



Our reference: 2011/6228

Mr Terry Johannesen
Project Manager
RATCH-Australia Corporation Limited
Level 4, 231 George Street
BRISBANE 4000

Dear Mr Johannesen

EPBC 2011/6228 Mount Emerald Wind Farm Proposal, Queensland

Thank you for your letter dated 14 December 2016 to the Department, for and on behalf of Mount Emerald Wind Farm Pty Ltd, requesting approval of the *Mount Emerald Wind Farm, Northern Quoll Outcomes Strategy, December 2016, Document R76073/PR130417-2*.

Officers of the Department have reviewed and advised me on the *Mount Emerald Wind Farm, Northern Quoll Outcomes Strategy, December 2016, R76073/PR130417-2*. On this basis, and as a delegate of the Minister for the Environment and Energy, I have decided to approve the *Mount Emerald Wind Farm, Northern Quoll Outcomes Strategy, December 2016, R76073/PR130417-2*. This plan must now be implemented.

EPBC 2011/6228 condition 29 allows you (under certain circumstances) to implement revised plans without seeking the Minister's approval. If you require any advice on whether or not to submit a revised plan for approval, please contact the officer below. When submitting any revised plan to the Minister under condition 29, please provide a 'tracked changes' version of the plan. I also attach a fact sheet providing guidance on 'new or increased impact' relating to changes to approved management plans under EPBC Act environmental approvals.

Should you require any further information please contact Robin Nielsen, on 02 6274 1004 or by email: post.approvals@environment.gov.au

Yours sincerely

Monica Collins
Assistant Secretary
Compliance & Enforcement Branch
Environment Standards Division

23 Dec 2016

Enc.



Guidance on 'New or Increased Impact' relating to changes to approved management plans under EPBC Act environmental approvals

Introduction

This guidance is for those environmental approvals under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) containing 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 (RMP) condition, allows revised plans to be implemented without approval by the Minister, provided that the proposed changes do not 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 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'.

Section 143A of the EPBC Act allows an approval holder to submit revisions to approved plans for re-approval by the Minister in certain circumstances. In some cases, revisions to approved plans under section 143A will incur a fee under cost recovery provisions of the EPBC Act and regulations.

From late 2015, the RMP condition was included in new approvals where appropriate, and in some cases the RMP condition has been retrospectively added to projects with an existing EPBC Act approval through formal variations to conditions.

In approvals that have the revised management plan condition, a 'new or increased impact' is typically defined as: *a new or increased impact on any matter protected by the controlling provisions for the action, when compared to the plan, program or strategy that has been approved by the Minister.*

In broad terms, section 527E of the EPBC Act defines the term 'impact' as an 'event or circumstance' that is a direct or indirect result of the action taken by the approval holder or someone acting on behalf of the approval holder. A 'new or increased impact' in the context of the RMP condition is therefore very broad, and includes any direct or indirect increase in the impacts of an action, an increase to the risk of an impact occurring, or a change that reduces the acceptability of an impact such as a change to an environmental offset.

Scope of changes to a plan

Approvals are given for the purposes of one or more controlling provisions described in Part 3 of the EPBC Act, and plans may be required to avoid, mitigate or offset impacts to matters protected under those provisions (protected matters).

In some cases a plan may be required under both Commonwealth and state or territory approvals. It is possible that such a plan may require a revision in relation to state or territory matters only, and the changes may not relate to EPBC Act protected matters.

When considering whether a revised plan would have a new or increased impact, approval holders should have regard to all changes to the approved plan (ie. the latest version of that

plan that was formally approved by the Minister or delegate), not an unapproved revised plan (previously deemed by the approval holder to not have a new or increased impact under the RMP condition) or a plan only approved by the state or territory. In other words, if a revised unapproved plan is being implemented, and further revisions are being considered, all deviations (including incremental or cumulative changes) from the approved plan must be considered when making a decision on whether there is a new or increased impact.

The above emphasises the need to approval holders to use proper version control for plans. Further information about document version control can be found in the Department's Environmental Management Plan Guidelines available on the department's website:

<http://www.environment.gov.au/epbc/publications/environmental-management-plan-guidelines>

The following paragraphs are intended to provide general guidance about the types of changes to plans that are likely to result in a new or increased impact. They are not intended to be exhaustive or definitive. The particular facts and circumstances of a proposed revision to a plan will need to be taken into account in determining whether there is likely to be a new or increased impact.

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; or
- an impact to a protected matter that was not previously foreseen.

It should also 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 could require separate EPBC Act approval.

What is an increased impact?

A change to a plan may increase a known impact. An 'increased impact' can include:

- a new activity;
- 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; or
- any other change that increases the risks or uncertainty associated with an impact.

Some changes above may not be considered an 'increase' if the change is a clear improvement.

Examples of a new or increased impact

Although determined on a case-by-case basis, the following changes to a plan are **likely** to result in a new or increased impact:

- The transition from construction phase to operations phase, where the approved plan only covers the construction period.
- 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 commencement of an environmental offset.
- A change to the timing of a temporary impact, to a time when a listed migratory species is more prevalent.
- 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; or
- a clear improvement to a measure that avoids, mitigates or offsets the impacts of a proposal.

Examples unlikely to be a new or increased impact

Although determined on a case-by-case basis, the following changes to a plan are **unlikely** to result in a new or increased impact:

- Changes to a person's contact details.
- Changes to the name of a plan, or title page of a plan including version number or date.
- Changes to pagination or chapter format where content is not altered.
- Rectification of a clear typographical, grammatical error or mapping error, where the change does not relate to an impact or an avoidance, mitigation or offsetting measure.
- Changes to a plan that covers both state and EPBC Act requirements, and the change only relates to matters protected under state laws.
- The introduction of an additional mitigation measure.
- An increase in the frequency of monitoring.
- A change to the timing of a temporary impact, to a time when a listed migratory species is less prevalent.

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

The onus is on the approval holder to decide if a revision to a plan is likely to result in a new or increased impact.

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

When submitting a revised plan under the RMP condition, the approval holder should include a document clearly explaining the revisions (such as a 'tracked changes' version of the plan) and reasoning why they believe that the revisions will not have a new or increased impact.

Approvals that include the RMP condition also include a condition which gives the Minister the power to require implementation of the previously approved plan if the Minister believes that a revision is likely to result in a new or increased impact. 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.

Option to submit revised plan to Minister for approval

Nothing in the RMP condition prevents an approval holder from choosing to submit 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

