

Marine Parks Permits Policy

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Policy Statement

The purpose of this policy is to ensure that the regulation of activities in marine parks through the permit process is fair, consistent and clear to all those involved. The policy aims also to ensure that the regulation of activities in marine parks is consistent with the purposes of marine parks as described in the Marine Estate Management Act 2014 ("the Act").

Scope

This policy applies only to the permit assessments and decisions where permits are required under marine park legislation. Marine park permits are in addition to any requirement in any other Act or statutory instrument. Many regulated activities in marine parks will also require permits under other legislation. In particular, activities in marine parks are also subject to the provisions of the National Parks and Wildlife Act 1974 and regulations, and the Fisheries Management Act 1994 and regulations (see also "Other approvals required").

Requirements

1. Administrative Law Principles and Procedural Fairness

The proper administration of marine parks legislation requires that the principles of procedural fairness be applied in all permit deliberations. The principles of procedural fairness include an obligation to give a fair hearing to a person affected by a decision.

Other administrative law principles apply to decisions in respect of permits. These are:

- Decisions must be made within the scope of power
- All statutory procedural requirements must be followed
- Decision maker must have statutory power or delegated power to make the decision
- Decisions must be made for proper purposes and in good faith
- Decision maker must take into account all relevant considerations and not take into account irrelevant considerations
- Decision must not involve actual or apprehended bias
- Decision must not be so unreasonable that no reasonable person would make that decision.

It is also important for the decision maker to consider each case on its merits, and not inflexibly apply policies or guidelines.

2. Applications

Persons seeking consent to carry on a regulated activity in a marine park need to apply to the Department for the grant of a permit. All applications must be made on the form approved by the relevant Ministers / delegate. Applications not on the approved form should not be processed. The following information should be provided by the applicant:

Name of person or incorporated body
Address, phone and fax number
Marine parks, zones and locations where activity proposed
Details of the activity proposed
Duration of proposed activities
Size, capacity and registration of vessels / vehicles proposed for use in the activity

3. Certificate of currency of public liability insurance eligibility

Only legal entities are eligible for the grant of a permit. Applicants must be either:

- a natural person (i.e. an individual) or
- an incorporated body (i.e. a company, incorporated association).

An application made in a business name only (whether registered or not) will not be processed. The proprietor of the business name may apply in his/her/its own name and include the business name on the application (where provided) for identification purposes.

4. Further information

The relevant Ministers/ delegate may make a written request to an applicant requesting further information in relation to the permit application to assist in consideration of the application. Such a request should be made within 21 days of receipt of the deficient application.

The request should afford the applicant 21 days to provide the required information. A longer time period may be specified if appropriate.

If the further information is not provided within the specified time period, the relevant Ministers / delegate does not have to consider the application. In these cases, as a matter of policy, the relevant Ministers / delegate would generally not consider the application.

5. Public liability insurance for commercial activities

Where an application is received for commercial activities, the application must include a certificate of currency of public liability insurance, covering the proposed activity, to a minimum cover of \$10M.

Where a certificate of currency is not provided, then the application will be treated as insufficient, and a request for further information provided to the applicant as above.

6. Consent may be refused

Consent may be refused for an activity if:

- The application was not made in the approved form;
- The applicant has failed to respond, or has responded unsatisfactorily to a request for further information;
- The applicant has been convicted of an offence under the Act, the Regulation or similar legislation, or been issued with two or more penalty notices (not later dismissed by a court)
- The activity is inconsistent with the assessment criteria (to the extent the criteria is relevant).

As a matter of policy, consent should normally be refused in the above circumstances.

7. Assessment criteria - other requirements

The assessment criteria provided in the Regulations include any "other requirements that the relevant Ministers consider appropriate to the proposed activity". This will depend on the nature of the proposed activity and the zone(s) in which the activity is intended. Other requirements may include, amongst other matters, the following:

- whether the activity could be conducted outside the marine park
- application of the "precautionary principle" (defined in the Protection of the Environment Administration Act 1991) where the potential impacts of a proposed activity are unknown
- the likely magnitude and duration of any effects of the proposed activity on existing uses
- the likely effects of the proposed activity on adjoining and adjacent areas
- whether proposed research activities have been endorsed by Department and have received appropriate research ethics clearance.

8. Native Title considerations

The implications arising from the potential existence of native title rights must be considered with regard to any proposed dealing with marine parks. The impact of native title rights on the grant of permits in relation to marine parks will vary depending on the nature of the permit and the nature of the native title rights.

9. Other approvals required

Many activities will require approval under other legislation in addition to a marine parks permit. All marine park permits are subject to a standard condition stating that the marine parks permit is only valid while any other required approvals are granted and are current.

Where the application concerns an activity of a type that is principally managed under another jurisdiction for all NSW waters, approval under that jurisdiction may be required prior to processing of the application for a marine parks permit (e.g. Aquatic Licences under maritime legislation).

Procedures

- Review of Permit Decisions (see Attachment A)
- Format, Conditions, Period of Grant, Continuation of Permitted Activity and Renewal of Permits (see Attachment B)
- Surrender, Transfer, Variation, Suspension and Cancellation of Permits (see Attachment C)
- Management of Commercial Activities within new Marine Parks (see Attachment D)
- Permit Capping (see Attachment E)

Roles and responsibilities

- All staff: must be fair, unbiased, ethical and transparent in their application of this policy

Safety considerations

Nil

Delegations

Under the Act and Regulation, powers vested in the relevant Ministers may be delegated to the Department. The Department may also delegate powers to its officers, for example, marine park managers. In this policy, references to the consent of the Ministers or the exercise of a power by the Ministers include exercise of that power under delegation. References to the exercise of a power by the Department, or by marine park managers, include exercise of that power under delegations.

Definitions

- Nil

Legislation

- Marine Estate Management Act 2014 and subordinate regulations

Related policies

- TI -P-134 Complaints handling policy

Other related documents

- Nil

Superseded documents

This policy replaces:

- Marine Parks Authority Permits Policy

Revision history

Version	Date issued	Notes	By
1	16/04/2015	Minor amendments	Manager Jervis Bay Marine Park

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01 July 2016

Contact

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Review of Permit Decisions Procedure

1. Applicants review, acknowledgement & acceptance of permit conditions

Where an application is to be approved, the applicant may be provided with a preliminary draft copy of the permit and an “acknowledgement and acceptance” form for signature. The applicant will be invited to provide comment within 21 days of receipt regarding the draft permit and its conditions.

Comments received within 21 days will be considered, and conditions of the permit amended if appropriate. A draft amended permit may be provided to the applicant for further comment if appropriate.

The relevant Minister/ delegate may issue a final permit:

- Where a signed “acknowledgement and acceptance of the permit conditions” form is received by the Department; or
- Following receipt of comments by the applicant and consideration of these comments by the relevant Minister / delegate.

2. Review of refusal

Where a permit application is refused, the applicant will be notified in writing and advised that they can request a review of the decision by the Department within 21 days of the date of the notice. The Department may establish a panel to conduct such reviews, and may issue guidelines to assist the panel in its deliberations.

3. Third party appeal

The Department will not consider any appeal by a third party regarding the granting or refusal of permits.

Format Conditions of Grant, Continuation of Permitted Activity and Renewal of Permits Procedure

1. Format and content of permits

The information set out in a permit will include:

- (i) an individual permit identifier
- (ii) the name of the legal entity to whom the permit is granted
- (iii) the address of the legal entity to whom the permit is granted
- (iv) the names or classes of persons to whom the permit extends (for example, the employees of or other persons acting on behalf of or at the direction of the legal entity to which the permit is granted)
- (v) the section(s) of the Act or clause(s) of the Regulation to which the activity the subject of the permit relates
- (vi) the marine park to which the permit applies
- (vii) the zone(s) of the marine park to which the permit applies
- (viii) if the permit grants access only to specific locations, the identity of the locations
- (ix) the activity for which consent is given by the grant of the permit
- (x) the dates that define the period during which the permit is valid
- (xi) conditions or restrictions, consistent with the Act, that apply to conduct of the approved activity
- (xii) mode of transport permitted, passenger capacity, vehicle/vessel registration numbers (where relevant e.g. permits relating to commercial tourist activities)

2. Standard conditions

Permits will include the following standard conditions:

- non-transferability of the permit
- automatic repeal of the permit upon repeal of the management plan, or declaration of a marine park notification the provisions of which are incompatible with the continued conduct of the permitted activity
- availability of permit for inspection
- requirement to inform employees, participants, agents and contractors of the conditions
- native title provisions
- provisions for variation, suspension and revocation
- other required approvals have been granted.

3. Specific conditions

Permits may include specific conditions. For example:

- insurance conditions
- reporting conditions
- park, zone and/or site specific conditions

4. Permits issued prior to commencement of a management plan

Where a permit is granted prior to the commencement of a management plan for a marine park, the permit will include a warning advising that the permit will be subject to management plan requirements and that the permit holder should be aware that once the management plan is in place, a new permit may not be granted and/or the permit conditions may be varied to ensure that the approved activity is consistent with the new management plan.

5. Period for which permits may be granted

The maximum period for which any permit may be granted is five years.

6. Continuation of permitted activity

If, at the date of expiry of a permit, the permit holder has lodged an application on the approved form for the permit to be re-issued, the life of the permit may be extended until such time any of the following events occurs:

- a new permit is granted; or
- the application is refused.

7. Renewal of permits

A permit to carry on regulated activities in a marine park is not automatically renewable. Permit holders must lodge applications on the approved form, which will be assessed by the relevant Ministers / delegate in the same manner as an application for a new permit. Where there is no change to any of the previously approved activity; the environment of operations; or relevant law or policy, the original assessment may be considered sufficient for reconsideration of the proposal.

Surrender, transfer, variation, suspension and cancellation of permits procedure

1. Surrender

A permit holder may voluntarily surrender a permit by giving notice in writing to the relevant Ministers / delegate.

Any obligations (such as reporting requirements) imposed by conditions of the surrendered permit cease to have effect from the date upon which the relevant Ministers / delegate receives notice of surrender. However, surrender does not provide a defence to prosecution for non-compliance with conditions (including reporting conditions) that were current during the life of the permit.

Upon notice of surrender of a permit, the Department will provide notice in writing requiring attention to any outstanding requirements within 21 days or such other time as is negotiated between the Department and the permit holder.

2. Transfer

Marine park permits are not transferable.

When a commercial activity (the subject of a permit) is to be transferred, the process requires the existing permit to be cancelled and a new permit to be issued. The issue of the new permit is subject to the same application and assessment processes as was the existing permit.

If a permit holder proposes to transfer control or ownership of any commercial activities, for example by selling a business, then:

- the person/s or entity intending to take over the commercial activities (that is, the intended purchaser or transferee of the business) should lodge an application for a permit on the approved form before the business transfer arrangement proceeds; and
- the application is to be signed by both the existing permit holder and the intended purchaser of the business.

The relevant Ministers/ delegate will assess the application in accordance with this policy

If the relevant Ministers / delegate approves the grant of a permit to the transferee, the permit will come into effect from the day the business is transferred. The existing permit will also be cancelled effective from that date.

Management of commercial activities within new marine parks procedure

Note: this section of the policy applies only in that situation where a new marine park has been declared and a management plan has not formally commenced for that park.

1. Exemption for commercial activities prior to a management plan

Certain commercial activities may be conducted in marine parks prior to a final management plan without the consent of the relevant Minister / delegate.

When a new marine park is declared, existing operators of commercial activities in the new marine park will be invited to apply for the grant of a permit for their existing commercial activities in the marine park. Operators will be advised that their commercial activities may be prohibited or subject to conditions when the final management plan has been implemented.

Proponents intending to commence commercial activities in a marine park after declaration but prior to a final management plan being prepared will be invited to apply for a permit and advised that their commercial activities may be prohibited or subject to conditions when the management plan has been implemented.

Permit capping procedure

1. Capped permits

From time to time the relevant Ministers / delegate may determine that:

- the number of permits granted for particular activities in particular marine parks, zones or sites of marine parks should be restricted or “capped” ; and
- priority be given to a particular class of applicants for a capped activity.

In determining whether to cap the number of permits, and whether to prioritise a class of applicants, the relevant Ministers / delegate must consider the following:

- any existing use within the marine park or zone at the time the marine park or zone came into question;
- the environmental, cultural or social impacts caused by these existing uses;
- whether the use is consistent with the objects or the Act, the purposes of marine parks, the objects of the zone, or other matters specified in the assessment criteria..

2. Allocation of limited access

Where the number of permits is capped, the relevant Minister / delegate will determine the allocation of permits according to an equitable process.

Where the control or ownership of commercial activities is transferred, any cap imposed on permits for that activity will not restrict the grant of a new permit to the transferee provided that the number of permits or amount of activities will not increase, and the application is made in accordance with this policy. This is because the grant of a new permit to the transferee of the business will be nullified by the cancellation of the existing permit held by the transferor of the business. This allows operators of commercial activities to gain access to capped activities through commercial avenues.

Where particular activities in particular parks or zones are capped, any residual capacity at the time of capping, and capacity validly arising as a result of cancelled or expired permits, will be publicly advertised by the Department through an “expression of interest” process on an annual basis.

The public advertisement will invite applications, detail all assessment criteria, and specify the address and closing date for applications. A minimum of 21 days from the date of the advertisement will be provided for lodgement of applications.

Assessment criteria will include demonstrated capacity to conduct the activities in question at the subject location in accordance with all the laws in force, including compliance with conditions of previous permits.

Eligible applications will be ranked according to an assessment of the specific proposal against the assessment criteria. Consideration will be given to any measures proposed to further the purposes of marine parks and to ameliorate impacts.

A ballot will be conducted by the relevant Ministers / delegate where applications outnumber capacity, and two or more applications have equal ranking.

Permits will be allocated according to their ranking or results of the ballot as appropriate.