

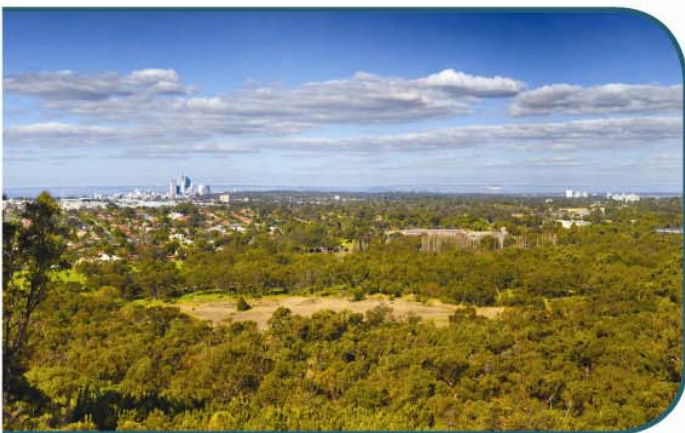


Environmental Protection Authority

# **Environmental Assessment Guidelines**

**No.2**

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



Draft

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## Draft Environmental Assessment Guideline No. 2

### Changes to Proposals after Assessment – Section 45C of the *Environmental Protection Act 1986*

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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. The generic process for developing Guidelines is set out in Appendix 1.

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 environmental approval has been issued. The power under section 45C is only exercisable if the changes to the assessed and approved proposal are minor and will not “have a significant detrimental effect on the environment in addition to, or different from, the effects of the original proposal” (EP Act, 1986).

The application of section 45C since its introduction has demonstrated that it provides opportunities and limitations. The opportunities are to allow proponents flexibility in the implementation of their proposals to make changes that are **environmentally neutral or beneficial**. The limitations of section 45C are that if this section is used inappropriately, cumulative impacts cannot be adequately considered, risk reduction conditions cannot be set and public scrutiny of changes to proposals is not possible (EPA, 2008).

## **2. OBJECTIVES**

The objectives of this Guideline are to clarify the applicability of section 45C in allowing changes to approved proposals and to specify the information required to be submitted in support of the proposed changes.

## **3. SCIENTIFIC, POLICY AND LEGISLATIVE CONTEXT**

Section 45C allows the Minister to approve changes to a proposal where the Minister considers that the amended proposal is unlikely to have a significant detrimental impact that is different from or additional to the effect of the original proposal.

Section 45C provides for an analysis of changes between the effect on the environment of the original proposal as implemented and the detrimental effect on the environment the change might have. The evaluation under section 45C considers six aspects:

1. identify the content of the original proposal;
2. identify the content of the relevant changes and determine whether they involve a revision of the original proposal;
3. decide 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. decide whether the change or changes to the original proposal might (in the Minister's opinion) have any detrimental effect on the environment and, if so, what;
5. decide whether the detrimental effect (if any) which the changes in question 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; and
6. decide whether any detrimental effect which the change or changes 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. (WASCA 2007, para. 115).

The powers under section 45C are currently delegated by the Minister to the Chairman of the EPA.

The Ministerial Statement for the proposal will apply to the implementation of the proposal as amended, unless the approval under section 45C indicates otherwise. An approved change to a proposal usually results in a revised Key Characteristics Table and Figure of the amended proposal being attached to the Ministerial Statement as a sequentially numbered Attachment.

Changes under section 45C may be made to the proposal description only, not the conditions of the Ministerial Statement. Changes to conditions may be considered under section 46.

As the conditions of the Ministerial Statement continue to apply to the changed proposal, the proponent must review any environmental management plans required by the Ministerial Statement and ensure that those plans are amended and, if required, reviewed and endorsed by the Department of Environment and Conservation.

There are limits to the extent that proposed changes can be considered and approved under section 45C. There are other processes in the EP Act that can deal with changes to a proposal that are of such significance as to justify further assessment, such as section 38.

**HISTORY**  
**the Elwood decision**

Further interpretation of the application of section 45C was provided by Justice Buss of the Western Australian Court of Appeal in the 2007 'Elwood' case. In his reasoning, Justice Buss set out the 'six aspects' to be considered by the Minister when considering an application under section 45C (WASCA 2007 para. 115).

Also relevant from this case is that a proposal remains a proposal until it has finished being implemented, and that the Minister can use his own opinion in determining whether a change "might" have a significant detrimental effect on the environment in addition to, or different from, the effect of the original proposal.

## 4. PROCEDURES

Where the proponent considers that changes to an assessed and approved proposal may be appropriate under section 45C, the proponent may request the changes by providing the information detailed below to the Chairman, EPA.

Section 45C applications are handled by the Statement Management Branch of the Environmental Impact Assessment Division, Department of Environment and Conservation. One hard copy and one electronic copy of the application, and an electronic copy of any applicable spatial data should be mailed to **Locked Bag 33, Cloisters Square WA 6850**.

A non-statutory 28-day timeline applies to consideration of applications under section 45C. All applicable information must be provided with the proponent's application to enable evaluation of the change or changes to the proposal. If the proponent has not provided adequate information as defined in this Guideline and in *Environmental Assessment Guideline No. xx: EIA Timelines for Proposals* (in development), the administrative 28-day timeline will not be regarded as having begun and the proponent will be advised so there is a defined course of action to address the issue.

**SNAPSHOT**  
**information to be provided**  
**for section 45C applications**

Always required:

- detailed information to address the six aspects test;
- revised Key Characteristics Table.

When applicable:

- spatial data showing the original proposal with the proposed changes overlaid;
- revised Figure of the proposal showing changes;
- indication of compliance with the Ministerial Statement and stage of implementation of the proposal;
- details of stakeholder consultation;
- revised environmental management plans; and
- notify EPA of any change of proponent.

The following headings are taken from the **six aspects** described in Section 3, and should be used as a guide for the preparation of the section 45C application.

**1. Content of original proposal**

To adequately describe the original proposal, a proponent may need to refer to the following information:

- the key characteristics table in Schedule 1 of the Ministerial Statement;
- 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.

Note that pre-June 1998 Implementation Statements 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 should 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

It is also necessary to provide details of any changes to the proposal or proponent subsequent to the Ministerial Statement (i.e. through previous changes approved under section 45C or section 46). A bullet point summary of each change to the proposal should be provided as this will inform assessment of the potential for cumulative impacts.

## **2. Content of proposed change to proposal**

The proponent should describe the content and reason for the proposed change(s) to the proposal.

The proposed change should also be summarised in the form shown in Appendix 2, including a **revised Key Characteristics Table** which should be reproduced in full for each additional Attachment, 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** should be submitted where the change includes an element that can be represented on a figure. 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). If the proposed changes are approved, a figure may be included with the Attachment to the Ministerial Statement – if appropriate to the proposed changes, it is useful to also provide a figure in PDF version showing the changes.

### **What is a section 45C change?**

Approved changes could include, but are not limited to, the following:

- changes in clearing for relocated access track;
- re-definition of mine pit boundary;
- change in discharge to the environment; and
- changed waste dump or infrastructure location.

### **What is not a section 45C change?**

Any change that might have a significant, detrimental effect on the environment in addition to, or different from, the effect of the original proposal. In this case, the proposed change should be referred as a new proposal under section 38 and may include changes such as:

- clearing vegetation in an area not previously assessed by the EPA;
- increased discharge to the environment, of a scale not previously considered by the EPA, nor covered by existing conditions; and

- relocation of the approved proposal to an entirely different location.

Some information about the proposal contained in Schedule 1 (or other documents detailing the proposal) may provide information that is not directly relevant to determining what constitutes the proposal, its impacts on the environment and measures taken to mitigate these impacts, e.g. workforce numbers, or 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 relevant change to the Proposal. In this case, a section 45C application would not be required.

### ***3. Detrimental environmental effects of original proposal***

The proponent should 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.

The implementation of the Ministerial Statement should be taken into account. Specifically, the requirements of any conditions attached to the Statement should be considered. The proponent should describe the stage of implementation of the proposal and **indicate compliance with the Ministerial Statement** to date.

### ***4. Detrimental environmental effects of the change to proposal***

Details of the likely detrimental environmental effects of the proposed changes must be provided and examined in a similar manner to that required at the time of the initial assessment of the Proposal. This may include key environmental factors already considered during the EPA assessment, or any different environmental factors which may be identified.

### ***5. Additional or different detrimental environment effects***

The proponent should describe whether any detrimental environmental effects identified at step 4 (above) are additional to an effect previously assessed (i.e. clearing more native vegetation; increased level of emissions) or are a different effect to any of the effects of the original Proposal.

### ***6. Significance of the additional or different detrimental environment effects***

#### **Determining significance**

After detailing the proposed changes in the context of the above steps, the proponent should then describe whether any of the additional or different detrimental environmental effects are significant.

The consideration of significance is made using professional judgement based on the following:

- a) the environmental values of the area affected;
- b) the extent and consequence of the proposed impact (or change);

- c) the resilience of the environment to cope with the impact;
- d) the extent and rigour to which the potential impact has been investigated and described in the proponent's document, and the confidence in the reliability of the predicted impact;
- e) policies, guidelines, procedures and standards against which a proposal, or proposed change, can be assessed;
- f) the degree of public interest;
- g) the extent to which other statutory decision-making processes can manage the environmental effects of the change; and
- h) the overall scale and scope of the proposed change to the original Proposal including consideration of cumulative impacts from previously approved changes, and the related detrimental environmental effects.

During the development of a section 45C application, the proponent should **consult with relevant stakeholders**. Details of consultation with external stakeholders, including 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.

### **Management of the changes**

The conditions of the Ministerial Statement will continue to apply to the changed proposal, if approved. To demonstrate how an environmental effect can be managed the proponent should review all relevant environmental management plans and **submit revised environmental management plans** for consideration with the section 45C application. The proponent should indicate whether the plan will need to be endorsed by the Department of Environment and Conservation or any other agency.

The proponent should indicate whether the existing conditions of the Ministerial Statement can be used to manage the proposed change without amendment. If a change to the 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.

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.

## **5. DEFINITIONS**

"Minister" refers to the Minister for Environment.

“Ministerial Statement” is the Statement issued under section 45(5) of the EP Act.

“section 45C application” – information provided about a change or changes to a proposal and judgement about the significance of the detrimental effects on the environment with the intention to receive approval to make the change or changes under section 45C of the EP Act.

## 6. BIBLIOGRAPHY

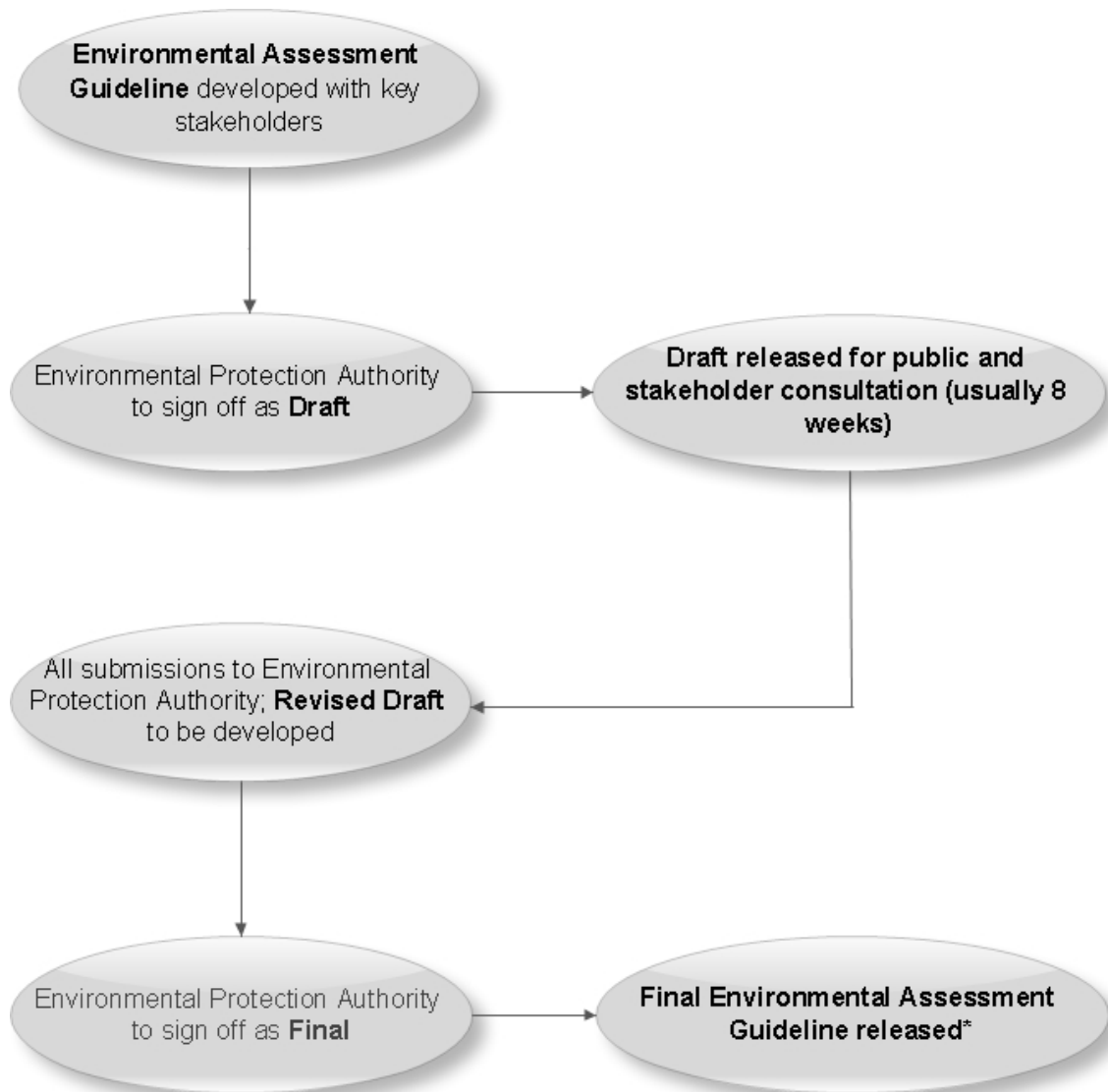
*Environmental Protection Act 1986*

EPA (2008) *Environmental Protection Authority Annual Report 2007/2008*, October 2008

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

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## Appendix 1 – Generic Flow Diagram for the Environmental Assessment Guideline Process



\* The Environmental Protection Authority may update the Guideline as necessary.

## Appendix 2 – Example of Attachment to a Ministerial Statement approving a change under section 45C

The following example of an Attachment to a Ministerial Statement should be completed by the proponent and submitted with the section 45C application.

Attachment # to Statement xxx  
*[Attachments are numbered consecutively –  
commence at #1 if previous Attachments are not numbered]*

### Change to Proposal

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**Proposal:** [Title of proposal and location, as per statement]

**Proponent:** [Proponent name – use current proponent and initiate change via section 38(7) if required]

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**Change:** [Provide a brief description of the proposed change. e.g. Change to the rail alignment along Hamersley Flats]

#### [Example] Key Characteristics Table:

Element	Description of proposal	Description of approved change to proposal
Life of Project	More than 50 years	More than 50 years
Area of disturbance	600 hectares	<b>650 hectares</b>
Dewatering	2 gegalitres per annum	<b>2.2 gegalitres per annum</b>
Rail length	35 kilometres	35 kilometres
Workforce	990 people	<b>Workforce numbers removed as not environmentally relevant</b>

**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 application under section 45C**

### **About this document**

This document describes the nature of proposal boundaries to be submitted as spatial data to the EPA as part of a section 45C application.

### **What is Spatial Data?**

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
- serve as an administrative record
- communicate to others where the EPA has given advice

### **What are the specifications required?**

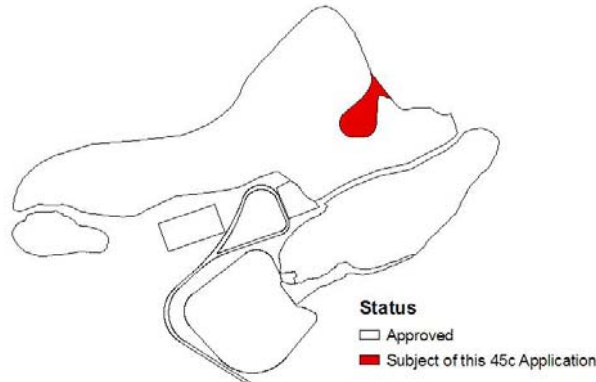
Proponents are required to submit geo-referenced GIS or CAD data on CD depicting the proposal extent boundaries or footprint for both; a) the currently approved boundaries; and b) the proposed changes under the s45C application. All spatial data should be provided as clearly attributed closed polygons, conforming to the following parameters:

1. Datum: GDA94
2. Projection: Geographic (latitude/longitude) or Map Grid of Australia (MGA)
3. Format: ESRI's shapefile, geodatabase or coverage, Microstation or AutoCAD

Information in the spatial data provided must be consistent with descriptions in the text of the application and the Key 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.

**Can you show me an example?**

**Figure 1:** GIS Boundaries for Approved and Proposed change under s45C

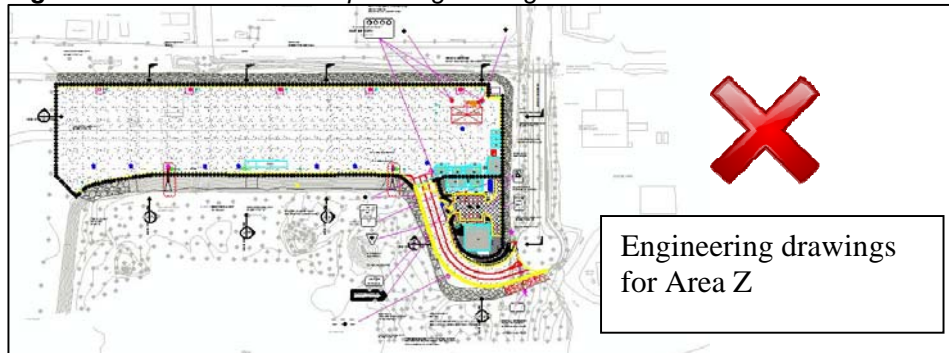


**Table 1: GIS Attributes for Approved and Proposed Change under s45C**

Description	Status	Document
Proposed Waste Dump Expansion	Subject of this 45c Application	not applicable
T6b Pit Stage 2	Approved	Ministerial Statement 551 - 45c change
T6b Pit Stage 1	Approved	Ministerial Statement 551
T4 Waste Dump	Approved	Ministerial Statement 551
T5 Pit	Approved	Ministerial Statement 463
Access/Haul Road	Approved	Ministerial Statement 463
Crusher and ROM Pad	Approved	Ministerial Statement 463
Offices and Workshop	Approved	Ministerial Statement 463
Accommodation Camp	Approved	Ministerial Statement 463
MGM Waste Dump	Approved	Ministerial Statement 463

**Other examples?**

**Figure 2:** Do not submit complex engineering GIS data.



**Figure 3:** Only submit simple GIS boundaries of the Approved and Proposed changes.

