



Guidance on ‘new or increased impact’ relating to changes to approved management plans under EPBC Act environmental approvals

Introduction

Environmental approvals under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) may contain an approval condition which uses the reference ‘new or increased impact’ in relation to revisions to approved management plans. This condition, referred to in this document as the Revised Management Plan condition, allows revised plans to be implemented without approval by the Minister, provided that the proposed changes are unlikely to have a new or increased impact on matters protected under the approval.

The aim of this guidance is to assist approval holders and officers of the Department of the Environment and Energy in determining whether or not a change is likely to have a ‘new or increased impact’ on a protected matter.

Background

Many EPBC Act Part 9 approvals include conditions for management plans, strategies or programs to be implemented, and usually these documents must be submitted for approval by the Minister prior to implementation. For the purposes of this guidance, such documents are referred to collectively as ‘plans’.

From late 2015, the Revised Management Plan condition was included in new approvals where appropriate. The Revised Management Plan condition has also been retrospectively added to many projects with an existing EPBC Act approval through formal variations to conditions.

Comparing plans

In considering whether a revised plan is likely to have a ‘new or increased impact’, a comparison is made between the requirements of the revised plan and the last plan that was formally approved by the Minister. In other words, all deviations (including incremental or cumulative changes) from the last plan formally approved by the Minister must be considered when making a decision on whether there is a new or increased impact. It is the approval holder’s responsibility to implement effective version control for plans.

New or increased impact

A ‘new or increased impact’ includes any direct or indirect increase in the impacts of an action, an increase to the risk of an impact occurring, a reduction to the monitoring or mitigation measures for a protected matter, or a change to the nature or management of an environmental offset.

What is a new impact?

A 'new impact' may be caused by a change to an activity or a change to circumstances surrounding the activity, and can include:

- new activities that may impact on protected matters
- any change to an activity that creates a new potential impact to a protected matter
- an impact to a protected matter that was not previously foreseen.

It should be noted that in some cases, a new activity may also require a formal variation to approval conditions (under section 143 of the EPBC Act); or may be beyond the scope of an approved action and therefore require separate EPBC Act approval.

What is an increased impact?

A change to a plan may result in an increase to an existing impact, and can include:

- an increase in the scale, intensity or duration of impacts
- an increase in the likelihood or consequences of an impact occurring
- a change to a measure designed to avoid, mitigate or offset an impact
- a reduced capacity to identify or measure an impact
- any other change that increases the risks or uncertainty associated with an impact.

Examples of a new or increased impact

The following changes to a plan would be **likely** to result in a new or increased impact:

- changing a plan to address different project stages
- increasing the amount of habitat for a listed threatened species that will be cleared
- a change in a measure designed to mitigate the impacts of an action on a RAMSAR wetland
- a delay to the start of an environmental offset
- a change in the timing of construction to when a listed migratory species is more likely to be present
- a reduction in the frequency of monitoring.

What is unlikely to be a new or increased impact?

Changes unlikely to be a new or increased impact include:

- changes to the structure or layout of a plan or other administrative changes that are unrelated to environmental impacts or risks
- a change to a plan which does not affect EPBC Act protected matters
- a clear improvement that avoids, mitigates or offsets environmental impacts.

Who decides whether a revised plan is likely to have a 'new or increased impact'?

The approval holder decides if a revision to a plan is likely to result in a new or increased impact.

If, after considering this guidance, approval holders are unsure whether a proposed revision to a plan is likely to result in a new or increased impact, they may request advice from the Department.

If the Minister disagrees with the approval holder's assessment that the revised plan is unlikely to result in a new or increased impact, the Minister may require implementation of the previously approved plan. In order to reduce the likelihood of the Minister making this decision, the approval holder should contact the Department for advice if they have any doubt about whether a change is likely to result in a new or increased impact.

How does an approval holder submit a revised plan to the Department?

All revised plans under the Revised Management Plan condition should be submitted to the Department. When submitting a revised plan, the approval holder should include a document clearly explaining the revisions (including a 'tracked changes' version of the plan and/or a table detailing the changes) and the reasons why they believe that the revisions will not have a new or increased impact. Approval holders should be mindful of their obligations under the conditions of the project in terms of whether they are also required to publish the revised version of the plan.

Option to submit a revised plan to the Minister for approval

Nothing in the Revised Management Plan condition prevents an approval holder from submitting a revised management plan to the Minister for formal approval under section 143A of the EPBC Act at any time.

Advice and further Information

Approval holders may request advice relating to the matters described in this document by emailing: post.approvals@environment.gov.au.

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