



Environmental Assessment Guidelines

Environmental Assessment Guideline
for
Changes to Proposals after Assessment
– Section 45C of the
Environmental Protection Act 1986

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Environmental Protection Authority

Western Australia

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1 INTRODUCTION AND BACKGROUND

Environmental Assessment Guidelines (Guidelines) are developed by the Environmental Protection Authority (EPA) to provide advice to proponents, consultants and the public generally about specific procedures, methodologies and the minimum requirements for environmental management which the EPA would expect to be met by proposals or schemes it considers during the environmental impact assessment (EIA) process.

This Guideline specifically addresses the scope and use of section 45C of the *Environmental Protection Act 1986 (EP Act)*. The Guideline sets out:

- (a) when section 45C can be used for approving changes to a proposal after assessment; and
- (b) information required from proponents to enable the consideration and, if appropriate, approval of proposed changes to a proposal.

Section 45C was added to the EP Act in 2003 in recognition of the need for proponents to be able to make changes to proposals after the Minister had issued a statement under section 45(5) of the EP Act that the proposal may be implemented. The power under section 45C must not be exercisable if the change to the assessed and approved proposal “might have a significant detrimental effect on the environment in addition to, or different from, the effects of the original proposal” (EP Act, 1986).

2 OBJECTIVES

The objectives of this Guideline are to clarify the applicability of section 45C in allowing changes to proposals which have been assessed and authorised under Part IV of the EP Act, and to specify the information required to be submitted in support of requests made to the Minister to change a proposal.

3 POLICY AND LEGISLATIVE CONTEXT

Under section 45C the Minister must not approve a change or changes to a proposal in circumstances where he considers that the change might have a significant detrimental impact on the environment that is additional to, or different from, the effect of the original proposal.

To determine whether a change to a proposal can be approved under section 45C of the EP Act it is important to understand the nature of the original proposal as authorised. A proposal is usually defined in Schedule 1 of a Ministerial Statement which outlines a description of the proposal, the key elements in the Key Proposal Characteristics Table, the location and the spatial extent of the proposal.

As a guide, approval to change a proposal is required if there is a change to the Key Proposal Characteristics (e.g. further clearing of vegetation, changes to the footprint of a proposal, or increase in emissions). The EPA will be releasing subsequent guidance on how a proposal is defined in the *Environmental Assessment Guideline for Defining a Proposal*, which will provide further guidance on how a proposal is to be defined and what elements are described in the Key Proposal Characteristics Table.

There are six aspects to the evaluation required under section 45C(2) to enable the Minister to approve the change, commonly known as the 'Six Aspects Test'¹:

1. Identification of the content of the original proposal.
2. Identification of the content of the relevant change(s) and determine whether the change(s) involves a revision of the original proposal.
3. Determination as to whether the original proposal has had or will have any detrimental effect on the environment and, if so, what. The Minister will take into account the implementation conditions in making this decision.
4. Determination as to whether the change(s) to the original proposal might (in the Minister's opinion) have any detrimental effect on the environment and, if so, what.
5. Determination as to whether the detrimental effect (if any) which the change(s) might have on the environment is additional to, or different from, the detrimental effect (if any) which the original proposal has had or will have.
6. Determination as to whether any detrimental effect which the change(s) to the original proposal might have on the environment, which is additional to, or different from, any detrimental effect which the original proposal has had or will have is, in the circumstances, significant.

¹ Re Minister for the Environment Ex Parte Elwood & Anor [2007] WASCA 137

If the Minister approves a change to the proposal under section 45C, the amalgamation of the change plus the original proposal becomes the revised proposal. The implementation decision or agreement (commonly referred to as the Ministerial Statement) for the original proposal will apply to the revised proposal (section 45B EP Act, 1986) unless there is a need to amend the implementation conditions. Any amendment to the implementation conditions will be made by way of an inquiry under section 46 or, if the change to the conditions is only minor, under section 46C.

If the Minister approves a change to a proposal under section 45C, the Minister advises the proponent and any relevant decision making authorities in writing. The decision detailing the change is attached to the Ministerial Statement relevant to that proposal. Decisions made in respect of changes to the proposal under section 45C can be found on the EPA's web site.

4 PROCEDURES

4.1.1 Submission of request

The Office of the Environmental Protection Authority (OEPA) administers the approvals under section 45C on behalf of the Minister or the Minister's delegate (usually the Chairman, EPA). The Minister, or the Minister's delegate, makes the final decision.

Where a proponent considers that change(s) to a proposal may be approved under section 45C, the proponent may request the change(s) be approved by making a request in writing which is to be submitted to the Registrar, OEPA. The request must include the information detailed below and be accompanied by the completed S45C Checklist - Guide for Preparing a Section 45C Request (Appendix 1).

One hard copy and one electronic copy of the proponent's request and the relevant information, and an electronic copy of any applicable spatial data, if appropriate, must be submitted to: The Registrar, OEPA, Locked Bag 33, Cloisters Square, WA 6850.

4.1.2 Processing

The target time for processing of a section 45C request is 30-60 days depending on the comprehensiveness of the information submitted by the proponent, the complexity of the proposed change(s), and any associated environmental effects.

All applicable information must be provided to enable evaluation of the change(s) to the proposal. If the proponent has not provided adequate information as defined in this Guideline and in *Environmental Assessment Guideline for EIA Timelines for Proposals*, the administrative timeline will not be regarded as having begun and the proponent will be advised, which will include an explanation of what further details are required in order to address the issue.

**ACHIEVING A TIMELY
DECISION - HANDY
HINTS**

**Information to be
provided for section 45C
requests**

Always required:

- detailed information to address the 'Six Aspects Test'
- revised Key Proposal Characteristics Table
- S45C checklist (Appendix 1)

Where applicable also provide:

- spatial data showing the original proposal with the proposed changes overlaid (if relevant)
- revised Figure of the proposal showing changes
- indication of compliance with the Ministerial Statement and stage of implementation of the proposal
- information about any previous revision(s)
- details of stakeholder consultation
- revised environmental management plans
- notify EPA of any change of proponent

5 INFORMATION REQUIRED

The information required to accompany a request for a change to a proposal under section 45C is explained below. This information is also outlined in a checklist provided in Appendix 1, which must be completed and provided along with the section 45C request.

5.1 Explanation of six aspects

The following headings are taken from the six aspects described above **and are to be used as a guide for the preparation of the section 45C** request.

5.1.1 Content of original proposal

To adequately identify the content of the original proposal, a proponent may need to refer to the following information:

- the Key Proposal Characteristics Table in Schedule 1 of the Ministerial Statement;
- the description of the proposal in the environmental review documentation;
- the report prepared by the EPA under section 44 of the EP Act; and
- appeal documentation, if relevant.

Specifically, the requirements of any implementation conditions attached to the Ministerial Statement will need to be considered. The proponent must describe the stage of implementation of the proposal; indicate compliance with the Ministerial Statement to date; and provide details of any previous changes(s) under s45C and/or section 46 approvals, including the cumulative impact of any previous change(s) to the proposal. This information may be provided in the form of a bullet point summary with supporting documentation (e.g. annual environmental reports).

Please note that Ministerial Statements issued prior to June 1998 do not use Schedule 1. The description of the proposal is summarised in the header of those Ministerial Statements.

Documents used to describe the contents of the original proposal must be appropriately referenced to justify that the content (including all components) of the original approved proposal has been adequately identified and, therefore, the assessment of the significance of the proposed change can be made against a known baseline.

5.1.2 Content of proposed change to proposal

The proponent must provide a description of the content and reason for the proposed change(s) to the proposal.

The proposed change(s) can be summarised in the form of a revised Key Proposal Characteristics Table as illustrated in Appendix 2, which should be reproduced in full for each additional Attachment to the Ministerial Statement, detailing in three columns: the proposal element; details of the approved proposal; and details of the approved changes to the proposal, using bold type to indicate where a change has been made. Reproducing the table in full in this way avoids confusing the elements of the proposal over multiple approved section 45C changes, and also makes it clear if an element is intentionally dropped from the table (e.g. workforce numbers).

Spatial data is to be submitted where the change includes an element that can be represented on a figure. Care needs to be taken to ensure that the information provided in the Key Proposal Characteristics Table is consistent with the spatial data provided (see *Environmental Assessment Guideline for Defining a Proposal*). A good visual summary of the change can be shown on a figure that provides an overlay of the proposed changes on top of the original proposal (see Appendix 3). It is useful to also provide a figure in PDF version showing the change(s); if the proposed change is approved, a figure will be included with the Attachment to the Ministerial Statement.

5.1.3 Detrimental environmental effects of the original proposal

The proponent must describe whether the original proposal has had or will have any detrimental effect on the environment and, if so, what these are. The most succinct source of this information is usually the key environmental factors assessed in the EPA's Report.

5.1.4 Detrimental environmental effects of the change

Details of any detrimental effects the proposed change(s) might have on the environment must be provided, along with an examination of (if applicable):

- the values, sensitivity and quality of the environment which is impacted;
- the extent (intensity, duration, magnitude and geographic footprint) of the impact; and
- the resilience of the environment to cope with this impact.

5.1.5 Additional or different detrimental environment effects

The proponent must describe whether the detrimental environmental effects identified at step 4 (above) are:

- additional to; or
- different from,

any detrimental effects which the original proposal has had or will have on the environment.

5.1.6 Significance of the additional or different detrimental environment effects

The proponent will also need to provide information regarding the significance of the detrimental effects of the change which has been identified. In determining the significance of the detrimental effects of the change, the following matters must be considered²:

- (a) the values, sensitivity and quality of the environment which is likely to be impacted;
- (b) the extent (intensity, duration, magnitude and geographic footprint) of the likely impacts;
- (c) the consequence of the likely impacts (or change);
- (d) resilience of the environment to cope with change;
- (e) the cumulative impact of changes to a proposal and the cumulative impact with other proposals³; level of confidence of the impacts predicted;
- (f) objects of the Act, policies, guidelines, procedures and standards against which a proposal can be assessed; or

² The matters considered in determining significance of the detrimental effects of changes to a proposal are based on relevant aspects of the EPA's test of significance outlined in the *Administrative Procedures* 2010.

³ In this instance proposal refers to a strategic proposal, an approved significant proposal, or an implemented significant proposal.

(g) the public concern.

This information will be considered during review of the section 45C request by the OEPA assessing officers and in their recommendation to the Minister, or the Minister's delegate.

5.2 Details of consultation

During the development of a section 45C request, the proponent is well advised to consult with relevant stakeholders, including relevant government agencies and interested parties (e.g. entities who made submissions at the time the original proposal was assessed). Undertaking consultation with relevant stakeholders prior to submitting the section 45C request will assist in a timely assessment. If consultation is undertaken, the details, including the medium used to consult, consultation documentation, evidence of stakeholder feedback/submissions received and proponent's assessment and response to these submissions must be included in the proponent's request.

5.3 Management of the changes

The Ministerial Statement which conditions the implementation of the (original) proposal will apply to the change(s) if approved. An amalgam of the original proposal as changed is known as a revised proposal.

To demonstrate how an environmental effect of the change is to be managed (if necessary) it is recommended that the proponent review all relevant environmental management plans and provide details as to how the plans will manage the proposed change(s). Alternatively, the proponent should submit revised environmental management plans for consideration with the section 45C request. The proponent should indicate whether the plan is required to be endorsed by the Department of Environment and Conservation, or any other agency, in accordance with the terms of the condition.

The proponent must also indicate whether the existing implementation conditions of the Ministerial Statement can be utilised to manage the proposed change without amendment. If a change to the implementation conditions is required as a result of the proposed change to the proposal, a section 46 amendment to the implementation conditions will also be required unless the change is minor and can be approved under section 46C of the EP Act.

Any existing licences or permits issued for the proposal that are relevant to the proposed change should be detailed. The capacity for the licence or permit to manage the proposed change, or any modifications that would be required should also be discussed.

6 DEFINITIONS AND ACRONYMS

6.1 Definitions

Minister - refers to the Minister for Environment

Ministerial Statement - a statement issued by the Minister under section 45 (or under section 45 as applied by section 46(8)) of the Act as to whether or not a proposal to which it relates may be implemented and if that proposal may be implemented, as to what conditions and procedures, if any that implementation is subject.

section 45C request – request provided in writing to the Registrar OEPA, seeking approval to change a proposal under section 45C of the EP Act, along with the information referred to in this Guidance.

6.2 Acronyms

EAG Environmental Assessment Guideline

EPA Environmental Protection Authority

OEPA Office of the Environmental Protection Authority

EP Act *Environmental Protection Act 1986*

7 BIBLIOGRAPHY

Environmental Protection Act 1986

EPA (2010), *Environmental Impact Assessment Administrative Procedures 2010*

Re Minister for Environment; ex parte Elwood & anor [2007] WASCA 137

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Contact	The EPA undertakes periodic review of guidance documents, if you have any comments on the content of this Guideline please provide feedback to: Strategic Policy and Planning Division, Office of the EPA, Policy@epa.wa.gov.au

Appendix 1 – S45C Checklist - Guide for Preparing a Section 45C Request

This checklist has been prepared to supplement *Environmental Assessment Guideline for Changes to Proposals after Assessment – Section 45C of the EP Act (No. 2)*, and help guide Section 45C request preparation. Please ensure that all required information indicated is provided before you submit your request. If you have any queries, please contact Statement Management Section of the OEPA, sms@epa.wa.gov.au.

Information to be provided	
1. Six Aspects (for all requests) – Refer to Part 5 of the Environmental Assessment Guideline No. 2 for further details.	Provided?
1.1 Identification of the content of the original proposal. Including previous changes or amendments under section 45C and section 46.	<input type="checkbox"/>
1.2 Identification of the content of the relevant change(s) and prepare a modified Key Proposal Characteristics Table (if the change(s) can be described textually and/or a Figure to pictorially show the change(s).	<input type="checkbox"/>
1.3 Identification and information concerning the detrimental environmental effects the original proposal has had or will have on the environment.	<input type="checkbox"/>
1.4 Identification and information concerning the detrimental impacts the change(s) might have on the environment	<input type="checkbox"/>
1.5 Submission (supported by reasoning) as to whether the detrimental effect (if any) which the change(s) might have on the environment is additional to, or different from, the detrimental effect (if any) which the original proposal has had or will have on the environment	<input type="checkbox"/>
1.6 Submission (supported by reasoning) as to significance (as identified in section 5.1.6 (a) to (g)) of the indentified detrimental effect(s) which the change(s) might have on the environment and which is additional to, or different from, any detrimental effect which the original proposal has had or will have.	<input type="checkbox"/>
2. Other information (where relevant)	
2.1. Spatial data showing boundaries of proposal and request for change(s) as explained in Appendix 3.	<input type="checkbox"/>
2.2. Details of consultation with relevant stakeholders	<input type="checkbox"/>
2.3. Any additional information which readily identifies the change and its impact	<input type="checkbox"/>
Documentation to submit a request	
• Completed checklist (this sheet) attached to the s45C request	<input type="checkbox"/>
• Hard copy of the request, including relevant information, and	<input type="checkbox"/>
• Electronic copy of the request, including any applicable spatial data and other relevant information	<input type="checkbox"/>

Submit to: Registrar, Office of the EPA, Locked Bag 33, Cloisters Square WA 6850

Appendix 2 – Example of Key Proposal Characteristics Table for a change under section 45C

The following is an example of a Key Proposal Characteristics Table showing the proposed change to the proposal that must be completed by the proponent and submitted with the section 45C request.

e.g. Change to the rail alignment along Hamersley Flats

[Example] Key Proposal Characteristics Table:

Element	Description of proposal	Description of approved change to proposal
Life of Project	More than 50 years	<i>no change</i>
Area of disturbance	600 hectares	650 hectares
Dewatering	2 gigalitres per annum	4 gigalitres per annum
Rail length	35 kilometres	<i>no change</i>
Workforce	990 people	Workforce numbers removed as not environmentally relevant

List of Figures: [if required – also numbered consecutively for the Statement e.g. Figure 6: Hamersley Flats rail alignment]

Appendix 3 – Spatial information to be provided in the section 45C request

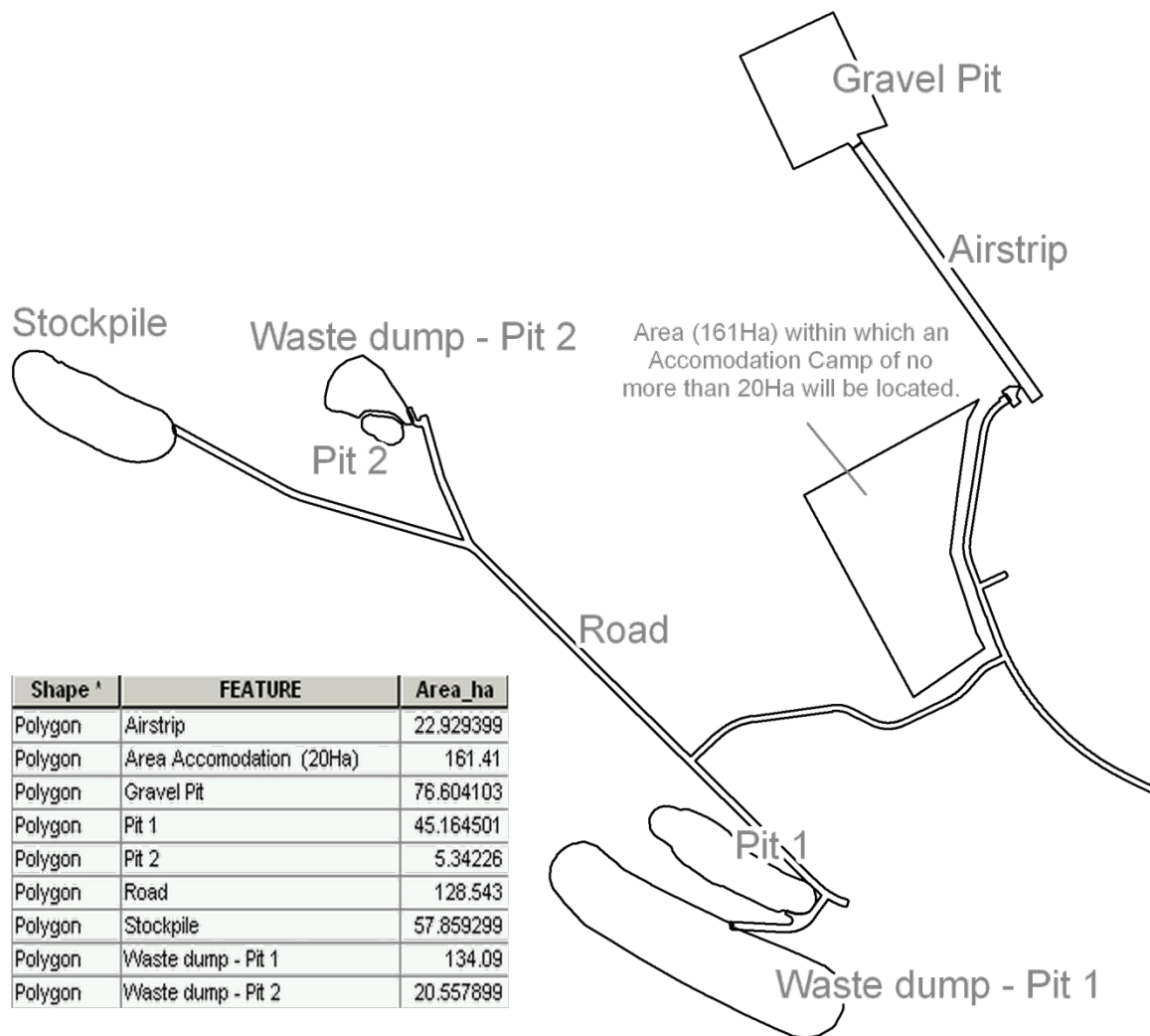


Figure 1. Example of database table and polygons of spatial data

Notes on spatial data

Spatial data is the modern means of digitally mapping features on the earth. Spatial data is digital information which can be used in computer mapping software; usually referred to as GIS (Geographic Information System) or CAD (Computer-Aided Design) data.

Why are proposal boundaries required to be submitted to the EPA as spatial data?

The EPA requires proposal boundaries as spatial data and uses them to:

- verify proposal location and footprint areas
- serve as an administrative record
- communicate to others where the EPA has given advice

What are the specifications required?

Proponents are required to submit geo-referenced GIS or CAD data on CD depicting the proposal extent boundaries or footprint for physical elements of a proposal.

Spatial data should be geo-referenced and conform to the following parameters:

- GIS: Polygons representing all activities referred under the proposal, attributed with name of the activity.
- CAD: Simple closed polygons representing all activities referred under the proposal. All polygons labelled with name of the activity inside each respective polygon.
- Datum: GDA94
- Projection: Geographic (latitude/longitude) or Map Grid or Australia (MGA).
- File format: Arcview shapefile, Arcinfo coverages, Microstation or AutoCAD.

Information in the spatial data provided must be consistent with descriptions in the text of the application and the Key Proposal Characteristics Table. For example, an area of disturbance described as 100 hectares, should be listed in the table as 100 hectares and be able to be calculated from spatial data as 100 hectares.

Spatial data supplied should represent proposal or activity footprints only and not contain complex engineering detail.

Figure 2. Examples of footprint and engineering detail

