



Report and recommendations of the Environmental Protection Authority



**Cape Preston East -
Multi-Commodity Export Facility
– inquiry under section 46 of the
Environmental Protection Act 1986
to amend Ministerial Statement 949**

BC Pilbara Iron Ore Pty Ltd

Report 1680

June 2020

Inquiry under section 46 of the *Environmental Protection Act 1986*

The Minister for Environment has requested that the Environmental Protection Authority (EPA) inquire into and report on the matter of changing implementation condition 3 (Time Limit for Proposal Implementation) of Ministerial Statement 949 relating to the Cape Preston East – Multi-Commodity Export Facility proposal.

Section 46(6) of the *Environmental Protection Act 1986* requires the EPA to prepare a report that includes:

- (a) a recommendation on whether or not the implementation conditions to which the inquiry relates, or any of them, should be changed
- (b) any other recommendations that it thinks appropriate.

The following is the EPA's report to the Minister pursuant to s. 46(6) of the *Environmental Protection Act 1986*.



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Chairman

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1. The proposal

The Cape Preston East – Multi-Commodity Export Facility (the proposal) is to design, construct and operate a multi-commodity export facility on the eastern side of Cape Preston in the Pilbara region of Western Australia.

The Environmental Protection Authority (EPA) assessed the proposal at the level of Assessment on Proponent Information (API), and published its report in May 2013 (Report 1476). In this report, it was the EPA's opinion that the following key environmental factors relevant to the proposal required evaluation:

- Marine fauna
- Marine environmental quality.

In applying the *Statement of Environmental Principles, Factors and Objectives* (EPA 2020b) these factors remain as Marine fauna and Marine environmental quality.

The EPA concluded in Report 1476 that the proposal could be managed to meet the EPA's environmental objectives, provided there was satisfactory implementation by the proponent of the EPA's recommended conditions.

The then Minister for Environment approved the proposal for implementation, subject to the implementation conditions of Ministerial Statement 949 (9 September 2013) (MS 949).

The proposal was also referred to the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) (now Department of Agriculture, Water and the Environment) for a decision as to whether it was a 'controlled action' under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The proposal was determined to be 'not a controlled action if undertaken in a particular manner', with the referral decision outlining measures that must be taken to avoid significant impacts on listed threatened species and communities and listed migratory species (EPBC 2013/6844; DSEWPaC 2013).

Previously approved changes to the proposal or conditions

The following changes to the proposal have been approved under section 45C of the *Environmental Protection Act 1986* (EP Act):

- increase in the footprint required for marine infrastructure from 3.2 hectares (ha) to 4.8 ha (Attachment 1 to MS 949, 8 April 2015)
- revision of the access road alignment, increasing the total disturbance from 402.8 ha to 413.2 ha, but decreasing the development envelope area from 2,942 ha to 2,552 ha (Attachment 2 to MS 949, 1 May 2017)
- change of purpose from a single commodity export facility (iron ore) to a multiple commodity export facility (iron ore and salt), change of name of the proposal (Attachment 3 to MS 949, 19 September 2018).

There have been no changes to the implementation conditions applying to the proposal since the issue of MS 949.

2. Requested changes to conditions

Condition 3-1 of MS 949 states that the proponent shall not commence implementation of the proposal after the expiration of five years from the date of the statement (being 9 September 2013) and that any commencement within that five-year period must be substantial.

Condition 3-2 of MS 949 states that any commencement of implementation of the proposal, within five years of the date of the statement, must be demonstrated as substantial by providing the Chief Executive Officer with written evidence, on or before the expiration of five years from the date of the statement.

The proponent has not yet substantially commenced implementation of the proposal. BCI Minerals Limited, on behalf of the proponent BC Pilbara Iron Ore Limited, requested changes to condition 3 (Time Limit for Proposal Implementation) in order to extend the authorised timeframe for substantial commencement of the proposal by five years, to 9 September 2023. The proponent has not proposed any changes to the proposal, or to any other conditions of MS 949.

In response to the proponent's request, the Minister for Environment requested that the EPA inquire into and report on the matter of changing the implementation conditions relating to the proposal in order to extend the authorised timeframe for substantial commencement of the proposal. This report satisfies the requirements of the EPA's inquiry.

3. Inquiry into changing conditions

The EPA typically recommends the Minister for Environment sets conditions on significant proposals that require them to be substantially commenced within a specified timeframe. Extending this timeframe requires the Minister to change the relevant conditions under s. 46 of the EP Act and provides for the EPA to review and consider the appropriateness of the implementation conditions relating to the proposal.

The EPA has discretion as to how it conducts its inquiry. In determining the extent and nature of this inquiry, the EPA had regard to information such as:

- the currency of its original assessment of the proposal (Report 1476)
- MS 949
- the information provided by the proponent (BC Pilbara Iron Ore Pty Ltd 2018).

In conducting this inquiry, the EPA reviewed the information provided by the proponent and considered the original assessment of the proposal detail in Report 1476. In considering whether it was appropriate to recommend an extension of the authorised timeframe for substantial commencement of the proposal, the EPA considered whether there was any change to, or new information relating to, the key environmental factors relevant to the proposal. The EPA also considered whether any new key environmental factors had arisen since its original assessment of the proposal.

The s. 46 inquiry also provides the EPA the opportunity to consider:

- any changes in environmental, scientific or technological knowledge that may have arisen since the initial assessment.
- whether the proposal is being implemented using best practice and contemporary methods so that the EPA objectives for the key environmental factors are met.

EPA procedures

In conducting this inquiry, the EPA followed the procedures in the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016* (State of Western Australia 2016) and the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual* (EPA 2020a).

4. Inquiry findings

The EPA considers that Marine Fauna is the key environmental factor relevant to the change to the conditions.

This determination is based on the length of time since the original biological surveys were conducted and the possibility that the conservation status of individual species may have changed in this period. The factor of Marine Environmental Quality is considered unlikely to have changed significantly since the issue of MS 949.

4.1 Marine Fauna

The EPA's environmental objective for this factor is *to protect marine fauna so that biological diversity and ecological integrity are maintained.*

Conclusions from EPA Report 1476

Potential impacts to marine fauna include temporary or permanent displacement, collisions with vessels, behavioural disruption or injury at close range from high impact noises such as pile driving, changes to turtle nesting beaches as a result of altered coastal processes, and light spill impacts on turtle nesting. The introduction of marine pest species also has the potential to impact marine communities.

At the time of the assessment the following marine fauna species listed under the *Wildlife Conservation Act 1950* had been identified as potentially occurring within the proposal area:

- humpback whale (*Megaptera novaeangliae*) (Vulnerable)
- short-nosed sea snake (*Aipysurus apraefrontalis*) (Critically endangered)
- loggerhead turtle (*Caretta caretta*) (Endangered)
- green turtle (*Chelonia mydas*) (Vulnerable)
- hawksbill turtle (*Eretmochelys imbricate*) (Vulnerable)
- flatback turtle (*Natator depressus*) (Vulnerable)
- dugong (*Dugong dugon*) (Other specially protected fauna - migratory).

Humpback whales may be encountered in the proposal area during their northern and southern migrations. The Cape Preston area is not known to support calving, aggregation or feeding areas for this species and migrating whales typically remain well offshore in waters deeper than 20 metres. Dugongs have been sighted in the area and may move through the area looking for food. The proposal will not impact on key feeding habitat of dense seagrass communities occurring approximately two kilometres north of the berthing area for the proposal.

The EPA recommended conditions 6-1 to 6-7 to manage marine fauna interaction with the activities of marine pile driving and marine construction. Requirements of the conditions include a marine fauna observer to be present at all times during marine construction activities, soft start procedures and the cessation of piling activities if

cetaceans (whales and dolphins) and dugongs are sighted within 500 metres, or marine turtles are sighted within 100 metres of the activity.

In addition to the EPA's recommended conditions, the referral decision under the EPBC Act (EPBC 2013/6844; DSEWPac 2013) sets out measures to avoid significant impacts on threatened and migratory marine fauna species during marine piling activities.

The eastern beaches of Cape Preston provide suitable nesting habitat for marine turtles, with observed low density nesting of flatback turtles. Surveys indicate that the beaches are not regionally significant compared to other beaches and islands in the Pilbara region. The EPA noted the proponent had considered best practice methods to manage and mitigate light spill, although due to the low elevation of dunes there would still be residual impacts of lighting on the south-eastern beaches which may impact on turtle nesting activities.

To manage potential impacts on marine turtle nesting the EPA recommended condition 6-8 which requires that no marine construction activities occur at night during turtle nesting season, being 20 October to 10 March in any year. The EPA considered the proponent's proposed management measures sufficient to manage the potential impacts from altered coastal processes.

Surveys conducted prior to assessment had not detected any marine pest species at Cape Preston. The EPA noted the risk of the introduction of marine pest species was considered low with appropriate management. However, due to the potential for significant and widespread impacts to natural marine communities should marine pest species be introduced, the EPA recommended condition 7 requiring an introduced Marine Pest Risk Assessment Procedure to be prepared and implemented.

EPA Report 1476 stated that, having particular regard to the:

- a) population and distribution of marine fauna in the area of the proposal including the regional significance of habitats elsewhere in the Pilbara
- b) short term nature of the construction activities
- c) mitigation and management measures proposed by the proponent,

it was the EPA's opinion that the proposal could be managed to meet the EPA's objective for marine fauna provided that the EPA's recommended conditions were implemented.

Assessment of the requested change to conditions

The EPA considers that the following current environmental policy and guidance is relevant to its assessment of the proposal for this factor:

- *Environmental Factor Guideline – Marine Fauna* (EPA 2016).

No further marine fauna studies have been carried out since the publication of MS 949. The proponent is not proposing any changes to the proposal that would

change the potential impacts to marine fauna, or any changes to the conditions of MS 949 relating to the management of impacts to marine fauna.

Since the original assessment, the *Biodiversity Conservation Act 2016* (BC Act) has replaced the *Wildlife Conservation Act 1950* as the legislation providing for the listing of threatened native flora and threatened native fauna. There has been no change in conservation status for six of the seven conservation significant marine fauna species previously recorded; short-nosed sea snake, loggerhead turtle, green turtle, hawksbill turtle, flatback turtle, and dugong. The humpback whale has decreased in conservation status under the BC Act from Vulnerable to Conservation Dependent but is still listed as Vulnerable and Migratory under the EPBC Act.

The EPA is satisfied that its objectives for this factor can be met, and the potential impacts of the proposal can be managed through the existing implementation condition 1 (Proposal Implementation), condition 6 (Marine Fauna), and condition 7 (Introduced Marine Pests).

4.2 Other Environmental Factors

Flora and Vegetation

The proposal includes clearing of up to 398 ha of vegetation within the 2,942 ha development envelope. The EPA identified Flora and Vegetation as a preliminary key environmental factor in the original assessment of the proposal.

The EPA noted in Report 1476 that there were no Declared Rare Flora or Threatened Ecological Communities within the proposal area, the proposal had been revised to avoid and minimise impacts to flora and vegetation, and there were further opportunities to modify the alignment of the road and infrastructure based on flora surveys prior to the commencement of construction. At the conclusion of the assessment the EPA considered Flora and Vegetation was not a key environmental factor warranting discussion and evaluation in the EPA's assessment report.

A review of the original survey results against current databases provided by the proponent (BC Pilbara Iron Ore Pty Ltd 2018) has identified that the Department of Biodiversity, Conservation and Attractions mapped extent of a Priority Ecological Community (PEC) (the Horseflat Land System of the Roebourne Plains; Priority 3) occurs within the proposal area. The original surveys mapped one vegetation unit that may represent this PEC, however this was not identified as a potential PEC at the time of assessment. Up to 90 ha of this vegetation type will be cleared for the proposal, from a total mapped area of the Horseflat Land System within the Pilbara Region of over 328,911 ha (EPA 2017). The EPA considers the amount of clearing required for the proposal is unlikely to have a significant impact on the Horseflat Land System of the Roebourne Plains PEC, and this new information would not change the conclusions reached by the EPA in Report 1476 in relation to Flora and Vegetation.

The EPA is satisfied the existing condition 1 (Proposal Implementation), which limits the amount of clearing for the proposal, is sufficient to manage the potential impacts to Flora and Vegetation.

Social Surroundings

The proposal is located wholly within the Yaburara Mardudhunera (YM) People Native Title Claim area, and there are a number of registered Aboriginal Heritage sites within or close to the development envelope. The EPA identified Heritage as a preliminary key environmental factor in the original assessment of the proposal.

The proponent has Native Title agreement to operate the Bulk Loadout Facility in the proposed location. The EPA noted in Report 1476 that heritage surveys were to be completed prior to ground disturbance and that the proposal design would take into account location of heritage sites and avoid these where practicable. Where disturbance of heritage sites could not be avoided, the proponent would be required to obtain approval under s. 18 of the *Aboriginal Heritage Act 1972* (AH Act). At the conclusion of the assessment the EPA considered that Heritage was not a key environmental factor warranting discussion and evaluation in the EPA's assessment report.

In applying the *Statement of Environmental Principles, Factors and Objectives* (EPA 2020b) this factor is now described as Social Surroundings. Since the EPA's original assessment heritage surveys have been conducted over the entire development envelope. BCI Minerals has consulted with the YM People, subsequently lodged an application under s. 18 of the AH Act and received approval to disturb five sites. BCI Minerals has also developed a Cultural Heritage Management Plan in consultation with the YM People to set out how Aboriginal Heritage issues will be managed in the construction and operation phases of the proposal.

The proponent is not proposing any changes to the proposal that would change the potential impacts to Social Surroundings. The EPA is satisfied that the proponent is aware of its obligations under the AH Act, and is consulting with the YM People in regards to management of Aboriginal Heritage.

The EPA is satisfied the existing condition 1 (Proposal Implementation), and the provisions of the AH Act, are sufficient to manage the potential impacts to Social Surroundings.

5. Conclusions and recommendations

Change to condition 3

The proponent has requested changes to condition 3 to extend the Time Limit for Proposal Implementation. The EPA considers it is appropriate to amend condition 3 and extend the Time Limit for Proposal Implementation by five years to 9 September 2023.

Conclusions

In relation to the environmental factors, and considering the information provided by the proponent and relevant EPA policies and guidelines, the EPA concludes that:

- there are no changes to the proposal associated with the request to change the conditions
- there is no significant new or additional information that changes the conclusions reached by the EPA, under any of the key environmental factors, during its original assessment of the proposal detailed in Report 1476 (May 2013)
- no new significant environmental factors have arisen since the EPA's original assessment of the proposal
- impacts to the key environmental factors are considered manageable, based on the requirements of the original conditions retained in Ministerial Statement 949, and the imposition of the attached recommended conditions
- the authorised timeframe for substantial commencement of the proposal may be extended by five years as requested.

Recommendations

Having inquired into this matter, the EPA submits the following recommendations to the Minister for Environment under s. 46 of the EP Act:

1. While retaining the environmental requirements of the original conditions of Ministerial Statement 949, it is appropriate to delete implementation condition 3 and replace it with a new implementation condition extending the authorised timeframe for substantial commencements of the proposal by five years, to 9 September 2023.
2. After complying with s. 46(8) of the EP Act, the Minister may issue a statement of decision to change condition 3 of Ministerial Statement 949 in the manner provided for in the attached recommended statement (Appendix 1).

References

BC Pilbara Iron Ore Pty Ltd 2018, Cape Preston East Iron Ore Export Facilities Ministerial Statement 949 Section 46 Application – Request to Change Implementation Conditions, Part B: Environmental Assessment Supporting Document.

DSEWPaC 2013, Notification of Referral Decision, Cape Preston East – Iron Ore Export Facilities, WA (EPBC 2013/6844) Australian Government Department of Sustainability, Environment, Water, Population and Communities, Canberra, ACT.

EPA 2013, Cape Preston East – Iron Ore Export Facilities, Report and recommendations of the Environmental Protection Authority (Report 1476), Environmental Protection Authority, Perth, WA.

EPA 2016a, *Environmental Factor Guideline – Marine Fauna*, Environmental Protection Authority, Perth, WA.

EPA 2017, *Sino Iron Mine Continuation, Report and recommendations of the Environmental Protection Authority* (Report 1602), Environmental Protection Authority, Perth, WA.

EPA 2020a, *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual*, Environmental Protection Authority, Perth, WA.

EPA 2020b, *Statement of Environmental Principles, Factors and Objectives*, Environmental Protection Authority, Perth, WA.

State of Western Australia 2016, *Western Australia Government Gazette*, No. 223, 13 December 2016.

Appendix 2: Identified Decision-Making Authorities and recommended environmental conditions

Identified Decision-making Authorities

The following decision-making authorities have been identified for the purposes of s. 45 as applied by s. 46(8) of the *Environmental Protection Act 1986*:

Decision-Making Authority	Legislation (and approval)
1. Minister for Aboriginal Affairs	<i>Aboriginal Heritage Act 1972</i> (section 18 consent to impact a registered Aboriginal heritage site)
2. Minister for Environment	<i>Biodiversity Conservation Act 2016</i>
3. Minister for Lands	<i>Land Administration Act 1997</i>
4. Minister for State Development	<i>Iron Ore (Mineralogy Pty Ltd) Agreement Act 2002</i>
5. Minister for Ports	<i>Port Authorities Act 1999</i>
6. Minister for Water	<i>Rights in Water and Irrigation Act 1914</i> (permit to interfere with beds and banks)
7. Chief Executive Officer, City of Karratha	<i>Planning and Development Act 2005</i>
8. Chief Executive Officer, Department of Water and Environmental Regulation	<i>Environmental Protection Act 1986</i> (works approval and licence)
9. Commissioner, Main Roads Western Australia	<i>Main Roads Act 1930</i>
10. Chief Executive Officer, Pilbara Ports Authority	<i>Port Authorities Act 1999</i>

Note: In this instance, agreement is only required with DMAs 1 to 6 since these DMAs are Ministers.

Recommended Environmental Conditions

STATEMENT TO CHANGE THE IMPLEMENTATION CONDITIONS APPLYING TO A PROPOSAL

(Section 46 of the *Environmental Protection Act 1986*)

CAPE PRESTON EAST – MULTI-COMMODITY EXPORT FACILITY

Proposal: To design, construct and operate a multi-commodity export facility on the eastern side of Cape Preston in the Pilbara region of Western Australia

Proponent: BC Pilbara Iron Ore Pty Ltd
Australian Company Number 107 492 517

Proponent Address: Level 2, 1 Altona Street
West Perth WA 6872

Report of the Environmental Protection Authority: 1680

Preceding Statement/s Relating to this Proposal: 949

Pursuant to section 45 of the *Environmental Protection Act 1986*, as applied by section 46(8), it has been agreed that the implementation conditions set out in Ministerial Statement No. 949 be changed as specified in this Statement.

Condition 3 of Ministerial Statement 949 is deleted and replaced with:

3 Time Limit for Proposal Implementation

- 3-1 The proponent shall not commence implementation of the proposal after 9 September 2023, and any commencement, prior to this date, must be substantial.
- 3-2 Any commencement of implementation of the proposal, on or before 9 September 2023, must be demonstrated as substantial by providing the CEO with written evidence, on or before 9 September 2023.

Note: “CEO” means the Chief Executive Officer of the Department of the Public Service which is responsible for the administration of section 48 of the *Environmental Protection Act 1986*, or his delegate.