change representations – applicant makes representations but does not suspend the appeal period

Process 1



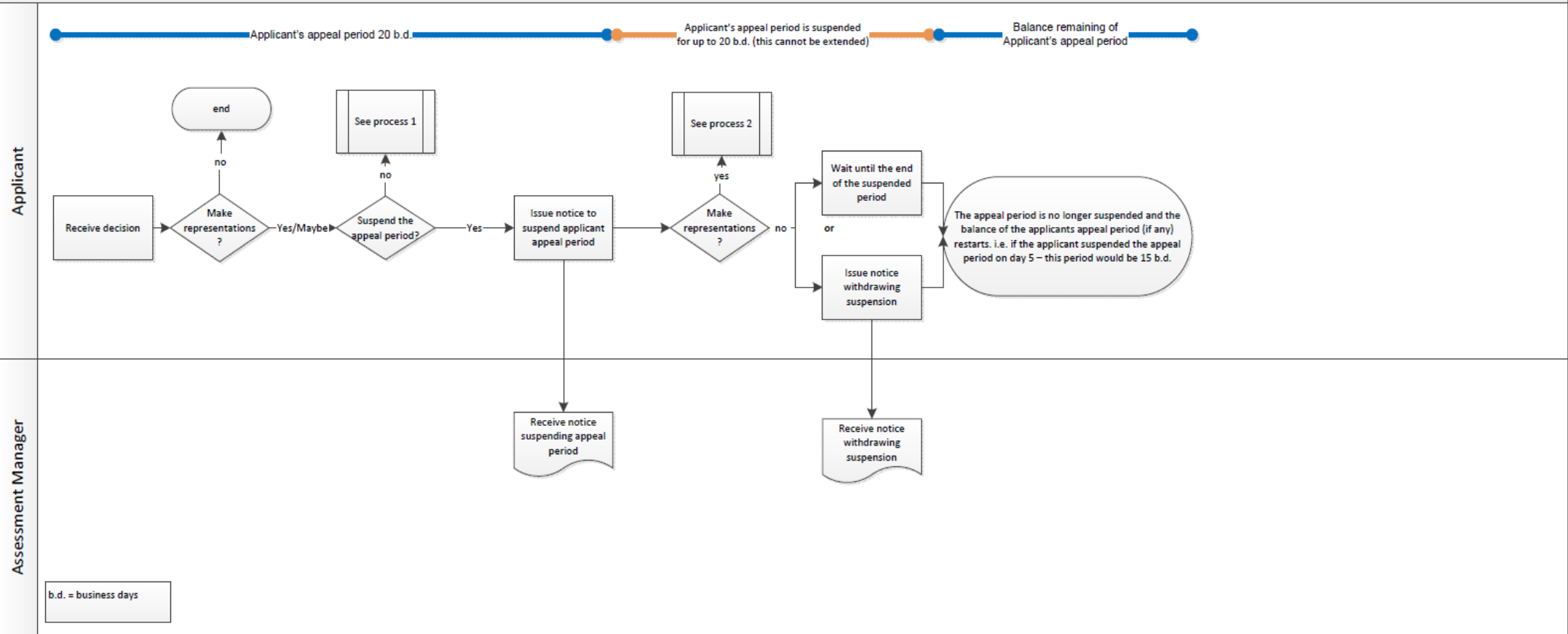
Change representations – applicant suspends the appeal period and makes representations

Process 2



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

Process 3



FAQs

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

No – as a transitional matter, change representations for any application that is assessed and decided under the SPA will continue to follow the representations process under SPA. Only applications assessed and decided under the Planning Act may use the Planning Act's change representations provisions.

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

Nothing under the Planning Act stops the applicant undertaking these two actions at the same time.

What is the implication for an application where 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 balance of the applicant's appeal period will restart. A negotiated decision notice cannot be given outside of the applicant's appeal period. Therefore, any decision notice that was 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 Act. To change an approval outside of the applicant's appeal period, the change application provisions under subdivision 2 of division 2 of chapter 3 of the Act apply. See also the fact sheet 'Changing, cancelling and extending development approvals'.

If the applicant does not suspend the appeal period before making representations to the assessment manager, does the assessment manager need to receive, assess and decide the representations in 20 business days? Is there any ability for an assessment manager to extend or otherwise negotiate an extension of this period?

If the applicant does not suspend the appeal period, the representations must be made, considered and decided within the applicant's 20-business-day appeal period for a negotiated decision notice to be given. In practice, this will likely result in the applicant needing to suspend their appeal period as a matter of course, as there is likely to be insufficient time for the assessment manager to receive, assess, and potentially give, a negotiated decision notice and no ability for the assessment manager to seek an extension of time. This is particularly important for applicants to note when looking to use the change representations process.

What is the difference between 'applicant's appeal period starts again' and 'balance of the applicant's appeal period restarts'?

The term 'restart' is used where the remaining balance of the appeal period is recommencing from the point at which it was suspended and 'starts again' where the whole 20-business-day appeal period is to start again.