

Operational Policy

Application to vary conditions of an exploration permit

MIN/2015/1246
22 January 2020
Version 1.04

Purpose

This policy provides guidance to industry on the processes and expectations about varying an exploration permit work program (exploration activities and expenditure), and relinquishment conditions.

This policy is written to:

- provide guidance and clarity to both applicants and departmental officers;
- promote consistency of tenure administration and regulation across the state, and
- increase the department's timeliness and efficiency of processing exploration permit applications and requests.

The information provided in this policy reflects how departmental officers should prepare material to support the Minister or delegated decision-maker in making a decision with respect to a variation of a condition.

The information contained in this policy does not override legislative requirements, and reflects current practices within the department. These practices may change from time to time with all changes to be published through a revised version of this policy.

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

Policy Determination

Relevant legislation

This policy relates to the following sections of the *Mineral Resources Act 1989* (MRA):

- s. 133 Application for exploration permit
- s. 139 Periodic reduction in area of exploration permit
- s. 140 Voluntary reduction in area of exploration permit
- s. 141 Conditions of exploration permit
- s. 141C Application to vary conditions of existing permit
- s. 146 Initial term of exploration permit
- s.392 Substantial compliance with Act may be accepted as compliance,

and the following provisions of the *Mineral Resources Regulation 2013* (MRR):

- s.13 Activity reports
- s.17 Final reports.

These sections are applied when assessing an application for variation of a work program or relinquishment condition for an exploration permit.

Application to vary a condition

Under s141 of the MRA, a permit holder is required to comply with all permit conditions (including the work program and relinquishment conditions) within the agreed condition timeframes. However, the department accepts that the obligations in a condition or its timing may need to change as geological knowledge is gained or if the timing of an operation is impacted by extraordinary circumstances.

Under s141C of the MRA a permit holder is permitted to make an application to vary the conditions of the exploration permit.

The application is to be made on the published form available on the department's website. The form includes checklist criteria the permit holder should satisfy before applying for a variation.

Under s.141C(2) of the MRA, when making an application to vary an exploration work program, the holder should provide the statements required under s.133 of the MRA as necessary for the department to assess the variation application. Holders are also required to attach supporting documentation to the application, including:

- A statement providing details of the variation sought (i.e. year of tenure, current commitment and the proposed amendment, prescribed areas and proposed areas);
- A statement of the activities and expenditure for the current term;
- A statement detailing why the holder is unable to meet the current conditions;
- A statement detailing the attempts made to meet the conditions, and
- A statement addressing any changes to technical or human resources to support the new rationale.

Permit holders applying for a variation to expenditure need to provide a statement justifying any decrease to expenditure and a proposal stating how the holder will remedy the shortfall for the following period of the permit.

The permit holder should ensure that they provide comprehensive information about the variation sought and in the accompanying statements to allow the decision-maker to conduct a proper assessment on the application. Failure to provide this material with the application may result in the application being rejected.

Before submitting an application, the holder should use the self-assessment checklist to determine if they will meet the requirements of the MRA and this policy. The checklist forms part of the application form.

Variations to work program conditions (exploration activities and expenditure)

The application to vary a work program condition should be made at least **two months** before the end of the period that relates to the condition.

An application to vary will be assessed based on the following criteria:

- a) The permit holder has complied with the requirements of s141C(2) of the MRA (items to be completed on and accompanying the published form).

- b) If the exploration permit was granted as a result of a competitive application process, an application to vary is unlikely to be favourably considered during the first two (2) years of the permit or conditioned period (if applicable) without sufficient and satisfactory reasons to the decision maker. An example of satisfactory reason may include exceptional circumstances.
- c) The permit holder must have lodged all required activity reports and paid all required rent on the exploration permit.
- d) The variation to work program activities is an alternative work activity that is equal or greater value and the alternative work activity meets or exceeds the objective of original work program component.
- e) The variation of the expenditure component must be justified and reasons provided why the permit holder requires expenditure to be decreased or spent in another period of the permit term. Please note a variation request is not required for an increase in expenditure).
- f) There are exceptional circumstances beyond the permit holder's control. An exceptional circumstance is when the ability of the permit holder to meet a work program commitment is adversely impacted by an event that:
 - is or was beyond the applicant's control; and/or
 - could not have been prevented by a reasonable person in the applicant's position.

These types of circumstances would typically be **force majeure events** such as strike, crime, cyclone or flooding.

Exceptional circumstances do not include matters that relate to the applicant's financial or technical resources or ability to manage mineral exploration. Such factors may influence the perceived commercial viability of the work program, and the option may be then for the holder to relinquish all or part of the area.

Exceptional circumstance may be relied upon as a reason for varying the conditions of an exploration permit that was granted as a result of a competitive application process.

The above criteria list the main considerations when assessing an application, however, consideration will also be given to an applicant's previous performance. The decision-maker will give regard to whether the permit holder has met the previous conditions of the permit relating to work programs and/or been granted variations in the previous year/s.

IMPORTANT NOTE

An EP holder who has not been able to complete work program components in the **first conditioned milestone** of the EP, may vary the work program condition and 'roll over' incomplete work program components into the **second conditioned milestone**.

This will be decided on a case-by-case basis and the holder will be required to demonstrate that they have completed the majority of the work program in the first conditioned milestone and only a portion of the work program will be varied to roll over into the second conditioned milestone.

It is not the intention of this policy to have work program components rolled over into a renewed permit term.

For further information on work program conditions please refer to the **work program and relinquishment conditions policy**.

Expenditure for exploration permits (expenditure conditions)

Under **Operational Policy MIN/2015/1254 05/2012 work program and relinquishment conditions** the expenditure condition for an exploration permit will be separated into two conditioned milestones. For an exploration permit with a term of five years, the first conditioned milestone is years one-three and the second milestone is years four-five of the term. The department will assess compliance with the expenditure condition in year 3 at the end of the first conditioned milestone (the first period) and year five will be assessed at the end of the second conditioned milestone (at renewal).

Compliance assessments for years 2016 and 2017

In 2016 and 2017, a holder of an exploration permit (EP) for either minerals or coal who is due for a compliance assessment of the first period or the compliance assessment at renewal, may lodge a special application to vary their expenditure conditions.

Factors relevant to decisions under the MRA must be considered on their own merits. However, as a matter of policy it is intended that EP holders who are due for compliance assessment may apply to vary their conditioned expenditure up to 50% by lodging a special variation application and that the Minister or delegated decision-maker will approve the variation of conditioned expenditure (by up to 50%) for the conditioned periods.

This aspect of this policy will apply to conditioned periods **ending in years 2016 and 2017 only**. Upon approval of the variation of the expenditure condition, a holder will only be required to comply with the reduced amount of the expenditure condition.

An EP holder with a term less than 5 years, but more than 1 year, may also be eligible to lodge a special application to vary their expenditure conditions where the first and second conditioned milestone ends in years 2016 and 2017.

EPs will **not** be considered eligible where they have been:

- granted prior to 2000, and
- granted as a result of a same day competitive application process.

This will also **not** apply to:

- any activities associated with a Mineral Development Licence, and
- conditioned relinquishment requirements for an EP.

If an EP holder believes they may be eligible for special variation of up to 50% of their conditioned expenditure, the holder will be required to lodge the special variation application using the published form available of the department website.

You may lodge the application using the MyMinesOnline system. Alternatively you may complete the original of this application and submit the application at a Mines Lodgement Office.

If the granting of an application to vary the expenditure condition by up to 50% will affect an EP holder's work program, the holder must use the same special variation application form to seek a variation of the work program in line with the varied expenditure.

EP holders are encouraged to carry out work program activities for the EP within the intent of the approved work program objectives for which the EP was granted.

The EP holder remains subject to the requirements of the MRA, this policy and associated policies.

EP holders must comply with relinquishment conditions on the EP, and will still be required to comply with their obligation to pay rent under s.138

An EP holder who wishes to lodge an application to vary a relinquishment condition will not be able to rely on any reduction in expenditure as a reason for requiring a variation, and they may have their variation application refused.

Variations to relinquishment condition

An application to vary a relinquishment condition should be lodged at least two months prior to the commencement of the period to which the proposed variation relates. This is to allow the decision-maker to consider the application in a timely manner.

Applications lodged with less than two months until the proposed variation may not give the decision-maker adequate time to consider the request which could impact on the decision whether to approve the application.

When assessing an application, the decision-maker will consider if:

- a) the permit holder met the program of works and the expenditure condition attached to the exploration permit to date
- b) the permit holder met any previous relinquishment condition of the permit
- c) the permit holder applied for (and was granted) a variation to the relinquishment condition in the current term
- d) the permit holder provided a reason, acceptable to the decision-maker, for wanting to vary the relinquishment condition, such as:
 - exceptional circumstances
 - awaiting grant of a higher form of tenure.
- e) the exploration permit is a conditional surrender grant and conditioned with accelerated relinquishment?

If a relinquishment variation is granted, it does not change the permit holder's relinquishment requirements. It only defers the requirement to the next relinquishment date. For example, if a holder is granted approval to vary a 50% relinquishment condition to 40% relinquishment (a variation of 10%), then the 10% would be added to the holder's relinquishment condition in the next period.

If a relinquishment condition is varied and deferred to the next relinquishment date, there may be discrepancies in the actual number of sub-blocks that are required to be relinquished due to the change in percentages. To ensure that a holder who varies their relinquishment condition will relinquish the same amount of sub-blocks (as if they had not varied their relinquishment) relinquishment in the deferred period will be calculated based on sub-blocks.

Availability:	External
Location	Business Industry Portal
Owner:	Georesources Division
Date of this Version	22 January 2020
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Approving Authority	Deputy Director-General
Related documents	This policy should be read in conjunction with the Work program and relinquishment conditions and Project based permit administration operational policies.
Contact:	For help and information contact the Coal or Mineral Assessment Hub: Phone: (07) 4936 0169 Email: CoalHub@dnrme.qld.gov.au Phone: (07) 4447 9230 Email: MineralHub@dnrme.qld.gov.au For technical support contact the MyMinesOnline Helpdesk. Telephone: +61 7 3199 8133 Email: mines_online@dnrme.qld.gov.au 8.30am – 4.30pm (AEST) Monday to Friday on Queensland business days.

Disclaimer

The purpose of this policy is to provide a framework for consistent application and interpretation of the legislation administered by the department. Policies may be applied flexibly where individual circumstances require an alternative application of policy. Where this policy, or part of this policy, is inconsistent with relevant legislation, the legislation will prevail to the extent of the inconsistency. 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 Queensland Government should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.