To: Department of Environment and Science

Re: Guideline for Major and Minor Amendments under the *Environmental Protection Act 1994*

Date submitted: 19 April 2023

Introduction

The Association of Mining and Exploration Companies (AMEC) appreciates the opportunity to make a submission on the Guideline for Major and Minor Amendments (the Guideline) for an Environmental Authority (EA) under the *Environmental Protection Act 1994* (EP Act).

In response to a request from the Department of Environment and Science (DES) for insights into the experience of Guideline users, AMEC emailed DES insights and examples from members in January 2023. The members were a mix of environmental service providers that have regular interaction with the Guideline for many clients, as well as proponents independently using the Guideline. This January input is provided as an attachment.

In the January input, AMEC submitted that some of the fundamental elements of the guideline that require administrative attention are key factors that form the baseline assessment at the front end of any application. The certainty that applicants require stems from a need for DES to be able to provide an assessment level decision (ALD) with consistency and consideration that provides the applicant with a predictable path forward. This approach will reduce the need for information requests, as well as help facilitate applications that are of a sound and assessable standard.

About AMEC

AMEC is a national peak industry body representing over 540 mineral exploration and mining companies across Australia, with 69 operating in Queensland. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over $100 billion of the mineral exploration and mining sector's capital value.

Mineral exploration and mining make a critical contribution to Australia's economy, directly employing over 274,000 people. In 2020/21 Industry generated a record high $301 billion in mining exports, invested $3.2 billion in exploration expenditure to discover the mines of the future, and collectively paid over $43.2 billion in royalties and taxes.

AMEC's members explore for, develop and produce minerals including antimony, bauxite, coal, cobalt, copper, gold, graphite, lead, lithium, manganese, mineral sands (e.g., silica), molybdenum, nickel, phosphate, potash, rare earths, silver, tungsten, vanadium and zinc.

Specific comments on the reviewed guideline

4.2. Considering the element of 'significantly'

The updated guideline provides better context for the lack of definition in the EP Act. However, the reviewed guideline adds new words that can be subjective, including *'Generally, an action has a **'significant impact'** if the impact is **'important, notable, or of consequence'** having regard to its context'.* While the attempt to improve guidance on defining the threshold of significant is noted, it is recommended that this continues to be considered and improved.

The new examples provided in Appendix 2 for major/minor amendments are an improvement and address specific Minor Amendment criteria. However, there's still room for expansion on the examples, to have multiple per ERA type and sector (mining vs exploration, etc). On that basis it would be warranted to update the list of examples annually.

The additional examples included in Appendix 2 are also still generic in nature, and for an experienced environmental professional very self-explanatory and do not provide any further guidance than previous versions on the grey area of minor and major amendments.

Booth vs Bosworth is a great example of a significant impact, noting the findings are an extreme example. The court found that there are some determinations of what 'significance' is though; it is in relation to a World Heritage Area, which can be tied back to the EPBC Act, which has a clear definition of 'significant'.

A further issue picked up during the online industry briefing that AMEC would like clarity on, was when DES discussed considering an ALD and the context of an amendment that the baseline for assessment would be the existing approval base. It would be good to see this terminology drafted into the guideline, as this is a very clear element that would provide clarity to any applicant.

AMEC Member Comment:

> *"There was some ambiguity in this session, based on my understanding, where DES initially stated that assessment would be on the existing approval base however, DES then went on to revise this statement to infer that the assessment would be based on the existing level of impact.*
>
> *It would be good to seek clarity here. For a Greenfields development, there is no/very little existing impact, so by default many amendments would likely end up in the major amendment process. However if assessed against the remit of the prevailing EA then a different outcome presents. "*

In response to DES' consultation query, suggest keeping the examples in this guideline (rather than a separate document) to keep it all tied together.

Public Notification for Major Amendment

Changes to s230 of the EP Act, being that major EA amendment applications for resource activities now require public notification. It would be helpful if the document contained a link to: https://www.business.qld.gov.au/running-business/environment/licences-permits/applying/public-notification.

What is meant by public notification may be self-evident to anyone previously involved with an EIS. Considering however that this is new to EAs, we believe the additional context will improve user experience overall.

Section 4. Assessment level decisions for amendment applications

"There is no assessment level decision for a minor amendment (condition conversion). Applicants should not submit multiple staged minor amendments to avoid determination as a major amendment"

Question: What deterrent is there to not do multi-stage minor change application, other than "applicants shouldn't"?

Section 1 and 2 both have contradictory statement regarding submitting an EA or PRCP at the same time (S1 para 2 and S2 para 2).

Section 4. Assessment level decisions for amendment applications

"Important note

While the administering authority may indicate if the proposed changes are likely to be a minor or major amendment as part of a pre-lodgement meeting, the assessment level decision can only be made when the actual application is submitted.

The purpose of the assessment level decision is to determine the most appropriate assessment approach for an application (i.e. minor or major). Applications involving complex matters may be assessed as major to provide for a more detailed technical review to verify the conclusions made in the application."

This statement is an example of how the guideline generates uncertainty; it is difficult for applicants to understand if the scope of their proposal triggers a minor or major amendment. Most applicants will not see what they are proposing to do as "complex".

The continuation of these sorts of grey areas delivers the experience AMEC has heard members' share that they are experiencing a consistent exercising of the precautionary principle, which then triggers a major amendment. AMEC is concerned this stems from an assessing officer not having the capability to understand what is being proposed, nor the capability/culture/process to engage proactively to understand or is based on the opinion of the individual assessor.

AMEC understands that the purpose of an ALD is not to address complex matters as major. Major determinations are those matters in theory that increase the threshold of disturbance, magnify the potential operation and require additional approvals, and may or may not have a degree of scope that is of public interest. If a matter is complex, it does not necessarily mean that it is major, they are two different aspects that make up an application. Likewise, if an application requires technical review, it does not necessarily mean that it is also a major amendment.

10% increase in surface area issue

For operations that have a small existing footprint (say 20 ha) and propose to increase this by 11% (2 ha), this does not appear reasonable to be assessed as a major amendment (given the relatively small area of disturbance and environmental harm), increasing time and costs for both the proponent and DES.

AMEC notes that the 10% issue remains as this stems from the EP Act and advocates that DES should prioritise this a future legislative amendment to allow smaller scale projects to more easily modify activities. For example, '10% or 10ha, or whichever is greater'.

Larger scale projects can increase by a greater amount in terms of direct ha disturbance and avoid a major amendment, which doesn't seem reasonable.

Additionally, there is still a high degree of uncertainty in the ALD space around 10% criteria and the reliance on DES to make a considered and reasonable decision.

AMEC member comment:

"What "trumps" where an application includes differing drivers of ALD i.e., say you have a new TSF proposed but can demonstrate why the level of harm and impact is not significant, yet the footprint of the proposed facility still adds >10% to the disturbance area…..what ultimately drives the ALD?

Is it the +10% which makes it a major decision?

Is it the demonstration of 'significant increase' which shows no significance increase in harm, scale or intensity or significantly different impacts?

How are different drivers reconciled in an ALD?"

Guidance and examples that clarify this would bring further value to the guideline.

'Substantial change' issues

Uncertainty/inconsistency in the use of 'substantial change' as a trigger for public notification in the EP Act. Previously 'substantial' was not defined in the EP Act or guideline.

This change is now irrelevant as the EP Act was amended by the Environmental Protection and Other Legislation Amendment Act 2022. Any major amendment for a resource activity can now trigger public notification, under s. 230 of the EP Act.

Appendix 1

The new Appendix 1 is supported and a positive step to improve efficiency and certainty for applicants. It also clears up some things that only people with past experience would know, for example in relation to EP Act s.226 1(f), 'there are currently no other documents that are prescribed by regulation to be included as part of an amendment application'.

A similar appendix would be great to add to the guidelines for new EA applications – e.g. 'Approval processes for environmental authorities (ESR/2015/1743)'.

Conclusion

AMEC's members are emerging developers, mostly of critical minerals, and operate in a space that means they may be bringing past operations back online, leading Greenfields projects or extension of Brownfields. Characteristic of these sorts of operations is that they will evolve and pivot sometimes two or three times over the course of a few years. This is comparatively very different to other more stable parts of the resource industry such as large mineral and coal operations. As such, these guidelines being sympathetic and considerate of this emerging sector is very important. As Queensland drives to towards de-carbonisation and critical minerals become an evolving space the guideline too needs to have a grasp on the key users of the guideline and be adaptive and supportive to their needs.

AMEC welcomes the opportunity to discuss our submission in more detail.

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Original material provided to DES in January 2023

Thank you for the opportunity to provide feedback on aspects of the Major and Minor Amendment Guideline (the guideline) that are considered unclear and may be leading to inconsistencies in departmental decision-making. In preparing this response, AMEC engaged with members—operators, consultants and legal professionals—to understand their experience in using the guideline. All of those engaged agreed that improving the guideline with clearer guidance on what is a minor amendment and what is a major amendment would deliver benefits across the board, that is not only for proponents but also DES assessment officers.

To add context, please note that AMEC largely represents junior critical mineral and base metal explorers and miners, not tier 1 companies. As such the operations and resourcing of our members is significantly different and leaner than the larger players. This is a burgeoning part of Queensland's resources sector, and as such every opportunity to make frameworks and guidance inclusive and fit for operations is an opportunity to support the growth of these minerals and metals that are critical to energy transition and new technologies.

Consolidated member feedback:

In general, all that were consulted agreed that the current operation of the guideline and its implementation is not clear for EA/ERA holders within industry.

In general the problems with the guideline ultimately stem from issues in the definition of minor and major amendment in the EP Act. However, until such time as these issues are addressed in an update to the legislation, the guideline can be improved to provided greater clarification to assist proponents to determine if a minor or major amendment is required, and expand on what is reasonable to be assessed as a minor amendment to facilitate the development in the resources sector necessary to meet the State's economic and energy transition targets.

Members agreed that thresholds, for example the 10% threshold used for surface area to determine a major or minor area amendment, are clear and helpful in applying the guideline. That said, it is worth noting that a 10% threshold is not an operationally pragmatic trigger for a major amendment threshold and speaks to the grey area between major and minor amendments determination, namely the lack of a middle-in-between (for want of a better term) amendment threshold. By way of hypothetical example if there was a 10% increase in surface area operations, and the site has a good environmental compliance record and is not exceeding the overall production threshold, an increase in 10% is not a significant increase in the operation and should be considered a minor amendment. However it is understood that this would be considered a major amendment, but to what extent does the applicant need to support the change when all the existing requirements for sound environmental operations are met? In addition, for operations that have a small existing footprint (say 20 ha), and propose to increase this by 11% (2 ha), this does not appear reasonable to be assessed as a major amendment (given the relatively small area of disturbance and environmental harm), increasing time and costs for both the proponent and DES.

Another challenge identified by members is the openness of interpretation regarding 'significant' and 'substantial' increases. AMEC supports there being flexibility or adaptability in the assessment process, but where this creates inconsistency between projects, and contradicts outcomes sought in other

guidelines and Acts, it can become obstructive to process and development. For example, an applicant may be asked to place an amendment on public notification, having never had to perform an EIS before, making the level of assessment unfeasible for the proponent and consequently the application pathway and development become unviable.

Members agreed that there is significant disparity in the interpretation of what constitutes a major and minor amendment. The lack of clarity in the definitions and resulting ambiguity in how they can be interpreted, can create a great deal of stress and anxiety for all involved—the applicant, the EA holders and the assessment team—to make the most appropriate and fitting determination for the circumstances presented. The experience of members is that as a result of the ambiguity are now consistently finding themselves in a situation where the assessor is exercising the precautionary principal and making determination that the amendment is major, but with limited evidence to demonstrate why this decision is taken. In response to this approach applicants are spending considerable time and cost to address and define matters, that could be resolved with a more open and transparent assessment process coupled with effective engagement to achieve the most appropriate degree of information and strategy required to address the changes that are being sort.

Proposals for improvement:

Based on this feedback and the request received, AMEC puts forward the following recommendations for DES to consider in scoping up their next step in this process:

- *The guideline include a new 'middle ground' threshold or some level of scalability (noting the limitations in the legislation, though providing a pathway to achieve more reasonable outcomes proportionate to the risk). This works as a natural reflection of the different scales for operational ERA/EA holders. It also allows for a degree of bespoke approach to the site-specific considerations. It allows for a more specific assessment appropriate to the size, nature and scale of the applicant. This is increasingly important as the diversity of the resources sector in Queensland changes with more junior critical mineral and base metal developers.*

- *Refine the guideline to have clearer guidance and definition on 'significant' and 'substantial' increase or change in environmental harm (triggers for major amendment and public notifications, respectively), to improve clarity and the guideline's useability. Refinement of the guideline will go a long way to allowing DES to make accurate and consistent decisions across officers and projects. In addition, it will assist proponents to develop the right degree of response to the guidelines prior to pre-lodgement, with greater confidence on the financial commitment required and the degree of certainty in the outcomes; overall this will improve confidence of all involved in the process and empower them to exercise their roles and responsibilities in a more fit for purpose way. The examples provided in the current guideline for 'significant' or 'substantial' should be expanded into a methodically structured set of criteria, grouped by relevant categories, resource types, activity types (mining vs exploration) and project scales. This will require involvement of regulatory bodies, industry and the scientific community to ensure the criteria are fit for purpose, reasonable and protect the environment while facilitating development.*

- *The list of examples for minor and major amendments that currently exist in the guideline were sighted as helpful but not expansive enough. As per the recommended expansion in definition of 'significant' and 'substantial' in the guideline, structured examples of minor and major*

amendments that provide a better representation of the array of changes typically required for projects would be beneficial. Involvement of the relevant parties listed above will ensure the examples adequately assist proponents and DES to make informed and reasonable decisions. Focusing on allowing for greater scalability in the assessment types will provide for more optimised regulatory and project outcomes.

Together these proposals would help the guideline deliver on its objective to allow EA holders, proponents and applicants to evolve the licensing and compliance requirements as a site grows and changes. It is an in-built fluidity that should allow for site to scale up and or scale down and/or correct errors within the administrative tools for a site, whilst continuing to protect the environment in a manner that is accurately proportionate to the project-specific risks.

The Guideline in the Context of the EP Act 1994 and the Mineral Resources Act

In consulting with members a current point of contention between the EP Act and MRA was also raised that we thought timely to raise. Namely the issue of where an applicant for an ML and EA under the MRA and EP Act amends their EA application, the change to the EA application is governed by Part2, Div 6 of Ch 5 of the EPA. If it is a minor change, the information stage and notification stage apply. For the notification stage, s 154 provides that the submission period ends on "the last objection day under the Mineral Resources Act for the application."

The problem is for an ML that has already been publicly notified under the MR Act and EP Act, the last objection day will have already passed.

The department has used s 152(3) of the EP Act to give a 'substituted' notification process comprising a later date. The concern is that this is not a valid use of s 152(3) as it relates to the process of giving the notice, not the process for receiving submissions.

Provision of examples

A positive example that was provided was from Ravenswood Gold, where the new TSF was deemed a minor amendment as they were able to evidence that there was no significant risk of leakage from the facility.

A negative example that was given was from a consultant who shared that the same effort to support a minor amendment was required to support a major amendment, in terms of supporting studies. Due to the openness of interpretation this effort is becoming more common and seems inconsistent with the intent of the amendments process, i.e. a similar amount of time and costs required to support a minor amendment as a major amendment Improving the guideline will assist in addressing this issue.

Assessment experience

AMEC notes the work that has been done by DES to respond to customer feedback through the GRIP project and looks forward to its implementation to see how experience hopefully changes. We also understand that an element of GRIP will be more of a case management approach—an initiative that the Department of Resources is also looking at—to ensure consistency of engagement, advice and assessment. If implemented successfully these will all help to improve some of the experience that is shared regularly.

With this in mind, AMEC is also keen to share feedback that has been shared consistently by members on the following matters of culture and would like to see as part of this consultation and engagement, and in general over the coming year, a focus on how the Department of Environment and Science can genuinely improve on their relationships with the resources sector. Members are unfortunately finding the engagement they have with assessing officers to be inconsistent – namely, inconsistent interpretation of legislation and guidance, and willingness to work collaboratively with industry to achieve positive and reasonable outcomes. This is becoming costly for members in time and money and is eroding trust in the process. AMEC considers a contributing factor may be the assessing team not being regionally located with the projects in question and a lack of sharing of knowledge and objectives within the Departments organisational structure; as well as inter-Departmental sharing creates for duplication of information. There is also a lack of implementing strategic departmental objectives to drive improvements and increase efficiencies in regulation of the resources sector AMEC advocates that there needs to be a more connected and role specific approach to EA and ERA holders and more relationships focused outcomes to achieve improved environmental outcomes. The example was given that a safe space to ask questions and determine optimal outcomes has been reduced within DES, which was concerning.