

GUIDELINE FOR PROPONENTS (draft August 2006)

CHANGES TO A PROPOSAL AFTER IMPLEMENTATION STATEMENT ISSUED.

Please note that it is not possible for this Guideline to address all the situations to which section 45C of the *Environmental Protection Act 1986* will be applied. To determine whether a situation comes within the scope of section 45C of the EP Act, it will be necessary for the Proponent to look at the context and purpose of Part IV of the Act, and where necessary, consult with the Director, EIA Division of the Department of Environment and Conservation (DEC).

INTRODUCTION

The Proponent, named in a statement issued under section 45(5) of the *Environmental Protection Act 1986* (**Implementation Statement**) must ensure that the implementation of the Proposal, to which the Implementation Statement relates, is in accordance with the implementation conditions.

From time to time it may be necessary for a Proponent to change the Proposal after the Implementation Statement has been issued. Section 45C allows the Minister¹ to approve a change to the Proposal after the Implementation Statement has been issued without a revised proposal being referred to the Environmental Protection Authority.

This (draft) Guideline is intended to assist Proponents:

- determine whether, and in what circumstances, they require approval under section 45C of the *Environmental Protection Act 1986* (**EP Act**); and
- prepare the information necessary to enable the Minister to consider and, if appropriate, approve a proposed change to a Proposal.

DETERMINATION OF WHETHER APPROVAL UNDER SECTION 45C IS REQUIRED

As stated above, section 45C allows the Minister to approve a Proponent changing a Proposal after an Implementation Statement is issued under section 45(5) of the EP Act. The Minister must not give approval under section 45C, if the Minister considers that the change, or changes, 'might have a significant, detrimental effect on the environment in addition to, or different from, the effect of the original Proposal'².

The original Proposal is that project, plan, programme, policy, operation, undertaking or development or change in land use which was assessed by the Environmental Protection Authority (**EPA**) under Part IV of the *EP Act* and determined by the Minister to be implemented under such Conditions and Procedures as are set out in the Statement of implementation conditions issued under section 45(5).

A preliminary step, in determining whether approval under section 45C is required, is to understand what constitutes the Proposal. A description of the Proposal, its scope and nature, is provided for in the assessment information provided to the EPA during the assessment process. The description of the Proposal is also summarised in the description of the Proposal included in the Implementation Statement. However,

¹ If the power has been delegated, reference to the Minister, is a reference to the Minister's delegate.

² Section 45C(2) of the EP Act.

usually, given the complex nature and scope of proposals, it may also be necessary to look beyond the description provided in the Implementation Statement and consider extraneous information. For example, the EPA's report published under section 44 of the *EP Act*; and, where there is an appeal, the Appeal Convenor's report and the Minister's appeal decision.

Accordingly, to identify what is the Proposal, a Proponent may need to refer to the following information:

- the description of the Proposal in the public review documentation, as this is considered the most complete description of the Proposal, assessed by the EPA;
- the report prepared by the EPA under section 44 of the *EP Act*;
- Appeal documentation, if relevant; and
- the key characteristics of the Proposal, which are summarised in Schedule 1³ of the Implementation Statement.

The key characteristics of a Proposal will generally include the following information:

- location of the Proposal e.g. land title/tenure description,
- cadastral and spatial information e.g. natural and constructed constraints related to land use and features which may potentially be affected by the Proposal;
- position and size of the components (e.g. buildings, structures, and infrastructure);
- general and specific activities (e.g. mining, mineral processing, infrastructure development, canal development) ;
- processes, technology, construction methodology, programmes of operations that influence the degree, nature and extent of impact on the environment (e.g. construction methodology; dewatering; emissions or wastes discharged); and
- areas of impact and influence of the Proposal.

The key characteristics of a Proposal are intended to readily identify those aspects of the Proposal that may have, or be related to, a detrimental effect on the environment; however, being a summary, may not be sufficiently comprehensive.

IMPLEMENTATION ACTIONS THAT ARE LIKELY TO CONSTITUTE A CHANGE TO A PROPOSAL

Implementation actions that are likely to constitute a change to a Proposal include:

1. a change to a key characteristic of a Proposal;
2. a change to other characteristics of the Proposal (not necessarily identified in Schedule 1 of the Implementation Statement), which, if altered, would cause directly or indirectly an environmental effect which was not previously considered by the EPA or the Minister.

IMPLEMENTATION ACTIONS UNLIKELY TO CONSTITUTE A CHANGE TO A PROPOSAL

³ Please note that pre-June 1998 Implementation Statements do not have a Schedule 1. The summary of the description of the Proposal is found in the header of these Implementation Statements.

Information found in the documentation referred to above, may provide additional detail to the State and to the public about the Proposal. However, this information may not be directly relevant to determining what constitutes the Proposal, its impacts on the environment and measures taken to mitigate these impacts. For example, Proponent details⁴, work force and economic benefits.

Implementation actions which only change this type of effect, and which would not, if altered, cause directly or indirectly an environmental effect not previously considered by the EPA or the Minister, would be unlikely to constitute a change to the Proposal.

If necessary, a Proponent may consult with the Manager, Statement Management Section, Department of Environment and Conservation (ph. 6364 6500).

INFORMATION REQUIRED TO FACILITATE CONSIDERATION UNDER SECTION 45C

If a Proponent requests a change to the Proposal, the following information is required:

1. Description of the features of the change and the existing approved features of the Proposal. This information is best presented in a table format. For example, Attachment 1 to this Guideline provides, in table form, a description of the existing approved component, activity or process, and a description of the intended change.
2. Details of the likely environmental effect(s) of the proposed change.
3. An assessment of the significance of those effects, based on a comparison of the effects of the approved Proposal and technical information, policies and guidelines relevant to those effects.
4. Whether the proposed change can be regulated using the terms and conditions of the existing Implementation Statement, and, if not, what additional regulation of the change the Proponent considers appropriate⁵.
5. Details of consultation with external stakeholders (relevant government agencies and interested parties) as appropriate to the nature of the change (e.g. if there are no detrimental effects, then notification may be sufficient consultation). The information required should include details of the medium used to consult, consultation material, feedback / submissions received and Proponent's assessment and response to these submissions.
6. Compliance with the Implementation Statement and stage of implementation of the Proposal.

The nature of this information is discussed in more detail below.

1. DESCRIPTION OF PROPOSED CHANGE(S) TO THE PROPOSAL

The Proponent should describe the feature(s) of the change and the existing approved features of the Proposal. This information is best presented in a table format. For example, Attachment 1 to this Guideline provides, in table form, a description of the existing approved component, activity or process, and description of the intended

⁴ Sections 38 (6a) and (7) of the EP Act set out the statutory requirements for changes to proponent details.

⁵ The need to amend conditions of the existing Implementation Statement will be independently assessed by the agency and the Minister. However, the exercise of considering whether the existing conditions are relevant to the proposed change will assist the Proponent and the DEC to determine the nature of the change and its impacts on the environment. Any amendments to conditions will need to be effected under section 46 of the EP Act.

change. The initial section of the Table provided in Schedule 1 provides a description of what is approved and then a section describing the corresponding change(s) to what needs to be approved.

Common changes are:

- new components (e.g. infrastructure / processing plant / new mine pits / waste material dump);
- new activities (e.g. dewatering; processing ore to concentrates; increasing waste discharge to the environment);
- or other modifications (e.g. realignment of a road or noise bund; specification of plant / infrastructure layout rather than a conceptual layout; a change in the land use).

2. DETAILS OF LIKELY ENVIRONMENTAL EFFECTS OF THE CHANGE

Details of the likely environmental effect(s) of the proposed change(s) must be provided and examined in a similar manner to that required at the time of the initial assessment of the Proposal. Effects may be additional to an effect previously assessed (e.g. extra clearing of native vegetation; increased level of emissions) or may be a different effect to any of the effects of the original Proposal.

As discussed above, the Minister must not approve changes to a Proposal if the Minister considers the change(s) might have a significant, detrimental effect on the environment in addition to, or different from, the effect of the original Proposal. This section of the Proponent's submission must include enough detailed information to enable consideration of the significance of the effects. Any conclusions made by the proponent in relation to the likely effect of the change must be supported by scientific evidence.

3. AN ASSESSMENT OF THE SIGNIFICANCE OF THE EFFECTS ON THE ENVIRONMENT, BASED ON A COMPARISON OF THE EFFECTS OF THE APPROVED PROPOSAL AND TECHNICAL INFORMATION, POLICIES AND GUIDELINES RELEVANT TO THOSE EFFECTS

An assessment of the significance of the effects on the environment should have regard to the following:

1. the extent and consequences of the biophysical impacts;
2. the environmental values of the area to be affected;
3. the extent of emissions and their potential to unreasonably interfere with the health, welfare, convenience or amenity of people;
4. the potential for biophysical impacts of the change to significantly and adversely affect people's social surroundings;
5. the extent and rigour to which potential impacts have been investigated and described in the submission, and the confidence in the reliability of predicted significance of the impacts;
6. the extent to which the change to the Proposal is in accordance with the principles of sustainability;
7. the ability of decision-making-authorities' legislation to manage the environmental effects of the change;
8. the likely level of public interest, and the extent to which the Proponent has consulted with interested and affected people and responded to issues raised; and,
9. the overall scale and scope of the proposed change to the original Proposal and the related detrimental environmental effects.

If the change involves clearing of native vegetation, the Proponent must provide information which addresses the clearing principles in Schedule 5 of the EP Act.

The Proponent should comment on whether it considers the effects of the change(s) to be detrimental, and whether those detrimental effects are additional to, or different from, the effects of the original Proposal.

While the Proponent is invited to provide comment in relation to the significant detrimental effects on the environment of the Proposal, ultimately, the Minister makes the decision.

4. CONDITIONS THAT MANAGE THE CHANGE

Unless the approval of the Minister under section 45C indicates otherwise, the implementation Statement for the Proposal will apply to and regulate the implementation of the Proposal, as amended. Accordingly, the Proponent must review any environmental management plans required by the Implementation Statement and ensure that those plans are amended and, if required, reviewed and endorsed by the DEC. If there are amendments required to the Implementation Statement, such amendments will be effected under section 46 of the EP Act.

5. STAKEHOLDER CONCERNS

Details of consultation with external stakeholders (relevant government agencies and interested parties (e.g. entities who made submissions at the time the original Proposal was assessed) should include the medium used to consult, consultation documentation, evidence of stakeholder feedback / submissions received and proponent's assessment and response to these submissions.

6. PROJECT ENVIRONMENTAL MANAGEMENT PERFORMANCE AND COMPLIANCE

The Proponent should discuss its overall environmental management performance to date and describe the status of compliance with the Implementation Statement. The proposed change should be discussed in the context of how the change would be managed by the Proponent to protect the environment.

ENQUIRIES

Enquiries about the draft Guidelines should be directed to the Manager, Statement Management Section, Environmental Impact Assessment Division, (08) 6467 5438.

APPENDIX

Attachment 1. Table providing a description of the features of a change.

(after approval, this table is attached to the Minister's Implementation Statement to update the description of the Proposal).

Attachment to Statement 001

Change to Description of Proposal

Proposal:**Proponent:****Change:** *narrative description if needed***Features of currently approved Proposal:**

Element	Quantities/Description
<i>Mine pits</i>	<i>4 pits (P1 to P4)</i>
<i>Rail car dumpers</i>	<i>2 dumpers at XYZ (CD1 & CD2)</i>

Features of approved change to Proposal:

Element	Quantities/Description
<i>Mine pits</i>	<i>6 pits (P1 to P4) plus P5 and P6</i>
<i>Rail car dumpers</i>	<i>3 dumpers at XYZ (CD1, CD2 & CD3)</i>

(If required) Figure 1. Revised layout map (should include geo-referenced spatial coordinates)