



APPROVAL

Port Hedland Spoilbank Marina Project, WA (EPBC 2019/8520)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. Note that section 134(1A) of the **EPBC Act** applies to this approval, which provides in general terms that if the approval holder authorises another person to undertake any part of the action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such condition.

Details

Person to whom the approval is granted (approval holder)	Department of Transport
ACN or ABN of approval holder	ABN 27 285 643 255
Action	To construct and operate a new spoilbank marina, approximately 1.5 kilometres east of Port Hedland, Western Australia.

Approval decision

My decisions on whether or not to approve the taking of the action for the purposes of each controlling provision for the action are as follows.

Controlling Provisions

Listed Threatened Species and Communities	
Section 18	Approve
Section 18A	Approve
Listed migratory species	
Section 20	Approve
Section 20A	Approve

Period for which the approval has effect

This approval has effect until 19 February 2065.

Decision-maker

Name and position	Kylie Calhoun Assistant Secretary Environment Assessments West (WA, SA, NT) Branch
Signature	
Date of decision	19 February 2021

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

1. To minimise **impacts** to **protected matters**, the approval holder must not remove or modify more than:
 - 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**.
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:
 - 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.
3. To minimise **impacts** to **protected matters**, the approval holder must not dredge outside of the **dredge area** and dredged material must be disposed of onshore.
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)**.
5. The approval holder must submit an Operational Environment Management Plan (OEMP), at least three months prior to the anticipated commencement of the **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:
 - 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:
 - 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, 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:
 - i. anthropogenic activities; and/or
 - ii. environmental factors in combination with anthropogenic activities.

- 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.
- 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.
- 7. All **plans** required under these conditions must be consistent with the **Department's Environmental Management Plan Guidelines**, and must include:
 - 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
 - f. A monitoring program, which must include:
 - 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

- 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**.
- 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**.

Compliance records

- 10. The approval holder must maintain accurate and complete **compliance records**.
- 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.

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.

Submission and publication of plans

12. The approval holder must:

- 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:
 - 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
- d. keep **plans** published on the **website** until the end date of this approval.

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

14. The approval holder must prepare a **compliance report** for each 12 month period following the date of **commencement of the action**, or otherwise in accordance with an annual date that has been agreed to in writing by the **Minister**. The approval holder must:

- 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. exclude or redact **sensitive ecological data** from **compliance reports** published on the **website**; 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.

Note: Compliance reports may be published on the **Department's** website.

Reporting non-compliance

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:

- 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.
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:
- a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;
 - 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

17. The approval holder must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister**.
18. For each **independent audit**, the approval holder must:
- 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.
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

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.
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**.
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:
- a. notify the **Department** in writing that the approved action management plan has been revised and provide the **Department** with:
 - 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;
 - 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

- 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**.
 - b. subject to condition 24 implement the RAMP from the RAMP implementation date.
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.
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:
- a. condition 21 does not apply, or ceases to apply, in relation to the RAMP; and
 - b. the approval holder must implement the action management plan specified by the **Minister** in the notice.
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.

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.

Completion of the action

26. Within 20 **business days** after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Part C - Definitions

In these conditions, except where contrary intention is expressed, the following definitions are used:

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.

Cemetery Beach means the area shown marked within the green hatched area labelled as 'Cemetery Beach' in Attachment D.

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:

- 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**.

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**.

Completion of the action means the date on which all specified activities associated with the action have permanently ceased.

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.

Compliance report(s) means written reports:

- 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.

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.

Construction Environmental Management Plan (CEMP) means the plan titled *Port Hedland Spoilbank Marina Proposal Construction Environmental Management Plan (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.

Denuding means any measurable reduction in size or form of a beach due to loss of sand from erosion.

Department means the Australian Government agency responsible for administering the **EPBC Act**.

Dredge area means the area shown marked within the orange outline and coloured in solid yellow labelled as 'Dredge Area' in [Attachment E](#).

Dredging Environmental Management Plan (DEMP) means the plan titled *Port Hedland Spoilbank Marina: Dredging Environmental Management Plan (Rev 5)* 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.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Flatback Turtle(s) means the species *Natator depressus* listed as Vulnerable, Marine and Migratory under the **EPBC Act**.

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 [Attachment B](#).

Green Turtle(s) means the species *Chelonia mydas* listed as Vulnerable, Marine and Migratory under the **EPBC Act**.

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 [Attachment C](#).

Green Sawfish means the species *Pristis zijsron* listed as Vulnerable and Migratory under the **EPBC Act**.

Green Sawfish foraging habitat means benthic sub-tidal habitat (sandy/silty bare sediment) which may be used by **Green Sawfish**.

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.

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.

Independent audit means an audit conducted by an independent and **suitably qualified person** as detailed in the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines* (2019).

Marine construction activities means any and all piling, dredging and breakwater construction operations.

Monitoring data means the data required to be recorded under the conditions of this approval.

Minister means the Australian Government Minister administering the **EPBC Act** including any delegate thereof.

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 *Guidance on 'New or Increased Impact' relating to changes to approved management plans under EPBC Act environmental approvals* (2017).

Operation of the marina means the use of the marina facilities for the berthing, storage, refuelling, maintenance and/or launching of water craft.

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).

Project area means the area shown marked within the blue outline and labelled as 'Port Hedland Marina Project Area' in Attachment A.

Protected matter(s) means a matter protected under a controlling provision in Part 3 of the **EPBC Act** for which this approval has effect.

Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) *Sensitive Ecological Data – Access and Management Policy V1.0*.

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.

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.

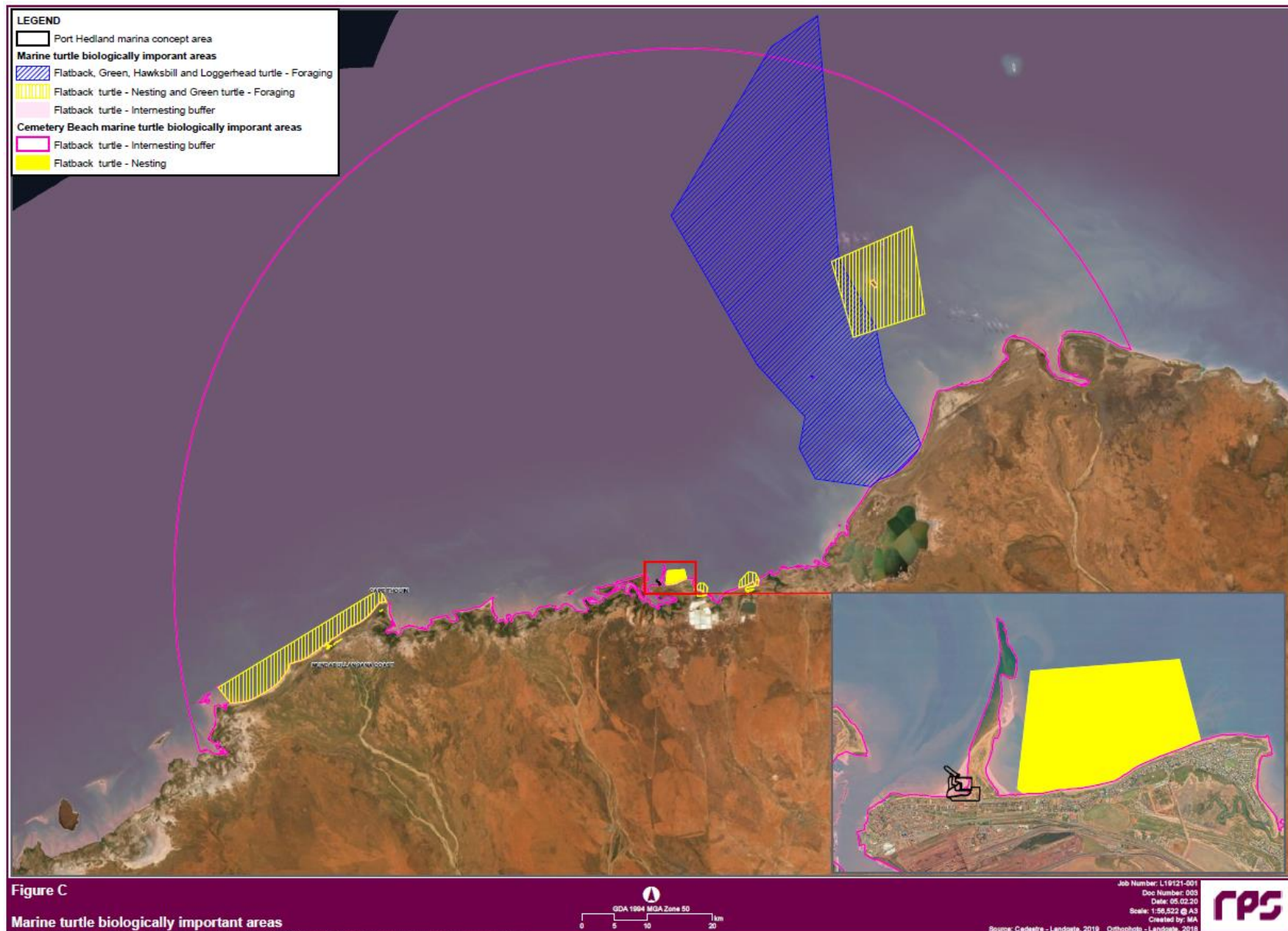
Website means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.

ATTACHMENTS

1. Attachment A – Project Area



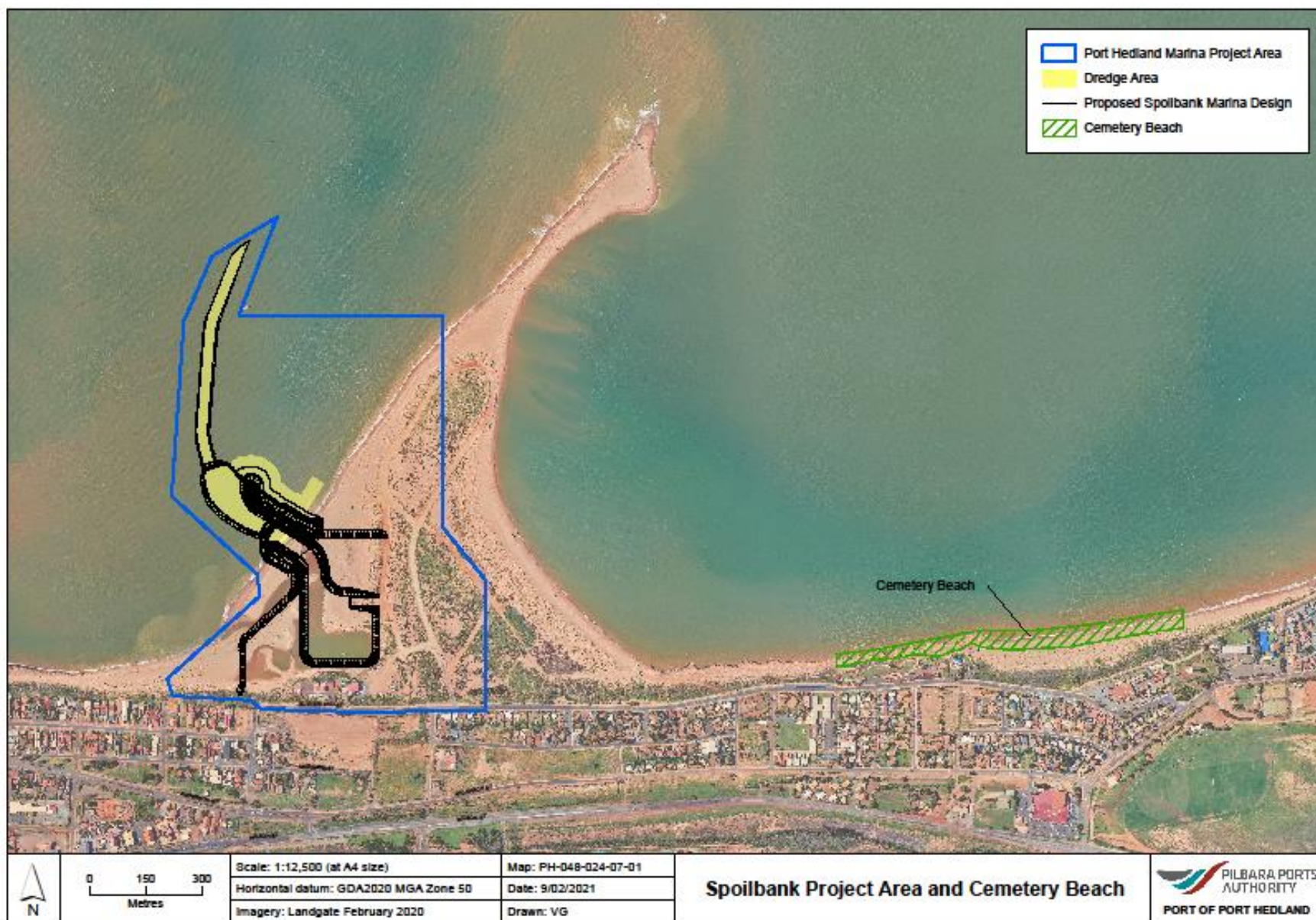
2. Attachment B – Flatback Turtle Biologically Important Areas



3. Attachment C – Green Turtle Foraging Habitat



4. Attachment D – Cemetery Beach



5. Attachment E – Dredge Area

