



Environmental Protection Bulletin No. 17

Strategic and derived proposals

It is widely recognised in the practice of environmental impact assessment that strategic or 'big picture' approaches, rather than case by case assessments, can lead to more efficient planning and better environmental outcomes.

There are several ways to take a more strategic view, but this bulletin deals with one mechanism - the provisions in the *Environmental Protection Act 1986* for the assessment of 'strategic proposals' by the Environmental Protection Authority (EPA)¹.

Under these provisions, the assessment of a strategic proposal may give rise to more streamlined consideration of future 'derived' proposals that fall within the parameters of the strategic proposal.

Purpose of this bulletin

The purpose of this bulletin is to:

- clearly define strategic proposals and derived proposals;
- outline the purpose and intent of the strategic and derived proposal provisions of the Act, and the expected benefits and outcomes which will be achieved by assessing strategic proposals;
- describe the assessment process for strategic proposals, and how derived proposals are determined and regulated;
- outline the process and the EPA's expectations for public consultation on strategic and derived proposals;
- outline the EPA's general approach to assessing strategic proposals and recommending conditions which should apply to derived proposals; and
- describe the EPA's expectations of proponents of both strategic and derived proposals to ensure that the intent and outcomes can be met.

What are strategic and derived proposals?

A strategic proposal is a proposal which identifies one or more future proposals that may, individually or in combination, have a significant effect on the environment.

Generally, a strategic proposal does not, of itself, have a direct impact on the environment (although there may be circumstances when it does).

Instead, strategic proposals anticipate that there will be one or more future proposals that may have a significant environmental impact if implemented singly or in combination and which might normally be assessed on a case-by-case basis.

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Examples of strategic proposals are a plan for the development of an industrial precinct, a program for oil exploration in the marine environment, a structure plan for urban or industrial development of land, and a plan for extensive infrastructure over a wide area.

A derived proposal is a future proposal which was identified in the strategic proposal, which has been referred to and considered by the EPA, and which is then declared to be a derived proposal.

Examples of derived proposals are a plan of subdivision which was identified in a structure plan that was assessed as a strategic proposal, and an industrial development identified within an industrial precinct assessed as a strategic proposal.

The Act outlines the requirements for the EPA to determine if a proposal is a derived proposal, and the circumstances under which it can refuse to declare a derived proposal. These requirements are discussed further below.

The intent and benefits of the assessment of strategic proposals

In 2003, the Act was amended to include provisions for the assessment of strategic proposals. This amendment recognised that there were a number of benefits to be gained through this approach. These include:

- the early consideration of environmental issues providing the ability to influence the detailed design of future proposals;
- the ability to consider the cumulative impacts of more than one proposal;
- greater certainty for local communities regarding the maximum extent of cumulative impacts of future developments, and greater confidence for proponents of future developments;
- more flexible timeframes for consideration of environmental issues; and
- potential efficiencies in the approvals process.

Overall approval timeframes can be improved if a strategic proposal is approved, as future proposals can be determined more quickly when they are referred. Certainty for future proponents is also improved if a strategic proposal is approved.

The greatest benefits can be achieved by using the strategic proposals assessment provisions where there are a number of projects within a particular landscape or area, and which may, if implemented in combination, have a significant environmental impact.

Generally, assessment of strategic proposals aims to establish acceptable environmental parameters within which the derived proposals, individually and in combination, are expected to operate. The EPA's approach to achieving this aim is discussed further below.

Assessment of strategic proposals is not unique to Western Australia. The potential benefits have been widely recognised and similar approaches adopted across many jurisdictions internationally, and by the Australian Government under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*.

Under section 146 of the Commonwealth Act, the Australian Government Environment Minister may agree to undertake a strategic assessment of a policy, plan or program. The Commonwealth applies strategic assessments to complex, large-scale or ongoing activities, projects with multiple stakeholders, or for high-growth areas where many projects would otherwise need separate federal approvals.

The process for assessing strategic proposals

Strategic proposals are generally assessed by the EPA in the same manner as other proposals.

Figure 1 outlines the process and refers to the specific provisions of the Act which apply to each part of the process.

Once a strategic proposal has been referred to the EPA by a proponent², the EPA publicly advertises the referral³ and then makes a decision on whether or not to assess the proposal⁴ and, if so, the level of assessment. If the EPA decides to assess the strategic proposal, the assessment provisions under Part IV, Division 1 of the Act apply.

Strategic proposals are normally assessed by the EPA at the highest level, Public Environmental Review⁵, and therefore the public review and assessment process will follow the same format as that for a significant proposal assessed at that level.⁶

Following the EPA's assessment of the strategic proposal, the EPA reports to the Minister for Environment on:

1. the key environmental factors identified during the assessment;
2. whether or not the future proposals, identified in the strategic proposal, may be implemented; and
3. any conditions which should apply to those future proposals, if they are subsequently referred to the EPA and declared to be derived proposals.⁷

As with other proposals, any person may appeal to the Minister for Environment if they disagree with the content of, or any recommendations in, the EPA's report.⁸

After determining any appeal, the Minister for Environment consults with other relevant decision-making authorities for the purposes of deciding whether the future proposals, identified in the strategic proposal, may be implemented. The Minister also consults on any conditions which will apply to the implementation of the future proposals and the strategic proposal.⁹

If the Minister for Environment and relevant decision-making authorities decide that the future proposals may be implemented, with or without conditions, the Minister publishes a "strategic proposal Ministerial statement". However it is not until after the EPA has declared a future proposal, identified in the strategic proposal, to be a derived proposal, that the future proposal can be implemented.

The process for declaring and implementing derived proposals

Figure 2 outlines the process for declaring and implementing derived proposals.

Once the strategic proposal Ministerial statement has been issued, the proponent of a future proposal (identified in the strategic proposal Ministerial statement), may then refer their proposal to the EPA along with a request that it be declared a derived proposal.¹⁰

Any person may refer a future proposal, identified in a strategic proposal, to the EPA. However, it is not until after the strategic proposal Ministerial statement has been issued, and the proponent has requested the referred proposal be declared a derived proposal, that the EPA can consider whether to declare it to be a derived proposal.

² The Act, s 38(3)

³ *Environmental Impact Assessment Administrative Procedures 2010*

⁴ The Act, s39A

⁵ *Environmental Impact Assessment Administrative Procedures 2010*

⁶ Refer *Environmental Impact Assessment Administrative Procedures 2010*

⁷ The Act, s 40B(2)

⁸ The Act, s 100(1)

⁹ The Act, s 40B(2)

¹⁰ The Act, s39B(1)

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After receipt of the referral and a request, the referral (and the proponent's request for it to be declared a derived proposal) is advertised for public comment. The EPA can only consider public comment in the context of its decision on whether or not to declare the proposal to be a derived proposal.

After considering public comment and the proposal documentation, the EPA then considers whether or not to declare the referred proposal to be a derived proposal. To do so, the Act requires that:

- the proposal was identified in the strategic proposal; and
- the strategic proposal Ministerial statement provides that the referred proposal may be implemented, subject to any conditions.¹¹

The EPA may refuse to declare the referred proposal to be a derived proposal if it considers that:

- the environmental issues raised by the referred proposal were not adequately assessed when the strategic proposal was assessed;
- there is significant new or additional information that justifies the reassessment of the issues raised by the referred proposal; or
- there has been a significant change in the relevant environmental factors since the strategic proposal was assessed.¹²

If the EPA declares the referred proposal to be a derived proposal, it does not assess that proposal.¹³ Instead, the strategic proposal Ministerial statement, together with any accompanying conditions, takes effect and applies to the declared derived proposal. The Minister is required to issue a notice stating this.¹⁴

If the strategic proposal Ministerial statement relates to two or more future proposals, the Minister's notice may specify which of the conditions of the strategic proposal Ministerial statement apply to the derived proposal.¹⁵

Alternatively, the Minister may request the EPA to inquire into the conditions which apply to the derived proposal¹⁶ or the EPA may decide to inquire into the conditions¹⁷ and, if so, the EPA may recommend changes to conditions and make any other recommendations that it thinks are appropriate.¹⁸

There are no appeal provisions relating to the EPA's decision to declare a derived proposal, to refuse a declaration, or its determination as to whether or not to inquire into conditions. There is also no appeal in relation to the Minister's notice which specifies the coming into effect of the strategic proposal Ministerial statement and any conditions which relate to the derived proposal.

If the EPA inquires into the conditions which apply to the derived proposal there is no appeal in respect of the EPA's report to the Minister, however the proponent can appeal any conditions which are set following that inquiry.¹⁹

What is the process for public involvement?

The EPA's intent and expectation is that the opportunities for public input into the assessment of a strategic proposal should be equal to those provided through the assessment of other proposals.

The process allows for public comment when a strategic proposal is referred, and when the proponent's strategic proposal environmental review document is published.

The EPA requires proponents to consult widely with stakeholders prior to the referral of a strategic proposal, and in undertaking the appropriate studies and investigations prior to submitting the

¹¹ The Act, s 39B(3)

¹² The Act, s 39B(4)

¹³ The Act, s 39B(6)

¹⁴ The Act, s 45A(2)

¹⁵ The Act, s 45A(2)

¹⁶ The Act, s 46(1)

¹⁷ The Act, s 46(4)

¹⁸ The Act, s 46(6)

¹⁹ The Act, s 100(3)

strategic proposal environmental review document to the EPA.

The EPA believes that the assessment of strategic proposals will provide the community with the added advantages of:

- being consulted at an earlier stage in the planning of future proposals, providing increased opportunity to influence decisions relating to the location and final design of those proposals; and
- being able to consider the cumulative impacts of more than one proposal, rather than dealing with the assessment of individual proposals (if at all, as individually the proposals may not be significant).

Appeal provisions apply to strategic proposals as they do for other proposals:

- if the EPA determines that it need not assess a strategic proposal, any person may appeal that decision;²⁰
- any person who disagrees with the content of, or recommendations in, the EPA's report, may appeal;²¹ and
- the proponent of the strategic proposal may appeal any conditions set by the Minister for Environment.²²

There is only one formal period for public comment in the EPA's consideration of future (derived) proposals. Referrals of future proposals, requesting that the proposal be declared a derived proposal, are advertised for public comment. This comment period is for public input into whether the EPA should declare the referred proposal to be a derived proposal. The EPA can only consider public comment in the context of the criteria under which it can declare or refuse to declare a proposal to be a derived proposal, as described in the section above.

The EPA requires that proponents of derived proposals consult with key stakeholders in the development of their referral documentation and management plans before referral to the EPA, to ensure that stakeholder concerns are identified and addressed, and EPA decision-making is expedited.

The EPA's approach to assessing strategic proposals and considering derived proposals

The EPA believes that assessment of strategic proposals strengthens the environmental impact assessment process through early consideration of environmental issues at the project planning stage and formal consideration of the cumulative impacts of multiple proposals.

The EPA recognises that detailed design of the future proposals identified in the strategic proposal may not be available at the time of the EPA's assessment of the strategic proposal.

However, the EPA expects that proponents of a strategic proposal will provide the EPA with sufficient information about the strategic proposal, and undertake an environmental review of its strategic proposal to the extent necessary, to enable the EPA to assess the proposal and report, with confidence, to the Minister in relation to:

- the key environmental factors;
- the identified future proposals and whether or not they may be implemented in a way that will meet the EPA's objectives; and
- any conditions which should apply to those future proposals, if they are subsequently referred to the EPA and declared to be derived proposals.

To ensure that the benefits of strategic assessments are realised, the EPA takes the following approach to assessing strategic proposals and deciding on derived proposals.

²⁰ The Act, s 100(1)

²¹ The Act, s 100(1)

²² The Act, s 100(3)

1. The assessment of a strategic proposal should enable the EPA to confidently define the overall environmental outcomes that must be achieved through implementation of any derived proposals identified in the course of the assessment of the strategic proposal.

To do this, the EPA's assessment will:

- define, as far as possible, the key characteristics of the future proposals, recognising that the assessment may provide opportunities to refine these characteristics;
- define the maximum extent or limits to the scope of any future proposals;
- identify the key environmental factors associated with the future proposals, at a scale commensurate with the nature and extent of those future proposals;
- define the maximum disturbance (impact) footprint of the future proposals (terrestrial, marine and air) and the envelope within which any future proposals will occur;
- define the potential maximum cumulative environmental impacts and risks from the future proposals, and demonstrate the acceptability of those impacts/risks; and
- define potential best practice management principles and strategies to be applied to any future proposal to avoid and minimise impacts to the greatest extent possible.

As with the assessment of any proposal, the EPA draws on its experience in assessing proposals of a similar nature in determining whether a strategic proposal can meet EPA objectives.

2. Information submitted with a request that the EPA declare a derived proposals will need to demonstrate how the proposal will meet the environmental outcomes defined through the assessment of the strategic proposal, including any Ministerial conditions.

Generally, the EPA will recommend conditions for future derived proposals that require proponents to demonstrate how they will meet the outcomes defined through the assessment of the strategic proposal. This could include recommended conditions that require the development of plans to:

- define the actual footprint of the derived proposal and demonstrate that it fits within the environmental outcomes assessed and approved at the strategic proposal stage of the assessment and meets best practice;
- refine the baseline ecological status within the area of the footprint and the area outside the footprint that may be at risk or impacted during construction or operation of the proposal;
- outline the management measures, triggers and actions to be taken to meet the principles and strategies referred to in the strategic proposal, and to ensure there is no material or serious environment harm outside the footprint area;
- define and implement a long term program for environmental monitoring, management, reporting and incident response; and
- offset significant residual environmental impacts and risks if they occur (offset proposal).

3. Referrals of future proposals must contain sufficient information to enable the EPA to determine whether the proposals can be declared as derived proposals.

As a minimum the EPA requires the proponent to submit information which readily enables the EPA to determine whether a derived proposal declaration can be made according to the criteria set out in section 39B of the Act. The EPA will require sufficient information about the derived proposal and its implementation to enable the EPA to determine with confidence that the matters assessed and the environmental outcomes determined in its assessment of the strategic proposal can and will be met.

To minimise duplication and streamline decision-making, proponents are required to submit some or all of the plans that might be required through the conditions specified in the strategic proposal Ministerial statement relevant to the derived proposal. This will enable the EPA to determine with confidence that the implementation of the derived proposal can meet the environmental outcomes assessed and established during the assessment of the strategic proposal.

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Proponents are encouraged to provide documentation as early as possible in the process as this will minimise the approval timelines.

4. Proponents of future proposals should undertake thorough stakeholder consultation.

As the determination of derived proposals does not trigger a public review, the EPA requires proponents to consult with the community and relevant decision making authorities on the proposal and any subsequent plans required by conditions, before referral to the EPA. The information submitted to the EPA by the proponent is also to demonstrate how the community and decision-making authority concerns are identified and addressed in the referred proposal and plans.

Other advice

For further procedural detail, please read the EPA's *Environmental Impact Assessment Administrative Procedures*.

This bulletin is for guidance only and is not intended to provide legal advice. Proponents are encouraged to seek their own legal advice as required.

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Figure 1: Strategic proposal assessment process

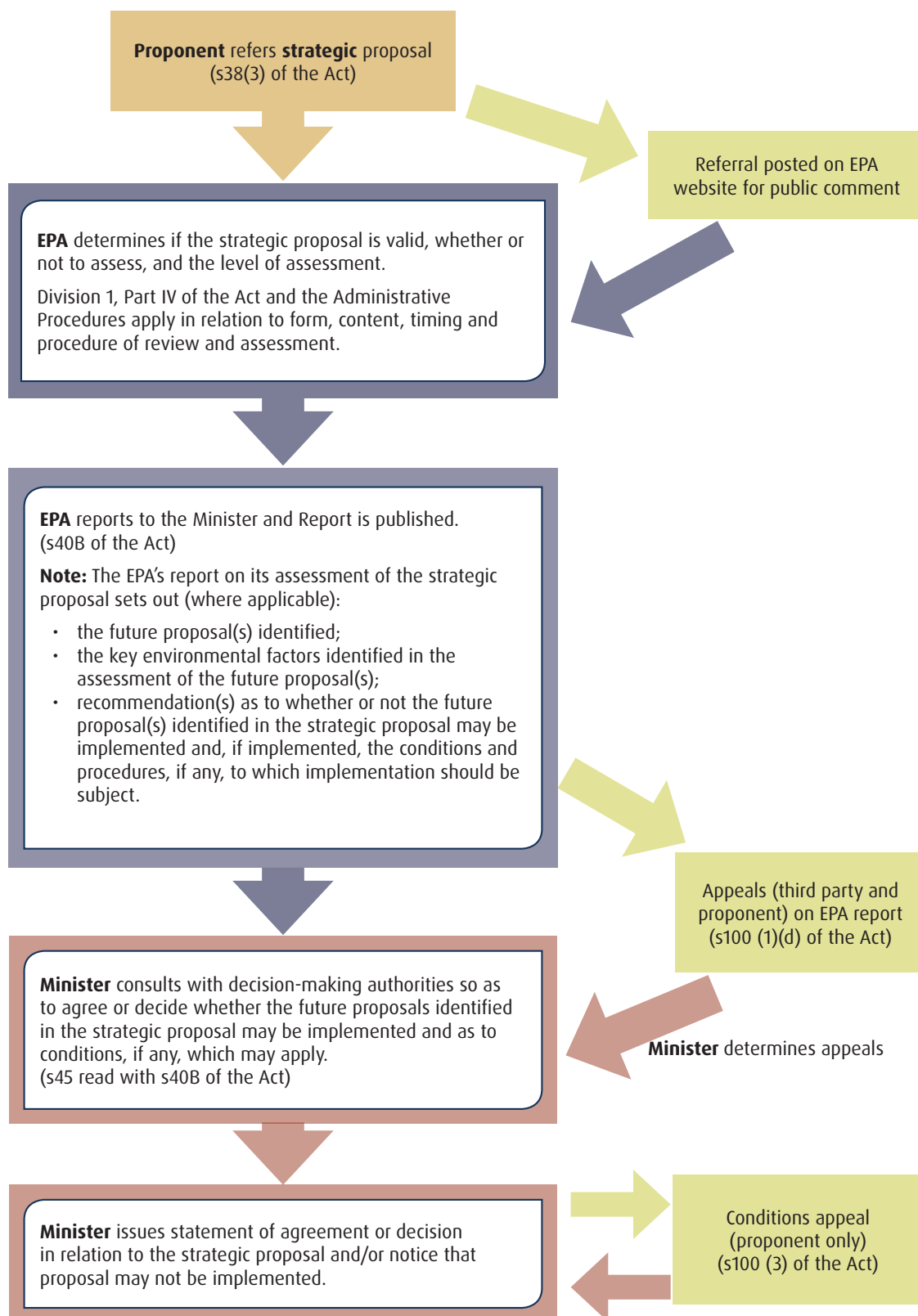


Figure 2: Determination and implementation of derived proposals

