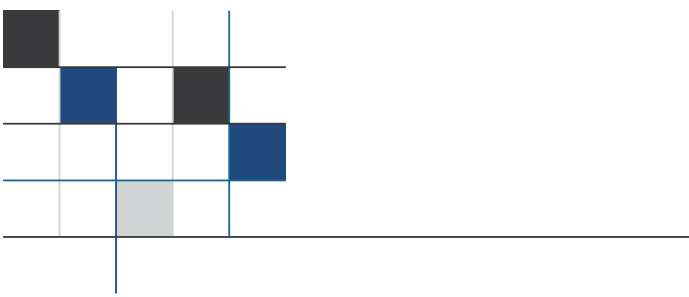


Policy

Applications for amendments to clearing permits

Draft for public consultation

April 2021



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April 2021

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Contents

Scope and purpose1

Legislation1

Other relevant matters to which the CEO shall have regard.....1

New permits.....2



Scope and purpose

The *Policy: Applications for amendments to clearing permits* provides guidance on matters that the Chief Executive Officer (CEO), or delegate, shall have regard to when making a decision on an application to amend a clearing permit under the *Environmental Protection Act 1986* (EP Act).

Legislation

Clearing of native vegetation in Western Australia is regulated under Part V Division 2 of the EP Act and the Environmental Protection (Clearing of Native Vegetation) Regulations 2004.

The amendment of an existing clearing permit must be done in accordance with section 51M of the EP Act, which sets out the procedure, and section 51K of the EP Act, which sets out how the CEO may amend the permit. An application for an amendment must be in a form approved by the CEO, accompanied by the prescribed fee and be supported by required information. Where the CEO initiates a clearing permit amendment, any representations properly made by the permit holder must be considered.

In making a decision on an amendment to a clearing permit, the CEO shall have regard to the clearing principles in Schedule 5 of the EP Act so far as they are relevant to the matter under consideration, and any planning instrument or other matter that the CEO considers relevant, under section 51O of the EP Act.

Other relevant matters to which the CEO shall have regard

Third parties

While there is no statutory requirement to advertise an application to amend a clearing permit or seek comments from parties other than the permit holder, the Department of Water and Environmental Regulation and the Department of Mines, Industry Regulation and Safety will advertise all amendment applications for a minimum of seven days.

If the CEO decides to amend a clearing permit, third parties are able to appeal the amendment pursuant to section 101A of the EP Act. Where a third party lodges an appeal against an amendment of a clearing permit, the amendment continues to have effect until the appeal is determined. This means a permit holder may legally undertake any additional clearing that has been granted under the amendment until the appeal is determined.

In contrast, third parties can appeal against both the grant and the conditions of new clearing permits, and the clearing permit is not in effect while the appeal is pending.



It is for these reasons that the CEO will have regard to the interests of third parties in deciding whether to grant an amendment of a clearing permit.

New or additional environmental impacts

Under section 51K of the EP Act, the amendments that the CEO may make include minor and administrative amendments. The following sections of the EP Act provide further guidance as to the reasons that a clearing permit may be amended:

- section 51K(c) of the EP Act provides for the redescription of boundaries of the area that may be cleared under an area permit
- section 51K(ca) of the EP Act, in the case of a purpose permit, provides for the adding, deleting, modifying or redesccribing a purpose for which clearing may be done
- section 51K(a) of the EP Act provides for the variation of any condition on a clearing permit
- section 51K(b) of the EP Act provides for the addition of new conditions.

In considering whether to grant an amendment to redescribe the boundaries of an area, or to vary or add a condition, the CEO shall have regard to whether the change relates to the original area, and whether the impacts would have an environmental impact which is in addition to or different from what was assessed under the original permit application.

The requirement for the CEO to have regard to the clearing principles under the EP Act includes considering any new scientific information which would change the original impact assessment. This must be done based on information available at the time of the application for amendment and would also apply to amendment applications to extend the duration of the permit.

New permits

In the event that the CEO refuses to grant an application to amend a clearing permit, or the applicant considers that an amendment application may not be appropriate in the context of the CEO's considerations under section 51O of the EP Act, it is open for the applicant to lodge a fresh application for a permit.