

LIBRARY

Department of Biodiversity,
Conservation and Attractions

This PDF has been created for digital preservation. It may be used for research but is not suitable for other purposes. It may be superseded by a more current version or just be out-of-date and have no relevance to current situations.

A GUIDE TO

IMPLEMENTING

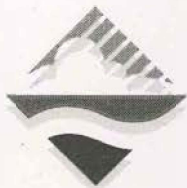
CHANGES TO

PROPOSALS AND/OR

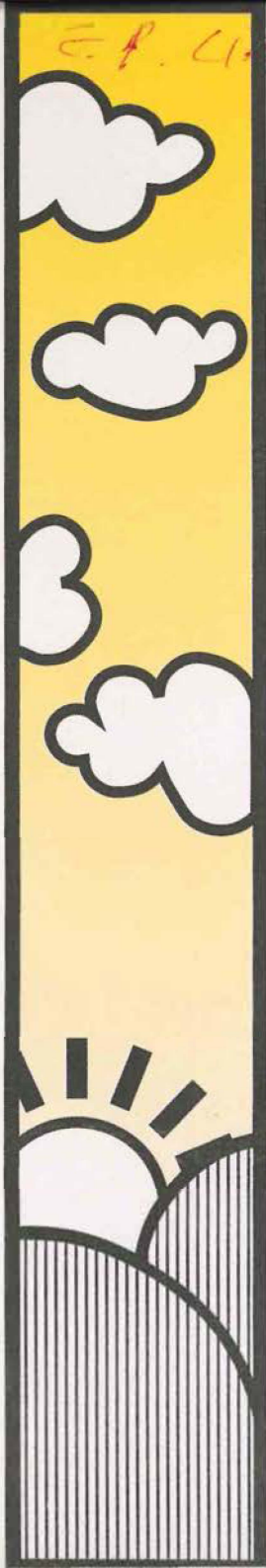
ENVIRONMENTAL

CONDITIONS

OF PROPOSALS ASSESSED UNDER PART IV OF
THE ENVIRONMENTAL PROTECTION ACT,
1986 IN WESTERN AUSTRALIA



Department of Environmental Protection





For more information

Please contact:

Department of Environmental Protection
Westralia Square
141 St Georges terrace
PERTH WA 6000

General inquiries

Information Branch

Telephone: (09) 222 7140

Facsimile: (09) 322 1598

Environmental Impact Assessment

Assessment Procedures

Telephone: (09) 222 7081

Facsimile: (09) 322 1598



A GUIDE TO

IMPLEMENTING

CHANGES TO

PROPOSALS AND/OR

ENVIRONMENTAL

CONDITIONS

OF PROPOSALS ASSESSED UNDER PART IV OF
THE ENVIRONMENTAL PROTECTION ACT,
1986 IN WESTERN AUSTRALIA

Published in Western Australia by the Department of Environmental Protection, 1996
ISBN 0 7309 8000 6

Printed on recycled paper

DEP 1083-1196-800

Introduction

Western Australians have an environmental impact assessment process which looks at new development proposals to ensure that the environment will be protected.

The process is aimed at protecting the environment by ensuring development is environmentally sound and well managed and recognises that people want a say before the Government decides.

Proponents, or project developers, are required to tell the Environmental Protection Authority and the community what they want to develop, what they expect the environmental impacts to be, and how they plan to manage their projects so the environment will be protected.

They also are required to commit themselves to the environmentally responsible implementation of their proposals.

Impact assessment provides a way in which independent environmental advice can be given to Government so it can properly decide the balance between political, environmental, social and cultural issues in relation to various types of development.

The EPA provides independent advice to the Government and the community on ways to ensure that a development is environmentally acceptable. This advice is published in the EPA's assessment report.

The Government decides whether it accepts that advice, and sets the legally binding Environmental Conditions that determine the way in which the development will proceed.

The Minister for the Environment issues a Ministerial Statement that the proposal may be implemented, subject to the environmental conditions contained in the statement.

Details of the different parts of the assessment process are provided in the other publications listed at the back of this booklet.

The final environmental conditions set on a proposal depend on the details of the proposal, as specified at the time of the assessment.

These are usually site specific and also determined by the particular technology to be used in the implementation and operation of the proposed development.

There are occasions when a proponent may need to modify the proposal, after the assessment has been completed.

Examples of this include:

- unanticipated engineering problems on the site, necessitating changes to the site boundaries or location of the plant within the site;
- an environmental condition that later proves to be inappropriate and which cannot be achieved in the manner envisaged at the time of assessment;
- omission in setting an environmental condition;
- changes to the approved time frame for implementation; and
- on occasions (rarely) the need to correct typographical errors in environmental conditions.

Sometimes, environmental conditions or commitments may prove to be unworkable in practice.

They may have unforeseen consequences in implementation, or they may be ineffective in protecting the environment.

Clearly some of these circumstances may be regarded as very minor in nature, while others might be regarded as more significant. In all instances the consideration is whether or not amendment to conditions will expose the environment to less protection than provided by the original environmental conditions.

The Environmental Protection Act has made provision for the consideration of changes to proposals and/or conditions and this booklet describes those provisions.

Purpose of this booklet

This booklet explains the process by which changes can be made to proposed developments and/or to environmental conditions following assessment under Part IV of the Environmental Protection Act, 1986.

The information is current as at October 31, 1996, but could be subject to change if the Act or its administrative processes are modified.

It does not cover amendments to licences issued under Part V of the Act.

There are three possible situations that can occur and which are described in more detail. These are:

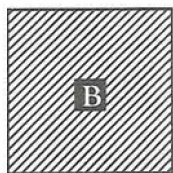
- a change that is “minor”
which requires no assessment or change to environmental conditions.
- a “major” change;
which necessitates full re-assessment of the whole proposal under Part IV;
- a change which falls between one that is “minor” and “major”;
 - a) changes to *environmental conditions* that fall between the above two categories, can be achieved without full re-assessment by using Section 46 of the Act to amend the environmental conditions of approval.
 - b) changes to *the proposal* that fall between minor and major can be achieved without full reassessment of the proposal by assessing the change to the proposal only, using Section 38 of the Act.

How do you tell whether a change is “Minor” or “Major”?

There is no easy answer to this as it is a matter of judgement as to how different the changed proposal is, and how environmentally significant that might be. The following illustrations provide some guidance.

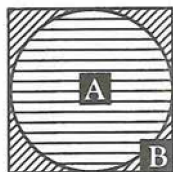


The circle represents the original, fully assessed proposal, Proposal “A”.



The square represents the modified proposal, Proposal “B”.

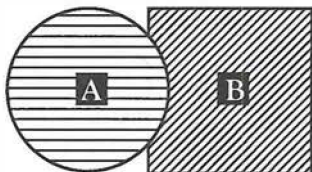
Areas in overlap indicate areas common to both developments and also, therefore, areas already covered adequately by the proponent's environmental commitments and environmental conditions set on the proposal.



Scenario 1 - a change that is “minor” requiring no assessment or change to environmental conditions.

The environmental conditions set on the original proposal also apply to almost all of the revised proposal. The environmental effects are very slight and not environmentally significant.

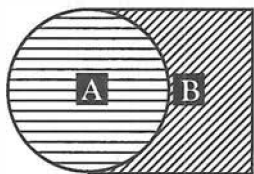
This may be considered as a situation of “minor” change.



Scenário 2 - a "major" change requiring full re-assessment.

There is some overlap between proposals "A" and "B", but most of Proposal "B" lies outside the environmental conditions already set on "A". The differences are environmentally significant and too great to be accommodated only by amendments to the existing environmental conditions and/or assessment of the change to the proposal.

This situation would be considered to be a "major" change, requiring a new assessment. See booklet on "A Guide to Environmental Impact Assessment in Western Australia" for details of the process.



Scenario 3 - falls between "minor" and "major" requiring assessment of the change only.

There is moderate overlap between the two proposals. The environmental effects of proposal "B" are similar to proposal "A" with a high degree of commonality of conditions. The new controls required for "B" contain no factors of major environmental or public concern.

This situation represents a change that falls between "minor" and "major" that can be handled by:

- amending the proposal's existing environmental conditions of approval, if necessary, under Section 46 of the Act; and/or
- assessing the change to the proposal only under Section 38 of the Act.

The Minister for the Environment needs to determine whether the conditions imposed on the original proposal need to be amended (Section 46) and the EPA needs to determine the environmental significance of the change to the proposal only that falls outside the boundary of the original proposal assessed (Section 38).

In this scenario the EPA would run both processes in parallel.

The following sections explain how to apply to change a proposal and/or amend existing environmental conditions of approval.

Changes to Environmental Conditions

There are occasions when proponents may need to modify their plans, after the assessment has been completed.

Examples of this include:

- unanticipated engineering problems on the site, necessitating changes to the site boundaries or location of the plant within the site;
- an environmental condition that later proves to be inappropriate and which cannot be achieved in the manner envisaged at the time of assessment;
- omission in setting an environmental condition;
- changes to the approved time frame for implementation; and
- on occasions (rarely) the need to correct typographical errors in environmental conditions.

Sometimes, environmental conditions or commitments may prove to be unworkable in practice.

They may have unforeseen consequences in implementation, or they may be ineffective in protecting the environment.

Clearly, some of these circumstances may be regarded as very minor in nature, while others might be regarded as more significant. In all instances the consideration is whether or not the need to amend will expose the environment to less protection than covered by the original environmental conditions.

How to make application

Application to amend existing environmental conditions of approval should be made in writing to the EPA. The application should include:

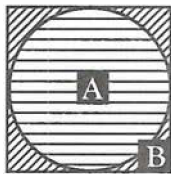
- project title;
- a description of the changes proposed to the environmental conditions; and
- a description of the environmental impact and measures to mitigate that impact.

You can use the application form in this booklet (appendix II), although it is not compulsory to do so.

Under Section 46 of the Act the Minister for the Environment has to decide, following advice from the EPA, whether a proposed change to environmental conditions is "not substantial" or "substantial". The approach taken is different according to the Minister's decision.

There are no appeal rights against the decision of the Minister as to whether or not to initiate a Section 46 Report.

The flow chart on page 11 illustrates the main steps in the process, and should be read with this Section.



Scenario 1 - a "minor" change requiring no change to environmental conditions.

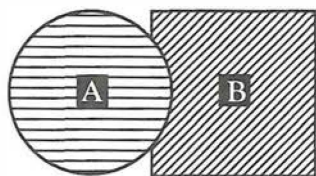
Changes to environmental conditions and/or procedures may be achievable where they apply only to circumstances that are very minor in nature by using the standard implementation clause always issued in the Minister's Statement permitting the original proposal to proceed. The standard implementation clause requires the proponent to implement the development in accordance with designs, specifications, plans and other technical material as supplied to the EPA (Clause 2-1). It also states that:

"Changes to the proposal which are not substantial may be carried out with the approval of the Minister for the Environment.", and

"Where, in the course of the detailed implementation referred to in condition 2-1, the proponent seeks to change the designs, specifications, plans or other technical material submitted to the EPA in any way that the Minister for the Environment determines, on the advice of the EPA, is not substantial, those changes may be effected." (Clause 2-2)

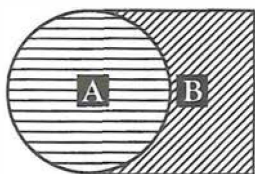
The EPA advises the Minister as to the significance of the proposed changes and the feasibility of managing the situation in the above manner, prior to the Minister giving approval to the change.

In this situation, the Minister for the Environment gives approval to changes that are minor by the issue of a letter of approval to the proponent.



Scenario 2 - a "major" change requiring full re-assessment.

In this case the Minister for the Environment decides that the request to amend the existing environmental conditions of approval is a major change and too great to be accommodated only by amendments to the existing environmental conditions and requires assessment as if it were a new proposal under Section 38 of the Act. See booklet on "A Guide to Environmental Impact Assessment in Western Australia" for details of the process.



Scenario 3 - falls between "minor" and "major" requiring assessment of the change to environmental conditions only.


If the proposed change falls between "minor" and "major", the Minister can initiate an assessment of the change to environmental conditions by the EPA under Section 46 of the Act.

The Minister's decision to initiate an assessment of the change to environmental conditions will be advertised in the Department of Environmental Protection's weekly advertisement which appears in "The West Australian" newspaper every Saturday.

There are no appeal rights against the Minister's decision as to whether or not to initiate an assessment and report by the EPA under Section 46 of the Act.

The proponent will be expected to provide the EPA with a report outlining the proposed changes, their likely environmental impacts, and proposed means of mitigating the impacts. This report is not usually as detailed as the initial report on the whole proposal.

The proponent's report is normally made available for a minimum four-week public review period. However, exceptions can occur requiring a more limited review. In these instances, the proponent's report is, as a minimum, forwarded to decision-making authorities, involved agencies and those members of the public who made submissions on the original proposal, for their comment.



The EPA then assesses the proposed changes to the environmental conditions and publishes its report and recommendations, proposing amended environmental conditions of approval under Section 46 of the Act.

The report under Section 46 of the Act is prepared as a Bulletin and requires the same approval procedure including appeal period and environmental condition setting process as a normal EPA assessment report.

The Minister for the Environment can decide in consultation with other decision-making authorities to issue an amended statement, or reject the proposed changes.

An amended Statement that applies to the proposal is titled:

"Statement to Amend Conditions Applying to a Proposal according to the Provisions of Section 46 of the Environmental Protection Act, 1986."

The above Statement has the same status as all other documentation and certificates authorising implementation of the proposal.

Change to Environmental Conditions

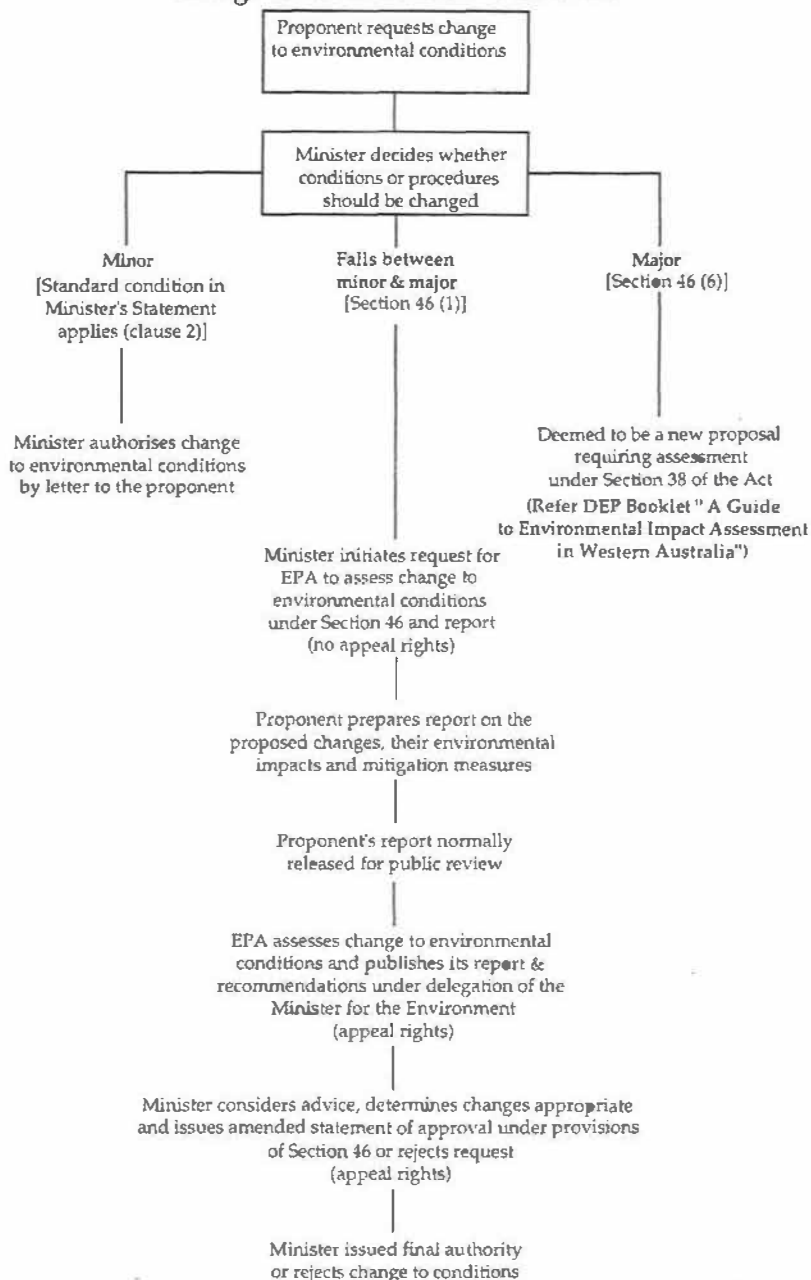


Fig. 1: Flow Chart for consideration of changes to environmental conditions

Changes to a Proposal

How to make application

An application stating the changes to the proposal that are required, should be made in writing to the EPA including:

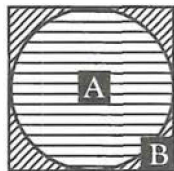
- project title;
- a description of the changes to the proposal; and
- a description of the environmental impact and measures to mitigate that impact.

You can use the application form in this booklet (appendix II) although it is not compulsory to do so.

The key question that must be asked is, "Can the change to the proposal be accommodated by environmental assessment of the change only, or does it require assessment as a new proposal?"

The EPA's decision to initiate an assessment of the whole proposal or assessment of the change to the proposal only under Section 38 of the Act will be advertised in the Department of Environmental Protection's weekly advertisement which appears in "The West Australian" newspaper every Saturday.

The flow chart on page 15 illustrates the main steps in the process and should be read with this Section.

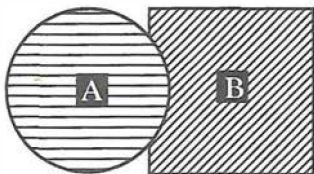


Scenario 1 - a "minor change" requiring no assessment.

The EPA determines the change to the proposal be accommodated by assessment of the change only.

The EPA then decides the environmental significance of the proposed changes to the proposal under section 38 of the Act.

In this scenario the EPA would determine the level of environmental impact assessment under Section 38 usually as "not assessed" with no further environmental advice related to the change of proposal being provided.



Scenario 2 - a "major" change requiring full re-assessment.

If the changes to the proposal are significant, the whole proposal is treated as a new proposal.

The EPA then determines the environmental significance of the proposed changes to the proposal under Section 38 of the Act.

In this case, the EPA would determine the level of environmental impact assessment under Section 38 usually as a "formal assessment".

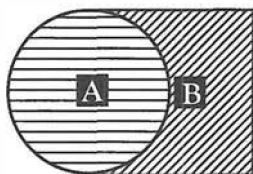
The EPA would assess the proposal following a period of public review and publish its report and recommendations as a Bulletin.

The Minister for the Environment then decides in consultation with other decision-making authorities the statement of conditions of approval, or he rejects the proposal.

The Statement that applies to the proposal is titled:

"Statement of Conditions Applying to a Proposal according to the Provisions of Section 38 of the Environmental Protection Act, 1986."

This Statement authorises implementation of the proposal.



Scenario 3 - falls between "minor" and "major" requiring assessment of the change to proposal only.

The EPA determines the change to the proposal may be accommodated by assessment of the change only.

The EPA then determines the environmental significance of the proposed changes to the proposal under section 38 of the Act.

In this case the EPA would determine the level of environmental impact assessment under Section 38 usually as either:

- "formal assessment" - the procedures applying to a formal assessment are discussed under scenario 2;

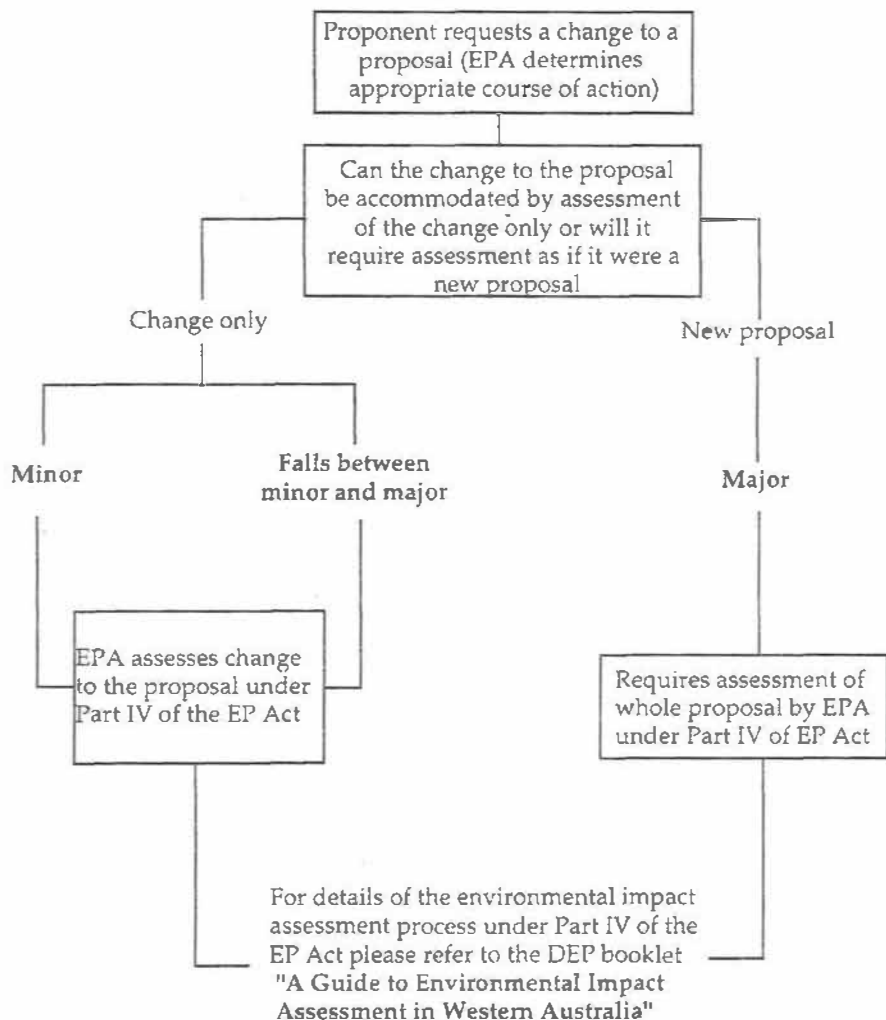
or

- "informal review with public advice" - in this case the EPA provides informal environmental advice to decision making authorities with that advice made publicly available.

For information on proposals assessed by the EPA under Section 38 of the Act, refer to the DEP publication "A Guide to Environmental Impact Assessment in Western Australia".

It may be that the proposed change involves assessment under Section 46 of the Act to amend the existing environmental conditions of approval and assessment of the changes to the proposal under Section 38 of the Act. In this situation both assessments would be undertaken in parallel with one assessment report being issued by the EPA at the end of the process.

Change to a Proposal



Public review

As is the case with assessment of a proposal, it is recognised that the community often wishes to provide input or comment. Public consultation is handled on a case-by-case basis depending on the proposed amendment.

The proponent's report is usually made available for at least four weeks' public review. However, exceptions can occur in which case a more limited review might take place. This will generally involve, as a minimum, the decision-making authorities, involved agencies and the members of the public who made submissions on the original proposal.

Changes to a proposal will require determination on the Level of Assessment by the EPA. Determinations on the level of assessment are covered in the booklet "A Guide to Environmental Impact Assessment in Western Australia" obtainable from the Department of Environmental Protection.

Appeal rights

Section 46 Amendments to Environmental Conditions

There is no appeal right on the decision by the Minister to request a report and recommendations from the EPA on proposed changes to environmental conditions under Section 46 of the Act.

Other aspects are appealable under the same terms as a full assessment and are as follows:

- Anyone has the right to appeal the content of and/or recommendations in the EPA Report, under Section 100(2) of the Environmental Protection Act.
- The proponent has the right of appeal against the environmental conditions published, under Section 100(3) of the Environmental Protection Act.

Section 38 Formal Environmental Impact Assessment

Where a change to the proposal is referred to the EPA under Section 38, then the normal appeal provisions for the impact assessment of proposals apply.

For information on appeal provisions, refer to “A Guide to Environmental Impact Assessment in Western Australia”.

APPENDIX I

SUGGESTIONS FOR COMPLETING AN APPLICATION TO AMEND ENVIRONMENTAL CONDITIONS OR AN APPROVED PROPOSAL

EPA
WESTERN AUSTRALIA

The application form is not a legal document.

It is designed to provide information to help the Minister and the EPA to determine whether the modifications will constitute a "minor" or "major" change or falls between these categories and whether this process can be handled using Section 46 and/or Section 38 of the Act.

This form will not be adequate on its own, and you are advised to consult with the Department of Environmental Protection on the nature of additional documentation that may be appropriate.

PROPONENT

The EPA and the Minister for the Environment will need to know the precise details about the person or company responsible for the application for changes to environmental conditions or a proposal. For legal reasons this needs to be precise, including the full name and address of the person or the registered name of the company.

PROPOSED CHANGES

A simple, brief description of the changes being sought to the proposal or environmental conditions is required. This should include, as a minimum, information about likely changed technology, area to be affected by the proposal, likely changes to environmental impacts and management plans to mitigate impacts. An indication of the urgency in terms of proponent constraints and timing would also be useful.

Please include plans, designs and photographs, information on site location and conditions, and services where these differ from those used for the original proposal.

ENVIRONMENTAL IMPACT

The reader is referred to the booklet "A Guide to Environmental Impact Assessment in Western Australia" for guidance on the factors used in assessing environmental impact of a project.

APPENDIX II

APPLICATION FORM -

AMENDMENTS TO ENVIRONMENTAL CONDITIONS OR PROPOSALS FOLLOWING COMPLETION OF ASSESSMENT

EPA - WESTERN AUSTRALIA

OFFICE USE ONLY: ASST No _____ FILE No _____

This is not a legal document. It is designed to provide information to assist the Minister and the EPA to determine whether the modifications will constitute a "substantial" or a "non substantial change" and whether this process can be handled using Section 46 and/or Section 38 of the Act.

PROPONENT - Submitted by _____

Address for correspondence _____

Proponent's contact person _____

Phone No _____

Position _____

PROPOSED CHANGES - Title of proposal _____

Proposed changes to environmental conditions Y/N

Description of changes to environmental conditions _____

Proposed changes to proposal Y/N

Description of changes to proposal _____

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins or other markings on the paper.

Are there significant risks and hazards associated with the proposed changes to the environmental conditions or proposal? If so attach details. List relevant environmental studies and documentation already produced.

[illegible]

Date _____

Suggested reading

- Western Australia Environmental Protection Act, 1986
- Environmental Protection Authority (1987)
'A Guide to the Environmental Protection Act, 1986'.
- Environmental Protection Authority (1992)
'Environmental Protection, Western Australia'.
- Environmental Protection Authority (1992)
'Guidance notes - from Environmental Protection Authority reports 1971-1992, Western Australia'.
- Government of Western Australia (1992)
'State of the Environment Report'.
- Australian and New Zealand Environment and Conservation Council (1991)
'A National Approach to Environmental Impact Assessment in Australia' and
'The Background Paper of the Working Group', ANZECC, Canberra.
- Inter governmental Agreement on the Environment (1 May 1992).
- National Strategy for Ecologically Sustainable Development (December 1992).
- Compendium of Ecologically Sustainable Development Recommendations,
December 1992.
- 'National State of the Environment Report 1996' - (in press).
- Environmental Protection Authority (1993)
'A Guide to Environmental Impact Assessment in Western Australia'.
- Environmental Protection Authority (1993)
'Environmental Protection Act, 1986 Environmental Impact Assessment Administrative
Procedures 1993'.
- Environmental Protection Authority (1993)
'Environmental Reviews Guidelines for Proponents'.
- Department of Environmental Protection (1995)
'Environmental Impact Assessment How to Make a Submission'.