



Government of Western Australia
Department of Mines and Petroleum



Proposed procedure for declining and
refusing environmental applications

FOREWORD

As part of the Department of Mines and Petroleum's (DMP) Reforming Environmental Regulation (RER) initiative, the department is reviewing its approach and practices to ensure that they are aligned with the principles of best practice environmental regulation.

Currently, DMP applies different decline/refuse approaches to different application types received by the Environment Division. Therefore, DMP has developed an overarching Environment Division *Procedure for Declining and Refusing Environmental Applications* in order to ensure fairness, consistency and transparency in DMP decision making in this area.

In practice, DMP does not decline or refuse a high percentage of applications or submissions. In most circumstances DMP will work with applicants to adapt these documents so that they can be approved and accepted under the relevant legislation without unacceptable impact on the environment.

DMP recognises that declining or refusing an application will have both direct and indirect impacts to the applicant.

This document outlines the proposed procedure, together with background on the administrative issues relating to decisions to decline or refuse applications. DMP seeks comments from stakeholders on the appropriateness and fairness of this proposed procedure.

I encourage you to read this document and to submit your comments on what is being proposed.

Phil Gorey

EXECUTIVE DIRECTOR ENVIRONMENT

8 October 2015

SUBMISSIONS

The Department of Mines and Petroleum (DMP) invites people to make a submission on the proposed *Procedure for Declining and Refusing Environmental Applications*.

All submissions will be considered by DMP before revised procedures are implemented. All submissions to DMP will be made publicly available.

If you wish to provide comments, please remember to include:

- your name;
- address; and
- date.

Points to keep in mind:

- clearly state your point of view;
- indicate the source of your information if applicable; and
- suggest alternative recommendations where necessary.

Electronic submissions are preferred, and can be submitted to: reform@dmp.wa.gov.au with the subject line “**Declining and refusing environmental applications stakeholder feedback**”

Submissions must be received by 5.00pm on 4 November 2015.

If you have any queries regarding the proposal, please contact:

Ian Mitchell, Team Leader, Operations on 9222 3441.

Copies of the current legislation administered by DMP are available on the State Law Publisher’s website at www.slp.wa.gov.au.

PROCEDURE RELATING TO DECLINING AND REFUSING ENVIRONMENTAL APPLICATIONS – DRAFT FOR COMMENT

The Department of Mines and Petroleum (DMP) Environment Division undertakes environmental assessments under the provisions of the following legislation:

- *Mining Act 1978* – Mining Proposals, Mine Closure Plans and Programmes of Works;
- *Mining Rehabilitation Fund Act 2012* – MRF Submissions;
- *Petroleum and Geothermal Energy Resources Act 1967* – Environment Plan and Spill Contingency Plans;
- *Petroleum (Submerged Lands) Act 1982* – Environment Plan and Spill Contingency Plans;
- *Petroleum Pipelines Act 1969* – Environment Plan and Spill Contingency Plans; and
- *Environmental Protection Act 1986* – Native Vegetation Clearing Permits¹.

DMP's assessment of these applications will (usually) result in one of the following outcomes:

- Approval/acceptance of the application;
- A request to modify and resubmit the application or a request for additional information;
- The application is declined or refused; or
- The application is withdrawn by the proponent.

Each year, DMP receives more than 3000 applications for mineral and petroleum exploration and development. The majority of these applications are approved, sometimes after revision, however a percentage of these applications are either declined or refused.

This document sets out DMP's approach to declining and refusing environmental applications and applies to all assessments undertaken by the Environment Division. The objective is to ensure that decisions made by DMP are undertaken in a way that is:

- Accountable:** it is clear to proponents who the decision maker is regarding their application and who they are able to discuss the matter with if they have any concerns.
- Consistent:** practices of DMP will be consistently applied.

¹ Under delegation from the Department of Environment Regulation – applies to Native Vegetation Clearing Permit assessments only.

- iii) Proportionate: DMP's decisions will be fair, impartial and clearly justified.
- iv) **Targeted**: DMP practices for processing inadequate or incomplete applications should not adversely impact on the timeframe for other applications.
- v) **Transparent**: DMP's practices are clear to the applicant, including the reasons why an application will be declined or refused.

Terms used

Decline is the term used where an application is not accepted as a valid document for environmental assessment.

Refuse is the term used where a valid application will not be approved after an environmental assessment has been conducted and the proponent has been given an opportunity to amend their application yet it still fails to adequately address all environmental impacts.

If an application is declined or refused, a new application is required if the proponent wishes to obtain an environmental approval.

Declining to assess applications

DMP may decline to assess an application in the following circumstances:

- The application contains errors or omissions that are material to the environmental assessment or regulatory function of DMP;
- The application is incomplete and/or not in the form required by the relevant legislation and/or DMP guidance; and/or
- The application includes activities that cannot be authorised (e.g. where the proponent has not secured or applied for the appropriate tenure/authority).

DMP officers with the appropriate authority to decline an application will be involved in the decision making process.

Refusing to approve applications

Where DMP determines that an application is not suitable for approval after conducting an environmental assessment, DMP will provide the proponent with an opportunity to revise and resubmit their application. DMP will refuse an application where:

- Two amended applications have been provided by the applicant (i.e. three separate versions of the application) and the assessing officer considers that the application remains materially deficient;
- The applicant was requested to submit further information or amend their application and did not do so by the required date. For all

applications, DMP will nominate a set timeframe of 20 business days (four weeks) for applicants to submit the requested further information or to amend the application. If the applicant cannot provide the requested information within the 20 business days they can either request that DMP proceed with making a decision on the application or advise DMP of when the information will be provided. However, the period of time nominated by the applicant must not be longer than three months. If no response is received, a DMP officer will attempt to contact the applicant and provide an additional 10 business days to respond. If no response is provided within this timeframe, the application will be refused; or

- The assessing officer decides that there is no reasonable likelihood that the application can be made environmentally acceptable.

The recommendation to refuse an application will be reviewed by a senior officer before a final decision is made.

Notification of assessment decisions

DMP will notify the proponent in writing that their application has been declined or refused and the reasons for the decision will be outlined in the letter. For applications that have been declined, the proponent will be refunded any assessment fees paid. Assessment fees are intended to partially fund the cost of assessments and are, therefore, not refundable if an assessment occurs and an application is refused.

The proponent may modify the application or provide additional information to address the issues outlined by DMP and submit a revised application for assessment. The revised application will be registered as a new application and payment of assessment fees will be required where applicable.

Continued improvements in DMP guidance and systems

DMP is committed to transparency and will continue to investigate ways to improve public availability of assessment decisions.

The Environment Division will continue to review its application forms, guidance material and online systems to clearly identify the mandatory information that must be provided for assessment and to outline its expectations regarding the content of environmental applications. This will principally be achieved through the progressive adoption of compulsory online lodgement processes by DMP (as has been the case over the last few years).

BACKGROUND

Each year, DMP receives more than 3000 environmental applications for assessment covering mineral and petroleum exploration and development. The majority of these applications are approved, sometimes after revision, however a percentage of these applications are either declined or refused.

Applications and submissions can be declined or refused for a variety of reasons, including that the application or submission:

- Details proposed activities that are environmentally unacceptable;
- Does not include sufficient detail to allow DMP to assess the potential environmental impacts of the proposal;
- Contains errors or omissions which are material to the environmental assessment undertaken by DMP;
- Is incomplete and/or is not in the form required by the relevant legislation and/or DMP guidance; and/or
- Proposes activities that cannot be authorised (e.g. where the proponent has not secured or applied for the appropriate tenure/authority).

For most of these reasons, there will be an element of judgement applied by the assessing officer. Therefore, practices have generally evolved in the department to provide the proponent with the opportunity to submit additional detail to DMP before a final decision is made on the proposal or submission. This is usually undertaken through a 'stop-the-clock' notification from DMP requesting additional information, clarification or amendments to the submitted document.

In 2012, DMP commenced the Reforming Environmental Regulation (RER) initiative with the objective of implementing the principles of best practice environmental regulation. This process has been largely successful, with a number of strategic reforms being well-advanced, and DMP is now reviewing its various procedures to ensure that these further the principles of best practice regulation - namely accountability, transparency, predictability and proportionality.

It has been raised through internal reviews, as well as from stakeholder feedback, that DMP practices relating to declining or refusing environmental applications and submissions have not been well-aligned to these principles.

NUMBERS OF APPLICATIONS THAT ARE DECLINED AND REFUSED

The number of environmental applications declined or refused by DMP is a small percentage of the total number received in any one year. For instance, about four per cent of mineral exploration and prospecting applications (Programmes of Work) are declined or refused by DMP each year. This is generally consistent with other environmental applications received by DMP.

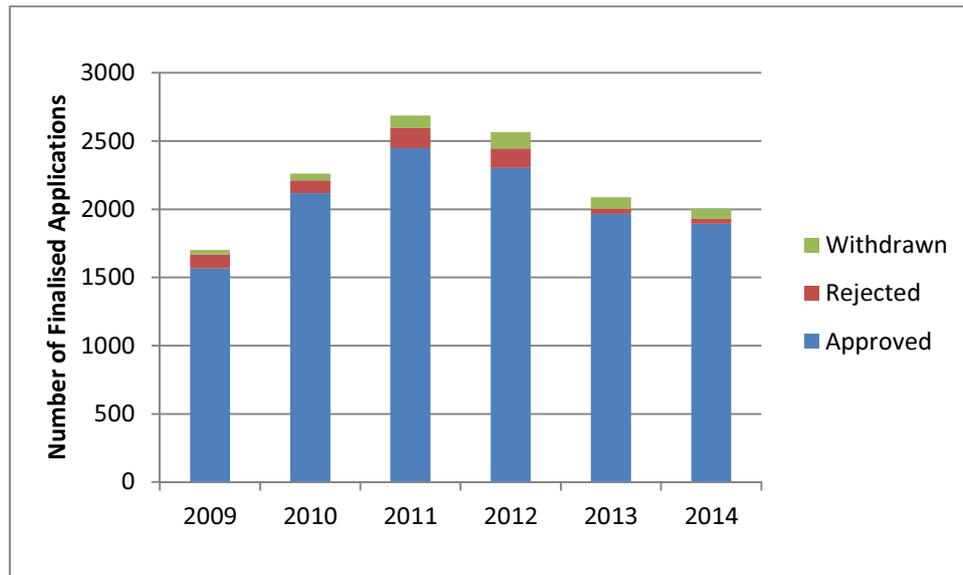


Figure 1: The proportion of mineral exploration and prospecting applications approved, rejected and withdrawn each year

As a general practice, all areas of the Environment Division work with applicants to ensure that they have the opportunity to address and resolve any deficiencies in their applications or submissions before DMP makes a decision to refuse an application.

DMP is also continuously reviewing its guidance to clearly identify the mandatory information that must be provided for assessment and to outline its expectations regarding the content of environmental applications. These continuous improvements reduce the likelihood that a proponent's application will be declined in screening.

Notwithstanding, there is a small percentage of applications that are declined or refused each year. DMP's review has identified that although there have been some standard rules for declining and refusing applications, there has been some variation in the processes implemented for the different application types assessed in the Environment Division. The differences and similarities are outlined below.

Programmes of Work (minerals)

- Programme of Work applications undergo administrative screening and incomplete and/or invalid applications are declined as invalid. If the application is declined the proponent is notified in writing;
- Requests to the applicant for additional information or amendment include a standard required response time of 10 business days;
- If a response is not provided within 10 business days, a DMP officer will attempt to contact the applicant and if no response is obtained the application is refused;
- A letter of refusal is sent to the applicant; and
- There will be two opportunities after the initial assessment for reassessment, prior to refusing a Program of Work. (At present, there is no limit to the number of reassessments DMP will undertake prior to refusing a Programme of Work).

Mining Proposals (minerals)

- Mining Proposals undergo administrative screening and incomplete applications are declined as invalid. If the application is declined the proponent is notified in writing;
- Requests to the applicant for additional information or amendment include a standard required response time of 20 business days, or alternative time depending on the scope of the further information required;
- If a response is not provided within the required time, a DMP officer will attempt to contact the applicant and provide an additional 10 day timeframe, and if no response is obtained the application is refused;
- A letter of refusal is sent to the applicant; and
- There will be two opportunities after the initial assessment for reassessment, prior to refusing a Mining Proposal. (At present, there is no limit to the number of reassessments DMP will undertake prior to refusing a Mining Proposal).

Mine Closure Plans (minerals)

- Mine Closure Plans undergo administrative screening and incomplete and/or invalid applications are declined. If the application is declined the proponent is notified in writing;
- If a Mine Closure Plan is considered inadequate or requires clarification, the assessing officer requests this information from the proponent and provides a due date for a response appropriate to the scale and nature of information requested;
- If the information is not provided within the timeframe then the matter is escalated to the area manager (within DMP) to determine whether the Mine Closure Plan should be refused, and what compliance action needs to be taken (as refusal may indicate the tenement holder is not in compliance with tenement conditions);
- There will be two opportunities after the initial assessment for reassessment, prior to refusing a Mine Closure Plan. (At present, there

is no limit to the number of reassessments DMP will undertake prior to refusing a Mine Closure Plan); and

- A letter of refusal is sent to the applicant.

Environment Plans and Oil Spill Contingency Plans (petroleum)

- Environment Plans and Oil Spill Contingency Plans are primarily screened through the requirement of providing mandatory information in DMP online lodgement systems. Assessing officers will also undertake a preliminary assessment to identify any major issues;
- If an assessing officer considers that an Environment Plan or Oil Spill Contingency Plan is deficient, then they are required to provide proponents with a reasonable opportunity to modify and resubmit their application (this process is set out in the relevant regulations, for example the Petroleum and Geothermal Energy Resources (Environment) Regulations 2012);
- A timeframe for submission of the revised Environment Plan is set by the DMP officer based upon the nature of the issue;
- Where applications are refused, a letter of refusal is sent to the applicant; and
- There will be two opportunities after the initial assessment for reassessment, prior to refusing an Environment Plan or Oil Spill Contingency Plan. (At present, there is no limit to the number of reassessments DMP will undertake prior to refusing an Environment Plan or Oil Spill Contingency Plan).

Native Vegetation Clearing Permits:

- Clearing Permit applications undergo administrative screening and incomplete applications are declined as invalid. The applicant is notified in writing if the application is declined;
- Initial requests to the applicant for additional information or amendment to the application may not specify a response time. However, if the information has not been received within a reasonable time-frame, the assessing officer may specify a response time in a follow-up request;
- If a refusal of the application is being considered, a letter will be sent to the applicant advising that the application is likely to be refused based on the information provided. The letter allows 30 days for the applicant to provide additional information prior to a decision being made;
- The applicant is notified in writing if the application is refused; and
- There is no limit to the number of assessments DMP will undertake prior to refusing a Clearing Permit application.

ISSUES WITH THE APPROACH USED TO DATE

Internal reviews and feedback from proponents identified a number of issues with DMP's practices, which led to the development of this draft procedure. These issues are summarised below:

1. Response timeframes

Setting required response times is a critical element of effectively managing the workload and resources of DMP and ensuring that applications and submissions are resolved in a reasonable timeframe.

Some applicants have stated that the required response time set by DMP in its request for further information or amendment of the submission is too short to allow the proponent to undertake the necessary research and redrafting.

Additionally, for those application and submission types where no standard response time is set by DMP, response times can differ significantly.

The solution has been to propose set timeframes, as outlined in the procedure, that can be varied through negotiation between the proponent and DMP.

2. Variable treatment when applicants fail to respond

Internal auditing has identified that, while the majority of requests for further information or amendments to applications include a timeframe for response, DMP responds in different ways when no response is provided by the set date. Officers tend to allow differing lengths of time to elapse before attempting to contact the proponent.

There are some cases where, after attempts are made to contact the proponent, the assessment is terminated and the application is refused. In other cases DMP does not refuse the application and it remains on the DMP system.

One impact of remaining on hold for an extended period of time is that it creates uncertainty in the assessment process for DMP officers who are considering the potential cumulative impacts of activities within a certain area, and the nature of the applications become more deficient as the application systems of DMP are refined.

The solution has been to propose set timeframes, as outlined in the procedure that can be varied through negotiation between the proponent and DMP.

3. Impact on other applicant timeframes and maximum number of assessments to be undertaken prior to refusal

While it is expected that applications or submissions that require amendment or additional information will take longer overall to resolve (because of the application being put on hold awaiting a response from the proponent), internal reviews have also identified that these applications require greater effort and, therefore, resources from DMP to assess.

Figure 2 provides the example of Programmes of Work, showing the average number of days required to complete assessment for those applications that have required further information or amendment by a proponent compared to those applications that did not. Since 2009, it has taken up to six working days longer, with commensurate additional resourcing from DMP, to complete assessment of these applications (excluding the time the applications were placed on hold awaiting additional information from proponents). This suggests that many applications require detailed reassessment by an assessing officer.

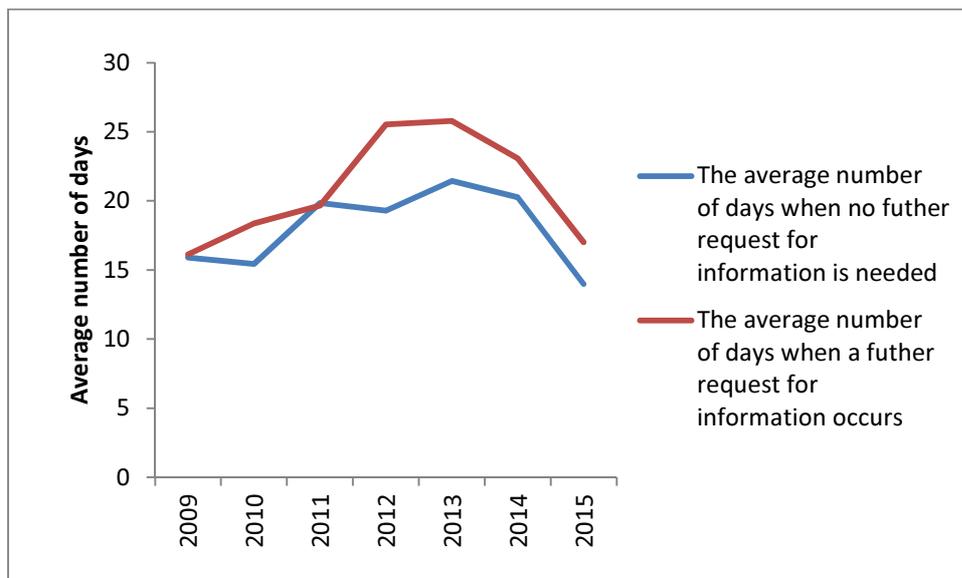


Figure 2: A comparison of the number of days it has taken DMP to make a decision on Programme of Work applications that have been on hold awaiting response from proponents, compared to those that were considered complete on application (since 2009; n=6851)

This results in overall application assessment timeframes being longer than would otherwise be the case. This issue is exacerbated when applications are significantly deficient and require multiple revisions and re-assessments (in particular when the same applicant repeatedly submits deficient applications).

This has a flow on effect to other applications that are waiting in line for assessment by DMP. It suggests that DMP needs to make its expectations clear and clarify the maximum number of assessments

that will be undertaken before an application is refused. This is now proposed to be two reassessments before a proposal is refused.

4. Inconsistency with the level of review prior to refusing to approve an application

In some cases, an assessing officer may be authorised to refuse an application without involving management in the assessment decision.

It proposed that any decision to refuse an application be formally made at least at Team Leader level to ensure appropriate oversight.

5. Concerns with the ‘stigma’ of having an application refused

Some stakeholders have raised concerns with the perception or ‘stigma’ of having an application refused – and what this might mean for future applications.

DMP considers each application on its own merits and decisions are not influenced by whether another application from the same applicant has previously been declined or refused.

6. Implications when assessment fees apply

DMP has some application processes where an application or assessment fee must accompany the application (e.g. Native Vegetation Clearing Permits).

Where applications are declined, the application fee is refunded. However, where applications are refused, any fee that has been paid will not be refunded. These fees are intended to partially fund the cost of assessment and are not refundable once the assessment has taken place. This means that the refusal of these applications will both delay the applicant ultimately achieving approval, and also result in them needing to pay the fees a second time. DMP is keen to ensure that proponents are provided with a reasonable opportunity to amend their applications before a decision is made to refuse an application.

PROPOSED APPROACH TOWARDS DECLINING AND REFUSING APPLICATIONS

There are a number of different terms that have been used in the past relating to ‘not accepting’, ‘not approving’ and ‘rejecting’ environmental applications, in part due to differing terminology used in the legislation that DMP administers. To improve clarity and consistency, DMP proposes to adopt the terms decline and refuse across all types of applications submitted to the Environment Division. The following section intends to clarify DMP’s proposed approach for declining and refusing applications.

Declining to accept an application

'Decline' and 'decline to accept' are both terms that have been commonly used where applications are not accepted as valid documents for environmental assessment.

Prior to conducting an environmental assessment of an application, DMP screens² the applications to ensure they are valid. DMP may decline to assess an application in the following circumstances:

- The application contains errors or omissions that are material to the environmental assessment or regulatory function of DMP;
- The application is incomplete and/or not in the form required by the relevant legislation and/or DMP guidance; and/or
- The application includes activities that cannot be authorised (e.g. where the proponent has not secured or applied for the appropriate tenure/authority).

For instance, where an application is required by legislation or DMP guidance to be submitted in a specific form, DMP may decline to accept the document as a valid application if it is clearly not in that specific form. As an example, section 70O of the *Mining Act 1978* requires that a Mine Closure Plan must be in the form required by the Mine Closure Guidelines. Therefore, a Mine Closure Plan which is not in the form required by the guidelines will not be considered a valid application.

DMP officers with the appropriate authority will be involved in the decision to decline an application. In most circumstances, the decision will be made at officer level and review by management will not be required, particularly in cases where the application is incomplete or is clearly not in the form required by legislation. The number of applications declined as a result of being incomplete is expected to continue to reduce as DMP further develops its online lodgement facilities.

The proponent will be notified that an assessment of their application could not be undertaken and their application has been declined. The proponent will be refunded any assessment fees paid, where applicable, through DMP's normal refund procedures.

The above procedures are consistent with the practices currently implemented by the DMP Environment Division.

Refusing (to approve) an environmental application

Refuse is the term used where a valid application will not be approved after an environmental assessment has been conducted and the proponent has been given an opportunity to amend their application yet it still fails to adequately address all environmental impacts. This is consistent with the terminology used in Petroleum Environment legislation and in Part V Division

² The screening process may range from administrative checks to the requirement of providing mandatory information in DMP online lodgement systems.

2 (clearing of native vegetation) of the *Environmental Protection Act 1986*. DMP proposes to also adopt this terminology for prospecting, exploration and mining applications.

Once an application passes the screening stage, DMP will conduct an environmental assessment of the document. An environmental application may be in the form required by the legislation, however it may not be suitable for approval for a number of reasons, for example the application may involve activities that are environmentally unacceptable.

Where DMP determines that an application does not meet its requirements following the completion of an environmental assessment, DMP will provide the proponent with a reasonable opportunity to revise and resubmit their application. Applications will be refused where:

- Two amended applications have been provided by the applicant (i.e. three separate versions of the application) and the assessing officer considers that the application remains materially deficient;
- The applicant was requested to submit further information or amend their application and did not do so by the required date. For all applications DMP will nominate a set timeframe of 20 business days (four weeks) for applicants to submit the requested further information or to amend the application. If the applicant cannot provide the requested information within the 20 business days, they can either request that DMP proceed with making a decision on the application or advise DMP when the information will be provided. However, the period of time nominated by the applicant must not be longer than three months. If no response is received, a DMP officer will attempt to contact the applicant and provide an additional 10 business days to respond. If no response is provided within this timeframe, the application will be refused; or
- The assessing officer believes that there is no reasonable likelihood that the application can be made environmentally acceptable.

The above procedures generally reflect the current practices implemented by the Environment Division. The key change is that DMP proposes to provide two opportunities for proponents to address DMP's requirements prior to refusal, rather than applications either sitting in limbo or requiring ongoing modifications.

To ensure that assessment decisions are fair, justified and consistently applied, the recommendation to refuse an application will be reviewed by a decision-maker at least at Team Leader level.

DMP will notify the proponent in writing that their application has been refused and the reasons for the decision will be outlined in the letter.

The proponent may modify the application or provide additional information to address the issues outlined by DMP and submit a revised application for assessment. The revised application will be registered as a new application and payment of assessment fees will be required where applicable.



DRAFT PROCEDURE FOR DECLINING AND REFUSING ENVIRONMENTAL APPLICATIONS

October 2015

SECTION 1. Stakeholder details

Public or Confidential

Do you wish to lodge your submission 'IN CONFIDENCE'

Yes

No

DMP is intending to publish a summary of the submissions received. Feedback received from an 'IN CONFIDENCE' submission will be presented, but the respondent's name will not be published on DMP's website.

Submission Details

Note: The following information **will** be placed on DMP's website.

This submission is written on behalf of: (please select one of the following categories)

Individual

Organisation

Are you making this submission as:
(please select one of the following categories)

- Business
- Industry representative
- Academic
- Government representative

- Professional
- Other

Submission Details

Note: The following information will **not** be published on DMP's website **if** you are lodging your submission 'IN CONFIDENCE'.

Individual OR Organisation's name:

Individual / Organisation Details

Note: The following information will **not** be placed on DMP's website

Principal contact name:

Contact phone number:

Email address:

PLEASE NOTE:

Typed electronic submissions are the preferred submission format.

If you wish to submit a hand written submission or for other submission related queries, please contact Department of Mines and Petroleum on **92223441** or via email reform@dmp.wa.gov.au with the subject line "**Declining and refusing environmental applications stakeholder feedback**"

Confidential material – Where a submission includes confidential and non-confidential material, the confidential material should be provided separately and clearly marked 'IN CONFIDENCE' and will not be placed on the website.



Please note: Legal requirements such as those imposed by the Freedom of Information Act 1982 may affect the confidentiality of public submissions.

SECTION 2. Stakeholder Response Form

General comment(s)

PROCEDURE RELATING TO DECLINING AND REFUSING ENVIRONMENTAL APPLICATIONS – DRAFT FOR COMMENT

Comments: (Please include section/page numbers).

Section: Declining to assess applications

Comments: (Please include section/page numbers).

Section: Refusing to approve applications

Comments: (Please include section/page numbers).

Section: Notification of assessment decisions

Comments: (Please include section/page numbers).



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