

Guideline

Environmental Protection Act 1994

Public notice requirements and submissions about site-specific applications for environmental authorities for resource activities other than mining

This document explains the statutory requirements under the Environmental Protection Act 1994 for public notices and submissions relating to site-specific applications and amendment applications for environmental authorities for resource activities other than mining¹, and the statutory requirements for public submissions.

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¹ Resource activities other than mining include petroleum activities, geothermal activities and greenhouse gas storage activities.

Background

Section 149 of the *Environmental Protection Act 1994* (EP Act) provides that an applicant must give and publish a notice about an application if it is a site-specific application and any part of the application is for a resource activity other than mining. Under s.230 of the EP Act the administering authority¹ may, for an amendment application for an environmental authority for a resource activity other than mining, decide that public notification is required if the proposed amendment is deemed to be a major amendment².

Why is public notification required?

The public notice process allows the public to have access to information about, and the opportunity to make submissions to the administering authority on, site-specific applications for or amendment of resource authorities other than mining.

Public notification is carried out by the applicant and promotes community awareness and understanding of the implications of the application. It allows the public:

- (a) To obtain details of applications by taking extracts or making copies of the application.
- (b) To make submissions about the application to the administering authority.
- (c) The right of review and appeal regarding the administering authority's decisions on applications about which they have made a submission.

Public notice requirements for amendment applications

Section 230 of the EP Act provides that public notification of an amendment application can only be required where the amendment is a major amendment and the administering authority is satisfied that there is likely to be a substantial increase in the risk of environmental harm under the amended environmental authority because of a substantial change in—

- (a) the quantity or quality of contaminant authorised to be released into the environment; or
- (b) the results of the release of a quantity or quality of contaminant authorised to be released into the environment.

A substantial change is taken to be each of the following—

- (a) an increase of 10 percent or more in the quantity of a contaminant to be released into the environment;
- (b) if the amendment application is for an environmental authority for a resource project, an amendment to add an ineligible ERA for the authority.

The administering authority will notify applicants in writing if the applicant is required to notify the public of their amendment application. The decision to require public notification must be made by the administering authority within 20 business days after the amendment application is received.

How does an applicant make an application notice?

1. The applicant may start the notification stage as soon as the application stage ends. Where no information request has been made, public notice must be given and published within 29 business days of the application stage ending. If an information request has been made, public notice must be given within 9 business days after the end of the information stage. For an amendment application, public notice must be given and published within 29 business days of the assessment level decision being given. Section 152 of the EP Act provides that the application notice must be given and published—

¹ The administering authority is the Department of Environment and Science.

² The administering authority must decide whether the proposed amendment is a major or minor amendment. This decision is referred to as an assessment level decision for the application. The EP Act defines a major amendment as “for an environmental authority, an amendment that is not a minor amendment.” Section 223 of the EP Act outlines what is a minor amendment.

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- a) simultaneously or together with, and in the same way as, any public notice for an application under resource legislation for a relevant tenure for the application; or
- b) if public notice is not required to be given for an application under resource legislation for a relevant tenure for the application—
 - i) in a newspaper circulating generally in the area where the relevant resource activity is proposed to be carried out.
- The applicant must give the administering authority within 5 business days after the submission period ends —
 - a) a statutory declaration of compliance using the document: *Declaration of compliance for public notice requirements for resource activities (ESR/2015/1622*³) which declares:
 - i) whether or not the applicant has complied with the notice requirements under ss.152 and 153 of the EP Act; and
 - ii) whether the applicant has made a copy of the application notice and application documents available on a website from the start of the submission period; and
 - b) the applicant must attach a copy of the application notice and application documents to the declaration.
- The applicant must comply with the public notice requirements—

If an applicant does not fully comply with the public notice requirements under ss.152 and 153, the administering authority must decide whether to allow the application to proceed. This may only occur when the administering authority is satisfied there has been substantial compliance with the requirements.

In circumstances where the administering authority decides not to allow the application to proceed it must, within 10 business days after making the decision, give the applicant—

- a) a written notice, fixing a substituted way to give or publish the application notice; and
- b) a new submission period for the application; and
- c) an information notice⁴ about the decision not to allow the application to proceed and the decision to fix the new notice period.

What form must the application notice take?

Section 153 of the EP Act provides that the application notice must be in the approved form and state each of the following—

- a) a description of each relevant resource activity.;
- b) the land on which each activity is to be carried out.;
- c) where the application documents may be inspected or accessed.;
- d) where copies of, or extracts from, the application may be obtained;
- e) that any entity may make a submission to the administering authority about the application;

³ This is the publication number, which can be used as a search term to find the latest version of the publication at www.des.qld.gov.au.

⁴ An information notice about a decision means a written notice stating-

- (a) the decision; and
- (b) if the decision is a decision other than to impose a condition on an environmental authority, the reasons for the decision; and
- (c) the review and appeal details.

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- f) the period (the submission period)⁵ during which submissions may be given;
- g) how to make a properly made submission;
- h) another matter prescribed under a regulation.

Applicants for pipeline licences are required to give and publish the application notice simultaneously or together with specific public notice requirements under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)⁶.

The approved form for the application notice is included in the document *Application notice – public notice of an application for an environmental authority or major amendment to an environmental authority (ESR/2016/2378⁷)* which is available on the website of the administering authority. The applicant must use this form and insert the relevant details of the proposed project. An example of a completed notice is included in the above mentioned document as a guide to applicants.

How does a person make a submission?

Where is information about the application available?

The administering authority must allow any person to view the application at its head office and permit a person to take extracts from the application or, on payment of the appropriate fee, to copy all or part of the application. The application is available for these purposes from the application date to the review date⁸.

The administering authority requires that a copy of the application is also available for viewing in or near the location(s) of the proposed resource activity. This is to be done by the applicant following consultation with the administering authority, and may be the local office of the administering authority. The applicant is required to make the application, application notice and any response to an information request available on their website, and include the web link and a search term, to assist in the location of the application on their website.

What is a properly made submission?

A properly made submission must, pursuant to s.161 of the EP Act—

- (a) be written or made electronically;
- (b) state the name and address of each signatory;
- (c) be made to the administering authority;
- (d) be received on or before the last day of the submission period; and
- (e) state the grounds of the submission and the facts and circumstances relied on in support of the grounds.

The administering authority may accept a written submission even if it is not properly made.

What is the submission period?

The submission period for an application must be stated in the application notice. In compliance with s.155 of the EP Act the submission period has been fixed by the administering authority through the publication of this guideline as ending 20 business days after the date the application notice is published unless otherwise fixed by the administering authority before the notice is published.

What happens after submissions are received?

Submissions must be considered

⁵ Refer to s. 5.3 of this guideline.

⁶ Requirements for public notice of a pipeline licence are provided in s.411 of the P&G Act.

⁷ This is the publication number, which can be used as a search term to find the latest version of the publication at www.des.qld.gov.au.

⁸ The review date is generally 10 business days after the day the applicant receives notice of the decision.

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When deciding whether to grant or refuse an application, the administering authority must consider any properly made submissions about the application. Submissions are only one of several matters that must be considered by the administering authority in deciding an application.

After the decision is made about the application

In accordance with s.172, within 20 business days after the day the decision stage for the application starts, the administering authority must give an information notice about a decision to:

- (a) the applicant and any submitter, where the decision is to:
 - (i) refuse the application; or
 - (ii) approve the application subject to conditions; and
- (b) any submitter, where the decision is to grant the application.

Related documents

- *Declaration of compliance for public notice requirements for resource activities (ESR/2015/1622)*
- *Application notice – public notice of an application for an environmental authority or major amendment to an environmental authority (ESR/2016/2378)*

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved:

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Version	Effective date	Description of changes
4.00	25 March 2013	First version uploaded to Policy Register.
4.01	23 July 2018	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.