

Operational policy

Visitor Management

Amendments and variations to permits for QPWS managed areas

Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of Environment and Science. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.

Policy subject

This policy details the key issues, policy statements and procedures associated with applications for amendments and variations to permits authorising activities in Queensland Parks and Wildlife Service (QPWS) managed areas.

This policy:

- defines what constitutes an amendment;
- defines what constitutes a variation;
- identifies which permits can be amended under the policy;
- describes when fees apply.

Background

Legislation administered by QPWS provides for the granting of permits and authorities authorising various activities in QPWS managed areas. On occasions, permit holders submit requests to QPWS to amend the terms and conditions or other particulars of their permit/s for various reasons.

The following legislative provisions provide for the amendment by application of a permit issued by the chief executive:

- s47 Nature Conservation (Administration) Regulation 2006
- s62 *Recreation Areas Management Act 2006*
- s26 Marine Parks Regulation 2006

The *Forestry Act 1959* (Forestry Act) does not specifically provide for amendments to permits, however section 24AA of the *Acts Interpretation Act 1954* provides a general power for amendment of permits issued under Queensland legislation.

Definitions

Chief Executive refers to the chief executive of the Department of Environment and Science (DES) and their delegate.

'minor amendment' means an amendment that –

- a) omits a condition, if the omission does not adversely affect the holder's interests; or

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- b) corrects an error; or
- c) makes another change, other than a change of substance that does not adversely affect the holder's interests.

Permission means a permission issued under this Act (*Marine Parks Act 2004*)

Permit means a permit issued under the Act (*Recreation Areas Management Act 2006*)

Protected area authority means a permit or authority mentioned in sections 9 and 10 of the Nature Conservation (Administration) Regulation 2006

QPWS-managed areas (for the purposes of this operational policy) include:

- recreation areas declared under the *Recreation Areas Management Act 2006* (RAMA)
- state forests and forest reserves managed under the *Forestry Act 1959* (FA)
- protected areas (State land) dedicated under the *Nature Conservation Act 1992*, including national parks, coordinated conservation areas and regional parks; (NCA) and
- marine parks dedicated under the *Marine Parks Act 2004*. (MPA)

Relevant authority means a protected area authority and a wildlife authority

Policy statements

Amendments and variations to permits on application

The holder of a permit may apply to the chief executive for an amendment or variation to a permit. The application must be in writing and where applicable, be accompanied by the fee prescribed under relevant legislation.

Amendments

Amendments are changes or modifications to some point, detail or circumstance, made by a formal procedure and are generally considered minor in detail. An alteration to a permit that would result in a change in the nature of the use authorised under the original permit, would not be consistent with the definition of an amendment. Such a change would require formal assessment and therefore be considered as a variation. As a result, the changes to permitted use/s that can be authorised via an amendment to an existing permit are limited in nature and extent.

For the purposes of this policy, an amendment to a permit includes:

- any change to the holder's personal, business (where relevant) and contact details on a permit issued for an activity on a QPWS managed area; or
- any change to the existing terms and/or conditions that is not considered as a variation.

Note: A change of address on a permit is not an amendment and is to be effected without fee.

Requested changes or alterations to a permit which are considered as material changes will not be treated as amendments. They will be dealt with as a request to vary a permit i.e. a 'variation'.

Amendment fees

Where a permit holder requests an amendment to a commercial or group activity permit issued under the NCA, RAMA or FA (other than a change of address), they are subject to the scheduled fee for each amendment as prescribed in relevant legislation.

Variations

A variation to the terms and conditions of a permit includes any change to the use/s authorised under the permit which, in the chief executive's opinion, would be material or substantive enough to represent a different or varied use requiring formal assessment and (where supported) authorisation under a new permit.

The following types of change which would generally require formal assessment of an application against relevant criteria would be considered as a variation:

- change/s to the purpose of the permitted use or activity/ies;
- changes to the nature of the permitted activity/ies (different type/s of activity/ies are proposed);
- changes to the location/s (site/s and/or area/s) where the activity/ies are to be conducted;
- proposals to establish infrastructure (e.g. construction of a building on a QPWS-managed area);
- changes to the duration, frequency, capacity, intensity or timing of the activity/ies; and
- changes impacting substantially on third parties.

Decisions as to whether proposed change/s would constitute an amendment or a variation will be made on a case-by-case basis by the relevant delegate taking into consideration the particular facts and circumstances of the proposal and whether the proposed changes are likely to substantially alter the activities of the business.

The chief executive may refuse an application for an amendment on the ground that it proposes a material change to the existing permit that would be more appropriately addressed as an application for a variation to an existing permit.

Variation fees

In circumstances where a delegate considers that:

- a proposed change to an existing permit, or
- a requested change made by an applicant when applying for a new relevant authority of the same type,

constitutes a variation, the fees payable will be equivalent to the full application fee (scheduled fee) for a new permit of the same type.

Procedures for permit holders applying to amend or vary a permit requiring a decision by the chief executive are set out below.

Permits that can be amended

The types of permits and authorities that may be amended in accordance with this policy include:

- relevant authorities issued under the Nature Conservation (Administration) Regulation 2006;
- permits issued under the *Recreation Areas Management Act 2006*;
- permits issued under the *Forestry Act 1959*; and
- permissions issued under the *Marine Parks Act 2004*.

Assessment criteria for variations to a permit

A permit may be varied only where the chief executive is satisfied that the variation is considered appropriate in achieving the object of the relevant Act.

Proposed variations to a permit will be considered against the same assessment criteria that apply to a decision to grant that type of permit in the first instance as established by relevant legislation and policy.

Change of permit holder

A proposed change to the person or other legal entity that holds a particular permit is not an amendment.

Transferability of permits

Authority holders considering the sale of a business which has been issued with a permit to conduct commercial activities in QPWS managed areas should contact QPWS permits officers (see contact details final page) for advice prior to entering into formal contract negotiations.

Procedures**Amendment or variations to permits on application**

The delegate must:

1. Confirm they have the authority to make a decision concerning the proposed amendment.
2. Confirm whether the proposed change/s constitute an amendment to the existing permit or whether they are substantive enough to represent a varied use that requires a comprehensive assessment / re-assessment
3. Determine whether the proposed changes:
 - a) can be dealt with as an application for an amendment to the existing permit - assess the application and make a decision to amend the permit in the way sought, or to refuse to amend the permit.
 - b) are substantive enough to represent a different use that requires a comprehensive assessment – grant or refuse the application for a variation to the permit.

Assessment criteria for variations to a permit

Proposed amendments to a permit should be considered against the same assessment criteria used to grant that type of permit, as established by relevant legislation and policy. For example, a proposed amendment to a permit authorising commercial filming/photography in a QPWS-managed area would be subject to the assessment criteria specified in s25 of the Nature Conservation (Administration) Regulation 2006.

However it is only necessary to assess the change in impacts likely to result from the proposed amendment/s. Much of the assessment for the existing permit should remain relevant.

Where an amendment application is granted

If a decision is made to grant an amendment application, the delegate must within 10 business days after the decision is made:

- amend the permit;
- give the applicant a copy of the amended permit, and
- give the authority holder notice of the amendment.

An amendment to a permit will include the date from which the amendment takes effect.

Where an amendment application is refused

If the delegate decides to refuse the amendment application, the delegate must as soon as practicable after making the decision, give the holder an information notice about the decision. The information notice must state the following:

- the decision;

- the reasons for the decision;
- all rights of internal review (if applicable) under the regulation i.e. as provided for under the Nature Conservation (Administration) Regulation 2006), *Recreation Areas Management Act 2006* or *Marine Parks Act 2004*;
- the period in which any internal review must be started;
- how rights of internal review are to be exercised;
- if applicable, that a person may apply, as provided under the QCAT Act, to QCAT for a stay of a decision the subject of an internal review.

Where an amendment application has been refused because the proposed change/s are substantive enough to represent a different or varied use that requires a comprehensive assessment, applicants are able to apply to conduct the use through a variation to their existing permit.

Other matters to consider

Delegations

Prior to authorising an amendment to a permit, QPWS permits officers must ensure that they have the authority to do so under the delegations for the relevant piece of legislation. Where a delegation authorises the issue of a particular type of permit by certain office holders, those office holders are also authorised to make amendments to that type of permit, unless an instrument of delegation or operational policy states otherwise.

Period for submission of applications

An application to amend a permit must be made at least 10 business days before the permit holder requires the amendment to take effect. However, if a permit holder does not apply at least 10 days before they require the amendment to take effect, the application may still be dealt with at the discretion of the delegate. Applications to vary a permit must be made 40 business days before the authority holder requires the proposed variation to take effect.

Native Title

Amendments to existing permits may trigger Native Title notification requirements. Where required, notification under the *Native Title (Queensland) Act 1993* will be undertaken by QPWS in accordance with the government's approved Native Title Work Procedures.

Amendments and variations to commercial activity agreements

This operational policy does not include reference to amendments and variations to commercial activity agreements. Where the operator of a commercial activity agreement requests an amendment to a commercial activity agreement, amendments will be effected in accordance with the clause 'Amendment and Variation' of the relevant agreement.

Reference materials

Operational Policy: Commercial activities in QPWS managed areas

Authorities

Marine Parks Regulation 2006

Nature Conservation (Administration) Regulation 2006

Recreation Areas Management Act 2006

Forestry Act 1959

Acts Interpretation Act 1954

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 By

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| Jason Jacobi |
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Signature

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| 4 September 2013 |
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Date

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