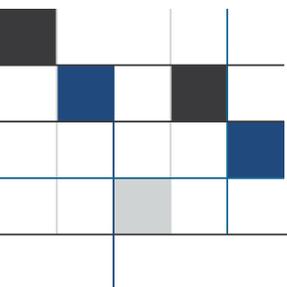


Policy

Timely submission of required further information

Formerly Operational policy No 5.11

October 2019



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Any enquiries relating to the implementation of this policy or any matters relating to management of water resources in the regions, please contact a regional office listed under 'Regional enquiries'. For more information about this policy, contact: Principal Policy Officer, Water Policy branch.

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The Department has implemented a policy framework across all of its regulatory documents. The framework provides a clear and structured document hierarchy, which details how the department and its stakeholders should apply the different types of documents within the hierarchy.

As part of the implementation of this framework, this document has been updated with a new format to show how the document is classified within the framework.

The content of the document has not been changed and remains the department's position.

For more information on the policy framework refer to the department's website here: www.dwer.wa.gov.au

This document was previously published in November 2009.



Summary

Water resources are essential for the state's economy and lifestyle. To ensure sustainability and equity in water allocation, the state's terrestrial water resources are vested in the Crown under the provisions of the *Rights in Water and Irrigation Act 1914* (the Act). The Department of Water and Environmental Regulation (the department), the state's water resource management agency, is responsible for discharging the water resource management powers and functions set out in the Act, including granting licences that entitle access to groundwater and surface water resources, or approving transfer of water entitlements or approval of agreements between licensees and third parties.

In exercising the discretions under the Act, the department is required to consider several matters, including whether the proposed water use is in the public interest, is ecologically sustainable, is environmentally acceptable, may prejudice other current or future needs for water, or may have a detrimental effect on another person. To enable these matters to be assessed, the department is empowered to require further information from the applicant as part of the application.

The information required may be quite extensive, particularly in areas of high demand for accessing the water resources. In some cases, the application may also need to be advertised to give concerned people an opportunity to comment on the application and its likely impacts.

Currently, the department assesses applications on a 'first-in-first-served' basis, although other allocation mechanisms are being trialled in some parts of the state, including employing a merit selection system. Although appropriate over most of the state, the 'first-in-first-served' approach may result in excessive delays in assessing later-received applications, if an earlier applicant does not provide the required further information to the department in a timely manner.

To address this issue, the department will notify applicants of the information required to complete their applications and the acceptable timeframes for providing the information. Typical timeframes are provided in the policy, and may, where necessary, be adjusted to take into consideration an applicant's particular circumstances. Where the further information is not provided to the department within the required timeframe, the department will consider that the application is incomplete, may return it to the applicant and not proceed with its assessment.

In such cases where genuine extenuating circumstances or complexities associated with the required actions lead to delays, the applicant must notify the department in writing of the delays that prevent the applicant from providing the information within the required timeframe. The department will consider the applicant's request for a revised timeframe to comply with the requirements.

Should an applicant whose application has been returned, resubmit the application with the required information, the department will accept it as a new application. However, it is possible that in the interim all the available water resources will have



been allocated and the applicant may then need to source water through other mechanisms such as the transfer of an existing water licence entitlement.



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1. Policy Statement

1.1 Policy position

The Department of Water and Environmental Regulation will regard an application for:

- a section 5C licence to take water;
- an amendment to a section 5C licence;
- approval of a transfer of a licence or water entitlement;
- approval of an agreement with a licensee to take water, a section 11, 17 or 21A permit; or
- an amendment to a section 11, 17 or 21A permit

as a complete application for the purpose of clause 4 or 32 of Schedule 1 to the *Rights in Water and Irrigation Act 1914* or regulation 4 of the *Rights in Water and Irrigation Regulations 2000* and undertake its assessment under clause 7(2) of Schedule 1 or regulation 7(2) if:

- the application is made in accordance with clause 4(1) or 32 of Schedule 1 to the *Rights in Water and Irrigation Act 1914* or regulation 4(1) of the *Rights in Water and Irrigation Regulations 2000*; and
- the applicant has provided any further information required by the department, within a reasonable timeframe.

Applications deemed incomplete will be returned to the applicant and will not be assessed by the department. The department will undertake a preliminary review of an application to ascertain what additional information (if any) it requires to fully assess the application and make a determination.

Following the preliminary review, the department will inform the applicant of any further information required to be provided for the application to be regarded as a complete application and the expected timeframes for that information to be provided. The department will also inform the applicant that if the required further information is not provided by the requested timeframe, the department will return the incomplete application.

For policy reasons, applications for section 5C licences and amendments of section 5C licences are treated slightly differently than other applications in that the department will enter a water allocation in the water licensing system for the application. This ensures that if the required further information is received within the required timeframe and the department proceeds with its assessment and exercises its discretion to grant the licence, there will be water available for allocating as per the application. The required timeframes for providing information relating to section 5C licences is shown in Table 1 (refer to 'Further information is required to complete the assessment').

In such cases where genuine extenuating circumstances or complexities associated with the required actions lead to delays, the applicant must notify the department in



writing of the delays that prevent the applicant from providing the information within the required timeframe. The department will consider the applicant's request for a revised timeframe to comply with the requirements.

Should an applicant whose application has been returned resubmit the application with the required information, the department will accept it as a new application. However, it is possible that in the interim all the available water resources will have been allocated and the applicant may then need to source water through other mechanisms such as the transfer of an existing water licence entitlement.

1.2 Policy principles

This policy supports the department's approach that water should be allocated to water users on a 'first-in-first-served' basis.

If an application is incomplete and is not made complete in a reasonable timeframe then the application should be returned to the applicant. This will, in turn, allow for the assessment of subsequent licence applications as the volume of water held for applications will be reduced.

The timely assessment of water licence applications will encourage development of an area, economically and socially, creating jobs and building communities.

1.3 Policy outcomes

It is anticipated that this policy will minimise delays in the water licensing process. By returning incomplete applications, the department will reduce the volume of water held for applications that are not being progressed in a timely manner.

Applicants will be encouraged to present complete applications under the *Rights in Water and Irrigation Act 1914* in a reasonable timeframe, which will in turn minimise delays for development of an area.

It is expected that the policy will reduce the incidence of disingenuous applications being held by the department and will minimise delays in the licensing process arising from an applicant's failure to complete an application.

2. Background

This document is a revision of the Department of Water and Environmental Regulation's September 2007 publication. The principal change is to the format of the document which now conforms with the new approved Department of Water and Environmental Regulation's Strategic water policy framework template. However, as the content has not had full review, it still retains the previous (September 2007) publication date.

2.1 Issue

Water resources are essential for the state's economy and lifestyle. The Government of Western Australia actively manages water resources to maximise sustainable



development while minimising the risk of water use impacting upon the environment or other water users. The *Rights in Water and Irrigation Act 1914* (the Act) was passed by the state parliament in 1914, vesting in the Crown the right to the use, flow and control of the waters at any time in any watercourse, wetland or underground water source. Permission in the form of a licence or the existence of a conferred right (e.g. riparian right) is required to take water lawfully.

The department is responsible for discharging the specific water resource management powers and functions set out in the Act. These include the discretion to grant, refuse to grant or amend licences to take water under section 5C of the Act, to approve or refuse to approve transfers of water entitlements, to approve or refuse to approve agreements between licensees and third parties in relation to the taking of water and to grant, refuse to grant or amend permits, such as those required by section 17 of the Act.

In exercising these discretions, the department is required to consider several matters, including whether the proposed water use is in the public interest, is ecologically sustainable, is environmentally acceptable, may prejudice other current or future needs for water, or may have a detrimental effect on another person. To properly assess these matters, the department is empowered to require further information as part of the application.

The information required to exercise these discretions can be extensive, and in many cases the information required to be provided through applications forms is insufficient. The information required also varies according to such matters as the volume of water requested (the water entitlement), the hydrogeology/hydrology of the resource proposed to be accessed, the likely environmental impacts, and the information already available to the department. As demand for accessing the water resources in an area increases and the possibility of unacceptable impacts rises, increasingly detailed information is required before the department's discretion can be exercised.

Equity between applications is an important consideration for the department, and applications are generally managed on a 'first-in-first-served' basis (see Water and Rivers Commission 2000, Statewide policy no. 3 – Policy statement on water sharing). Other allocation mechanisms such as a merit selection process are being trialled in some parts of the state.

Under the 'first-in-first-served' approach, if an applicant does not provide the required further information to the department in a timely manner that will allow the department to exercise its assessment of the application, subsequent applications can be delayed. Cases where an applicant has decided not to proceed with an application, or is taking delaying action to block potential competitors, can be particularly difficult.

To address these issues and ensure that applications are assessed within reasonable timelines, the department has drafted this policy. Under the policy, applicants who do not provide the required further information to the department within a reasonable time may have their applications returned to them on the grounds



that the application is considered incomplete. In extenuating circumstances, applicants must contact the department requesting further time to provide the required information providing sufficient grounds for the requested time extension to be considered.

2.2 Intent

This policy's intent is to:

- encourage relevant applicants under the *Rights in Water and Irrigation Act 1914* to progress their applications in a reasonable timeframe
- minimise unnecessary delays in the water licensing process arising from an applicant's failure to complete their applications
- reduce the volume of water held for applications that are not being progressed in a timely manner
- reduce the incidence of disingenuous applications restricting development.

2.3 Policy links

This policy overrides any earlier policy or practices that the department adopted to manage an applicant's failure to take any required actions during the application assessment process. This policy has links to other water policies of the department including:

- Policy: Water entitlement transactions for Western Australia
- Policy: Giving an undertaking to grant a licence or a permit
- Statewide policy No. 9, Water licensing – Staged developments [under review]
- Policy: Use of operating strategies in the water licensing process
- Policy: Water conservation/efficiency plans
- Operational policy No. 5.12, Hydrogeological reporting associated with a groundwater well licence

2.4 Legislation

The *Rights in Water and Irrigation Act 1914* and the *Rights in Water and Irrigation Regulations 2000* are the primary legislative tools relating to rights in water resources which make provision for the regulation, management, use and protection of water resources in Western Australia. The right to the use, flow and control of the waters at any time in any watercourse, wetland or underground water source are vested in the Crown, except as appropriated under the Act.

Minister for Water has delegated specific water resource management powers and functions set out in the *Rights in Water and Irrigation Act 1914* to the Department of Water and Environmental Regulation to administer. Such powers include the allocation by licensing of water resources and the implementation of associated conditions of use including hydrogeological reporting (refer Operational policy no. 5.12).



Please refer to Appendix A for further information regarding applicable legislation.

3. Implementation

3.1 Application

This policy focuses primarily on the timely submission of further information in relation to applications made to the department for section 5C licences to take water, or for amendments of section 5C licences under the *Rights in Water and Irrigation Act 1914*. In particular, the current policy of assessing applications for section 5C licences, or amendment of section 5C licences, on a 'first-in-first-served' basis requires a decision to be made on the first application before subsequent applications can be assessed, which may result in time delays for assessing and making a decision on subsequent pending applications.

This policy provides guidance as to what is a reasonable time for an applicant to provide further required information under clause 4(2) of Schedule 1 to the Act, relating to applications for section 5C licences to take water, or amendments of section 5C licences. It also provides a process for dealing with applicants that do not provide the further information required to undertake an appropriate assessment under clause 7(2) of Schedule 1 to the Act.

The policy is also applicable for other types of applications including: approval of transfer of a licence or water entitlement; approval of agreements with licensees to take water; section 11, 17 or 21A permits; or amendment to section 11, 17 or 21A permits.

This policy overrides any earlier policy or practices that the department adopted to manage an applicant's failure to take any required actions during the application assessment process.

3.2 Preliminary review of applications

Applications to take and use water under section 5C of the *Rights in Water and Irrigation Act 1914*, for amendments to section 5C licences, for approval of transfers or agreements with third parties, for permits and for amendments to permits are submitted to the department using the application forms specified for the respective purpose by the department. These forms are available from the department's regional offices or from the department's website: <www.water.wa.gov.au>.

Upon receiving the application, the department will undertake a preliminary review to determine whether it has sufficient information to make a determination or if there are issues that need to be addressed in more detail by the applicant. Generally, departmental licensing officers will liaise directly with the applicant regarding the provision of required further information and the timeframe for response. The department will aim to undertake its preliminary review of the application and notify the applicant of the further information requirements within 60 days for most applications. The process may take longer for complex or larger scale projects; in



highly allocated or environmentally sensitive areas; or in areas where there is limited knowledge of the water resource. In relation to applications for a section 5C licence, amendment of a section 5C licence or approval of transfers or agreements with third parties, these issues may include but are not limited to:

- likely impacts of the proposed taking of water on nearby environmental features such as wetlands
- likely impacts on nearby water users
- development schedule of proposed development (especially for very large developments requiring significant volumes of water)
- an operating strategy detailing how the applicant will manage the impacts of the proposed operations
- nutrient and irrigation management plans for horticultural activities.

In undertaking the preliminary review of a section 5C licence application (including applications for amendment of section 5C licences or approval of transfers or agreements with third parties), the department will take into consideration issues including the:

- level of the department's knowledge of the local water resources
- degree of competition for accessing the water resources
- volume of water allocated compared with the water availability of that management area
- volume of water requested
- policies and practices of the department in that specific water management area
- previous decisions made by the department on similar applications.

If an application for a section 5C licence, or amendment of a section 5C licence, is valid (compliant with clause 4 of Schedule 1 to the Act), the department will enter a water allocation against an application in the water licensing system for the period of assessment, so that water is available to be allocated should the department determine that a new or amended section 5C licence should be granted to the applicant. Applications for approval of transfers or agreements with third parties need to be valid (compliant with clause 32 of Schedule 1 to the Act) before an assessment is undertaken.

In relation to an application for a permit or an amendment to a permit, the department will undertake a preliminary review to determine whether it has sufficient information to make a determination or if there are issues that need to be addressed in more detail by the applicant.

These issues may include but are not limited to:

- potential for impacts on the environment (riparian vegetation; ecosystems) or upstream or downstream water users



- management of erosion, sedimentation, turbidity, ponding, water flows or fish passage.

Applications for permits or amendment of permits need to be valid (compliant with regulation 4 of the *Rights in Water and Irrigation Regulations 2000*) before assessment is undertaken.

The department will not require an applicant to provide further information if it concludes that the application will be refused regardless of the information provided (most commonly if all available water has already been allocated).

3.3 Further information is required to complete the assessment

The preliminary review may conclude that the applicant should provide further information to complete the application. Such further information can be required by the department under clause 4(2) or 32(2) of Schedule 1 to the *Rights in Water and Irrigation Act 1914* or regulation 4(2) of the *Rights in Water and Irrigation Regulations 2000*, depending upon the type of application. The information may be required to enable the department to complete its assessment or review its assessment. The precise nature of this further information is not prescribed by the Act because the kind of information required may differ between applications.

Table 1 indicates the typical timeframes for completing the most common examples where further information is required. The timeframes vary depending on the complexity or type of further information that is required. For multiple information requirements, the timeframes would be served concurrently.

Where further information is required, the department will send a 'required further information' letter to the applicant, notifying the applicant:

- of the further information that is required to complete the application
- of the appropriate timeframes for providing the required further information to the department
- that if the required further information is not provided to the department within that timeframe, the department will consider the application to be incomplete and may return it to the applicant.

This 'required further information' letter will be sent to the applicant by registered mail. In the event that registered mail is unclaimed, the department will contact the applicant by alternative means (e.g. phone, fax, email, etc.).

A flowchart overview of the process is included at Appendix B.

In relation to section 5C licence applications (including amendments of section 5C licences), the department will enter a water allocation in the water licensing system against an application for the timeframe in which the required further information is to be provided to the department.



Table 1 Guideline for timeframes for providing information

Specific further Information required	Complexity of further information	Expected timeframe (months)
Section 26D exploration licence (to construct or alter wells)		
Bore completion information (prior to assessment of a 5C application)	Low	At expiry of 26D licence
Hydrogeology reports (prior to assessment of a 5C application) [#]		
<ul style="list-style-type: none"> H1 – Desktop hydrogeological assessment (a 26D licence may not be required, captured as part of 5C assessment requirements) 	Low	3 months
<ul style="list-style-type: none"> H2 – Basic hydrogeological assessment including installation and testing of investigation bores 	Moderate	6 months
<ul style="list-style-type: none"> H3 – Detailed hydrogeological assessment including installation and testing of investigation bores and a groundwater model 	High	6–12 months Negotiated
Section 17 permit to build a dam		
Surveyors certificate of dam volume (prior to assessment of a 5C application)	Low-moderate	2
Section 5C licence (to take water)		
Development timetable ¹	Low	1
Horticulture development application (HDA)	Low	1
Operating strategy	Moderate	3
Water use efficiency plan	Moderate	3
Nutrient and irrigation management plan (NIMP)	Moderate	3
Assessments of impacts on groundwater-dependent ecosystems	Moderate-high	4
Regional resource assessment	High	Negotiated

[#] Note: the timeframes given for completion of hydrogeology reports coincides with the recommended duration of a 26D licence (6–12 months). Note that a 26D licence may not be required for H1 – Desktop hydrogeological assessment. In such circumstances, this would be captured as part of the section 5C assessment requirements.



3.4 Further information requirements for highly complex projects

Highly complex projects may pose special challenges. These projects may be classed as those which:

- have a high water requirement (> 1 GL/yr)
- may impact the environment or other users on a regional scale
- have complex and/or poorly understood hydrologic/hydrogeological interactions
- relate to public water supply provision and require a significant lead time between planning and development
- relate to staged developments and are large projects which require a significant lead time between planning and full level of operation, or
- have been referred to the Environmental Protection Authority, the department's environment regulation function or native title claimant groups for assessment or advice.

The timeframes for submitting information may be amended from that shown in Table 1, primarily in relation to the development timetable. The department expects that an applicant would have knowledge of various aspects of the proposed development prior to making an application, including the type and magnitude of development, the location, the proposed timeframe, the potential water use requirements and possible water source options.

For complex projects, the department will normally request the additional information required to assess an application only once. However, there may be circumstances when the information provided may highlight additional knowledge gaps that may need to be addressed with further work. Due to the complexity of issues to be considered, it is possible that the proposed development timetable may need to be amended (prior to the assessment of the application being finalised).

Advance planning and investigations for some public water sources may extend over a few years. Where a public water reserve exists, there is priority for water service providers to access the water set aside for this purpose. Where a public water reserve does not exist, the department notes the need to allow significant lead time to plan future potable town water supplies.

The department will allow flexibility to water service providers with regard to their development timetable. The department has prepared Statewide policy No. 9 (under review) to manage the water requirements of staged developments. That policy would come into effect after a water licence has been issued. Licensees would need to prepare and advise the department regarding the schedule of water use, which is a component of the overall development timetable. Statewide policy No. 9 does not apply to water service providers or to licensees that have purchased their water entitlements from the market.



3.5 Required further information not provided in time

If the applicant does not provide the required further information to the department within the indicated timeframe, the department will send a 'final notice' letter to the applicant, notifying the applicant:

- that the department has not received the required information that was referred to and requested in the 'required further information' letter
- that the applicant has 10 working days (from the receipt of the 'final notice' letter) to provide the required further information or demonstrate genuine extenuating circumstances which have resulted in the non-compliance.

This 'final notice' letter will be sent to the applicant by registered mail. In the event that registered mail is unclaimed, the department will contact the applicant by alternative means (e.g. phone, fax, email, etc.).

If the applicant does not reply within 10 working days, the incomplete application will be returned to the applicant with an explanatory letter sent by normal mail services. The applicant will be advised that if the application is resubmitted, it will be treated as a new application, and the same further information is likely (at a minimum) to be required for any future applications of the same kind.

In relation to section 5C licence applications (including amendment of section 5C licences), the volume of water entered in the water licensing system against the application will be returned to the pool of available water and be available for allocation to other section 5C licence applicants.

3.6 Time extensions and extenuating circumstances

There may be circumstances when the applicant has been unable to meet the timeframes provided by the department due to factors outside the applicant's control. The applicant should provide documentation or proof to support their circumstances. Acceptable extenuating circumstances may include:

- difficulty in acquiring specific information to complete the required studies (e.g. inability to obtain field monitoring data due to a flooding event that restricted access to the site for an extended period of time)
- lack of availability of skilled contractors or consultants needed to complete investigations and prepare reports within the specified timeframe, particularly in remote parts of the state
- delays in receiving information or advice on the proposal that has been referred to other agencies (e.g. Environmental Protection Authority, native title claimant groups)
- newly diagnosed significant illness or recent severe accident that has impacted on the applicant's ability to work and prepare the required information.

Inadequate reasons provided for extenuating circumstances may include:

- uncertainty of market forces (e.g. "I haven't provided the information because I don't know whether I want to grow peas or carrots")



- reluctance to provide the information or employ contractors or consultants to provide the information (e.g. “It costs too much to employ someone” or “I don’t know how or don’t want to write the report”).

When an extenuating circumstance occurs, the applicant must notify the department as soon as is practicable. The applicant can provide this notice to the department in writing or by electronic mail providing details of the extenuating circumstances and requesting additional time to complete the work:

- before the end of the specified timeframe for providing the required further information; or
- in reply to the department’s ‘final notice’ letter.

department will consider the applicant’s request for a revised timeframe and the reasons for the extenuating circumstances. The department will aim to respond in writing to the applicant on whether an extension has been granted within 10 working days of receiving the applicant’s letter and will either:

- grant an extension for the information to be provided at a later date, and send a letter to the applicant by normal mail services confirming the extension; or
- decline to grant an extension, and the incomplete application will be returned to the applicant with an explanatory letter sent by normal mail services.

Note: that if the information is not submitted by the submission date specified in the extension confirmation letter, the incomplete application will be returned to the applicant with an explanatory letter sent by normal mail services.

3.7 Resubmission of an application with required further information

An applicant, whose application has been returned as an incomplete application because the applicant has not provided the required further information within a reasonable timeframe, can resubmit an application to the department at any time.

When an applicant resubmits an application, with the required further information, the department will treat the application as a ‘new’ application. Each application will need to be accompanied by the prescribed fee (where relevant). The information will be used by the department to complete its assessment of the application. It is possible that further information will be required for the department’s assessment of the resubmitted application to that requested in the previous application.

In relation to applications for section 5C licences (including amendments of section 5C licences), the date on which the department receives this ‘new’ application will be the date on which the application will be ranked for the purpose of applying the ‘first-in-first-served’ policy for allocation of water. In areas of high demand, it is possible for all the available water to have been allocated to other licence applicants and the ‘new’ application to be refused by the department on the basis that the management area is fully-allocated.



3.8 Required further information provided is not to an acceptable standard

The department has published policies and/or guidelines on required standards for most types of required further information. However, there may be occasions when the information provided by the applicant does not address all the issues identified sufficiently, or requires some redrafting to be of an acceptable standard to the department.

After reviewing the further information provided, the department may negotiate with the applicant and write to them, outlining deficiencies in the information provided and requesting that the deficiencies be addressed within a reasonable time (generally no more than 50 per cent of the original time provided in Table 1). The letter would be sent by normal mail services.

Note: If the information is not submitted by the submission date specified in the letter, or the applicant is unable to address the deficiencies, the incomplete application will be returned to the applicant with an explanatory letter sent by normal mail services.

3.9 Applications currently awaiting information

The department is holding numerous incomplete applications in relation to which the department requires further information from the applicant. For these applications, the department will determine the appropriate timeframe for the information to be provided.

Those applications that the department has already notified the applicant of the need for further information, will be dealt with by sending a 'final notice' letter to the applicant. This will be sent when the submission period in the original letter has expired (refer to section 3.5, 'Required further information not provided in time').

The more recent applications will have a 'required further information' letter sent to the applicant, which will identify the further information required and the appropriate timeframe in which to provide it to the department (refer to section 3.3 'Further information is required to complete the assessment').

4. Review

This policy will be reviewed five years from the publication of this document. The policy may be reviewed sooner if significant changes (such as the introduction of new water management legislation or new water management initiatives) warrant a review of this policy.



Appendices

Appendix A - Applicable legislation

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A1 Applications for licences under section 5C of the *Rights in Water and Irrigation Act 1914*

The *Rights in Water and Irrigation Act 1914* requires people to hold a licence to take water from any artesian underground water source throughout the state, from nonartesian underground water sources located within proclaimed underground water areas or from watercourses or wetlands within proclaimed surface water areas. Licences to take water are issued under section 5C of the Act. Some exemptions apply, for example taking water for stock and garden uses in most areas of the state.

Under the Act, the grant or refusal to grant a licence under section 5C of the Act is at the discretion of the Department of Water and Environmental Regulation. Clause 7(2) provides that in assessing an application for a licence under section 5C, the department is to have regard to all matters that it considers relevant including whether the proposed taking and use of the water is in accordance with the matters set out in clause 7(2). The matters listed in clause 7(2) include matters such as the ecological sustainability and environmental acceptability of the proposed taking and use, and the department may refuse an application on the grounds that the potential impacts of the taking and the use of the water are unacceptable.

Clause 4(2) of Schedule 1 to the Act provides that an applicant for a licence must provide the department with any further information that the department may require in order to assess the application.

A2 Applications to amend section 5C licences

Clause 23(1) of Schedule 1 to the *Rights in Water and Irrigation Act 1914* allows a licensee to apply to the department at any time for the amendment of a licence (for example, a licensee may apply for an increased annual water entitlement).

In assessing such an application, the department is entitled to have regard to the same matters as it would when assessing an application for the grant of a new licence – that is, the matters listed in clause 7(2). Further, as is the case with new



licence applications, clause 4(2) applies, allowing the department to require further information from the applicant.

A3 Applications to transfer section 5C licences

Clause 29 of Schedule 1 to the *Rights in Water and Irrigation Act 1914* allows water entitlements to be permanently transferred to another person who is eligible to hold a licence under section 5C, as a means for reallocating the water in a fully-allocated system.

Clause 31(5) of Schedule 1 to the Act provides that in exercising the discretion of whether to grant or undertake to grant approval of such a transfer, the department is to have regard to all matters it considers relevant, including those set out in clause 7(2).

Transfers under clause 29 are required to be approved by the department. Clause 32(1) of Schedule 1 provides that an application for approval of a transfer of a licence must be made in the form specified for the purpose by the department, must include information that is stated in the form to be required and must be accompanied by the prescribed fee. Clause 32(2) then provides that an applicant must provide the department with any further information that the department may require.

A4 Approval of agreements with licensees to take water

Clause 30 of Schedule 1 to the *Rights in Water and Irrigation Act 1914* allows for the temporary transfers of water entitlements, by providing that a licensee may enter into an agreement allowing a third party to take water under the licence for a limited period of time. Such agreements are required to be approved by the department.

Clause 30(5) of Schedule 1 to the Act provides that, in exercising the discretion of whether to grant or undertake to grant approval of such an agreement, the department is to have regard to all matters it considers relevant, including those set out in clause 7(2).

Clause 32(1) of Schedule 1 provides that an application for approval of an agreement must be made in the form specified for the purpose by the department, must include information that is stated in the form to be required and must be accompanied by the prescribed fee. Clause 32(2) then provides that an applicant must provide the department with any further information that the department may require.

A5 Applications for permits under section 17

Section 17 of the *Rights in Water and Irrigation Act 1914* requires that a person hold a permit to obstruct, destroy or interfere with certain waters or the bed and banks of any watercourse or wetland in areas proclaimed under section 6 or irrigation districts. Such permits are issued under regulation 7 of the *Rights in Water and Irrigation Regulations 2000*.

Under regulation 7, the grant or refusal of a section 17 *Rights in Water and Irrigation Act 1914* permit, and the terms, conditions and restrictions to be included in the permit are at the discretion of the department. Regulation 7(2) provides that in exercising that discretion, the department is to have regard to all matters that it considers relevant including whether the proposal for which the permit is sought is in



accordance with the matters set out in that regulation. The matters listed in regulation 7(2) again mirror those in clause 7(2) and include matters such as the ecological sustainability and environmental acceptability of the proposed construction or action, and the department may refuse an application on the grounds that the potential impacts of the proposal are unacceptable.

By regulation 4(1), an application for a permit must be made to the department in a form specified for that purpose by the department and accompanied by, or include, those plans or other information that are stated in the form to be required. By regulation 4(2), an applicant for a permit must provide the department with any further information that the department may require.

A6 Applications for permits under section 11

Section 11 of the *Rights in Water and Irrigation Act 1914* requires people to hold a permit to obstruct or interfere with a watercourse or wetland or its bed or banks accessed by a road or reserve in areas proclaimed under section 6 or irrigation districts even if the person is exercising other rights. Such permits are issued under regulation 7 of the *Rights in Water and Irrigation Regulations 2000*.

Again, under regulation 7, the grant or refusal of a section 11 permit, and the terms, conditions and restrictions to be included in the permit are at the discretion of the department. Regulation 7(2) provides that in exercising that discretion, the department is to have regard to all matters that it considers relevant, including whether the proposal for which the permit is sought is in accordance with the matters set out in that regulation. The matters listed in regulation 7(2) again mirror those in clause 7(2) and include matters such as the ecological sustainability and environmental acceptability of the proposed construction or action, and the department may refuse an application on the grounds that the potential impacts of the proposal are unacceptable.

By regulation 4(1), an application for a permit must be made to the department in a form specified for that purpose by the department and accompanied by, or include, those plans or other information that are stated in the form to be required. By regulation 4(2), an applicant for a permit must provide the department with any further information that the department may require.

A7 Applications for permits under section 21A

Section 21A of the *Rights in Water and Irrigation Act 1914* requires people to hold a permit to obstruct or interfere with a watercourse or wetland or its bed or banks in a non-proclaimed area even if the person is exercising other rights. Such permits are issued under regulation 7 of the *Rights in Water and Irrigation Regulations 2000*.

Again, under regulation 7, the grant or refusal of a section 21A permit, and the terms, conditions and restrictions to be included in the permit are at the discretion of the department. Regulation 7(2) provides that in exercising that discretion, the department is to have regard to all matters that it considers relevant including whether the proposal for which the permit is sought is in accordance with the matters set out in that regulation. The matters listed in regulation 7(2) again mirror those in clause 7(2) and again include matters such as the ecological sustainability and



environmental acceptability of the proposed construction or action, and the department may refuse an application on the grounds that the potential impacts of the proposal are unacceptable.

By regulation 4(1), an application for a permit must be made to the department in a form specified for that purpose by the department and accompanied by, or include, those plans or other information stated to be required in the form. By regulation 4(2), an applicant for a permit must provide the department with any further information that the department may require.

A8 Applications to amend section 11, 17 or 21A permits

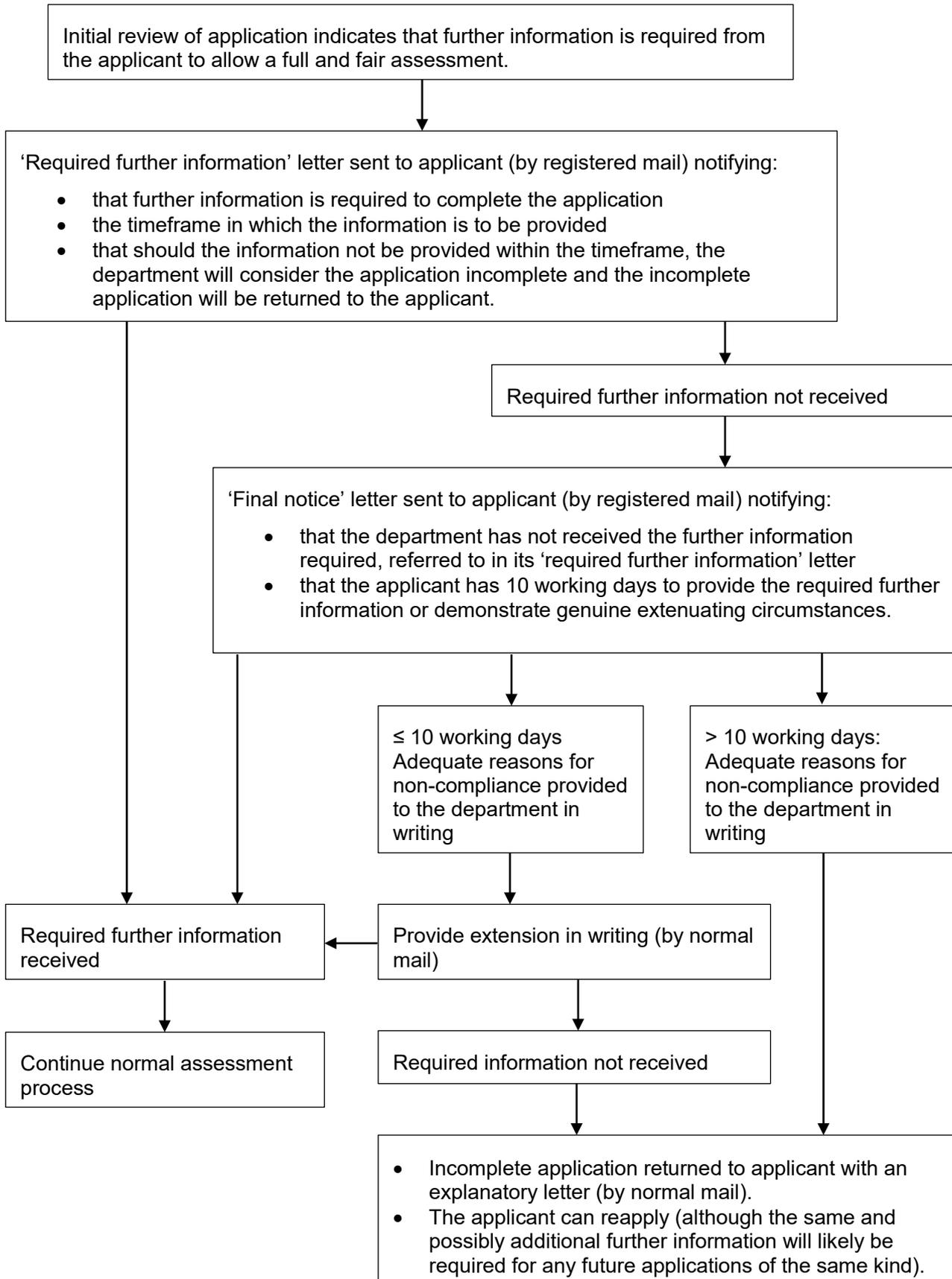
Regulation 11 of the *Rights in Water and Irrigation Regulations 2000* allows a permit holder to apply to the department for the amendment of a permit. Regulation 11(2) provides that regulations 4, 6, 7, 9, 10, 17 and 18 apply with all necessary modifications, to an application for amendment of a permit, as if it were an application for the grant of a permit. The department must exercise its discretion as to the grant or refusal of the amendment and in exercising that discretion, the department is to have regard to all matters that it considers relevant, including whether the amended construction or action proposed is in accordance with the matters set out in regulation 7(2).

By regulation 4(1), an application for an amendment to a permit must be made to the department in a form specified for that purpose by the department and accompanied by, or include, those plans or other information stated to be required in the form. By regulation 4(2), an applicant for an amendment to a permit must provide the department with any further information that the department may require.



Appendix B - Process flowchart

Further information required





Glossary

Term	Definition
Abstraction	The permanent or temporary withdrawal of water from any source of supply, so that it is no longer part of the resources of the locality.
Allocation limit	In the department's current water licensing system, an allocation limit is a volumetric limit. It is ordinarily equal to or less than the sustainable yield.
Annual water entitlement	The quantity of water permitted to be taken under a licence, usually specified in kilolitres/year (kL/yr).
Aquifer	A geological formation or group of formations capable of receiving, storing and transmitting significant quantities of water. Usually described by whether they consist of sedimentary deposits (sand and gravel) or fractured rock. Aquifer types include unconfined, confined and artesian.
Bore	A narrow, normally vertical hole drilled in soil or rock to monitor or withdraw groundwater from an aquifer.
Confined aquifer	An aquifer lying between confining layers of low-permeability strata (such as clay, coal or rock) where water in the aquifer cannot easily flow vertically.
Development timetable	Provides details of an applicant's development proposal, including a schedule of water use and associated development timeframes.
Environmental water provisions (EWPs)	Actual level (allocation) set after consideration of the economic and social requirements for the water. It may be equal to or less than the environmental water requirements.
Environmental water requirements (EWRs)	The water regime needed to maintain the ecological values (including assets, functions and processes) of water-dependent ecosystems at a low level of risk.
Groundwater area	All the boundaries that are proclaimed under the <i>Rights in Water and Irrigation Act 1914</i> and used for water allocation planning and management.
Hydrogeology report	Consisting of hydrogeological assessments to support an application for a water licence or ongoing groundwater monitoring reports undertaken to demonstrate that groundwater abstraction is not having a detrimental impact on the aquifer (refer to Operational policy No. 5.12).
Nutrient and irrigation management plans (NIMPs)	Detailed guidelines for the establishment and growing of crops, gardens, trees or turf. NIMPs demonstrate



Term	Definition
	<p>that inputs such as water and fertiliser should be well-matched to the plant growth cycle resulting in minimal contaminant leaching into the surrounding environment. Well-prepared NIMPs offer potential economic benefits as they promote the efficient use of water and agricultural chemicals, while offering protection to the surrounding water resources (refer to Water quality protection note WQPN 33).</p>
Operating strategy	<p>Operating strategies detail a licensee’s responsibilities for managing the impacts of taking and using water and specify: monitoring and reporting requirements; methods used to manage impacts on the environment and other water users; water efficiency measures; and contingency plans describing how the licensee will alter their operations to cope with any directions to temporarily reduce water consumption (refer to Statewide policy No. 10 (under review)).</p>
Recharge	<p>The movement of water that is added to a groundwater system.</p>
Sustainable yield	<p>The volume of water abstracted from a source that can be sustained on a long-term basis without exceeding the rate of replenishment.</p>



References

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- Department of Water, Perth. [replaced by Operational policy no. 5.12] Department of Water 2008, Statewide policy no. 16 – Water efficiency plans – Achieving water efficiency gains through water licensing, Department of Water, Perth. [replaced by Operational policy no. 1.2]
- Department of Water and Environmental Regulation 2019, *Policy: Giving an undertaking to grant a licence or a permit*, Perth.
- Department of Water and Environmental Regulation 2019 *Policy: Water entitlement transactions for Western Australia*, Perth.
- Department of Water and Environmental Regulation 2019 *Policy: Use of operation strategies in the water licensing process*, Perth.
- Government of Western Australia n.d., *Rights in Water and Irrigation Act 1914* as amended.
- Government of Western Australia n.d., *Rights in Water and Irrigation Regulations 2000*.
- Water and Rivers Commission 2000, Statewide policy No. 3 – Policy statement on water sharing, Perth. [under review]
- Water and Rivers Commission 2003, Statewide policy No. 9- Water licensing- staged developments, Perth. [under review]



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