

Operational policy

Environmental Protection Act 1994

Application for a review of an original decision when sufficient information has not been supplied

Operational policies provide a framework for consistent application and interpretation of legislation by the Department of Environment, Science and Innovation. Operational policies will not be applied inflexibly to all circumstances. Individual circumstances may require an alternative application of policy.

Policy issue

Sections 521(5) and 521(6) of the *Environmental Protection Act 1994* (EP Act) state that a 'review decision' must be made within the "decision period" if the application complies with s.521(2). The decision period is 15 or 20 business days after receipt of the application. The decision period is dependent on whether one or more review applications are made, whether any submissions are received, and is able to be extended by up to 5 business days in special circumstances.

If the administering authority is not satisfied that enough information has been supplied to enable assessment of the application, then it has a basis for informing the applicant that it cannot make a "review decision".

In such a case, rejecting the application might be unhelpful to both parties. How could the administering authority assist the applicant to provide an application that satisfies s. 521(2)(b) (i.e. supported by enough information to enable the authority to decide the application)?

Determination

The decision that the administering authority is not able to decide the application must be made (and the applicant notified) by the administering authority within the decision period (and should normally be within five business days), to avoid risk of the applicant (or anyone else) forming the opinion that s. 521(11) has operated to confirm the original decision.

The administering authority may ask the applicant (by letter or email) to provide the required information within a stated time (normally 10 business days). If the applicant fulfils the request within that time, a valid application is considered to have been made once the information is received. Section 521(5) or s. 521(6) then applies and the administering authority has the decision period specified in s. 521(15) (i.e. 15 or 20 business days, and up to 5 additional business days in special circumstances) from the date the information is supplied to the administering authority to make the 'review decision'.

If the requested further information is not supplied, the administering authority could consider that s. 521(5) or s. 521(6) (whichever is applicable) was not met and no "review decision" could be made. This would circumvent the applicant's right of appeal, as a decision that there is not enough information to enable the administering authority to decide the application, is not an original decision. This is not considered acceptable practice. It would also be argued that if there was enough information to make the original decision (which is the subject of the review application) then, in the absence of any further information, there should be enough information to confirm the original decision. If the applicant does not provide the requested information by the required date,



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the “review decision” should be made on the basis of the available information.

The letter (or email) to the applicant requesting additional information must state:

- that the administering authority considers that it has not been supplied with enough information to enable it to decide the application and requires further information in respect of *<specify the required information>*;
- the date by which the additional information is to be supplied (normally 10 business days);
- if the applicant fulfils the request within that time, the administering authority will decide the application within 15 business days or 20 business days (whichever is consistent with the decision period that applies under section 521(15)) of the date the additional information is received; and
- if the applicant fails to provide any further information, the administering authority will review the original decision on the basis of the information already supplied within 15 business days or 20 business days (whichever is consistent with the decision period that would apply under section 521(15)) of the date by which the additional information was to be supplied.

If the applicant does not provide the additional information within the stated time, the administering authority should still make its “review decision” within 10 business days of the date the further information was required. The “review decision” must be made to confirm, revoke or vary the original decision as appropriate, based on the information available.

The administering authority is to give the applicant written notice of the decision within 10 business days of making the “review decision”.

Other issues to consider

In any case where an application has been supported by enough information to enable a decision to be made, but a decision has not been made within the “decision period” or written notice of the decision has not been given within 10 business days after making the “review decision”, the administering authority should advise the applicant in writing that under s. 521(11) of the EP Act the authority is taken to have made a decision confirming the original decision. The applicant should be advised as soon as possible after the administering authority is considered to have made the decision confirming the original decision.

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Enquiries:

Permit and Licence Management
Ph: 1300 130 372 (select option 4)
Ph: 13 QGOV (13 74 68)
Email: palm@des.qld.gov.au

Version history

Version	Date	Description of changes.
1.00	5 June 2012	Versioning first added.
2.00	31 March 2013	Updated corporate style.
2.01	4 August 2016	Updated corporate style and added publication number ESR/2015/1739.
2.02	15 June 2018	Document rebranded to align with machinery of government changes.
3.00	4 December 2020	Updated to reflect amendments introduced by the <i>Environmental Protection and Other Legislation Amendment Act 2020</i> .
3.01	14 April 2022	Facsimile number removed.
3.02	22 February 2024	Document rebranded to align with machinery of government changes.
3.03	26 March 2024	Under 'Other issues to consider' "within 10 business days after receiving the application" replaced with "the decision period"; correspondence by 'letter' updated to 'letter or email'; plus other minor corrections.