

Land and Water Boards of the Mackenzie Valley



Reference Bulletin

Water Licence Term Changes

March 24, 2022

Introduction

Under the *Mackenzie Valley Resource Management Act* (MVRMA) and the *Waters Act*, the Land and Water Boards of the Mackenzie Valley (LWBs) have the authority to issue, renew, amend, and cancel a water licence. This legislation also enables the LWBs to issue a short extension of the term of an existing licence in limited circumstances when a renewal application has already been filed.¹

This Reference Bulletin clarifies how the LWBs will consider requests from applicants for a change to the term of a licence and outlines how such proceedings will be scoped.

If there is any conflict between this Reference Bulletin and the MVRMA, the *Waters Act*, and/or their Regulations, the Acts and Regulations prevail.

Applications Involving Changes to the Term

The legislation provides the LWBs with the authority to renew a water licence, with or without changes to its conditions, if the licensee applies for a renewal or if the renewal appears to be in the public interest.² A LWB may also amend the conditions of a licence upon application by the licensee or on its own motion – either in the public interest or to deal with a water shortage in a water management area – however, the legislation does not clearly state whether the term is considered a licence condition.³

The LWBs have the authority to scope and structure the proceeding for a renewal or amendment application, including a request to change the term of a water licence. Given this, and because changing

¹ See paragraph 72.15(3)(b) of the [MVRMA](#) and paragraph 41(3)(b) of the [Waters Act](#).

² See paragraph 72.12(1)(a) of the [MVRMA](#) and paragraph 36(1)(a) of the [Waters Act](#).

³ See paragraph 72.12(1)(b) of the [MVRMA](#) and paragraph 36(1)(b) of the [Waters Act](#).

the term of a licence entails the same preliminary screening and procedural considerations as a renewal,⁴ upon a request from the applicant to change the term of a licence the LWBs will typically follow the standard process that they would for renewal of a water licence, which includes the consideration of all licence conditions. Accordingly, the development of any application that includes a proposed change to the term of the licence must include broad engagement on all licence conditions, and the LWBs recommend that the applicant submit a renewal application.

Scope of Regulatory Proceeding

Renewals

Although a renewal licence will typically be based on the previous licence, the LWBs will establish the conditions in a renewal licence based on the evidence from the proceeding, which will typically include consideration of all licence conditions as noted above. Accordingly, this may result in changes to any licence conditions regardless of whether a renewal application includes proposed changes to the project. For example, a LWB may include requirements for new or updated management plans or monitoring plan requirements to address concerns raised during the proceeding, or changes to reflect current LWB policies or standard conditions.

The LWBs may, however, determine that the scope of a renewal proceeding will be limited if, for example, the change to term is necessary due to a proposed change to activities, no other substantive changes to the licence are being proposed or are otherwise determined to be necessary, and the licence expiry date is not approaching. If the applicant believes that the scope of a renewal proceeding should be limited, the applicant must provide rationale for the Board's consideration.

Renewals for developments that have not been modified and have fulfilled requirements of Part 5 of the MVRMA (i.e., undergone a screening, environmental assessment, or environmental impact review) are likely exempt from preliminary screening. If changes to the project are proposed as part of a renewal application, the proposed changes will likely need to be screened and could be referred to environmental assessment.⁵

Amendments

The scope of a proceeding for an amendment application may be limited to the changes proposed by a licensee. However, the LWBs have the authority to amend other aspects of the licence,⁶ as deemed necessary, in accordance with the LWBs' [Rules of Procedure](#).

⁴ With regard to public hearing requirements, a renewal of a licence and a change to the term of a licence are listed separately in the [MVRMA](#) and the [Waters Act](#). (See paragraphs 72.15(1)(b) and 72.15(2)(b) of the [MVRMA](#) and paragraphs 41(1)(b) and 41(2)(b) of the [Waters Act](#)). Despite this, the Acts do not set out a procedural difference between a renewal of a licence or a change to the term. The Acts do set out provisions for renewals that are 60 days or less, but the LWBs cannot grant consecutive renewals of 60 days or less without a public hearing. Further, although the [Exemption List Regulations](#) do address renewals for developments that have not been modified and have undergone an environmental assessment process, they do not otherwise make reference to changes to the term of a licence.

⁵ As described in the LWBs' [Guide to the Water Licensing Process](#), the licensee cannot propose changes to operations or conditions for renewals of 60 days or less, which allows the LWBs to expedite the proceeding because a preliminary screening is not required.

⁶ See subparagraphs 72.12(1)(b)(iii) of the [MVRMA](#) and 36(1)(b)(iii) of the [Waters Act](#).

In order to ensure a fair and transparent process, the LWBs will state their intent to consider amendments that are not related to an amendment application when it is distributed for review. This step is necessary to ensure that appropriate evidence to support such changes can be secured.

Amendments typically require a preliminary screening, unless the activities or changes proposed in the amendment application have been previously screened or subject to an environmental assessment and/or environmental impact review.

Detailed information about LWB processes for renewals and amendments is available in the LWBs' [Guide to the Water Licensing Process](#).

Summary

- The scope of an amendment proceeding will generally be limited to the proposed changes to the activities and/or conditions.
- The scope of a renewal proceeding will generally include all licence conditions.
- Upon a request from the applicant to change the term of a licence, the LWBs will follow the process that is typical for the renewal of a water licence.
- Notwithstanding the above, the LWBs have discretion in determining the scope and structure of any proceeding.