

Request to amend a proposal during
assessment under section 43A of the
Environmental Protection Act 1986

Instructions

Environmental Protection Authority

November 2021

Version	Change	Date
1.0	Initial version aligned with EP Act amendments 2020	5 November 2021

As EPA documents are updated from time to time, users should consult the EPA website to ensure they have the most recent version.

Environmental Protection Authority 2021,
Instruction: Request to amend a proposal during assessment under section 43A of the Environmental Protection Act 1986, EPA, Western Australia.

This document is available in alternative formats upon request.

National Relay Service

TTY: 133 677

(To assist persons with hearing and voice impairment)

More information

EPA Services

Department of Water and Environmental Regulation

Prime House, 8 Davidson Terrace

Joondalup WA 6027

Locked Bag 10

Joondalup DC WA 6919

p: 08 6364 7000

e: info.epa@dwer.wa.gov.au

w: www.epa.wa.gov.au

Purpose of these instructions

Proponents must seek approval from the Environmental Protection Authority (EPA) if they wish to amend their proposal during an assessment. The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to exercise the powers and duties in section 43A *Environmental Protection Act 1986* (EP Act).

The purpose of this document is to instruct proponents to provide the necessary information with their request to enable the EPA to decide whether to approve an amendment to a proposal during assessment under section 43A of the EP Act. The scope and detail of assessment information that is required to be provided is likely to depend upon the nature of the amendments being sought and be proportionate to their likely environmental effects.

The EPA has discretion to approve or refuse a request to amend a proposal, at any time before it provides its Assessment report to the Minister. If approved, the amended proposal is what the EPA considers for its assessment.

Note: If the EPA's view is that, if the proposal was already approved, the amendment would be a significant amendment (see section 3 of the EP Act), the EPA will usually refuse the amendment. A 'significant amendment' is one which is likely to have a significant effect on the environment. For guidance on 'significance', refer to the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

How to complete a request to amend a proposal during assessment under s. 43A

Proposal information provided to the decision maker

The EPA needs sufficient information on the proposed amendment and its likely impacts to decide whether to approve an application, and whether to perform any of the functions under section 40, such as requiring a public comment period for the amended proposal.

The quality of information provided in the request, the nature of Proposal elements and likely environmental effects associated with the proposed amendment, may affect expected (non-statutory) timeframes. They may also affect the EPA's decision whether to approve the proposed amendment. There may be delays to expected timeframes if inadequate information is provided and the EPA may also require additional information.

The EPA would often expect there to be a section 43A change to reflect any changes to the proposal which have been identified as likely to reduce its environmental effects.

Advice

Proponents may contact EPA Services, Department of Water and Environmental Regulation (DWER), if assistance to prepare a request is needed.

Refer to the EPA's [Administrative Procedures](#) and [Procedures Manual](#) for more information about the processes relating to amending a proposal during assessment.

Applications for amendment to proposal during assessment under section 43A will usually be made public. The EPA will usually publish a summary of reasons detailing the outcome of the s 43A application.

Content of a request to amend a proposal during assessment under s. 43A

A proponent who wishes to amend a proposal during assessment must seek the EPA's approval by written notice and provide the EPA with the following information. A form is also provided to assist proponents.

Information to be provided in support of an amendment to proposal and/or conditions

The following information is provided to assist proponents to complete the [Form: Request to amend a proposal during assessment under s. 43A](#) of the EP Act. The following sections are aligned with the key headings in the form for ease of completion.

Part A: Proponent information and proposal description

1. Proponent information

Proponent name: provide correct proponent name and an Australian Company Number (or Australian Business Number for government agencies).

Who is requesting to amend a proposal during assessment? These instructions apply to a nominated proponent of a proposal who wishes to amend their proposal during assessment. If the nominated proponent wishes to use an authorised agent, then an authorisation should be provided with the request to amend the proposal.

Declaration: For the EPA Services to accept a request from a proponent, or consultant on behalf of the proponent, it must be signed by an authorised person – either a CEO or a person with evidence to act on behalf of the organisation.

2. Pre-request discussions

Quote any applicable correspondence reference number and/or the EPA Services contact. Identify outcomes of any discussions with EPA Services at any meetings held prior to submitting the s43A request.

3. Proposal information

Provide clear proposal information, including relevant maps, figures and spatial data.

Title of the proposal: Provide the title of the proposal.

Proposal content document: Provide the proposal content document. If there is no current Proposal content document for the approved proposal, the proponent is required to prepare one as part of the request for an amendment to a proposal during assessment. It is required to comply with the [Instructions and Template: How to identify the content of a proposal](#). This ensures the inclusion of all Proposal elements which have the potential to have a significant effect on the environment.

Spatial data: The EPA requires maps and figures with the request. Provide spatial data in GIS format that is geo-referenced and conforms to the following parameters:

- data type: closed polygons that represent the proposal boundary (development envelope) and the activity areas for all physical elements of the proposal (footprint)
- attribution: name the development envelope and each activity area in the attribute table of the spatial data
- format: ESRI geodatabase or shapefile
- coordinate system: GDA20 (datum) (or as updated) and projected into the appropriate Map

Grid of Australia (MGA) zone.

Provide maps and figures that are clear and readable, of appropriate scale, in either jpeg or pdf format and of good resolution (greater than 300 ppi).

Part B: Assessment of amendments

1. Reason for and content of proposed amendment

Reason for the proposed amendment: Provide the reason(s) for the proposed amendment(s) to the proposal.

Content of the proposed amendment: Describe the content of the proposed amendment(s) to the proposal, including:

- any changes to the General Proposal Description in the Proposal content document, including how they compare to the referred proposal. For example, a change in location, or removal and/or addition of development(s) and/or activity(ies).
- any changes to the Proposal elements in the Proposal content document, and the proposed extent of these, including comparison of the proposed amended proposal with the referred proposal. For example, a decrease and/or increase of extent of Proposal elements or removal and/or addition of Proposal elements.

Consolidated updated Proposal content document: Provide a consolidated updated Proposal content document, including where relevant:

- General Proposal Description
- Proposal Elements
- spatial data maps and figures.

See [Instructions and Template: How to identify the content of a proposal](#) for examples of how to reflect amendments to the proposal.

Proposal alternatives: To the extent reasonably practicable, describe any feasible alternatives to the proposed amendment, including a comparative description of the environmental impacts of each alternative, and sufficient detail to make it clear why any alternative is preferred to another.

2. Regulatory information

Level of Assessment: Provide the level of assessment for the proposal.

Assessment details: Identify the assessment details and any proposed change to: assessment form; content; or indicative timing.

Status of the assessment: Provide the status of the assessment, including:

- Last assessment step completed (and date)
- Current assessment step. If the proposal is currently in Step 3: Public review, identify whether the Environmental Review Document has been released for public review.

The current level of assessment and status of assessment are important considerations for the EPA's decision, particularly where the proposed amendment includes increases to the proposal activities and or proposal extents. The EPA's considerations include but are not limited to the following:

- The level of detail required in the information provided. The further an assessment has

progressed the more information may be required.

- Whether to approve or refuse. The EPA usually expects a request to amend a proposal to reduce environmental effects as the assessment progresses and the mitigation hierarchy is applied. For other amendments, the EPA may be less likely to approve an amendment the further the EPA's assessment has progressed. For example, the EPA may refuse a request to amend a proposal if the proposal is in Step 4: Preparation of Assessment report.

If the EPA approves the amendment, the EPA may be more likely to perform any of the functions under section 40 of the EP Act if the nature of the amendment means that the assessment requirements for the amendment are not already included in the current Level of Assessment. This will depend on how far the assessment has progressed

Changes to decision-making authorities or processes: Identify if there are any likely changes to decision-making authorities or processes (addition or removal) as a result of the proposed amendment. For any new decision-making authorities or processes, include whether they can mitigate the potential impact of the proposal on the environment. For any removal of decision-making authorities or processes (where there is still a potential significant effect on the environment), include whether there is an alternate statutory decision-making process that can mitigate the potential impact of the proposal (see Instructions and Template: How to prepare an Environmental Review Document)

Identify if changes to assessment procedures are required

- Consider whether the current assessment procedures can continue to apply to the proposal as specified in the Level of Assessment, the Environmental Scoping Document and/or other procedures required by the EPA under section 40 of the EP Act

OR

- Specify what changes to the assessment procedures are proposed and identify any functions the EPA should perform or perform again under section 40 of the EP Act.

3. Identification of environmental factors and environmental effects

Environmental factor/s: Identify which environmental factor/s are relevant to the proposed amendment, considering:

- change in the environmental effects relevant to environmental factors (including decrease or increase in environmental effects).
- identification of new environmental factors.

Environmental effects: Identify any negative likely environmental impacts (including cumulative environmental and holistic impacts) to the environmental factors and environmental values from the proposed amendment, such as additional developments / activities and / or increases in the extent of Proposal elements.

Discuss whether there should be a change in the preliminary key environmental factors and/or other factors for the assessment.

Mitigation hierarchy: Describe how the mitigation hierarchy has been applied to the proposed amendment. Refer to [Statement of environmental principles, factors, objectives and aims of EIA](#) for further guidance on the mitigation hierarchy.

Residual impacts: identify if there are any residual environmental impacts, including whether there are significant residual environmental impacts.

Additional information: Identify if any additional information is needed to enable the EPA to continue assessing the proposal.

Discuss whether existing information provided for the assessment (and the information in PART B: Assessment of amendments) is adequate for the EPA to continue the assessment or whether additional information should be submitted to the EPA. This may depend on:

- the currency of information, such as surveys
- the nature of the proposed amendment - whether it includes additionality and increases or decreases to proposal extents and so on
- the Level of Assessment
- the status of the assessment.

If additional information needs to be submitted to the EPA to support the request for amendment, **complete PART C: Additional information**. If the EPA's view is that additional information is required but is not provided with the request, the EPA may request that the information be provided.

4. Consultation

Consultation undertaken: Discuss whether any consultation has been undertaken, including:

- consultation with decision-making authorities
- targeted consultation with other stakeholders (including any public consultation) where there are proposed increases to a relevant factor or factors
- Note: the EPA would usually expect some targeted public consultation on the amendment to have been carried out if the level of assessment includes public review and an amendment proposed after public review has the potential to have a significant effect on a preliminary key environmental factor.

Outcomes of consultation: Summarise the consultation process and outcomes:

- identify who was consulted, summary of discussions, key issues / matters raised, outcomes and whether matters raised were resolved or outstanding

Justify, if consultation has not been undertaken.

It is expected that the proponent would consult with any decision-making authorities who administer decision-making processes which may be affected by increases to impacts in relation to a relevant factor/s (and/or new factor/s) which have the potential to be significant. It is expected that targeted consultation with other stakeholders will be undertaken as appropriate.

Part C Additional information (if needed)

The provision of this information is optional. Depending on the nature of the proposed amendment, the EPA may need this information to consider the requested proposal amendment. The scope and detail of assessment information that is required to be provided is likely to depend upon the nature of the amendments being sought and be proportionate to their likely environmental effects.

1. Additional surveys, investigations, and other information

Discuss additional information that has been obtained since the referral or the environmental review document (whichever is more recent), such as surveys and investigations.

Submit additional information where it supports the request. If surveys are provided, submit IBSA/IMSA data packages – refer to [Instructions and Templates: Preparing data packages for the Index of Biodiversity Surveys for Assessments \(IBSA\)](#) and [Instructions, Templates and Form: Preparing data packages for the Index of Marine Surveys for Assessments \(IMSA\)](#).

2. Discussion of significance

Discussion should be based on the environmental factors relevant to negative environmental effects likely from the proposed amendment that the proponent has identified in Part B - Step 3.

Change to the significance of the residual impact: Discuss the likely effect of the requested amendment on, or in relation to the environmental factors, after application of the mitigation hierarchy including:

- the effects of the proposed amendment on its own
- the effects of the proposed amendment in the context of the existing proposal
- cumulative environmental impacts
- holistic impacts.

Significant effect on the environment: Discuss whether there is likely to be a significant effect on the environment (including cumulative and holistic impacts):

- from the effects of the proposed amendment on its own
- from the whole proposal if the amendment were approved, in the context of the original proposal.

Environmental outcomes: When discussing the above, include any change in likely environmental outcomes and the consistency of these outcomes with the EP Act principles and EPA objectives for environmental factors, in the context of the original proposal.

Character of the proposed amendment: Discuss whether the character of the proposed amended proposal will be substantially the same character as the referred proposal.

For guidance on “significance” see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA.](#)

Note: The EPA has discretion to approve or refuse a request to amend a proposal. If approved, the amended proposal is taken to be the referred proposal. If the EPA refuses a proposed amendment, the proponent may:

- decide not to proceed with the amendment, OR
- revise the amendment to reduce the environmental effect of the proposed amendment and resubmit the request, OR
- request that the EPA terminate the assessment of the current proposal under s.40A and refer a new amended proposal under s. 38.

Submitting a s43A request

Ensure that all required information in the [Form – Request to amend a proposal during assessment under s 43A](#) is provided with your request to the EPA Services, DWER. It is preferred that requests are emailed. Postal submissions will be accepted.

Submissions

Email: registrar@dwer.wa.gov.au OR EPA Services
Department of Water and Environmental Regulation
Locked Bag 10, Joondalup DC, WA 6919

General Enquiries

Telephone: 6364 7000 Fax: 6364 0896
Email: info.epa@dwer.wa.gov.au Website: www.epa.wa.gov.au