

APPEAL RIGHTS UNDER THE *ENVIRONMENTAL PROTECTION ACT 1986*:

Clearing permits

The *Environmental Protection Act 1986* (the Act) provides an opportunity to appeal decisions in respect to clearing permits under Part V of the Act.

There are four primary appeal rights:

1. decision to grant;
2. refusal to grant;
3. conditions applied to permit; and
4. amendment, revocation or suspension.

Decisions on clearing permits are generally made by the Department of Water and Environmental Regulation (DWER). The Department of Mines, Industry Regulation and Safety (DMIRS) has delegated authority to determine clearing permit applications in respect to proposals under mining and petroleum legislation and State Agreements.

Who can appeal?

Any person can lodge an appeal in respect to a decision to grant or the amendment of, or in respect to the conditions applied to, a clearing permit.

Only the applicant for, or the holder of, a clearing permit can appeal a refusal to grant a clearing permit, or the revocation or suspension of a clearing permit.

How do I lodge an appeal?

Appeals must be:

- in writing and clearly set out the grounds of appeal
- received within 21 days of the date of grant or the date the applicant is notified of the decision - *late appeals cannot be accepted*
- signed by the appellant

If your appeal does not comply with these requirements, it may be determined to be invalid and will not be investigated.

If you rely on supporting documentation, this needs to accompany your appeal.

There is no fee payable in respect to lodging clearing permit appeals.

A form for lodging an appeal is available on the Appeals Convenor's website.

Effect of lodging an appeal

Pending the determination of an appeal lodged against the **grant** of a clearing permit, the clearing permit is deemed not to have been granted.

For an appeal lodged against a **refusal to grant**, the **conditions** of, or a **revocation** or **suspension** of, a clearing permit, the decision against which the appeal was lodged continues to have effect.

For an appeal by the permit holder against an **amendment**, the amendment shall be deemed not to have been made unless it reduces or restricts the extent or method of clearing that may be done, in which case it continues to have effect. For third party appeals, the amendment continues to have effect.

What happens after an appeal is lodged?

The Appeals Convenor will provide a copy of the appeal to the DWER or DMIRS, and request that a written response to the matters raised is provided within a set timeframe (usually 21 days).

In the case of appeals lodged by a third party, the Appeals Convenor will also provide the permit holder the opportunity to respond to the appeal within a set timeframe (usually 21 days).

The Appeals Convenor may also seek guidance from other public authorities, organisations or persons that may have an interest or technical expertise relevant to the appeal.

Key considerations in appeals

For appeals in respect to clearing permits, the Appeals Convenor will consider the appeal in the context of the formal requirements of the Act, including the clearing principles in Schedule 5 of the Act, relevant planning instruments and any other matters considered relevant.

The appeal investigation will also consider the extent to which conditions can address the issues raised, as well as relevant policies and new information that may not have been available at the time of the original decision.

Appeals under the Act are 'merits' appeals. This means that the Minister can consider all relevant facts before making a decision. While process issues can be raised in an appeal, the focus of investigations will be on the substantive environmental matters raised by the decision.

Is there a hearing during the appeal investigation process?

The Office of the Appeals Convenor will consult the appellant as part of the investigation of the appeal. This may be by telephone, in person or such other means as the Appeals Convenor considers appropriate (for example, email). Where the appeal is lodged by a third party, the Appeals Convenor will also consult the permit holder.

These discussions are informal in nature, and are intended to provide a party to an appeal with an opportunity to clarify the issues in contention. Due to the informal nature of the process, appellants do not require, and generally do not seek, legal representation.

Occasionally the Appeals Convenor may convene a combined meeting between the parties where the Appeals Convenor is of the opinion that this will assist in resolving the issues in dispute.

What happens if the matter is settled between the parties?

If the matters in dispute are resolved, the appellant may give not less than seven days notice of an intention to withdraw the appeal. The appeal may then be withdrawn after the seven days, and the file will be closed.

What happens after the investigation?

After the appeal investigation is complete, the Appeals Convenor provides a report with recommendations to the Minister for Environment.

Once the Minister has determined the appeal, the Appeals Convenor's report will be provided to the appellant and published on the Appeals Convenor's website.

How long will the appeal investigation take?

While there are no statutory timelines in respect to appeal investigations, the Appeals Convenor aims to have 80% of appeal reports submitted to the Minister for Environment within 60 days of receiving a final response to the appeal from DWER/DMIRS, and where applicable, the permit holder.

What decision can the Minister make, and how is it given effect?

For appeals in respect to clearing permits, the Minister may:

1. dismiss the appeal; or
2. allow the appeal in full or part, which (depending on the type of the appeal) may include changing or amending conditions applying to the clearing permit or granting a clearing permit over a smaller area than was originally applied for or granted.

If the Minister determines to allow an appeal in full or part, the decision is given effect by DWER or DMIRS (as appropriate).

The Minister's appeal decision is final, and not subject to appeal.

The Minister's decision will be communicated to the appellant in writing, and will also be published on the Appeals Convenor's website.

Further information and contact details:

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