

### Who can operate under a development approval for a mobile and temporary environmentally relevant activity (ERA)?

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#### Policy subject

Because a development approval attaches to land, it is possible for a number of people to operate an environmentally relevant activity (ERA) under the same development approval for a site. For example, a development approval may have been issued for a site for ERA 20(b) quarrying. The landowner may allow a number of people to quarry on that site. All operators must have their own registration certificate and the total design production capacity on the site must stay within the 5000 to 100 000 tonnes per annum allowed under the development approval.

The development trigger for a mobile and temporary ERA under Schedule 8, part 1, table 5 of the *Integrated Planning Act 1997* (IPA) states:

**Table 5: Various aspects of development**

For an environmentally relevant activity	
3	A mobile and temporary environmentally relevant activity for which a code of environmental compliance has not been made under the Environmental Protection Regulation 1998.

There are two questions that arise in relation to this trigger. Firstly, is the trigger for the activity that is the ERA or for the particular business or operation for the ERA? Secondly, can a number of people/businesses operate under the one development approval issued for a mobile and temporary activity as they do for a land-based development approval?

#### Determinations

##### Is the trigger for a whole ERA or a particular business/operation carrying out the ERA?

The trigger is for particular business/operation carrying out the ERA.

Under section 3.8.1(b) of IPA the development approval for a mobile and temporary ERA does not attach to the land. The Act is silent on where the development approval attaches.

If the trigger applied to the whole activity that is the ERA then there would be no need for more than one development approval for all persons conducting a particular mobile and temporary ERA. That requirement would be met either by the first application for a development approval for the ERA being granted or by an

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existing licence issued under the *Environmental Protection Act 1994* prior to 4 October 2004 being transitioned to a development approval for mobile and temporary activities.

As a consequence of these transitional provisions there are already a number of development approvals for each mobile and temporary activity. Under section 3.8.1(2) of IPA:

- (c) the development approval applies for the activity wherever it is carried out; and
- (d) the development approval applies to and binds any person carrying out the activity under the approval.

There is no mechanism in IPA to restrict which of the development approvals apply to a particular business or operation. Therefore any business or operation would have to comply with all the development approvals for that ERA if the trigger applied to the whole activity that is the ERA.

This is “manifestly absurd” and “unreasonable” in the terms of section 14B(1)(b) of the *Acts Interpretation Act 1954*. The extrinsic material (such as the explanatory notes — see section 14B for further information on what constitutes extrinsic material) should be used to assist in interpreting the legislation to avoid such a result.

The explanatory notes state “the development approval would attach to the registered operator / plant / equipment”. That is, the development approval attaches to the specific mobile plant or equipment (the operation) or the person (or business) who applied to operate it, not the ERA as a whole.

### **Who can operate under a development approval for a mobile and temporary activity?**

The business/operation that the application was made for can operate under a development approval for a mobile and temporary activity. This includes anyone acting as a contractor or employee of the business/operation and any new owner/operator where the business/operation is sold and a continuing registration is approved.

From the determination for the previous question it can be seen that the development approval attaches to the business/operation applied for, not the ERA as a whole. Therefore not everyone can operate under the same development approval for a mobile and temporary activity.

Obviously the business/operation that applied for a development approval for a mobile and temporary activity, or on whose behalf an application was made, can operate under a mobile and temporary development approval. Where the business/operation has a contractor undertaking work for them, the contractor would be able to operate under the development approval. They would still require a registration certificate if they do not have a master/servant relationship with the business/operation (see the operational policy *When should a contractor hold a registration certificate?* <http://www.epa.qld.gov.au/publications?id=626>). The development approval would only apply for work done for that business/operator.

Where there is a change in ownership of the business/operation the new owner may apply for a continuing registration, which is equivalent to a transfer of the registration certificate. In this case the new owner does not need a new development approval. This is because the development approval attaches to the business/operation and they are now the operator or business owner.

**Operational policy**

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Date: 21 December 2005