



Environmental Protection Act 1986

**Hon Amber-Jade Sanderson
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY (REPORT 1664) – SCARBOROUGH PROJECT NEARSHORE COMPONENT

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 100(1) of the *Environmental Protection Act 1986* in objection to the above report. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellants:	Conservation Council of Western Australia Inc; Deep History of the Sea Country Project Team
Proponent:	Woodside Energy Ltd
Proposal description:	Installation of a 32.7 kilometre trunkline, running from the State water boundary to Kilometre Point 0, which is located approximately 1.5 metres above the highest astronomical tide adjacent to the existing Pluto Liquefied Natural Gas facility, together with associated activities required to construct the trunkline.
Minister's Decision:	The Minister allowed the appeals in part
Date of Decision:	2 July 2021

REASONS FOR MINISTER'S DECISION

The proposal the subject of this appeal is described in Environmental Protection Authority (EPA) Report 1664 as the State waters component of a 434 kilometre long pipeline for the Scarborough Gas Field Project. This pipeline links the Scarborough Gas Field Project to the Pluto Liquefied Natural Gas Plant on Burrup Peninsula. The EPA advised that neither the Commonwealth component of the Scarborough Gas Field Project nor the Pluto gas plant (which is approved under Ministerial Statement 757) were the subject of its assessment.

The EPA identified the key environmental factors for the proposal to be benthic communities and habitats, marine environmental quality, marine fauna, and social surroundings.

The Deep History of the Sea Country Project Team submitted that Woodside and the EPA failed to adequately assess impacts to submerged cultural heritage values associated with

dredging, spoil disposal and borrow activities. The Conservation Council raised concerns about the scope of the proposal and contended that the EPA ought to have assessed emissions from the extraction of gas from the Scarborough gas field as well as emissions to air arising from the processing of gas at the Pluto gas plant. The Conservation Council also raised concerns about possible impacts to marine fauna and the adequacy of the assessment process engaging with the community.

Minister's decision

Taking into account the available information, the Minister was of the view that the EPA's assessment was appropriately directed to the proposal the subject of the referral and no further assessment is required. However, the Minister partly allowed the appeals to the extent that condition 6 is modified in the manner set out in Appendix 2 of the Appeals Convenor's report, including that an additional objective is added to the Dredging and Spoil Disposal Management Plan, being 'to avoid and minimise impacts to marine fauna'.

The Minister has otherwise dismissed the appeals. The full reasons for her decision follow.

Does the proposal include operation of the pipeline?

The Conservation Council expressed concern that Report 1664 does not clearly identify or define the scope of the proposal and provides conflicting indications of the activities covered by the assessment.

In response to the appeal, the EPA advised that Section 2.1 of Report 1664 notes that the proposal includes construction works, pre-commissioning testing, commissioning, operation and decommissioning.

Table 1 of the Report provides a non-exhaustive description of the proposal (and additional context) while Table 2 summarises the physical and operational elements of the proposal. As the EPA has advised, the elements set out in Table 2 relate to the construction of the pipeline and define the scope of the proposal as referred by the proponent, subject to the amendments approved in December 2019.

The EPA has advised, and the Minister agreed, that the absence of a specific reference to operation of the pipeline in Table 1, and certain other parts of the EPA Report, is not determinative of the scope of the proposal assessed by the EPA. It is clear from the Report as a whole and the content of the referral documentation that the EPA understood that the proposal involved both the construction and operation of the proposed pipeline. As the Appeals Convenor noted, this includes inspection and maintenance activities over the life of the pipeline to ensure structural integrity is retained.

Should the EPA have assessed emissions from the extraction of gas and onshore processing of that gas?

The Conservation Council submitted that the EPA should have considered and assessed all emissions that are reasonably connected to the operation of the pipeline, being emissions associated with the extraction of gas in Commonwealth waters and the processing of that gas once it is conveyed onshore. By failing to undertake such an assessment, the Conservation Council is of the view that the EPA did not fully assess the environmental impacts of the referred proposal.

The EPA has advised that the processing of gas transported through the proposed pipeline does not form part of the proposal. In addition, the EPA advised that the emission of

greenhouse and acid gases from the Pluto and Karratha gas plants is currently regulated through existing Ministerial Statements.

The Minister noted that the Conservation Council has commenced judicial review proceedings in the Supreme Court of Western Australia challenging decisions made by the then Chairman of the EPA under section 45C of the *Environmental Protection Act 1986* in respect to the Pluto and Karratha gas plants. The Minister made no comment on those matters except to accept the EPA's advice that the proposal the subject of this appeal does not include gas processing activities, and as such, air emissions from those activities were outside the scope of its assessment.

In relation to emissions associated with the extraction of gas outside State waters, the Minister noted the EPA's advice that these are subject to processes administered by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA). In that regards, the Minister noted that NOPSEMA determined that the greenhouse gas emissions associated with the extraction of gas from the Scarborough field will be managed to an acceptable level.

Based on the above, the Minister was satisfied that the extraction of gas and processing of that gas onshore are not within the scope of the referred proposal.

In coming to this decision, the Minister accepted the EPA's advice that the air emissions associated with the proposal are limited to the emissions from the construction of the pipeline in State waters. The Minister also accepted the EPA's advice that existing approvals for the Pluto and Karratha gas plants regulate greenhouse and acid gas emissions, with additional controls on the latter through Part V of the Act. In relation to the Pluto gas plant, the Minister recently approved a revised Greenhouse Gas Abatement Program that applies for the period 2021 to 2025 and sets a trajectory to zero net greenhouse gas emissions by 2050, inclusive of both trains 1 and 2. The Minister also requested the EPA to inquire into updating the implementation conditions for the Pluto gas plant to ensure the new targets are enforceable and subject to transparent reporting measures.

Do conditions relating to dredging require amendment to better protect marine fauna?

The Conservation Council submitted that the conditions recommended by the EPA are not sufficient to ensure impacts to marine fauna will be managed to an acceptable level. This included objection to the content of the Dredging and Spoil Disposal Management Plan (Plan) which was submitted to be based on qualitative parameters which lack detail as to the basis for determining compliance.

Concern was also raised that the outcomes sought to be achieved from the Plan are limited to benthic habitat, and do not include impacts to marine fauna and other impacts to the water column. The Conservation Council provided additional information from Oceanwise in support of this ground of appeal, which was the subject of an independent peer review commissioned by the EPA.

Based on the information provided by the appellant, the EPA agreed that condition 6 should be amended to (among other things) include an objective to 'avoid where possible and otherwise minimise direct and indirect impacts on marina fauna listed as specially protected fauna under the *Biodiversity Conservation Act 2016*.' The EPA also recommended additional guidance on what the Plan should contain, including measures to avoid direct impacts to turtles and the establishment of exclusion zones.

Noting the EPA's objective for this factor is 'to protect marine fauna so that biological diversity and ecological integrity are maintained,' the Minister agreed with the Appeals Convenor that this does not require that there be no impacts to marine fauna.

On the basis of the information available to her, the Minister allowed this ground of appeal by amending condition 6 to achieve the intent set out in Appendix 2 of the Appeals Convenor's report.

Should the proposal have been assessed more fully or more publicly?

The Conservation Council submitted that the EPA should have assessed the proposal at the level of public environmental review given the level of public interest and the sensitivity and quality of the receiving environment. The Conservation Council submitted that the complexity of some of the issues raised warrant the proposal being assessed more fully and more publicly.

The proposal was assessed at the level of 'assessment on proponent information'. The Minister noted advice from the EPA that while there were a relatively large number of submissions when the proposal was advertised, most of the concerns were unrelated to the proposal. This included concerns about greenhouse gas emissions from the 'Burrup Hub', also cited by the Conservation Council.

Consistent with the finding above that the EPA was justified in not assessing, as part of this proposal, emissions associated with the extraction or onshore processing of gas from the Scarborough gas field, the Minister found that the assessment report appropriately considered the scale of impacts associated with the construction and operation of the pipeline. As such, Minister did not believe the proposal requires further or more public assessment.

Did the EPA adequately assess submerged cultural heritage?

The Deep History of the Sea Country Project Team raised concerns about impacts to potential submerged archaeological values over a three-kilometre wide relict submerged palaeobeach barrier system that extends across the northern entrance to Mermaid Sound. The appellant expressed the view that there was potential for these formations to contain embedded Aboriginal lithic materials of cultural heritage value, and that this potential required assessment before approval is considered.

Through the appeal investigation, representatives of the Project Team indicated that further analysis of the age of the barrier systems would be valuable in understanding the potential for them to contain embedded lithic materials. This was on the basis that if the formations are of an age that predated human occupation of Australia (that is, greater than approximately 65,000 years old), they would be highly unlikely to contain embedded lithic materials observed closer to the coast.

Additional peer-reviewed research commissioned by Woodside was made available to the Appeals Convenor in May 2021. The Minister noted that this research was undertaken by subject area experts who are members of the appellant Project Team. The report and peer reviews were made available to the appellant in May 2021. In response, the appellant advised that the report was of a very high quality and that the specific locations of interest raised by the original appeal were largely addressed by the report and the authors' findings. However, the appellant noted (among other things) that while embedded material may not be present, landscapes that formed prior to human occupation should not be taken to have a lack of significance as cultural materials can be found on ancient landforms long pre-dating the initial peopling of the continent.

It follows from the above that it is unlikely that embedded lithic materials will be found in the submerged formations the subject of the appeal. As a result, the Minister did not consider further assessment of that issue is required.

In addition, the Minister noted that in the current draft of the Cultural Heritage Management Plan, Woodside has committed to avoiding dredging on harder calcareous rock and compact sediments that have the potential to preserve archaeological materials. The Minister also noted that both the Cultural Heritage Management and Dredging and Spoil Disposal Management Plans are required to be finalised in consultation with Murujuga Aboriginal Corporation. Combined with the objectives for each of these plans, the Minister considered there is sufficient assurance that the implementation of the proposal (if approved) will be carried out in such a way that minimises impacts to cultural heritage values.

The Minister for Aboriginal Affairs is also a decision-making authority for this proposal. As such, the Minister considered his input into the appropriateness of the conditions in respect to Aboriginal cultural heritage will be a central consideration as to whether or not the proposal should be implemented.

The Minister also noted that Woodside will be required to abide by the requirements of the *Aboriginal Heritage Act 1972* which applies within State waters.

Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

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