

Operational policy

Deciding authority may make directions about applications

Policy number 12/2012
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Version 2.00

Notice to progress applications for grant or renewal of a resource authority

Application

This policy relates to:

- s. 193 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCPC)
- 386L of the *Mineral Resources Act 1989* (MRA)
- s. 843B of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)
- s. 413B of the *Greenhouse Gas Storage Act 2009* (GHG Act)
- s. 366A of the *Geothermal Energy Act 2010* (GEA).

The information provided in this policy **does not limit the exercising of discretion** nor does it override any legislative requirements. However, it reflects current practices within the department which may change from time to time. All changes will be published through a revised version of this policy.

Background

Amendments made by the *Mines Legislation (Streamlining) Amendment Act 2012* and the introduction of online processes for key resource authority approvals introduced the ability for the deciding authority¹ to progress applications by giving notice to applicants. Under the Resource Acts, by written notice, a deciding authority may direct an applicant to do a number of things within a stated period. The deciding authority may direct an applicant to complete or correct their application, do anything required under the Act or another Act to allow the application to be decided and give additional information about or relevant to the application.

The deciding authority may also direct the applicant to provide an independent report, statement or statutory declaration verifying certain information relating to the application. The deciding authority may specify who this independent report, statement or statutory declaration is to be made by.

The deciding authority may make one or more directions under these provisions, as well as extend the period for complying with any direction. The costs of complying with these provisions are to be borne by the applicant. The legislation provides that if the applicant fails to comply with a direction they are taken to have withdrawn their application. However the deciding authority will generally issue a show cause notice first.

¹ Deciding authority is the Minister, Chief Executive or a delegated officer



This provision will allow the department to address delays caused by applicants who fail to:

- pay rent or security
- agree to conditions of grant or renewal
- address or enter into native title negotiations
- seek environmental approvals
- seek requirements of other Acts and unforeseeable future legislation .

Applicants may be directed by way of this notice to undertake the actions required to address these failures. This ensures that the state can progress applications so that both the state and the applicant receive the benefit of investment in the resource potential secured by the grant of the resource permit.

This policy details how the department aims to deal with the inefficiencies that can arise due to the scenarios outlined above.

Policy issue

The core issues that this policy seeks to address include:

- Ensuring an application will continue to progress in accordance with the legislative requirements.
- Preventing delays in application administration and processing.
- Determining a process by which the department will issue a notice to progress an application.
- Preventing land-banking and real-estating that may lock out or prevent exploration or development in the same area by parties with bona fide intentions or with greater likelihood to meet requirements (e.g. negotiate a native title agreement).

Policy determination

The department has determined that:

1. Resource permits are tightly controlled with a range of requirements which must be met and other approvals required prior to the grant or renewal of an application. The department recognises that the obligations that must be satisfied **after lodging** an application are a continuing process. However the department expects that the applicant will complete each stage of what must be complied with in full and in a reasonable time.
2. The department is of the view that once an applicant has lodged the permit application they have agreed to fulfil all obligations necessary under the relevant legislation in relation to pursuing the granting of or renewing of a resource permit in such a way that gives effect to the purpose or objects of the resources legislation.
3. Applicants who fail to meet requirements delay the grant or renewal of the resource permit and ensure that areas with resource potential are unable to be utilised for significant periods of time which is detrimental to the state and other interested parties. This is contrary to the purposes

of the legislation which require actions taken under the legislation to be **efficient, viable, encouraging resource potential and for the benefit of the state**.²

4. Applicants must be **committed to finalising the assessment process** as a priority. After lodging an application, the applicant is subject to the general principles of good faith and must have a bona fide intention to discharge whatever obligations necessary to avoid causing detriment to the state with respect to permit application.

For example: an applicant for a permit may be required to undertake a native title process, in some instances the applicant will cause unnecessary delay to this process by electing to undertake an indigenous land use agreement and then changing to a right to negotiate only to go back to undertaking a land use agreement. This type of behaviour can demonstrate a lack of intention to proceed on the part of the applicant.

5. If after lodging an application for grant or renewal of a resource permit, an applicant has not taken the required steps or acquired approvals or agreements required under the relevant resources legislation (or another legislative instrument) in a reasonable amount of time, the notice to progress may be issued to the applicant directing the applicant to take the required steps.
6. There will be effective cooperation of both the department and the applicant in the administration and implementation of their respective obligations. All applicants must be provided with at least **20 business days** to fulfill their obligations. However this is only the minimum period of time that may be given and when issuing a notice, the deciding authority must give the applicant a reasonable amount of time necessary and convenient to complete what they are required to do. The amount of time which is reasonable will be based on the nature, purpose and circumstance of each case.
7. If the applicant is unable to complete the requirement of the notice in the prescribed time, the deciding authority may extend the period for complying with the notice. The applicant may provide submissions why a longer period is required. The deciding authority should be satisfied that the applicant has made a reasonable attempt to comply with the notice and that they have not been able to comply due to a circumstance beyond the applicant's control. If the deciding authority decides that an extension should be given, a new notice will be sent to the applicant advising them of the new period of time they have to complete the requirement.




Important note:

In keeping with the objectives' of the resources legislation, the department will generally only allow one extension to complete the requirement in the notice.

8. The department will undertake constructive engagement with the applicant to identify and resolve the issues identified in the notice if requested by the applicant.

² See s.2 *Mineral Resources Act 1989*, s.3 *Petroleum and Gas (Production and Safety) Act 2004*, s.3 *Greenhouse, Gas Storage Act 2009* s.3 *Geothermal Energy Act 201*

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9. The applicant is taken to have withdrawn the application if the applicant does not comply with the direction within the stated period in the notice.
 10. If the application is the result of a competitive process and there are other applicants for the same land, another applicant may be given the opportunity to have their permit approved.

**Executive Director
Mining and Petroleum Operations
September 2016**

Enquiries:

For help, information and technical support contact the MyMinesOnline helpdesk.
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Disclaimer

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