

Is an EIS required for alterations and additions?

A GUIDE FOR APPLICANTS AND CONSENT AUTHORITIES

These guidelines will help consent authorities decide whether an environmental impact statement (EIS) should be lodged with a development application when there is a proposed change (addition or alteration) to an existing or approved development.

The responsibility for deciding whether an EIS should be prepared rests with the consent authority, not the applicant. Information that applicants need to provide to consent authorities to allow them to make this decision is covered in this guideline.



Department of
Urban Affairs and Planning

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Introduction

Under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), a proposed change to an existing or approved development may require approval.

The consent authority (the Minister for Urban Affairs and Planning or the local council) will decide if the proposed change requires an application for a modification or a development application (DA) and whether an environmental impact statement (EIS) or statement of environmental effects (SEE) should be lodged with the DA for the proposed change.

There are three levels that can be applied to the assessment and approval of a change to an existing or approved development. The three levels take account of the nature and degree of proposed change and the level of impact. Changes are assessed as very minor; substantially the same development; and not substantially the same development.

These guidelines will help consent authorities decide on the levels of control required for proposed changes to a development. Appendix B, *Information for considering if an EIS is required for an alteration and or addition*, will guide applicants and consent authorities on the information that needs to be provided to determine whether an EIS should be lodged with a DA.

1

Level of assessment

The guidelines have been prepared to provide a systematic and consistent approach to deciding when changes to an existing or approved development require an application for a modification or a development application (DA) and, if the latter, whether an environmental impact statement (EIS) or statement of environmental effects (SEE) should be prepared to be lodged with the DA for the proposed change. However, the decision as to whether a development application (DA) is required or not, or if a SEE or EIS must accompany the DA, is the responsibility of the consent authority (Minister or local council) and not the applicant.

Under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), there is a gradation in the level of approvals and environmental assessment that can be applied to a proposal to change an existing or approved development, so the level of regulation matches the level of impact of the proposed change (see Figure 1). There are three potential levels of control:

1.1 Very minor changes

For very minor alterations or additions undertaken within the provisions of the existing consent, no formal development approval is required. The applicant may, however, need to change licence provisions under other legislation.

1.2 Substantially the same development

For alterations or additions that do not substantially change the nature and scope of the existing or approved development, an application must be made to amend the development consent under the provisions of s. 96 of the EP&A Act (previously s. 102). The SEE should accompany the application so the consent authority can assess the application in terms of the matters in s. 79C.

1.3 Not substantially the same development

For alterations or additions to an existing or approved development that are more substantial, and which change the nature and scope of the existing or approved development, a development application is required for the proposed change.

Under the Environmental Planning and Assessment Regulations 1994, the development application must be accompanied by an EIS or SEE to assess the potential impacts of the proposed changes. In order to determine if an EIS is required, the consent authority should consult Part 1 of Schedule 3 of the Environmental Planning and Assessment (EP&A) Regulation that lists developments that are designated and require an environmental impact statement (EIS).

If the existing or approved development and the alterations or additions do not meet any of the criteria in Schedule 3, then an EIS is not required and a SEE should be prepared to accompany the DA. If the existing or approved development and the alterations or additions do meet the criteria in Part 1 of Schedule 3, then an EIS **may** be required.

Is an EIS required for alterations and additions?

In these circumstances, Part 2 of Schedule 3, *Are alterations or additions designated development?*, should be consulted (Appendix A). This Part provides the consent authority with the discretion to remove the need for an EIS for a proposed modification, if the changes are not likely to significantly increase the environmental impacts of the total development (that is, the existing or approved development together with the additions or alterations) compared with the existing or approved development. The next section of this guideline focuses on applying Part 2.

If an EIS is not required, a SEE will need to be prepared to ensure that an appropriate level of environmental assessment is undertaken and appropriate environmental controls applied.

Figure 1 Modifications, alterations or additions to an existing or approved development under Part 4 of the EP&A Act

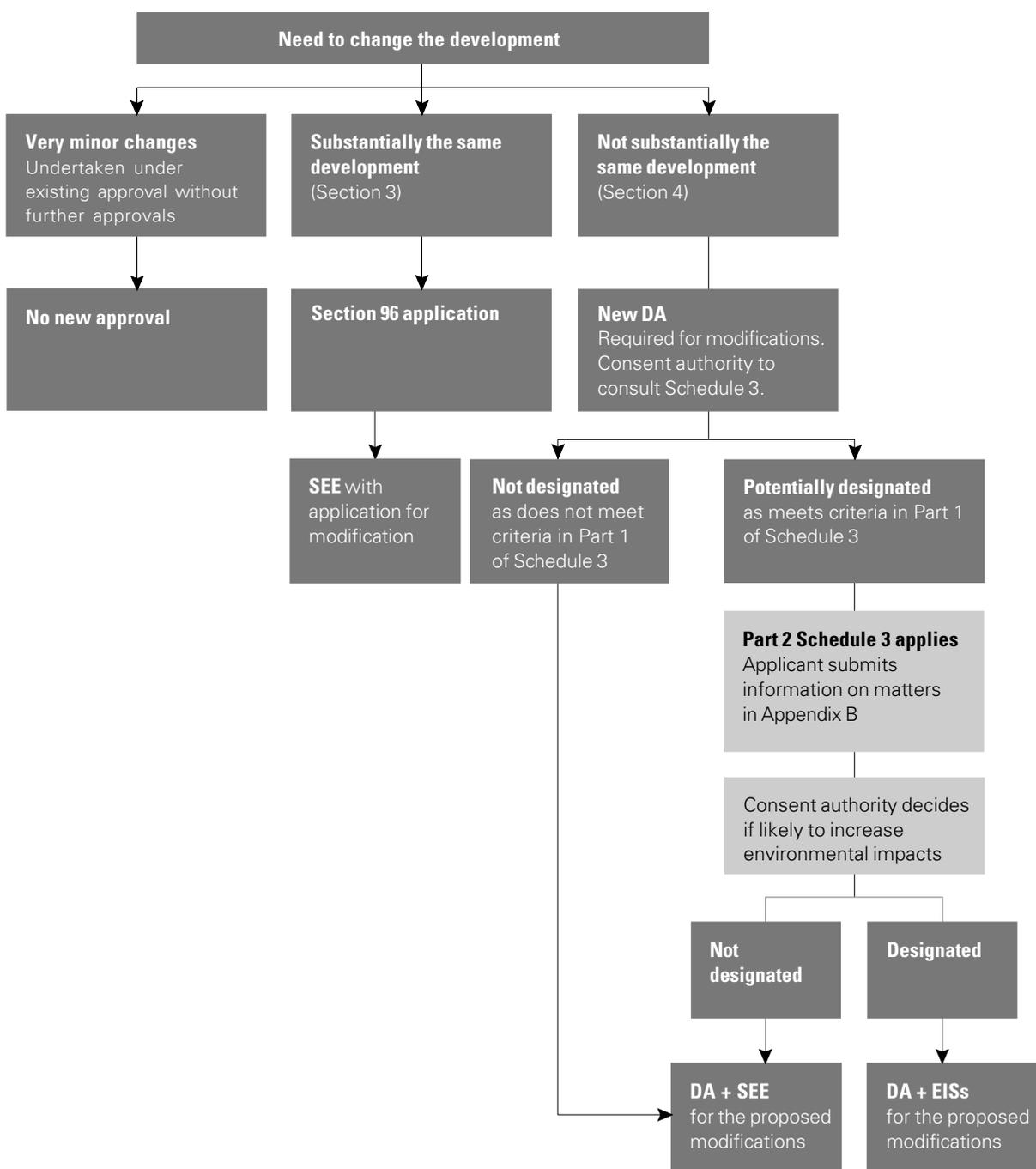


Table 1 outlines various scenarios to illustrate the types of situations that may arise in deciding the level of environmental assessment. These are only indicative. These guidelines cannot conclusively establish whether a particular proposed alteration or addition to an existing or approved facility is designated development. The consent authority must exercise discretion in making this decision having regard to the merits of the case based on an analysis of the factors in Part 2 of Schedule 3.

Table 1 When may an EIS be required for alterations/additions to designated development?

Example: A concrete works is designated development if intended annual production exceeds 30 000 tonnes.	Does Part 2 of Schedule 3 apply?	Is an EIS required?
<p>Scenario 1</p> <p>The works currently is approved to produce 10 000 tonnes p.a. The company proposes to carry out alterations or additions increasing intended production by 10 000 tonnes p.a. (i.e. total intended production 20 000 tonnes p.a.).</p>	No	<p>No. The alterations or additions will not increase production over the threshold of 30 000 tonnes p.a. A DA and SEE will be required for the modification.</p>
<p>Scenario 2</p> <p>The works currently is approved to produce 10 000 tonnes p.a. and the plant is within 100 metres of a natural waterbody. The company proposes to carry out alterations or additions increasing the intended production by 10 000 tonnes p.a. (i.e. total intended production 20 000 tonnes p.a.).</p>	Yes	<p>Maybe. Depending on the merits of the case (e.g. past performance and proposed future management), an EIS may or may not be required for the modification.</p>
<p>Scenario 3</p> <p>The works currently approved to produce 25 000 tonnes p.a. The company proposes to carry out alterations or additions increasing the intended production by 10 000 tonnes p.a. (i.e. a total of 35 000 tonnes p.a.)</p>	Yes	<p>Maybe. Although the alterations or additions take production over the threshold of 30 000 tonnes p.a., depending on the merits of the case an EIS may or may not be required.</p>
<p>Scenario 4</p> <p>The works currently is approved to produce 35 000 tonnes p.a. The company proposes to carry out alterations or additions increasing the intended production by 15 000 tonnes p.a.</p>	Yes	<p>Maybe. The existing development is already designated. Depending on the merits of the case an EIS may or may not be required.</p>
<p>Scenario 5</p> <p>The works currently approved to produce 10 000 tonnes p.a. The company proposes to carry out alterations or additions increasing the intended production by 200 000 tonnes p.a.</p>	No	<p>Yes. The alterations or additions constitute a new development.</p>

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When is an EIS required?

2.1 The decision of the consent authority

The provisions of clause 1 of Part 2 of Schedule 3 require the consent authority to consider if the proposed alteration or addition is likely to:

increase the environmental impacts of the total development (that is, the development together with the additions and alterations) compared with the existing or approved development.

If in the consent authority's opinion there will be no increase, the proposal can be exempted from the need to prepare an EIS. In determining whether there is a significant increase in the environmental impacts of the total development, the three factors in clause 2 (i.e. heads of consideration) should be taken into consideration. In summary, these factors are:

- a) the impact of the existing development
- b) the likely impact of the proposed alterations or additions
- c) any proposals to mitigate environmental impacts, manage risks and comply with relevant best practice or standards.

Appendix B provides a systematic approach to identify and analyse these factors so it can be established if there is a significant increase in the environmental impacts of the total development as a result of the proposed changes.

2.2 Information required on the existing or approved development and proposed change

The applicant should be requested to provide the necessary information in sufficient detail to respond to the issues in Appendix B and to enable an informed decision to be made on the designation status of the proposal. In deciding on the level of information to be provided, the applicant should consider:

- the size and complexity of the proposed change relative to the existing development
- the sensitivity of the environment
- the potential for cumulative impacts, and
- the nature and scale of existing and potential environmental impacts.

In some circumstances the applicant may prefer to provide the information in Appendix B accompanied by a draft SEE to provide additional information which may assist the consent authority.

In addition to the information provided by the applicant, it may be appropriate for the consent authority to contact other sources of information considered relevant, such as local councils, the Environment Protection Authority, other approval agencies and community consultation committees. This could be particularly important where the past performance of the facility is a critical issue.

2.3 Factors in deciding if an EIS is required

In deciding whether or not an EIS is required, issues associated with the past environmental performance of the facility, the likely performance as a result of the proposed changes and any proposals to manage impacts in the future need to be weighed to establish the extent to which the changes will affect the environment.

i) Consideration of past and potential future performance

The focus of the analysis should be on whether the changes will result in improved environmental outcomes. Part 2 provides an opportunity for the consent authority, in exercising discretion, to acknowledge past sound environmental performance, and to provide incentives to improve the quality of the performance in the future.

For instance, there would be less justification for requiring an EIS for a proposed change to a facility that:

- has previously undergone an EIS
- has complied with consent and licence conditions; or
- is not contributing to a significant cumulative impact problem in the area.

For example, if a facility has a sound record of environmental management, an increase in capacity is less likely to result in increased environmental impacts compared with a facility that has a history of environmental degradation.

There is more justification for requiring an EIS for a similar facility that:

- has a poor performance in compliance with approval conditions and a high level of complaints
- has never undergone environmental assessment
- has gradually increased in size by 'increment'; or
- is known to contribute to a significant cumulative impact problem in the area.

However, if a proposed change to an older facility that may have commenced pre-EP&A Act, would result in compliance of the whole facility with current relevant standards, codes or best practice, the proposed change may not justify an EIS.

In all circumstances, particular attention should be given to the level of commitment for ensuring best practice is integrated into environmental management plans and systems for the future management of the alteration or addition and the existing facility.

ii) Consider the likely impact of the proposed alterations or additions

When weighing the issues on exercising discretion, the consideration of the level of certainty in predicting outcomes and the sensitivity of the receiving environment should also be given a high priority. In accordance with the precautionary principle, a conservative approach should be taken if:

- there is uncertainty with regard to the environmental performance of any proposed changes, e.g. because of new untried technology, the potential risk profile of chemicals used or the risks associated with the characteristics of the proposed methodology
- the facility is located so the proposed changes are likely to affect a sensitive environment—either naturally sensitive (e.g. wetlands, threatened communities) or with an induced sensitivity because of cumulative impacts (e.g. existing air quality problems, blue green algae blooms, extensive clearing of remanent vegetation, high levels of traffic congestion).

In these circumstances, there would be compelling justification for an EIS to more fully explore the potential environmental consequences.

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2.4 Making the decision

Judgement is required in deciding if, when considering the total facility (existing/approved plus alterations and additions), there will be an increased environmental impact as a result of the proposed change. The benefits of any reduced impacts resulting in environmental improvements (e.g. in air or water quality) must be weighed against other increased adverse impacts (e.g. increase in truck movements) as a result of the increased production or new uses. This is a particularly important issue with older plants (which may be operating under existing use rights) which may never have undertaken an environmental assessment previously.

Ultimately it is the responsibility of the consent authority to exercise its judgement.

Appendix A

Part 2 Schedule 3 of the Environmental Planning and Assessment Regulations 1994

Are alterations or additions designated development?

Is there a significant increase in the environmental impacts of the total development?

1. Development involving alterations or additions to development (whether existing or approved) is not designated development if, in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development (that is the development together with the additions or alterations) compared with the existing or approved development.

2. Factors to be taken into consideration

In forming its opinion, a consent authority is to consider:

- a) the impact of the existing development having regard to factors including:
 - i) previous environmental management performance, including compliance with:
 - conditions of any consents, licences, leases or authorisations by a public authority, and
 - any relevant codes of practice, and
 - ii) rehabilitation or restoration of any disturbed land, and
 - iii) the number and nature of all past changes and their cumulative effects, and
- b) the likely impact of the proposed alterations or additions having regard to factors including:
 - i) the scale, character or nature of the proposal in relation to the development, and
 - ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality, and
 - iii) the degree to which the potential environmental impacts can be predicted with adequate certainty, and
 - iv) the capacity of the receiving environment to accommodate changes in environmental impacts, and
- c) any proposals:
 - i) to mitigate the environmental impacts and manage any residual risk, and
 - ii) to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department of Planning or other public authorities.

Appendix B

Information for considering if an EIS is required for an alteration or addition

In forming an opinion as to whether an alteration or addition is designated development, the consent authority must consider the factors in Part 2 of Schedule 3 of the Environmental Planning and Assessment Regulation 1994.

Part A

Impact of existing development

Factors in Part 2 of Schedule 3

Information useful for considering the factors

(a) Impact of existing development

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| <p>(i) previous environmental management performance including:</p> <ul style="list-style-type: none">• compliance with conditions of consent, licences, leases or authorisations and• relevant codes of practice | <ol style="list-style-type: none">1. Provide a brief history of the existing proposal including environmental performance of the existing development. It may be relevant to provide details on key environmental issues.2. Outline any serious environmental incident which may have occurred on the site, the cause and any measures in place to reduce the likelihood of incidents occurring in the future.3. Outline the record of any complaints from the community with regard to the environmental performance and any measures in place to reduce the likelihood of complaints occurring in the future.4. Outline the compliance record with any conditions of consent (attach previous approval conditions, if possible).5. Outline the compliance record with conditions of any licence, lease or other authorisation.6. Discuss the performance of the existing development in terms of any relevant government or industry codes of practice.7. Discuss the outcome of any environmental audits and any remedial actions implemented as a result of the audit.8. Any other relevant issues. |
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| (ii) rehabilitation or restoration of any disturbed land (particularly relevant to mines and extractive industries) | <ol style="list-style-type: none">1. If the existing development resulted in soil disturbance, have rehabilitation or restoration works been undertaken, with appropriate stabilisation and landscaping works? If so, please provide details.2. If a mining or extractive industry, are rehabilitation works being undertaken in conjunction with the stages of mining or extraction? If so, please provide details.3. If any soil has been contaminated, have works been undertaken to remediate or contain the contaminated soil? If so, please provide details.4. Outline the performance record of these rehabilitation or restoration works.5. Any other relevant issues. |
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| (iii) the number and nature of all past changes and their cumulative effects | <ol style="list-style-type: none">1. Outline any alterations or additions undertaken since the original development commenced operations.2. Outline the changes in terms of size, nature and environmental performance.3. Have the original development and any subsequent alterations or additions been through an environmental assessment and approval process? If so, please provide details.4. What has been the cumulative impact of the alterations or additions compared with the original development particularly in relation to key environmental issues?5. Any other relevant issues. |
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Add any other relevant information that you wish the consent authority to consider in relation to the history or environmental performance of the existing facility.

Part B

The likely impact of proposed alterations/additions

Factors in Part 2 of Schedule 3

Information useful for considering the factors

(b) the likely impact of the proposed alterations or additions having regard to factors including:

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| (i) the scale, character or nature of the proposal in relation to the development; and | <ol style="list-style-type: none">1. By how much will the addition or alteration change the scale of facility e.g.:<ul style="list-style-type: none">• coverage of site or the building size or number of buildings• annual production (e.g. tonnage increase)• vehicle movements (e.g. increase in number or type of vehicle movements)• number of employees• any other change in size?2. How will the character or nature of facility be changed e.g.:<ul style="list-style-type: none">• by a change of use or the addition of different uses• by the use of additional or different raw materials or energy supply• by the production of additional or different products or waste streams• by the introduction of new technology• by a change in the level of environmental risks or hazard potential• by a change in any other feature of the character or nature of the facility? |
| (ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is, or is to be, carried out and the surrounding locality; and | <ol style="list-style-type: none">1. Will any vegetation (in particular threatened species) be disturbed or affected by the changes? Can the native vegetation in the vicinity of the proposal be considered to be vulnerable or 'sensitive'?2. Will the changes affect air quality (particulate matter, gases or odour)? Is there an existing air quality problem in the area?3. Will the changes affect the water quality of the groundwater or any nearby waterbodies directly by discharges or indirectly by affecting environmental flow? Are there any existing water quality problems in these waterbodies?4. Will the changes affect the level of noise or vibration emitted from the facility? Is the community affected by the noise from the existing or surrounding facility?5. Will the changes affect the visual amenity of the area? Is the visual amenity highly valued by the community?6. Will the changes affect any heritage or conservation areas (indigenous, non-indigenous built, natural or movable)?7. Will any other environmental matter be affected? |

If you have answered 'yes' to any of the above, please provide details.

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- (iii) the degree to which the potential environmental impacts can be predicted with adequate certainty;
1. Is there an adequate level of knowledge and understanding of the proposed changes in relation to the:
 - environment likely to be affected
 - performance of the proposed technology or design
 - proposed mitigation measures and management
 - communities concerns and values?
 2. Are there established and reliable predictive modelling techniques to establish the environmental impacts of the proposal?
 3. Is there past experience that demonstrates the acceptability of the proposed changes to the facility in terms of environmental performance?

If you have answered 'yes' to any of the above, please provide details.

- (iv) the capacity of the receiving environment to accommodate changes in the environmental impacts.
1. Are there other types of development with similar impacts in the area?
 2. If so, have the cumulative effects on the environment of the impacts of those developments been considered?
 3. Is it likely that particular impacts associated with the proposed changes will add to these impacts to stress the receiving environment, resulting in serious environmental degradation or problems?

If you have answered 'yes' to any of the above, please provide details.

Part C

Any proposals to mitigate environmental impacts, manage risks and comply with relevant best practice or standards

Factors in Part 2 Schedule 3

Information useful for considering the factors

(c) any proposals

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| (i) to mitigate the environmental impacts and manage any residual risk | <ol style="list-style-type: none">1. Outline measures proposed to mitigate environmental impacts of the proposal in relation matters such as:<ul style="list-style-type: none">• site layout• access• technology• pollution control measures• waste strategies• auditing/monitoring, including feedback into any environmental management plan• training in environmental management?2. Has an Environmental Management Plan (EMP) been previously prepared for the existing facility? If so, please provide details. Is it proposed to extend the EMP to cover the proposed alterations or additions? If so, please provide outline.3. If there is no EMP, is an EMP being developed for both the existing facility and the proposed changes? If so, please provide an outline. |
| (ii) to facilitate compliance with relevant standards, codes or practice or guidelines published by the Department of Planning or other public authorities | <ol style="list-style-type: none">1. If previously the facility consistently did not comply with approval conditions, will the proposed changes lead to compliance with approvals?2. If industry practices have changed since the facility's original approval, will the proposed changes modernise the facility so that it will comply with the current best practice outlined in any relevant code or guideline? |
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If you have answered 'yes' to any of the above, please provide details.

This section is particularly important for older facilities that have had no previous development approvals or environmental impact assessment.
