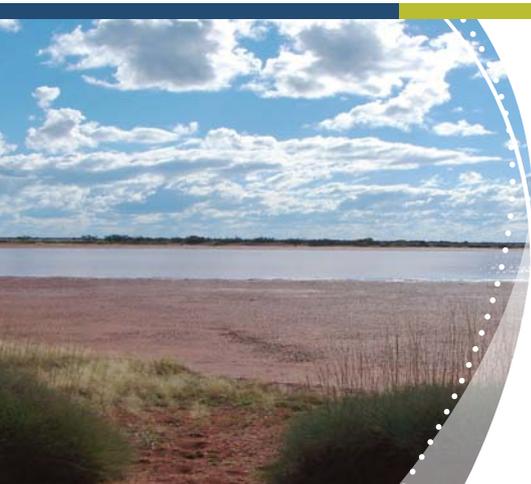




Report and recommendations of the Environmental Protection Authority



Multi-user Iron Ore Export (Landside) Facility, Port Hedland - inquiry under section 46 of the *Environmental Protection Act 1986* to amend Ministerial Statement 891

NWIOA Ops. Pty Ltd
(trading as North West Infrastructure)

Report 1591

December 2016

ENVIRONMENTAL PROTECTION AUTHORITY
REPORT AND RECOMMENDATIONS TO THE MINISTER FOR
ENVIRONMENT

**MULTI-USER IRON ORE EXPORT (LANDSIDE) FACILITY, PORT HEDLAND
- INQUIRY UNDER SECTION 46 OF THE *ENVIRONMENTAL PROTECTION
ACT 1986* TO AMEND MINISTERIAL STATEMENT 891**

The Minister for Environment has requested that the Environmental Protection Authority (EPA) inquire into and report on the matter of changing the implementation conditions relating to the "Multi-user Iron Ore Export (Landside) Facility – Port Hedland" project, in order to extend the Time Limit of Authorisation for substantial commencement of the proposal (condition 3 of Ministerial Statement 891).

The following is the EPA's Report and Recommendations (No. 1591) to the Minister pursuant to section 46(6) of the *Environmental Protection Act 1986* (EP Act).

Background

The proposal is to construct and operate port infrastructure which includes a stockyard facility, rail loop, conveyor, wharf and ship-loading facility at Port Hedland.

The EPA assessed the proposal at the level of Assessment on Proponent Information and released its assessment report (Report 1419) in November 2011. The EPA identified the following key environmental factors relevant to the proposal:

- Benthic Primary Producer Habitat;
- Surface water and tidal processes; and
- Emissions (dust and noise).

In applying the Environmental Protection Authority *Statement of Environmental Principles, Factors and Objectives*, December 2016 (SEPFO) these factors are now represented by:

- Benthic Communities and Habitats;
- Coastal Processes;
- Air Quality; and
- Social Surroundings.

The EPA concluded that it is likely that the EPA's objectives would be achieved provided there is satisfactory implementation by the proponent of the recommended conditions.

The Minister for Environment approved the proposal for implementation, subject to the implementation conditions of Ministerial Statement 891 (2 April 2012).

Requested changes to conditions

Condition 3-1 of Ministerial Statement 891 requires the proponent to substantially commence the proposal within five years of the date of issue of the Statement (that is, before 2 April 2017).

The proposal has not yet substantially commenced. The proponent for the proposal, NWIOA Ops. Pty Ltd (trading as North West Infrastructure) has requested an extension of the Time Limit of Authorisation (now referred to as "Time Limit for Proposal Implementation") for substantial commencement for a further five years, to 2 April 2022.

The proponent has not proposed any additional changes to the proposal as part of their application to extend the Time Limit for Proposal Implementation.

Application of relevant EPA policies and guidelines

In inquiring into the change to conditions, the EPA has given due consideration to relevant published EPA policies and guidelines, noting that a number of published policies and guidelines pertaining to this proposal were considered but not determined to be relevant.

On 13 December 2016, the EPA released a new suite of environmental impact assessment policy and guidance documents.

The Minister requested the section 46 inquiry on 21 September 2016, prior to the release of the new *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016* and environmental impact assessment policy and guidance documents.

In its assessment, the EPA has considered and given due regard, where relevant, to its current and any applicable former environmental impact assessment policy and guidance documents (Table 1).

Inquiry into the requested change to conditions

The EPA recommends imposing a substantial commencement timeframe implementation condition so that the conditions relating to a proposal can be reviewed within a reasonable timeframe to ensure:

- consideration is given to changes in the environment, scientific or technology knowledge arising since the initial assessment; and
- proposals are being implemented using best practice and contemporary methods so that the EPA objectives for the relevant key environmental factors are met.

The EPA has discretion as to how it conducts this inquiry. The currency of the initial assessment and issue of the Ministerial Statement (that is, when it was published) is also instructive in determining the extent and nature of the inquiry under s46. Ministerial Statement 891 was published on 2 April 2012.

Inquiry findings

In conducting this inquiry the EPA reviewed the information provided by the proponent.

In considering whether it should recommend an extension of the Time Limit for Proposal Implementation for substantial commencement of the proposal, the EPA also considered whether there is any new relevant information in relation to the assessment of the potential impacts of the proposal.

Benthic Communities and Habitats

The EPA's objective for the factor *Benthic Communities and Habitats* is: *"To protect benthic communities and habitats so that biological diversity and ecological integrity are maintained"*.

EPA Report 1419 identified that the Benthic Primary Producer Habitat (BPPH) communities that are considered relevant to the proposal are primarily mangroves with other BPPH existing within the proposal footprint which includes salt marshes (samphire) and cyanobacterial algal mats.

The EPA considered that the proponent has designed and engineered key components of the proposal to minimise the level of direct and indirect impact on mangroves and other BPPH wherever practicable and a key design component of the proposal to reduce loss of mangroves is the elevated trestle conveyor which would transfer the iron ore from the stockyard and rail loop located in Boodarie Estate to the berth and ship loader in South West Creek. The proponent has further reduced its impact through a shared corridor with Roy Hill Iron Ore Pty Ltd.

In consideration of the information provided by the proponent and relevant EPA policies and guidelines, the EPA considers that:

- there is no significant new or additional information that justifies the reassessment of the issues raised by the proposal; or
- there have been no new significant changes in the relevant environmental factors since the proposal was assessed by the EPA in Report 1419 (November 2011); and
- no new significant environmental factors have arisen since the EPA's assessment of the proposal.

The EPA is therefore satisfied that that existing implementation condition 5, Benthic Primary Producer Habitat, will continue to address the relevant environmental factors, and manage and mitigate the potential impacts of the proposal.

Coastal Processes

The EPA's objective for this factor is: *"To maintain the geophysical processes that shape coastal morphology so that the environmental values of the coast are protected"*.

The EPA considered (EPA Report 1419, November 2011) that the proposal is unlikely to have a significant impact on the existing surface and tidal water patterns of the receiving environment. The proponent has designed the railway embankment and stockyard area to run predominately parallel to the existing natural water drainage channels. Having particular regard to the proposal design and engineering solutions which aim to avoid (where possible) and limit impacts to surface water and tidal processes, it was the EPA's opinion that the proposal could be managed to meet the EPA's environmental objectives for this factor.

The EPA notes that the design of the railway embankment and stockyard area, to run predominately parallel to the existing natural water drainage channels, has not been changed.

The EPA considers that its original advice to the Minister in relation to this factor remains valid. The design of the facility should limit the impact to coastal processes, and the proposal is unlikely to have a significant impact on the existing surface and tidal water patterns of the receiving environment.

In consideration of the information provided by the proponent and relevant EPA policies and guidelines, the EPA considers that:

- there is no significant new or additional information that justifies the reassessment of the issues raised by the proposal; or
- there have been no new significant changes in the relevant environmental factors since the proposal was assessed by the EPA in Report 1419 (November 2011); and
- no new significant environmental factors have arisen since the EPA's assessment of the proposal.

The EPA is therefore satisfied that the existing design and layout of the proposal as shown in Figure 1 and Figure 2 of Ministerial Statement 891 minimises the impacts to coastal processes and continues to meet the EPA's objective.

Air Quality

The EPA's environmental objective for the factor *Air Quality* is: "*To maintain air quality and minimise emissions so that environmental values are protected*".

Considerations for EIA for the factor Air Quality include that analysis of potential health and amenity impacts has been undertaken using recognised criteria and standards, where relevant, informed by Australian and international standards. Emission of fine particulates is associated with vehicle emissions and any activities which generate dust, and is particularly relevant when located in close proximity to residential and other sensitive land uses.

In the EPA's original assessment of the proposal, the EPA liaised with the Department of Environment and Conservation (now the Department of Environment Regulation) with regard to the ongoing management of the proposed facility, and concluded that the most appropriate way to regulate dust emissions is under Part V of the EP Act, which includes Section 62A (1) (q), which relates to the requirement for environmental management and improvement plans. As such, the EPA did not recommend an Environmental Condition for dust.

In the EPA's recent section 46 inquiry into the Cape Lambert Port A & B Developments (Report 1586, November 2016), the EPA noted that the DER's regulatory framework ensures that licences and approvals issued will be subject to conditions that ensure there is not an unacceptable risk of harm to public health or the environment. Furthermore, the EPA recognises that section 62A of the EP Act defines the kinds of conditions that can be set in Part V Works Approvals and Licences. The EPA considers that section 62A could adequately allow for acceptable management of emissions.

The EPA considers that dust emissions which may impact amenity and human health are more appropriately regulated by the DER under Part V Environmental Regulation of the EP Act for the Multi-user Iron Ore Export (Landside) Facility.

Social Surroundings (Noise)

The EPA's environmental objective for the factor *Social Surroundings* is: "To protect social surroundings from significant harm". The objective recognises the importance of ensuring that social surroundings are not significantly affected as a result of implementation of a proposal or scheme.

Considerations for EIA for the factor Social Surroundings include that emissions of noise are considered in the context of relevant legislation, criteria or standards. Noise has the potential to unreasonably interfere with the health, welfare, convenience and comfort of people.

The EPA noted in Report 1419, that while the proposal will comply with the Environmental Protection (Noise Regulations) 1997 in isolation, overall there will be a minor increase in noise levels in Port Hedland. The EPA considered that cumulative noise emissions in Port Hedland do not meet the regulations and believes that this matter is best considered through a Noise Regulation 17 exemption process. As such, the EPA did not recommend an environmental condition for noise. The EPA considers that this is still the most appropriate method to address cumulative noise, and its original advice to the Minister in Report 1419, in relation to noise, remains valid.

EPA recommendations

Having inquired into this matter, the EPA submits the following recommendations to the Minister for Environment:

1. To amend condition 3 of Ministerial Statement 891 to allow for the timeframe for substantial commencement of the Multi-user Iron Ore Export (Landside) Facility Port Hedland to be extended by five years, to 2 April 2022; and
2. That, after complying with section 46(8) of the *Environmental Protection Act 1986*, the Minister issues a statement of decision to change condition 3 of Statement 891 in the manner provided for in the attached recommended Statement.

Table 1 – Relevant EPA policies and guidelines

Process/ Factor/s	Policies and guidelines considered relevant	Applied Yes/No	Comments
Change to conditions	<i>Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016</i>	Yes	<p>The Administrative Procedures provide the principles and practices around the environmental impact assessment process undertaken by the Office of the Environmental Protection Authority under Part IV of the EP Act.</p> <p>Relevantly, the Administrative Procedures provide guidance on the process for changing conditions under section 46 of the EP Act.</p>
Change to conditions	<i>Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual, December 2016</i>	Yes	<p>The Procedures Manual supports the Administrative Procedures and contains more detailed information on each step of the EIA process, including section 46 changes to conditions, under section 5.3.</p> <p>More relevantly, section 5.3 details the process for changing implementation conditions.</p>
Change to conditions	<i>Statement of Environmental Principles, Factors and Objectives, December 2016 (SEPFO)</i>	Yes	<p>Relevantly, the SEPFO:</p> <ul style="list-style-type: none"> • considers the object and principles of the <i>Environmental Protection Act 1986</i>; • uses environmental factors and objectives to organise and systemise environmental impact assessment and reporting; • takes a holistic view of the environment and a proposal or scheme's potential impact on the environment; and • considers significance when determining whether or not to assess a proposal or scheme and recommend whether or not an assessed proposal or scheme may be implemented. <p>In this case the SEPFO was applied in:</p> <ul style="list-style-type: none"> • confirming the key environmental factors identified for the original assessment in the current policy context;

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Process/ Factor/s	Policies and guidelines considered relevant	Applied Yes/No	Comments
			<ul style="list-style-type: none"> determining whether the identified environmental factors are still relevant and if any new factors should be considered; and preparing advice on whether the EPA's environmental objectives can be met.
Benthic communities and habitat	<i>Environmental Factor Guideline – Benthic Communities and Habitats, December 2016</i> <i>Technical Guidance – Protection of Benthic Communities and Habitats, December 2016</i>	Yes	<p>The purpose of this guideline is to communicate how Benthic Communities and Habitats are considered by the EPA in the environmental impact assessment process.</p> <p>The Guideline and Technical Guidance were used in determining the considerations for impacts on benthic communities and habitats, and if project design and mitigation measures were still appropriate to mitigate impacts.</p>
Coastal Processes	<i>Environmental Factor Guideline – Coastal Processes, December 2016.</i>	Yes	<p>The purpose of this guideline is to communicate how Coastal Processes are considered by the EPA in the environmental impact assessment process. In considering the change to conditions, this Guideline was applied when considering the EPA's original assessment of the proposal with regard to:</p> <ul style="list-style-type: none"> application of the mitigation hierarchy to avoid or minimise impacts on coastal processes, where possible; the significance of the likely change to coastal processes as well as the environmental values affected by those changes; the technical and practical feasibility of proposed management measures and approaches; and infrastructure that alters wave energy and current patterns such as: infrastructure or activities that interrupt tidal flows or cause a reduction in water exchange or changes in water quality.

Process/ Factor/s	Policies and guidelines considered relevant	Applied Yes/No	Comments
Air quality	<i>Environmental Factor Guideline – Air Quality, December 2016</i>	Yes	<p>The purpose of this guideline is to communicate how the factor Social Surroundings is considered by the Environmental Protection Authority (EPA) in the environmental impact assessment (EIA) process.</p> <p>In considering the change to conditions, this Guideline was applied when considering the EPA’s original assessment of the proposal with regard to:</p> <ul style="list-style-type: none"> • potential health and amenity impacts; • the significance of the likely change to air quality as well as the environmental values affected by those changes, in the context of existing and predicted cumulative impacts; and • whether analysis of potential health and amenity impacts has been undertaken using recognised criteria and standards.
Social Surroundings	<i>Environmental Factor Guideline – Social Surroundings, December 2016</i>	Yes	<p>The purpose of this guideline is to communicate how the factor Social Surroundings is considered by the Environmental Protection Authority (EPA) in the environmental impact assessment (EIA) process.</p> <p>With regard to the change to conditions, this Guideline was applied in the context of noise and dust impacts when:</p> <ul style="list-style-type: none"> • considering emissions of noise and dust in the context of relevant legislation, criteria or standards and whether proposed management or mitigation of impacts to social surroundings is technically and practically feasible.

Statement No. xxx

RECOMMENDED ENVIRONMENTAL CONDITIONS

**STATEMENT TO CHANGE THE IMPLEMENTATION CONDITIONS APPLYING TO A
PROPOSAL**
(Section 46 of the *Environmental Protection Act 1986*)

MULTI-USER IRON ORE EXPORT (LANDSIDE) FACILITY
PORT HEDLAND

Proposal: The proposal is to construct and operate port infrastructure which includes a stockyard facility, rail loop, conveyor, wharf and ship-loading facility at Port Hedland.

Proponent: NWIOA Ops. Pty Ltd (trading as North West Infrastructure)
Australian Company Number 137 476 370

Proponent Address: Level 2, 56 Ord Street
WEST PERTH WA 6005

Report of the Environmental Protection Authority: 1591

Preceding Statement/s Relating to this Proposal: 891

Pursuant to section 45 of the *Environmental Protection Act 1986*, as applied by s46(8), it has been agreed that the implementation conditions set out in Ministerial Statement No. 891, be changed as specified in this Statement.

Condition 3 changed

Condition 3 of Ministerial Statement 891 is deleted and replaced with:

3 Time Limit for Proposal Implementation

3-1 The proponent shall not commence implementation of the proposal after 2 April 2022, and any commencement, prior to this date, must be substantial.

3-2 Any commencement of implementation of the proposal, on or before 2 April 2022, must be demonstrated as substantial by providing the CEO* with written evidence, on or before 2 April 2022.

*"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.

Albert Jacob MLA

MINISTER FOR ENVIRONMENT; HERITAGE