



VARIATION OF CONDITIONS ATTACHED TO APPROVAL Port Hedland Spoilbank Marina Project, WA (EPBC 2019/8520)

This decision to vary conditions of approval is made under section 143 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Approved action

Person to whom the approval is granted	Pilbara Ports Authority ABN: 94 987 448 870
Approved action	To construct and operate a new spoilbank marina, approximately 1.5 kilometres east of Port Hedland, Western Australia. [See EPBC Act referral 2019/8520]

Variation

Variation of conditions attached to approval	The variation is: Insert new condition 5A specified in the table below. Delete the definitions of operation of the marina and project area and substitute with the definitions specified in the table below. Delete Attachment A and substitute with Attachment A below.
Date of effect	This variation has effect on the date the instrument is signed

Person authorised to make decision

Name and position	Bredan Linton-Smith Acting Branch Head, Environment Assessments (Vic, Tas) and Post Approvals Branch
-------------------	---

Signature

Date of decision

21/12/2023

Date of decision	Conditions attached to approval
Original dated 19/02/2021	<p>1. To minimise impacts to protected matters, the approval holder must not remove or modify more than:</p> <ul style="list-style-type: none"> a. 15 ha of Flatback Turtle inter-nesting habitat; b. 2.3 ha of Green Turtle foraging habitat; and c. 10 ha of Green Sawfish foraging habitat, within the project area.
Original dated 19/02/2021	<p>2. To minimise impacts to protected matters, the approval holder must not undertake any marine construction activities during the following dates and times for the period of the approval:</p> <ul style="list-style-type: none"> a. Flatback Turtle peak nesting period, between 1 December and 31 March; or b. Green Sawfish key movement period, between the hours of 19:00 and 07:00.
Variation dated 30/11/2021	<p>3. To minimise impacts to protected matters, the approval holder must not dredge outside of the dredge area. If any dredged material is disposed of offshore, this must be undertaken in accordance with all requirements of a Permit issued under the <i>Environment Protection (Sea Dumping) Act 1981</i>.</p>
Original dated 19/02/2021	<p>4. To ensure that marine construction activities and construction do not significantly impact protected matters, the approval holder must implement the Dredging Environmental Management Plan (DEMP) and Construction Environmental Management Plan (CEMP).</p>
Original dated 19/02/2021	<p>5. The approval holder must submit an Operational Environment Management Plan (OEMP), at least three months prior to the anticipated commencement of operation of the marina, for the Minister's approval to ensure that the operation of the marina does not significantly impact protected matters. The OEMP must:</p> <ul style="list-style-type: none"> a. include an Artificial Lighting Management Plan (ALMP) that ensures artificial lighting associated with the operation of the marina does not impact upon Flatback Turtle nesting on Cemetery Beach. The ALMP must be consistent with the Department's National Light Pollution Guidelines for Wildlife including Marine Turtles, Seabirds and Migratory Shorebirds (2020) and include: <ul style="list-style-type: none"> i. the finalised artificial lighting design of the marina; ii. justification of how the proposed design will prevent impacts to Flatback Turtle hatchlings on Cemetery Beach; iii. a monitoring and reporting program, which includes baseline data that monitoring and reporting will be evaluated against, to be undertaken for a minimum length of two years post commencement of operation of the marina to provide certainty that the artificial lighting of the marina is not impacting Flatback Turtle hatchlings or nesting on Cemetery Beach; and iv. management measures and corrective actions to be implemented should monitoring indicate that the marina's artificial lighting is likely to impact Flatback Turtle hatchlings on Cemetery Beach. b. include a Sediment Management Plan (SMP) that ensures anthropogenic activities of the action do not result in, or contribute to,

Date of decision	Conditions attached to approval
	<p>the denuding of Cemetery Beach. The SMP must include measures to monitor for denuding of Cemetery Beach and specify intervention measures to be implemented should denuding of Cemetery Beach be predicted or detected as a result of:</p> <ul style="list-style-type: none"> i. anthropogenic activities; and/or ii. environmental factors in combination with anthropogenic activities. <p>c. include a Marine Environment and Water Quality Management Plan (MEWQMP) that addresses how marine water quality, sediment quality and accumulation of marine debris will be monitored and managed to prevent impacts to protected matters from the operation of the marina. The MEWQMP must specify and justify the quality indicators to be monitored and timing of monitoring to prevent impacts to protected matters, including specific trigger criteria and limits, and clear, detailed corrective actions that will be implemented to prevent impacts to protected matters should trigger criteria and limits be reached.</p>
As varied on the date this instrument was signed	<p>5A. The approval holder may enable use of the public boat ramp prior to operation of the marina, subject to meeting the commitments of the Construction Environmental Management Plan. In enabling use of the public boat ramp the approval holder must:</p> <ul style="list-style-type: none"> a. fully comply with the Construction Environmental Management Plan (CEMP); b. during each period commencing on 1 December and ending on 31 March in the same financial year, prevent use of the public boat ramp after 6.00 pm each day and until 6.00 am the next day; c. not provide or permit any artificial lighting in the vicinity of the public boat ramp; d. instal gates and close them to prevent the use of the public boat ramp outside the period between between 6.00 am and 6.00pm each day; and e. erect clear signage at the public boat ramp prohibiting its use outside the period between between 6.00 am and 6.00pm each day.
Original dated 19/02/2021	<p>6. The approval holder must not commence operation of the marina unless the Minister has approved the OEMP in writing. If the Minister approves the OEMP then the approved OEMP must be implemented.</p>
Original dated 19/02/2021	<p>7. All plans required under these conditions must be consistent with the Department's Environmental Management Plan Guidelines, and must include:</p> <ul style="list-style-type: none"> a. The environmental objectives, relevant protected matters and a reference to EPBC Act approval conditions to which the plan refers; b. A table of commitments made in the plan to achieve the objectives, and a reference to where the commitments are detailed in the plan; c. Reporting and review mechanisms, and documentation standards to demonstrate compliance with the commitments made in the plan; d. An assessment of risks to achieving the environmental objectives and risk management strategies that will be applied; e. Impact avoidance, mitigation and/or repair measures, and their timing; and

Date of decision	Conditions attached to approval
	<p>f. A monitoring program, which must include:</p> <ul style="list-style-type: none"> i. measurable performance indicators; ii. trigger values for corrective actions; iii. the timing and frequency of monitoring to detect trigger values and changes in the performance indicators; and iv. proposed corrective actions, if trigger values are reached.
Part B – Standard administrative conditions	
Notification of date of commencement of the action	
Original dated 19/02/2021	<p>8. The approval holder must notify the Department in writing of the date of commencement of the action within 10 business days after the date of commencement of the action. The approval holder must notify the Department in writing of the date of commencement of the operation of the marina within 10 business days after the date of commencement of the operation of the marina.</p>
Original dated 19/02/2021	<p>9. If the commencement of the action does not occur within 5 years from the date of this approval, then the approval holder must not commence the action without the prior written agreement of the Minister.</p>
Compliance records	
Original dated 19/02/2021	<p>10. The approval holder must maintain accurate and complete compliance records.</p>
Original dated 19/02/2021	<p>11. If the Department makes a request in writing, the approval holder must provide electronic copies of compliance records to the Department within the timeframe specified in the request.</p> <p>Note: Compliance records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the Department's website or through the general media.</p>
Submission and publication of plans	
Original dated 19/02/2021	<p>12. The approval holder must:</p> <ul style="list-style-type: none"> a. submit plans electronically to the Department; b. unless otherwise agreed to in writing by the Minister, publish each plan on the website within 20 business days of the date: <ul style="list-style-type: none"> i. of this approval, if the version of the plan to be implemented is specified in these conditions; or ii. that the plan is submitted to the Department, if the plan does not require the approval of the Minister but was not finalised before the date of this approval; or iii. that the plan has been approved by the Minister in writing, if the plan requires the approval of the Minister; c. exclude or redact sensitive ecological data from plans published on the website or provided to a member of the public; and

Date of decision	Conditions attached to approval
	d. keep plans published on the website until the end date of this approval.
Original dated 19/02/2021	13. The approval holder must ensure that any monitoring data (including sensitive ecological data), surveys, maps, and other spatial and metadata required under a plan , is prepared in accordance with the Department's Guidelines for biological survey and mapped data (2018) and submitted electronically to the Department in accordance with the requirements of the plan .
Annual compliance reporting	
Original dated 19/02/2021	<p>14. The approval holder must prepare a compliance report for each 12 month period following the date of commencement of the action, or <u>otherwise</u> in accordance with an annual date that has been <u>agreed to in writing by the Minister</u>. The approval holder must:</p> <ul style="list-style-type: none"> a. publish each compliance report on the website within 60 business days following the relevant 12 month period; b. notify the Department by email that a compliance report has been published on the website and provide the weblink and documentary evidence providing proof of the date of publication for the compliance report within five business days of the date of publication; c. keep all compliance reports publicly available on the website until this approval expires; d. <u>exclude or redact sensitive ecological data from compliance reports published on the website</u>; and e. where any sensitive ecological data has been excluded from the version published, submit the full compliance report to the Department within 5 business days of publication. <p>Note: Compliance reports may be published on the Department's website.</p>
Reporting non-compliance	
Original dated 19/02/2021	<p>15. The approval holder must notify the Department in writing of any: incident; non-compliance with the conditions; or non-compliance with the commitments made in plans. The notification must be given as soon as practicable, and no later than two business days after becoming aware of the incident or non-compliance. The notification must specify:</p> <ul style="list-style-type: none"> a. any condition which is or may be in breach; b. a short description of the incident and/or non-compliance; and c. the location (including co-ordinates), date, and time of the incident and/or non-compliance. In the event the exact information cannot be provided, provide the best information available.
Original dated 19/02/2021	<p>16. The approval holder must provide to the Department the details of any incident or non-compliance with the conditions or commitments made in plans as soon as practicable and no later than 10 business days after becoming aware of the incident or non-compliance, specifying:</p> <ul style="list-style-type: none"> a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;

Date of decision	Conditions attached to approval
	<ul style="list-style-type: none"> b. the potential impacts of the incident or non-compliance; and c. the method and timing of any remedial action that will be undertaken by the approval holder.
Independent audit	
Original dated 19/02/2021	17. The approval holder must ensure that independent audits of compliance with the conditions are conducted as requested in writing by the Minister .
Original dated 19/02/2021	<p>18. For each independent audit, the approval holder must:</p> <ul style="list-style-type: none"> a. provide the name and qualifications of the independent auditor and the draft audit criteria to the Department; b. only commence the independent audit once the audit criteria have been approved in writing by the Department; and c. submit an audit report to the Department within the timeframe specified in the approved audit criteria.
Original dated 19/02/2021	19. The approval holder must publish the audit report on the website within 10 business days of receiving the Department's approval of the audit report and keep the audit report published on the website until the end date of this approval.
Revision of action management plans	
Original dated 19/02/2021	20. The approval holder may, at any time, apply to the Minister for a variation to an action management plan approved by the Minister under conditions 4 and 5, or as subsequently revised in accordance with these conditions, by submitting an application in accordance with the requirements of section 143A of the EPBC Act . If the Minister approves a revised action management plan (RAMP) then, from the date specified, the approval holder must implement the RAMP in place of the previous action management plan.
Original dated 19/02/2021	21. The approval holder may choose to revise an action management plan approved by the Minister under conditions 4 and 5 or as subsequently revised in accordance with these conditions, without submitting it for approval under section 143A of the EPBC Act , if the taking of the action in accordance with the RAMP would not be likely to have a new or increased impact .
Original dated 19/02/2021	<p>22. If the approval holder makes the choice under condition 21 to revise an action management plan without submitting it for approval, the approval holder must:</p> <ul style="list-style-type: none"> a. notify the Department in writing that the approved action management plan has been revised and provide the Department with: <ul style="list-style-type: none"> i. an electronic copy of the RAMP; ii. an electronic copy of the RAMP marked up with track changes to show the differences between the approved action management plan and the RAMP; iii. an explanation of the differences between the approved action management plan and the RAMP;

Date of decision	Conditions attached to approval
	<p>iv. the reasons the approval holder considers that taking the action in accordance with the RAMP would not be likely to have a new or increased impact; and</p> <p>v. written notice of the date on which the approval holder will implement the RAMP (RAMP implementation date), being at least 20 business days after the date of providing notice of the revision of the action management plan, or a date agreed to in writing with the Department.</p> <p>b. subject to condition 24 implement the RAMP from the RAMP implementation date.</p>
Original dated 19/02/2021	23. The approval holder may revoke their choice to implement a RAMP under condition 21 at any time by giving written notice to the Department . If the approval holder revokes the choice under condition 21, the approval holder must implement the action management plan in force immediately prior to the revision undertaken under condition 21.
Original dated 19/02/2021	<p>24. If the Minister gives a notice to the approval holder that the Minister is satisfied that the taking of the action in accordance with the RAMP would be likely to have a new or increased impact, then:</p> <p>a. condition 21 does not apply, or ceases to apply, in relation to the RAMP; and</p> <p>b. the approval holder must implement the action management plan specified by the Minister in the notice.</p>
Original dated 19/02/2021	<p>25. At the time of giving the notice under condition 24, the Minister may also notify that for a specified period of time, condition 21 does not apply for one or more specified action management plans.</p> <p>Note: conditions 21, 22, 23 and 24 are not intended to limit the operation of section 143A of the EPBC Act which allows the approval holder to submit a revised action management plan, at any time, to the Minister for approval.</p>
Completion of the action	
Original dated 19/02/2021	26. Within 20 business days after the completion of the action , the approval holder must notify the Department in writing and provide completion data .

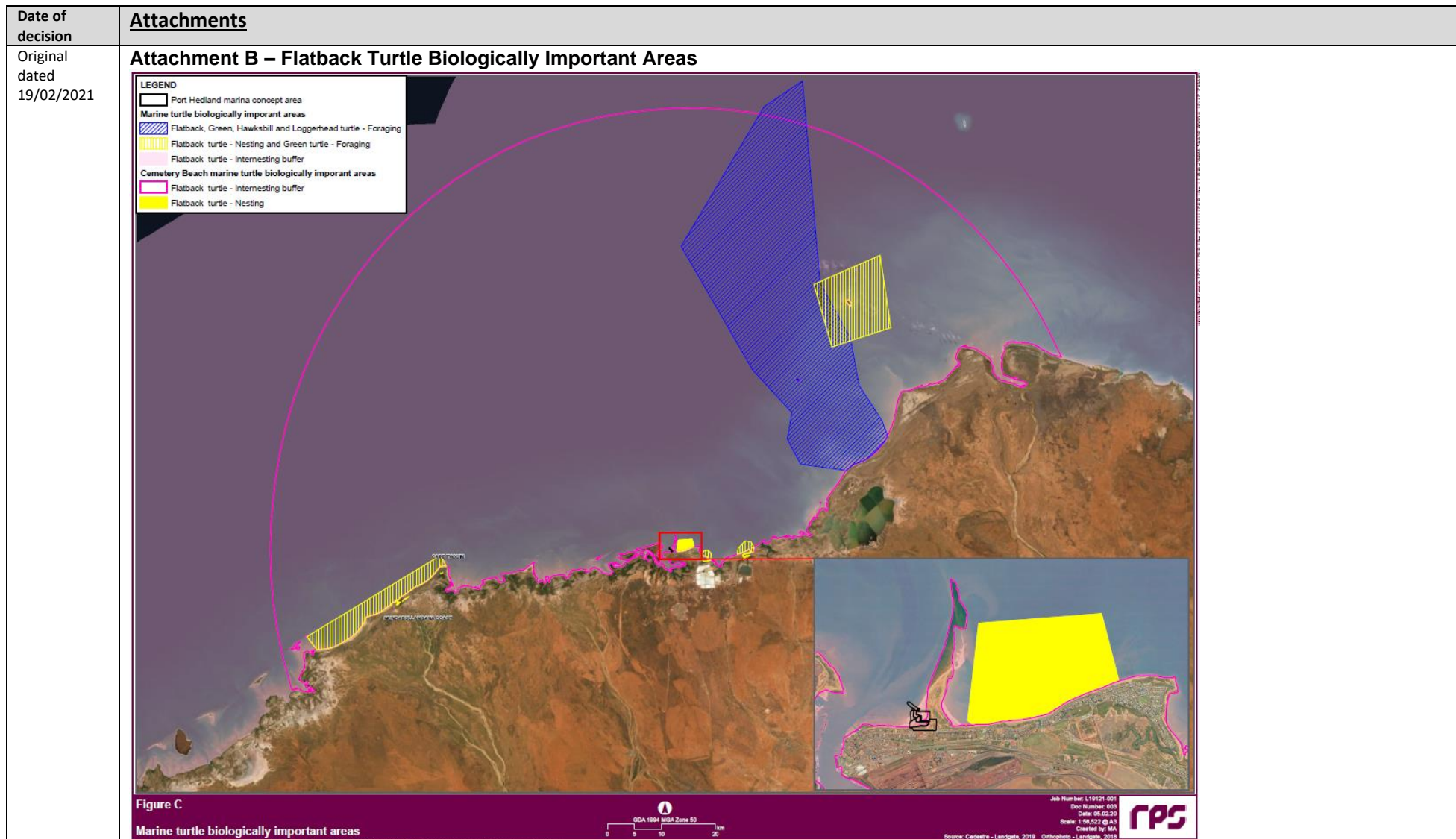
Date of decision	Definitions attached to approval
Part C - Definitions	
In these conditions, except where contrary intention is expressed, the following definitions are used:	
Original dated 19/02/2021	Business day(s) means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the action.
Original dated 19/02/2021	Cemetery Beach means the area shown marked within the green hatched area labelled as 'Cemetery Beach' in <u>Attachment D</u> .

Date of decision	Definitions attached to approval
Original dated 19/02/2021	<p>Commence/commencement of the action means the first instance of any specified activity associated with the action including clearing of vegetation, construction or marine construction activities. Commencement of the action does not include minor physical disturbance necessary to:</p> <ul style="list-style-type: none"> i. undertake pre-clearance surveys or monitoring programs; ii. install signage and /or temporary fencing to prevent unapproved use of the project area; iii. protect environmental and property assets from fire, weeds and pests, including erection of temporary fencing, and use of existing surface access tracks; iv. install temporary site facilities for persons undertaking pre-commencement activities so long as these are located where they have no impact on the protected matters.
Original dated 19/02/2021	<p>Completion data means an environmental report and spatial data clearly detailing how the conditions of this approval have been met. The Department's preferred spatial data format is shapefile.</p>
Original dated 19/02/2021	<p>Completion of the action means the date on which all specified activities associated with the action have permanently ceased.</p>
Original dated 19/02/2021	<p>Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.</p>
Original dated 19/02/2021	<p>Compliance report(s) means written reports:</p> <ul style="list-style-type: none"> i. providing accurate and complete details of compliance, incidents, and non-compliance with the conditions and the plans; ii. consistent with the Department's Annual Compliance Report Guidelines (2014); iii. include a shapefile of any clearance of any protected matters, or their habitat, undertaken within the relevant 12 month period; and iv. annexing a schedule of all plans prepared and in existence in relation to the conditions during the relevant 12 month period.
Original dated 19/02/2021	<p>Construction means the erection of a building or structure that is or is to be fixed to the ground and wholly or partially fabricated on-site; the alteration, maintenance, repair or demolition of any building or structure; preliminary site preparation work which involves breaking of the ground (including mass movement of sand or pile driving); the laying of pipes and other prefabricated materials in the ground, and any associated excavation work; but excluding the installation of temporary fences and signage.</p>
Original dated 19/02/2021	<p>Construction Environmental Management Plan (CEMP) means the plan titled <i>Port Hedland Spoilbank Marina Proposal Construction Environmental Management Plan</i> (Revision 3) prepared by Department of Transport or, the revised version of this plan most recently approved by the Minister or submitted to the Department in accordance with the requirements of Conditions 20-25.</p>

Date of decision	Definitions attached to approval
Original dated 19/02/2021	Denuding means any measurable reduction in size or form of a beach due to loss of sand from erosion.
Original dated 19/02/2021	Department means the Australian Government agency responsible for administering the EPBC Act .
Original dated 19/02/2021	Dredge area means the area shown marked within the orange outline and coloured in solid yellow labelled as 'Dredge Area' in <u>Attachment E</u> .
Original dated 19/02/2021	Dredging Environmental Management Plan (DEMP) means the plan titled <i>Port Hedland Spoilbank Marina: Dredging Environmental Management Plan (Rev 5)</i> prepared by WA Marine Pty Ltd (trading as O2 Marine) or, the revised version of this plan most recently approved by the Minister or submitted to the Department in accordance with the requirements of Conditions 20-25.
Original dated 19/02/2021	EPBC Act means the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
Original dated 19/02/2021	Flatback Turtle(s) means the species <i>Natator depressus</i> listed as Vulnerable, Marine and Migratory under the EPBC Act .
Original dated 19/02/2021	Flatback Turtle inter-nesting habitat means the habitat used by Flatback Turtles for inter-nesting activities, as shown marked as all areas within the pink line labelled as 'Flatback turtle – Internesting buffer' on the map at <u>Attachment B</u> .
Original dated 19/02/2021	Green Turtle(s) means the species <i>Chelonia mydas</i> listed as Vulnerable, Marine and Migratory under the EPBC Act .
Original dated 19/02/2021	Green Turtle foraging habitat means the areas which provide habitat for Green Turtles , shown marked in purple and labelled as 'Mixed assemblage', as well as the areas shown marked in green and labelled as 'Mixed assemblage with sparse seagrass' as shown on the map at <u>Attachment C</u> .
Original dated 19/02/2021	Green Sawfish means the species <i>Pristis zijsron</i> listed as Vulnerable and Migratory under the EPBC Act .
Original dated 19/02/2021	Green Sawfish foraging habitat means benthic sub-tidal habitat (sandy/silty bare sediment) which may be used by Green Sawfish .
Original dated 19/02/2021	Impact(ing) (verb) means to cause any measurable direct or indirect disturbance or harmful change as a result of any activity associated with the action. Impact(s) (noun) means any measurable direct or indirect disturbance or harmful change as a result of any activity associated with the action.
Original dated 19/02/2021	Incident means any event which has the potential to, or does, impact on one or more protected matter(s) other than as authorised by this approval.
Original dated 19/02/2021	Independent audit means an audit conducted by an independent and suitably qualified person as detailed in the <i>Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines</i> (2019).
Original dated 19/02/2021	Marine construction activities means any and all piling, dredging and breakwater construction operations.
Original dated 19/02/2021	Monitoring data means the data required to be recorded under the conditions of this approval.

Date of decision	Definitions attached to approval
Original dated 19/02/2021	Minister means the Australian Government Minister administering the EPBC Act including any delegate thereof.
Original dated 19/02/2021	New or increased impact means a new or increased environmental impact or risk relating to any protected matter , when compared to the likely impact of implementing the action management plan that has been approved by the Minister under condition 4 or 5, including any subsequent revisions approved by the Minister , as outlined in the <i>Guidance on 'New or Increased Impact' relating to changes to approved management plans under EPBC Act environmental approvals (2017)</i> .
As varied on the date this instrument was signed	Operation of the marina means the use of the marina facilities for the berthing, storage, refuelling, maintenance and/or launching of water craft. Operation of the marina does not include use of the public boat ramp.
Original dated 19/02/2021	Plan(s) means any of the documents required to be prepared, approved by the Minister , implemented by the approval holder and/or published on the website in accordance with these conditions (includes action management plans and/or strategies).
As varied on the date this instrument was signed	Project area means the area represented by the area enclosed within the white dotted line labelled as 'Development Envelope (EPBC Approved)' in <u>Attachment A</u> .
Original dated 19/02/2021	Protected matter(s) means a matter protected under a controlling provision in Part 3 of the EPBC Act for which this approval has effect.
Original dated 19/02/2021	Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) <i>Sensitive Ecological Data – Access and Management Policy V1.0</i> .
Original dated 19/02/2021	Shapefile means location and attribute information of the action provided in an Esri shapefile format. Shapefiles must contain '.shp', '.shx', '.dbf' files and a '.prj' file that specifies the projection/geographic coordinate system used. Shapefiles must also include an '.xml' metadata file that describes the shapefile for discovery and identification purposes.
Original dated 19/02/2021	Suitably qualified person means a person who has professional qualifications, training, skills and/or experience related to the nominated subject matter and can give authoritative independent assessment, advice and analysis on performance relative to the subject matter using the relevant protocols, standards, methods and/or literature.
Original dated 19/02/2021	Website means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.

Date of decision	Attachments									
As varied on the date this instrument was signed	<div>1. Attachment A – Project Area</div> <div><p>Spoilbank Marina Proposed Design</p><table><tr><td rowspan="3"></td><td>Scale: 1:5,500 (at A4 size)</td><td>Map: PH-201-016-03</td><td rowspan="3"></td><td rowspan="3"> PILBARA PORTS AUTHORITY PORT OF PORT HEDLAND</td></tr><tr><td>Horizontal datum: GDA2020 MGA Zone 50</td><td>Date: 14/11/2023</td></tr><tr><td>Source: PPA Drone Imagery 31 Oct 23 / Landgate Dec 22</td><td>Drawn: SL</td></tr></table></div>		Scale: 1:5,500 (at A4 size)	Map: PH-201-016-03		 PILBARA PORTS AUTHORITY PORT OF PORT HEDLAND	Horizontal datum: GDA2020 MGA Zone 50	Date: 14/11/2023	Source: PPA Drone Imagery 31 Oct 23 / Landgate Dec 22	Drawn: SL
	Scale: 1:5,500 (at A4 size)		Map: PH-201-016-03				 PILBARA PORTS AUTHORITY PORT OF PORT HEDLAND			
	Horizontal datum: GDA2020 MGA Zone 50		Date: 14/11/2023							
	Source: PPA Drone Imagery 31 Oct 23 / Landgate Dec 22	Drawn: SL								



Date of
decision

Attachments

Original
dated
19/02/2021

Attachment C – Green Turtle Foraging Habitat



Date of decision	Attachments
Original dated 19/02/2021	<div>Attachment D – Cemetery Beach</div> <div><p>Port Hedland Marina Project Area</p><p>Dredge Area</p><p>Proposed Spoilbank Marina Design</p><p>Cemetery Beach</p><p>Cemetery Beach</p><p>Scale: 1:12,500 (at A4 size)</p><p>Horizontal datum: GDA2020 MGA Zone 50</p><p>Imagery: Landgate February 2020</p><p>Map: PH-048-024-07-01</p><p>Date: 9/02/2021</p><p>Drawn: VG</p><p>Spoilbank Project Area and Cemetery Beach</p><p>PILBARA PORTS AUTHORITY</p><p>PORT OF PORT HEDLAND</p></div>