




Department of
Environment and Conservation

Our environment, our future 

Navigating Part V of the *Environmental Protection Act 1986* **(licences and works approvals)**

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Today's session

- Origins
- What DEC is working to achieve
- Ground rules
- Answering the simple question
- Examples of new guidance
- System changes
- Work in Progress and Future Directions
- Ongoing communication





Origins

Numerous reports, reviews & a parliamentary inquiry

DEC needs to improve:

- consistency in administration of Part V of the Act
- efficiency of its assessment processes
- standard of decisions
- quality of works approvals and licences
- industry regulation guidance information





DEC response

Improve DEC industry regulation performance by:

- separation of operational and policy/process functions
- reviewing and documenting policies and processes
- providing systems to guide and support DEC staff
- ensuring accessibility of up to date guidance information
- internal auditing of policy and process implementation





DEC response

- includes prescribed premises review
 - *clarify category descriptions*
 - *remove duplication of controls*
 - *control low risks through regulations*
 - *add emerging technologies with significant environmental risk*
- has not involved amendment of Part V
- may identify where future Part V amendment is needed
- is continuing function to achieve progressive improvement





DEC performance benchmark

DEC processes and decisions in the administration of Part V of the Act are:

- consistent
- legally sound
- administratively efficient
- environmentally effective
- reasonable and necessary





Getting it right

- reliable, efficient systems
- accurate assessment of jurisdiction
- clear application requirements
- thorough validation of applications
- competent technical assessment
- effective instruments





Ground Rules

- *Environmental Protection Act 1986*
- Environmental Protection Regulations 1987
- *Interpretation Act 1984*
- Administrative law principles
- Case law





Ground Rules

Establish:

- jurisdiction (prescribed premises categories, approval requirements)
- powers to make decisions (specific and explicitly set out)
- application and assessment processes (must be followed)
- authority for decisions (who makes which decisions)
- standards for exercising powers (must not be arbitrary or unreasonable)
- standards for making decisions (reasonable and necessary to achieve objects of Act)



Ground Rules

Reliance on DEC advice may not be sufficient

High Court decision: We regret to say that for the reasons which we have given the appeal must be upheld (*and the conviction reinstated*). It is impossible not to sympathize with the respondent (*Palmer*).

On any fair and objective view he was not culpable in any way. To the contrary he was most diligent. He went to the office of the administering authority twice in order to ascertain what his obligations were.

Entirely openly and strictly in accordance with his licence he sought to comply with his understanding of what he could do based on official information personally provided by officials. He contended that he had made reasonable and specific inquiries concerning the regulations applicable in the area where he proposed to fish and, on the basis of the representations he had received, honestly and reasonably believed that the area was not restricted.

Ostrowski - vs - Palmer



Determining whether an approval is required

Consists of two questions:

- *A question of law*: what is the legislative requirement?
- *A question of enforcement*: what action will be taken if the approval is not obtained?





Determining whether an approval is required

The question of law depends on what is proposed:

- will the premises become prescribed?
- is the premises already prescribed?
- is the premises licensed?
- is the proposal in accordance with an existing works approval, licence, Environmental Protection Notice or closure notice?
- what does the proposal entail?
- what would be the outcome of the proposal?



Determining whether an approval is required

- DEC does not decide whether an application is required
- DEC can provide advice
- DEC advice depends on quality of information provided
- DEC advice should be asked for and provided in writing
- DEC can provide guidance on what the Act requires





Determining whether an approval is required

The question of enforcement depends on what has happened:

- level of environmental impact/risk
- conduct and history of alleged offender
- the public interest
- significance of the offence (*de minimis non curat lex*)
- implications for administration of the Act





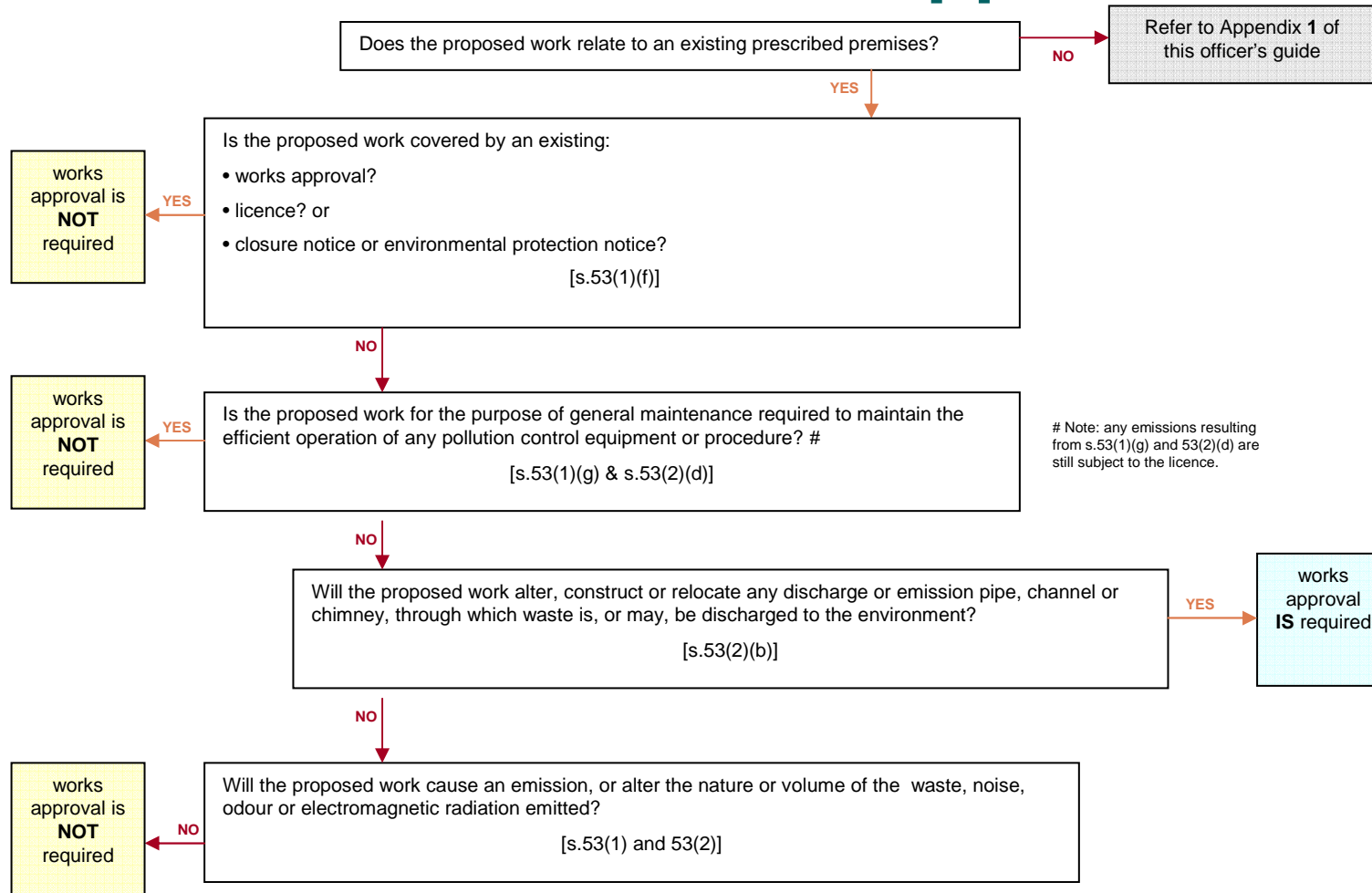
Determining whether a works approval is required

- under s52 a works approval is required for the establishment of prescribed premises
- for established prescribed premises s53 specifies approval requirements for a range of actions that may alter emissions or alter the operation of the premises





Decision tree for works approvals





Declining to deal with applications

DEC must decline to deal with:

- an application for a works approval or licence which is incomplete or inadequate
- a licence application if,
 - work subject to a works approval is not completed or is unsatisfactory
 - a works approval was not obtained and the work is incomplete





Scoping applications

- recommended for works approvals and new licences
- undertaken prior to an application being made
- establishes whether approval is required
- clarifies application requirements
- minimises assessment delays and changing requirements after an application is lodged
- ensures public authorities and other third parties have access to all the information
- assists DEC to audit the processes and soundness of decision made





Setting boundaries for prescribed premises

- the boundary of prescribed premises must be included in all approvals to define the area to which the approval applies
- the boundary may be proposed by an applicant but is determined by DEC as part of the process for assessing the application.
- the boundary forms part of the specifications of a works approval or licence and is subject to appeal.





Setting boundaries for prescribed premises


The boundary must:


- encompass the area on which the activity that causes the premises to become prescribed takes place and from which emissions and discharges from these activities would occur
- define an area under the control of the occupier
- be clearly and unambiguously described
- encompass a contiguous area of land, water or land and water, except where the area is bisected by a road, rail or waterway reserve.



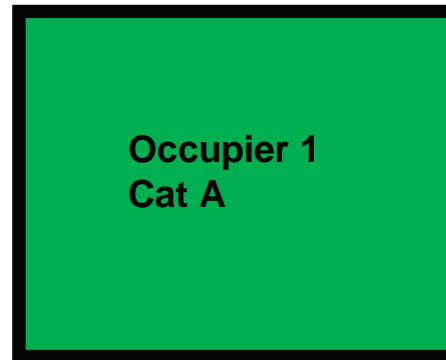
Example (not to scale)

Legend

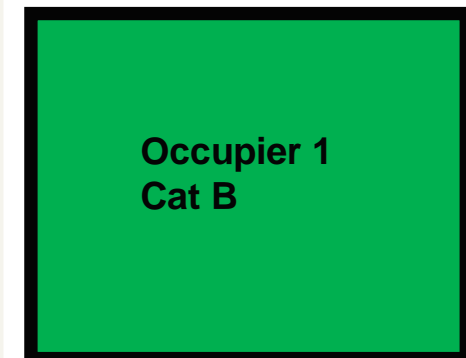
 Activity that causes premises to be prescribed

 Lot boundary

 Premises boundary






Road

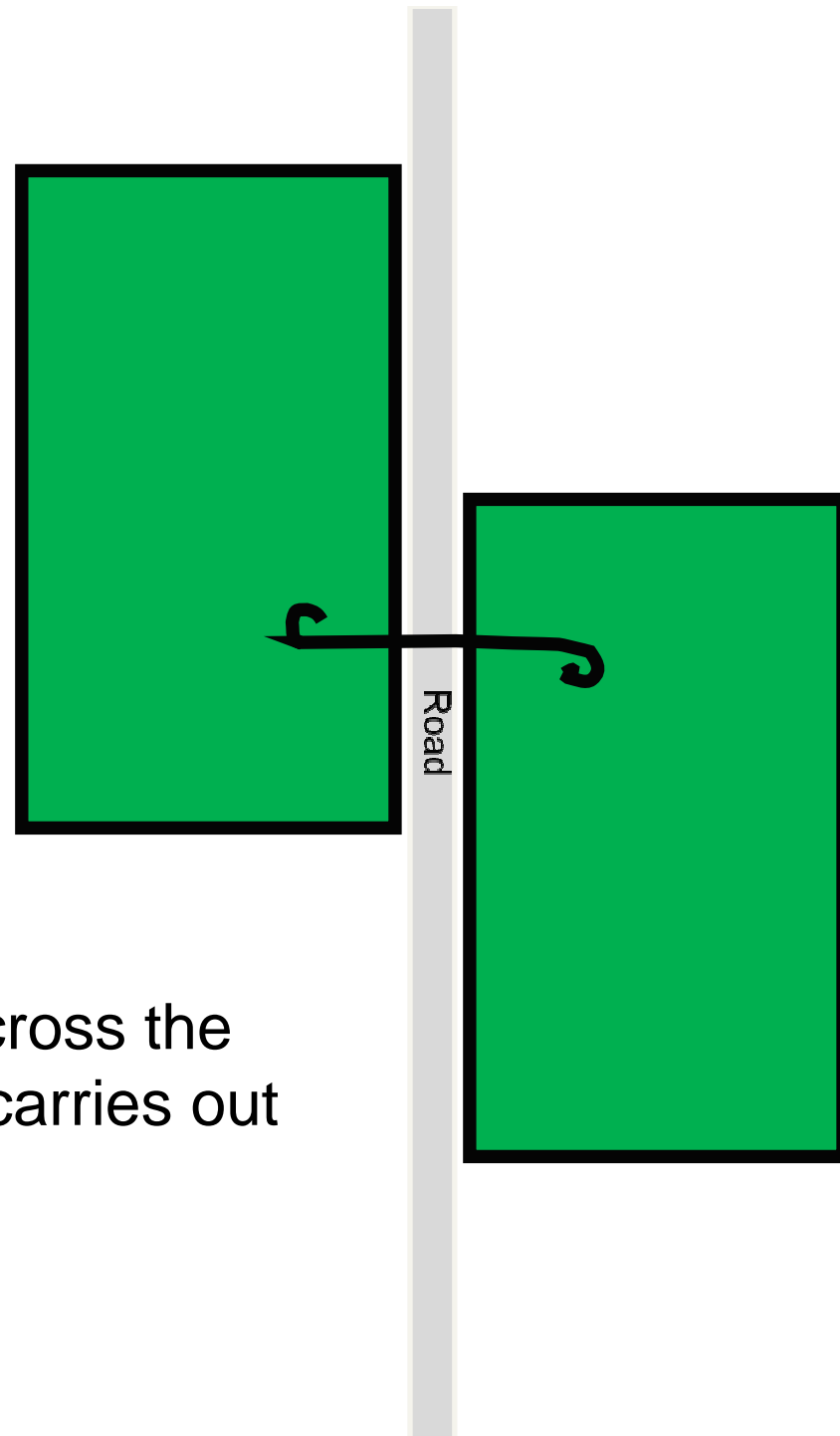


One occupier on two lots that are 2km apart carries out prescribed activities on both lots.

Example (not to scale)

Legend

-  Activity that causes premises to be prescribed
-  Lot boundary
-  Premises boundary



One occupier on two lots across the road from each other, who carries out prescribed activities.



Mobile equipment and prescribed premises

- mobile plant and equipment itself cannot be regarded as premises
- licensing and registration of mobile plant and equipment has been phased out
- occupiers of premises on which mobile plant and equipment is to operate are required to hold the licence or registration
- DEC seeking alternative way of dealing with mobile plant and equipment





Landfill Waste Classification and Waste Definitions 1996

Amended December 2009 to:

- correct technical inaccuracies
- update references

Published on www.dec.wa.gov.au

Room for further improvement





Improved systems

Industry Licensing System upgrade

- Increased capacity for web based application
- Improved workflow management and tracking
- Better functionality (fewer errors)
- Applicant user manual





Improved systems

Industry Regulation Information and Support (IRIS) centre

- internal web based information management system
- news posting
- forum for advice and discussion
- forum for comment on draft policies and processes
- repository of policy & process guidance
- technical reference library
- email alerts of content change





Work in progress

Wet commissioning under works approvals

- for greenfield sites/new premises
- commissioning plans in applications
- emission controls tailored to commissioning
- allows validation of design performance
- allows continuity of operation prior to licensing

Prescribed Premises Review

- completed removal of aquaculture
- preparing to consult on removal of Schedule 2 entirely



Work in progress

Revised application guidance

- proponent knows what information needs to be provided

Standardised licence format and content

- easier for proponent to understand

Standardisation of conditions

- consistency across premises

Long Term Licences

- life of premises licence
- periodic review and possible amendment





Improving communication

Better, continuous interaction with industry

- restructure industry regulation part of the DEC website
- improve content management
- establish industry email distribution list
- email draft documents for comment
- post news items on DEC website
- use DEC Stakeholder Reference Group for strategic matters





Summary

DEC is responding to the need to improve performance

- systems and processes
- guidance and communication

Legislation sets ground rules for DEC

Answering ‘when is approval required?’ is a challenge for the regulator and the regulated

Scoping is an efficient way to avoid applications being rejected

There is some flexibility in setting premises boundaries

Long term approach to use of mobile equipment needs to be worked out

Corrections made to Landfill Waste Classification and Waste Definitions 1996



Summary

Internal information and process management systems being upgraded
Wet commissioning proposed to make easier transition between works approval and licence

Better application guidance and licences

Possible move to long term licences

Need better mechanisms for communication